

Trials Instructions and Procedures

Prepare the proof. Make the record. Protect the client's choices.

A practice coursebook with a supplied trial file, completed courtroom work, supported jury instructions and changed-fact exercises.

PROGRAM FACULTY

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PRESENTED IN PARTNERSHIP WITH



**LATINO LAWYERS ASSOCIATION
OF QUEENS COUNTY**

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About the course

Preparing the case. Making the record. Explaining the law.

This course develops the episode's practical discussion of New York criminal trials from the first client decision through jury selection, evidence, examination, motions, instructions, and summation. It is intended for attorneys building trial skills. The integrated Rivera file is a fictional editorial adaptation of the episode's hypothetical; its added records, questions, and answers are teaching examples.

Authorities were rechecked October 12, 2026. The recording date has not been independently established. Current-law corrections include jury entitlement, discriminatory strikes, prior-act evidence, burdens and dismissal practice. The 2026 video-authentication decision and October 2025 justification instruction receive separate analysis. All supplied Rivera and Dunn records, dialogue, rulings and added facts are fictional editorial teaching materials, not faculty case accounts or adopted statements.

Proposed New York CLE credit: 1.5 Skills, subject to approval of the final course. This edition does not establish accreditation or attendance credit. Written study supplements the course; it does not itself confer CLE credit.

Newly admitted New York attorneys ordinarily must earn Skills credit in a traditional live classroom or a qualifying fully interactive videoconference. An on-demand recording does not satisfy that ordinary format requirement. Applicable exceptions and final accreditation must be checked before credit is represented. [28]

What you will be able to do

1. Prepare a reasoned client recommendation that separates the charge, proof, available disposition, and collateral consequences.
2. Conduct individual voir dire, distinguish cause from peremptory challenges, and make a supported Batson record.
3. Request a precise prior-act ruling and design an opening consistent with the expected admissible proof.
4. Build direct and cross-examination sequences with proper foundations and a defined stopping point.
5. Make a specific sufficiency motion and support instructions with the trial record.
6. Deliver an evidence-based summation and respond appropriately to jury questions.

A practical reading path

Chapters 1–2 build the client decision and supply the Rivera records before the solved ledger. Chapters 3–5 complete jury selection, evidentiary rulings and an opening. Chapters 6–8 supply answered examinations, motions and operative charge language. Chapters 9–10 complete closing and deliberations. Work the unseen Dunn file in §10.5 before its scored answer. Numbered citations link to the authorities; the contents and PDF outline provide navigation.

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Meet the faculty

Felipe Andres Garcia, Esq.



Attorney, Federal Defenders of New York

Felipe Andres Garcia is an attorney with Federal Defenders of New York in the Eastern District of New York. His public-defense experience spans federal criminal representation and earlier service in The Legal Aid Society’s Criminal Defense Practice in Queens.

Born in Bogotá, Colombia, he moved to Clearwater, Florida, at thirteen. He attended Florida State University and earned his law degree from George Washington University Law School. He was admitted to the New York bar in 2014, and his experience includes advising clients about plea decisions and representing people facing criminal charges at trial.

Education: Florida State University; J.D., George Washington University Law School

Admission: New York, 2014

Current role: Attorney, Federal Defenders of New York, Eastern District

Prior experience: The Legal Aid Society’s Criminal Defense Practice, Queens

Meet the faculty continued

Eugene D. Toussaint, Esq.



President, Attorneys With Swag Inc.; Staff Attorney, The Legal Aid Society

Eugene D. Toussaint is President of Attorneys with Swag Inc. and a staff attorney in The Legal Aid Society's Criminal Defense Practice in Queens. As a public defender, he represents people facing criminal charges. He founded AWS to make legal knowledge accessible through its podcast, music, and community education programs, and serves as a host and showrunner.

He graduated from Mount Saint Vincent in 2010 after studying history and psychology and earned his J.D. from St. John's University School of Law in 2014. He was admitted to the New York bar in 2015. A Bronx native and first-generation college graduate, he developed his interest in public education and community organizing alongside his legal career.

Education: Mount Saint Vincent, 2010, history and psychology; J.D., St. John's University School of Law, 2014

Admission: New York, 2015

Leadership and practice: President, Attorneys With Swag Inc.; staff attorney, The Legal Aid Society, Queens Criminal Defense Practice; AWS host and showrunner

Meet the faculty continued

Everett K. Hopkins, Esq.



Attorney, The Legal Aid Society; AWS Board Secretary, Co-host, and Producer

Everett K. Hopkins is an attorney with The Legal Aid Society whose practice includes criminal appeals. He earned his J.D. from CUNY School of Law in 2014 and was admitted to the New York bar in 2015. Raised in Jamaica, Queens, he played collegiate football at Hampton University before pursuing his legal career.

He serves as secretary of the Attorneys with Swag board and works as a host, producer, and musical artist. His creative work includes contributions to AWS's original music and its legal-education programs. He also serves on the board of Martin De Porres Youth and Family Services.

Education: J.D., CUNY School of Law, 2014

Admission: New York, 2015

Practice: The Legal Aid Society; criminal appellate representation

Service and creative work: AWS board secretary, host, producer, and musical artist; board member, Martin De Porres Youth and Family Services

Meet the faculty continued

Jubril Oladiran, Esq.



Attorney, Oladiran Law, PLLC

Jubril Oladiran is a New York attorney with Oladiran Law, PLLC and a background in public defense. He graduated from Touro Law Center and was admitted to the New York bar in 2015. Alongside his legal career, he is a musical artist known as Double T.

Education: J.D., Touro Law Center

Admission: New York, 2015

Practice: Oladiran Law, PLLC; public-defense background

Creative work: Musical artist known as Double T

1. The client's trial decision

Begin with the actual charge, the available proof, and the client's priorities.

1.1 The Rivera file

Sam Rivera is an adult teacher with no known criminal record. In this fictional adaptation of the episode, Rivera reports that a partner swung a metal bat toward Rivera's head in their kitchen at about 1 a.m. The swings missed and damaged a microwave. Rivera says they took the bat away, threw it aside, and pushed the partner while trying to leave as the partner continued approaching aggressively. The partner later reported that Rivera attacked with the bat. Police photographed an injury and the damaged kitchen. No neutral witness saw the encounter.

Those are competing accounts, not established findings. For the principal exercises, assume a local criminal court information charges intentional assault in the third degree under Penal Law §120.00(1). The prosecution must establish an intent to cause physical injury and the causing of that injury to the complainant or another person. Physical injury requires impairment of physical condition or substantial pain. A visible mark alone does not answer every element. Neither employment as a teacher nor lack of a record establishes innocence.

[2][3]

The source discussion uses a more serious arrest label. Do not convert that label into a charge or an automatic sentencing range. Obtain the current accusatory instrument, precise subsection, amendments, prior-record information, and applicable sentencing provisions. If the prosecution actually pursues attempted intentional murder, its intent-to-kill and attempt requirements require a separate analysis; a bruise does not automatically prove that charge, and the absence of death does not automatically defeat an attempt. The principal example does not assume that felony charge. [33]

1.2 Ask questions that change the recommendation

The first interview should distinguish observation from inference. Where was the bat after the disarming? How close was the partner when Rivera pushed? What did Rivera see suggesting another imminent attack? Did force stop once departure was possible? Which injury allegedly resulted from which act? Preserve the initial account without coaching it toward legal language. An admission that the partner had stopped attacking would materially change the justification assessment; counsel needs that fact before trial, not after an overbroad opening.

Prepare the case while evaluating disposition. Trial preparation can expose both weaknesses in the prosecution and weaknesses in the defense. Ask for the actual offer and its terms, including sentence, conditions, duration, protection-order consequences, and

admissions. An adjournment in contemplation of dismissal, a violation plea, and a misdemeanor conviction are different outcomes. None is guaranteed merely because the case appears weak. A noncriminal state-law label also does not establish that every other legal system will disregard the disposition.

Avoid presenting a probability as professional knowledge without a basis. The recording's broad percentages about jury selection or the need for client testimony are advocacy impressions, not measured success rates. Explain concrete uncertainty: an officer arrived after the event; a photograph cannot establish who started it; a witness may be believed despite inconsistencies. The client can weigh those risks more usefully than a claim that a trial is "85 percent won" at jury selection.

1.3 A completed client-advice note

Initial confidential teaching note, June 17. Rivera's priorities are avoiding incarceration, preserving teaching employment and avoiding a false admission. Current charge: Penal Law §120.00(1). The first available evidence consists of conflicting accounts, post-event photographs and an officer who did not see the confrontation. No written plea terms or verified employment determination have yet arrived. The dated follow-up in §1.5 records the later actual proposal. Rivera reports no prior record; obtain the records rather than assuming that report resolves every consequence.

Recommendation. Continue investigation and obtain a written disposition proposal. Seek the complete photographs, emergency-call recording, medical evidence, statements, and any available building video. The bat account may support justification, but the later push requires its own temporal analysis. Do not promise dismissal because the microwave is damaged. Obtain appropriate employment/licensing advice before representing that a disposition preserves the teaching position. Request time for informed consideration if a material consequence remains unresolved.

Decision recorded. Rivera has not authorized a plea. Explain the evidence and options in understandable language, confirm comprehension, and document questions still open. In a criminal case, the decisions whether to plead, waive a jury, and testify belong to the client after consultation. Counsel's recommendation is advice, not a replacement for that authority. Competence requires adequate preparation and, where needed, consultation with experienced counsel; a first trial is not a reason to conceal a preparation gap. [1]

1.4 Immigration requires individualized work

For a noncitizen variation, add a verified immigration history, documents, prior dispositions, and the exact proposed plea and sentence. Under Padilla, competent advice must address deportation consequences: clear law requires clear advice, while genuine uncertainty still requires advice about risk. Referral to a qualified immigration attorney

should inform the criminal representation before the plea; it does not erase criminal counsel's responsibility. [4]

The episode's DACA and driving discussion must not become a categorical safe-plea rule. USCIS identifies driving under the influence among disqualifying misdemeanors for DACA purposes, regardless of sentence, under its stated criteria. A New York "violation" or traffic label alone does not decide the federal analysis. Review the exact offense and immigration circumstances, including the current operation of DACA, with specialist counsel. [5]

The completed immigration variation in §1.6 supplies the status-document inventory, exact proposed offense and sentence, consultation request, limited specialist response and resulting client decision. It demonstrates the work required before counsel can give a reliable disposition recommendation. A label alone supplies neither a finding of safety nor a finding of inevitable disqualification.

1.5 A dated decision that belongs to the client

The following completed file is fictional. Names, dates, records and dialogue are supplied for practice; none is represented as a real client matter or a statement adopted by the faculty. The principal file uses one local-court information charging Penal Law §120.00(1). Later variations expressly change a fact or record. Do not silently import a favorable variation into the base case.

Confidential consultation — June 18, 2026, 3:00 p.m. Counsel Morgan Chen met with Sam Rivera privately for 55 minutes. Rivera identified three priorities: remain out of custody, protect the teaching position, and avoid admitting an attack Rivera says did not occur. Rivera reports United States citizenship and no convictions; counsel has requested the record rather than certifying that assertion. The separate noncitizen variation below replaces the citizenship fact. Rivera understands that the present charge is intentional third-degree assault, not the felony phrase used during the arrest discussion.

Actual proposed disposition in this exercise. The prosecutor's June 18 written proposal is a plea to the charged misdemeanor, a recommended noncustodial sentence, and a requested one-year full stay-away protection order. The court has made no sentencing commitment. The proposal does not resolve licensing, employer reporting, immigration, housing or other consequences. Counsel has not represented that the proposed order's duration or any sentence has been approved. Rivera may reject this proposal. No ACD or violation offer exists in this base file; counsel will request alternatives without describing them as available agreements.

Counsel's assessment. The complainant's account and reported pain create a real conviction risk. The first signed account differs from the expected trial account; the officer did not see the incident. The admitted-statement route may allow the jury to hear Rivera's defensive account without live testimony, but the jury need not credit it. The microwave damage supports the existence of damage, not the identity of the person who caused it. The

full lobby export shows a return that a shortened clip would conceal. A defense recommendation must address that fact before an opening promises a single uninterrupted departure. At this stage, preparation and negotiation should continue together.

What counsel said. “I recommend that we obtain the full evidence and written employment advice before you decide on this offer. I cannot promise an acquittal or that a noncustodial disposition preserves your job. A trial could end in conviction despite the inconsistencies we can show. You decide whether to plead, waive a jury, and testify after we discuss the actual choices. I will make recommendations and explain changes in the evidence; I will not record a decision you have not made.” [1]

Teach-back and decision. Rivera responded: “No jail in the proposal does not mean there are no consequences, and the judge has not promised the sentence. I want you to request an alternative and get the job advice. I am not authorizing this plea or a jury waiver today.” Counsel confirmed that account, gave Rivera a copy of the offer, and calendared a June 22 consultation before its stated June 24 expiration. The offer date is an exercise fact, not a statutory deadline. Counsel will seek an extension if necessary; an unanswered request does not itself extend the offer.

Assigned follow-up. Investigator Lena Park will preserve the complete camera range and original statement by June 19. Counsel will request the prosecution's complete discovery and prior-act notice, verify the criminal record and obtain a written account of all proposed plea terms. With Rivera's permission, counsel will consult employment counsel using only necessary information. Rivera will provide the employer's actual reporting policy and existing protection order. Nobody will contact the complainant through Rivera or suggest ignoring the order. The June 22 meeting must resolve what has been learned and what remains unknown. An adverse employment opinion would change the advice; it would not automatically eliminate trial risk or authorize a plea.

1.6 Completed immigration variation and bounded advice

Changed facts; separate file. Replace the citizenship statement above with these supplied facts: Rivera provides an unexpired category C33 employment-authorization card, a prior DACA approval notice, and a certified disposition showing no conviction in an earlier dismissed case. These documents are supplied facts for the exercise, not facsimiles of government records. Rivera also faces a separate driving case. Its written proposed plea is VTL §1192(1), with a fine and no custodial sentence. The prosecutor's draft factual statement refers to impaired driving after alcohol use. No specialist has verified removability, admission history or current eligibility merely by inspecting an employment card.

Counsel's completed June 19 consultation request. “Rivera authorizes this limited consultation. Please review the attached hypothetical status-document inventory, certified disposition, current accusatory instruments, exact §1192(1) proposal and factual statement, and proposed sentence. We need advice before acceptance, separately addressing

deportation consequences, DACA criminal-history criteria and discretion, and whether current litigation or policy affects the contemplated action. The assault proposal is still §120.00(1); please do not assume it has become a noncriminal disposition. Advise what further history or records are necessary. We have requested an extension of the June 24 offer but have no agreement yet.”

Completed specialist response in the exercise. “The state label alone cannot establish immigration safety. Section 236.22(b)(6) identifies specified misdemeanor categories, including driving under the influence and domestic violence, and also contains a sentence-based category and a multiple-conviction rule. The federal definition and facts matter; a state ‘violation’ label does not by itself settle their application. The absence of custody is relevant to some criteria but does not erase the listed categories. DACA remains discretionary under paragraph (c). I need Rivera's complete immigration history and the precise final record before giving a conclusion about this proposed offense. I have not evaluated current litigation's effect on Rivera's particular filing or established deportation consequences from the documents described.” This is an intentionally limited teaching response, not a real immigration opinion or a finding that §1192(1) necessarily disqualifies this client. [5][37]

Criminal counsel's completed advice and disposition of the question. “We do not yet have a basis to tell you this plea is safe. We also do not have a supported conclusion that it inevitably ends your DACA or causes deportation. I have explained the identified risk and requested the missing analysis. I recommend that you not authorize acceptance on the premise that the violation label resolves it. We will seek time and pursue alternatives while getting the necessary advice. If the governing deportation consequence is clear, I must give correct, clear advice about it; I cannot replace that duty with a generic warning or referral.” Rivera directs counsel to seek the extension and declines to authorize the plea today. Counsel records that instruction and schedules a same-day update when the prosecutor responds. [1][4]

Changed answer. If a completed, current analysis establishes a clear deportation consequence, the advice must identify that consequence accurately, explain available alternatives and document the client's informed choice. If the offer expires before essential advice arrives, tell the client the actual options and consequences of delay; do not pretend an extension exists or silently accept. Padilla resolved deficient advice on its record while leaving the separate prejudice inquiry for further proceedings. It did not make every uncertain consequence harmless, or every bad outcome proof of ineffective assistance. [4]

2. Build the proof before the performance

A trial file connects each disputed proposition to admissible evidence and a specific next step.

Rivera source file – work the records before the solution

Read R-1 through R-8 before the solved ledger in §2.5. Identify the strongest prosecution inference, the strongest defense inference and one unsupported assertion. The exercise distinguishes discovery from admitted trial proof. R-1 is the charge, R-2 a prior statement, R-3 an actual written evidentiary stipulation, R-4 an actual supplied diagram, R-5 an officer report, R-6 an admitted statement excerpt, R-7 a complete observation schedule for the specified video interval, and R-8 the governing trial extract. The complete documents needed for the assigned tasks appear here. No actual photograph, audio recording or video file is represented as attached; the supplied stipulation and stipulated observation schedule define their evidentiary contents for this simulation.

R-1 / Exhibit 1 – operative charging extract

Criminal Court of the City of New York, Queens County. People v. Sam Rivera. Teaching docket EDU-TR-26-01. Information, Count 1. The People allege that on June 15, 2026, at approximately 1:01 a.m., inside the kitchen of the fictional apartment described in R-4, Rivera, intending to cause physical injury to Jordan Vale, caused physical injury to Vale by intentionally pushing Vale against the counter, causing the left forearm to strike it. Count 1 concerns that final push. The supporting account also alleges earlier bat strikes as part of the confrontation; the court will not invite a conviction on an unidentified different act. The charged statute is Penal Law §120.00(1). Vale's supporting account alleges three strikes, pain lasting approximately four hours, and difficulty holding a kettle until noon. The information is assumed properly before the court for the trial-skills exercise; this extract is not a demonstration of every pleading or conversion requirement. It contains no felony count. Rivera is an adult outside the special youthful-offender jury provision, and has not waived a jury. [2][6]

R-2 / Exhibit 2 – complete first signed account

June 15, 2026, 1:25 a.m.; statement to Officer Alex Lee. Question: “Please describe what happened in the kitchen from the argument until Sam left.” Answer: “We argued about Sam leaving. Sam pushed me once. My left arm hit the counter. Sam left through the apartment door. My arm hurts.” Lee asked, “Anything else about how you were hurt?” Vale answered, “That is what I remember right now.” Vale read the statement and signed it, Jordan Vale. Lee recorded no question limiting the interview to events after an alleged bat attack. The original is preserved; the exercise supplies the entire account, including the open-ended prompt and follow-up. At trial, Vale admits signing these words and explains the omission

differently. Its admission for impeachment alone does not establish the truth of every sentence. [19]

R-3 / Exhibit 3 – admitted stipulation concerning photographs

Stipulation accepted in the fictional trial. The People and defense agree that Officer Lee personally took three unaltered photographs at 1:20 a.m. on June 15. Photo K shows a dent in the microwave door; no person is shown using the bat. Photo A shows a red area approximately four by two centimeters on Vale's left forearm; it does not measure pain, impairment or the mechanism of injury. Photo B shows a metal bat lying beside the refrigerator after the encounter. Lee can establish their fair and accurate depiction of what Lee observed at that time. No party stipulates who made the dent, when the red area first appeared, who moved the bat before Lee arrived, or whether the force was justified.

For this exercise the **written stipulation itself** is Exhibit 3, admitted as the agreed description of those post-event conditions in place of reproducing the photographs. Counsel Morgan Chen and prosecutor Taylor Bell agree to those terms; the court accepts them. A classroom reader therefore need not inspect a nonexistent attached photograph. The separate foundation exercise in §6.5 shows what testimony would be needed if the photographic stipulation were withdrawn. The picture of the room in R-4 is a labeled demonstrative diagram, not a photograph. [35]

R-4 / Exhibit 4 – supplied measured-room demonstrative

Investigator Park measured the kitchen with both parties' agreed access on June 17. The interior rectangle is ten feet east-west and eight feet south-north. For the drawing, the southwest corner is coordinate (0,0). The east-wall doorway extends from y=5 to y=8. The microwave occupies a counter on the west wall near the north corner; the refrigerator stands on the south wall near the east corner. The parties stipulate only that the fixed room features match the June 15 layout. They do not stipulate either person's position, movement, the bat's original location or a route of safe retreat. North indicates drawing orientation, not a surveyed compass bearing.

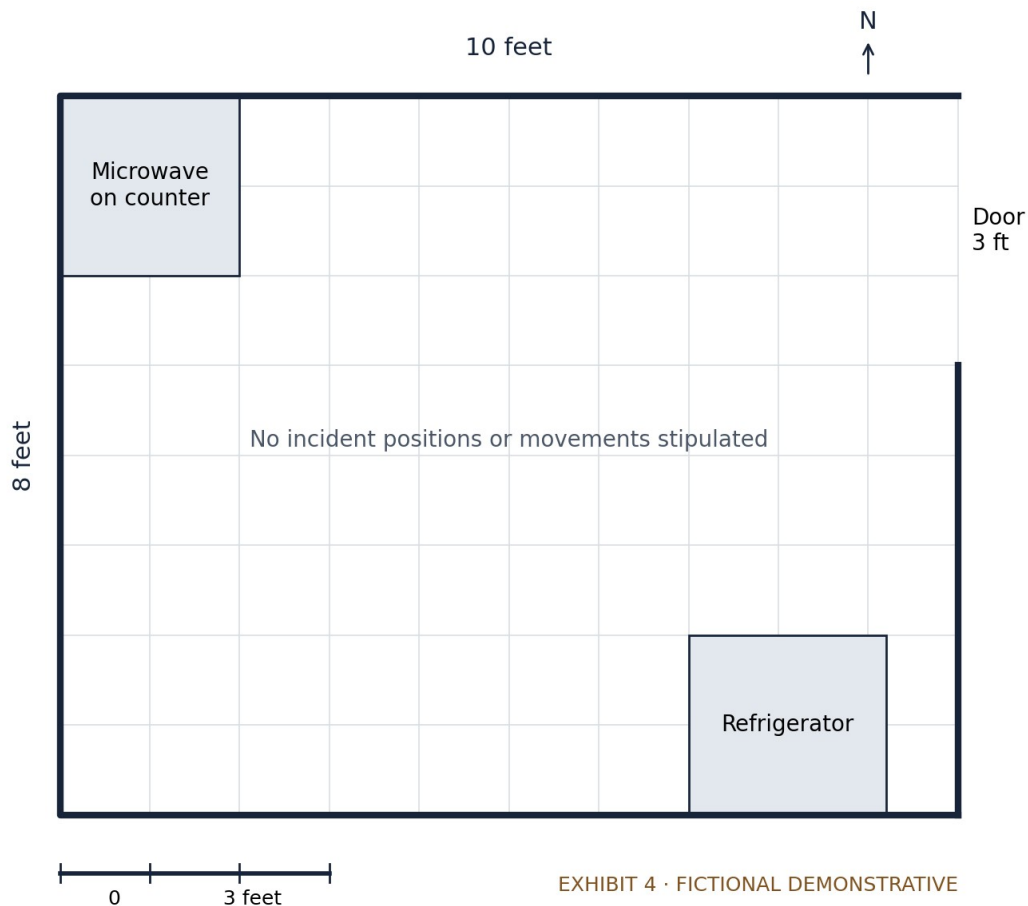


EXHIBIT 4 · FICTIONAL DEMONSTRATIVE

The drawing's one-foot grid and three-foot scale permit distance comparisons within the stipulated room. It has no plotted testimony about where Vale or Rivera stood. Counsel may mark separate overlays only after identifying the supporting witness and obtaining the court's permission. A convenient arrow added by a lawyer does not become an observed escape route. The text above supplies the same spatial information for readers who cannot use the graphic.

R-5 / Exhibit 5 – officer observations and investigation limits

Officer Lee's report, June 15. L1: Dispatch received at 1:07 a.m.; arrival at apartment door at 1:13. L2: Lee did not see any kitchen confrontation or either person swing the bat. L3: Vale pointed to the left forearm, described pain and moved the fingers; Lee did not administer a functional examination or diagnose an injury. L4: Lee saw the dent, red area and bat later described in Exhibit 3. L5: The bat was collected and logged, but no DNA or fingerprint examination was requested in this file. L6: Lee recorded Rivera's account at 1:16, before recording Vale's signed statement at 1:25. L7: Lee's body camera begins after arrival and cannot depict the earlier kitchen acts. L8: Lee's report does not purport to rule out earlier activity merely because it was not recorded. The report is a discovery source; the trial testimony below governs what the jury heard.

R-6 / Exhibit 6 – admitted Rivera statement

Complete substantive statement used in the base exercise, recorded at 1:16 a.m. L1: “We argued about whether I was leaving.” L2: “Jordan picked up the metal bat and swung it toward my head twice. I ducked. One swing hit the microwave.” L3: “I grabbed the bat, got it away and threw it toward the refrigerator.” L4: “Jordan immediately came at me again with both fists raised, about an arm's length away.” L5: “I pushed once to get space. I wanted to get out, not hurt Jordan.” L6: “Jordan went back against the counter. I left the apartment.” L7: Asked whether Rivera hit Vale with the bat, Rivera answered, “No.” L8: Asked whether the push happened after the bat was removed, Rivera answered, “Yes, but Jordan was coming at me again.”

The People introduce the whole defined statement through Lee in the base trial; the court permits its factual contents to be considered, subject to the jury's evaluation. No suppression or redaction dispute is assumed for this exercise, and counsel has reviewed the full supplied exchange. The admissibility stipulation is an express exercise assumption, not a general rule allowing a defendant to introduce a favorable out-of-court account. In the Record B variation, Exhibit 6 is not in evidence, and a private interview cannot replace it.

[24]

R-7 / Exhibit 7 – complete lobby-video observation schedule

The parties stipulate to the accuracy of the following schedule for an intact lobby recording covering 12:55 through 1:15 a.m. Its displayed time was checked against the building's reference clock and was accurate within one second. There is no audio, no view inside the apartment and no view of the stairs beyond the closed stair door. The preserved export remains with the fictional custodian. The schedule, rather than a video file, is the supplied teaching exhibit.

Lobby interval	What the admitted schedule shows	What it does not show
12:55:00–1:02:59	No person later identified as Rivera appears.	Events in the kitchen or another exit.
1:03:00–1:03:20	Rivera enters from the stair door and leaves through the street door. Hands appear empty.	A weapon concealed from this view or the earlier cause of departure.
1:04:10–1:04:25	Rivera returns through the street door and passes through the stair door.	Which floor or room Rivera enters.
1:05:00–1:05:15	Rivera reappears from the stair door, carrying a jacket and phone, and leaves.	Where those items were obtained or whether another confrontation occurred.
1:05:16–1:15:00	No further appearance by Rivera. Lee crosses the lobby at 1:12:35.	Events beyond the lobby camera's field.

Counsel cannot fairly describe this exhibit as proof Rivera never returned. The return may undermine an oversimplified defense account, but it does not prove a return to the kitchen or a second assault. A changed file that actually records a later assault would require a different theory. Neither side may expand this stipulated schedule beyond its stated field and interval.

R-8 – controlling trial extract and exhibit status

This short, complete extract supplies the testimony needed for the worked motions and closing. The additional examination in Chapter 6 develops the same answers without changing these facts. “TS” means teaching transcript, not a real certified transcript.

TS-1, Vale direct. L1 Q: What did Rivera do? A: “Hit my left forearm three times with the bat, then pushed me against the counter.” L2 Q: What happened to the arm? A: “The arm hit the counter and hurt more immediately after that push. It hurt moderately for about four hours.” L3 Q: How did it affect you? A: “I could not comfortably grip my kettle until noon.” L4 Q: Did you seek medical care? A: “No.” L5 Q: Did you threaten Rivera with a bat or raised fists? A: “No.” L6 On cross, Vale admits the complete Exhibit 2 words and signature. L7 Vale explains, “I thought Lee already knew about the bat, so I described the push.” L8 Vale acknowledges Lee's written prompt asked for what happened from the argument until departure, and the follow-up asked whether there was anything else about the injury.

TS-2, Lee testimony. L1: Arrival at 1:13; no firsthand view of the confrontation. L2: Observed the stipulated dent, red area and bat. L3: Did not conduct a medical or functional examination. L4: Vale reported pain. L5: No DNA or fingerprint testing was requested. L6: Lee made and accurately identifies the complete Exhibit 6 interview; the People offer it and it is admitted on the stated base assumptions. L7: No body-camera footage shows the prearrival kitchen event. L8: Lee cannot determine from the photograph alone who swung the bat. The officer does not recant the investigation or offer an opinion on guilt.

TS-3, building employee Lena Ortiz, defense case. L1: Ortiz knew Rivera from daily lobby encounters over two years. L2: From the desk facing both doors, Ortiz saw the 1:03 departure, 1:04 return and 1:05 second departure. L3: Ortiz saw empty hands on the first departure, and a jacket and phone on the second. L4: Ortiz saw no apartment event and did not follow Rivera upstairs. L5: Ortiz can identify the lobby and doors from personal observation, but recognition alone does not authenticate an unknown apartment-video clip. L6: Ortiz does not know whether Rivera returned to retrieve belongings or to confront Vale. L7: Ortiz visited the kitchen on June 17 and recognizes the fixed features in Exhibit 4; the June 15 layout is established by the limited stipulation, not by Ortiz's observation that night. L8: No other defense testimony changes the injury description in the base case. Rivera elects not to testify after consultation.

Evidentiary status controlling the model. Exhibits 3, 4, 6 and 7 are received subject to their stated purposes. Exhibit 2 is received for credibility only, with its limiting instruction. Exhibits 1 and 5 are charge/discovery materials, not automatically substantive exhibits for the jury. TS-1 through TS-3 are testimony. The prior-act variations in Chapter 4 are separate rulings unless expressly introduced into a changed trial. No closing may import their excluded material into this base file.

2.1 The completed proof ledger

This initial planning ledger separates the prosecution's burden from defense investigation. The supplied raw file records what later investigation and testimony establish; the completed evidence-and-risk solution follows in §2.5. Do not treat an intake unknown as still unknown after the trial record supplies an answer.

Proposition	Available information	Preparation consequence
Intent to cause injury	Partner alleges an attack; Rivera describes a defensive push.	Compare each account with the sequence and physical setting. Do not equate intentional movement with intent to injure.
Physical injury and causation	At intake, a photograph shows a mark; later supplied TS-1 testimony addresses pain and grip.	Obtain testimony and records about pain, function, timing, and mechanism. Identify the act said to have caused the injury.
Justification	Rivera describes bat swings, disarming, a renewed approach, and immediate departure.	Establish what remained threatening after the bat was removed. Identify a lawful route for those facts to enter evidence.
Reliability	Officer arrived afterward; accounts conflict about the bat.	Separate the officer's observations from repetitions of another person's account. Preserve original statements and their context.
Corroboration	Damaged microwave; possible building video.	Establish when damage occurred and what a camera could actually see. Preserve originals and complete time ranges.

Why the distinctions matter. A broken microwave is consistent with a bat strike but does not identify the swinger. An injured complainant may support injury and still leave justification unresolved. A witness who did not observe the encounter can authenticate a photograph taken afterward without becoming an eyewitness to the assault. Each item has a bounded evidentiary job.

2.2 Investigation starts at intake

Preserve the full emergency call, body-camera files, photographs, messages, medical records, and relevant surveillance through lawful requests and available process. Record custodians, dates, original filenames, and retention risks. Coordinate witness interviews through proper counsel or an investigator; do not direct a client to contact a protected person or bypass an existing order. Avoid changing, deleting, or annotating original evidence. Keep demonstratives and working copies separate.

Completed assignment. Investigator: determine whether the lobby camera records Rivera's departure and whether it has audio; request preservation from 12:30 to 1:30 a.m.; record the system clock's offset; obtain the original export and information needed to authenticate it. Purpose: test departure timing and visible condition. Limitation: lobby footage cannot establish who swung a bat inside the apartment. If it shows Rivera returning, revise the chronology and investigate the return rather than removing the unfavorable clip.

The episode rightly treats unknown answers as a preparation problem. A neighbor may have heard shouting but seen nothing. Interview the neighbor before promising an eyewitness. If a witness remembers no threat, do not rehearse a more useful recollection. Test the account against independent information and preserve disagreement for the lawyer's analysis.

2.3 Use missing evidence carefully

An untested bat is different from a tested bat yielding no usable profile; both differ from a reliable exclusion. Ask what was sampled, how it was collected, what testing was performed, and what the result actually means. A negative result does not by itself prove that no one touched the bat. A positive association may identify a biological contributor without establishing when or how material arrived. Obtain qualified interpretation before presenting a scientific conclusion.

Worked use at trial. If the officer admits the bat was never submitted for testing, a proper factual point is that this investigation produced no test result connecting Rivera to it. The next sentence cannot be "science proves Rivera never held it." Rivera's own account includes briefly handling it, so that claim would also contradict the defense theory. A lack-of-testing argument should explain the unresolved question, not invent an exonerating laboratory result.

2.4 Prepare around the trial sequence

Under CPL §260.30, the ordinary sequence is jury selection and preliminary instructions, the People's opening, an optional defense opening, prosecution proof, any defense proof, rebuttal as permitted, defense summation followed by the People's summation, and the court's charge. Motions and evidentiary rulings occur at their proper stages; deliberations follow the charge. Local-court trials incorporate the applicable trial procedures through CPL §§360.05 and 360.40. [16][34]

Use that sequence to schedule work. Prior-act rulings must inform the testimony discussion and opening. Cross-examination must produce the admissions needed for later argument. A sufficiency motion identifies what the proof failed to establish. Requested charges need support in the admitted record. An eloquent closing cannot repair a missing foundation or place an excluded fact in evidence.

2.5 The completed proof-and-risk ledger

Work the raw records above first. This completed ledger identifies both a permissible inference and the point at which inference would become unsupported assertion. It does not shift an element burden to the defense. [2][3][17]

Disputed issue	Supplied record and fair use	Strongest opposing point and completed decision
Charged intent and conduct	TS-1 L1–L2 alleges a deliberate push and immediate increased pain at the counter, with earlier bat strikes as context. Exhibit 6 L2–L8 describes disarming and a defensive push.	The jury may credit Vale despite inconsistency. Contest proof; do not tell Rivera that contradictory accounts compel dismissal.
Physical injury	TS-1 L2–L4 supplies duration, moderate pain and affected grip. Exhibit 3 shows a red area, not a pain measurement.	No treatment is not dispositive. Base proof can meet the sufficiency threshold; reserve the lesser-injury variation for §7.4.
Post-disarming threat	Exhibit 6 L4 and L8 describes an immediate renewed approach with raised fists.	TS-1 L5 denies the threat. Request justification on the favorable reasonable view, then argue credibility to the jury; do not demand the judge accept Rivera as a finding.
First account and later testimony	Exhibit 2 and TS-1 L6–L8 support a meaningful contradiction and a tested explanation.	Impeachment-only use does not establish the push as substantive truth. Use Exhibit 6, not a hearsay shortcut, for the defensive account.
Timing and return	Exhibit 7 and TS-3 show a 50-second interval between the start of the return and the next lobby appearance.	That is not 50 seconds inside the kitchen. Do not conceal the return or certify what happened out of view.
Forensic gap	TS-2 L5 establishes no requested testing.	Rivera admits handling the bat. Missing testing neither proves innocence nor disproves the admission. Drop a “never touched it” theme.
Officer's limits	TS-2 L1, L7 and L8 separate observations after arrival from the disputed acts.	The People can still prove a case through Vale. Stop after establishing the limit; do not seek an unsupported officer concession of innocence.

Competing inference exercise, completed. The prosecution can argue that the return is consistent with anger and an unfinished confrontation. The defense can argue that the visible jacket and phone are consistent with retrieving belongings. Neither inference

establishes what occurred upstairs. The properly bounded conclusion is that the video complicates the chronology and must be disclosed accurately in advice and argument. Test both explanations against admissible evidence; do not add Rivera's unadmitted later explanation to the record.

2.6 Completed preservation request and evidence receipt

June 18, 2026, 10:20 a.m., counsel to fictional building custodian. “Please preserve the native lobby recording, any related metadata and export logs for June 15 from 12:30 to 1:30 a.m., including the stair and street doors, and any available clock-check records. Preserve the complete interval and the original system record without overwriting it. Please identify the custodian, retention schedule, whether audio exists, camera views and any gaps. This request seeks preservation; it does not assert a subpoena, court order or consent authorizing release. Please advise what lawful process is required for production.” No real message has been sent.

June 19 receipt recorded by investigator Park. Custodian Dana Moss confirmed preservation and, under the fictional parties' agreed lawful access, provided an export of the complete one-hour lobby interval with its export log. Moss reported no audio. The file was retained read-only; a separate working copy was made. A shortened 1:03 departure clip supplied earlier was marked incomplete and removed from the presentation plan, not destroyed. Park's review of the full interval found the 1:04 return and 1:05 departure. R-7 supplies the stipulated observations for the portion used at trial. The full-hour preservation interval remains broader than the 20-minute trial schedule.

Counsel's resulting June 19 note. “The new export is unfavorable to the claim of a single final departure. Revise the client interview and opening. Preserve the complete file and chain; do not circulate a misleading cropped clip. Request the custodian's foundation and resolve admissibility before relying on the recording. Ask Rivera about the return without suggesting an answer; record that a later client explanation is not automatically evidence.” This is a completed response to harmful evidence, not an instruction to delete it. [1][35]

2.7 Trial order and burden applied to this file

In this local-court jury trial, CPL §360.05 carries over the ordinary order in §260.30 as applicable: prosecution opening, defense opening if made, prosecution proof, defense proof if offered, appropriate rebuttal, defense summation, prosecution summation, the charge and deliberations. Dismissal requests are made at the proper evidentiary stages, and the charge conference must identify the actual proof. A defense decision to call Ortiz does not shift the burden of proving intent, injury or identity. Nor does seeking justification make it an affirmative defense with a defense preponderance burden. [16][17][22][34]

Applied sequence. The People call Vale and Lee and introduce Exhibit 6. Counsel moves specifically at the close of that case. After denial, the defense calls Ortiz, introduces the permitted demonstrative and rests without Rivera's testimony. Counsel renews the specified motion on the expanded record and requests justification using Exhibit 6 L4–L8. The defense closes first, so it prepares for the prosecution's return-to-building argument before speaking. If the People never introduce Exhibit 6 and no other defensive account enters, the planned instruction requires reassessment; an opening cannot manufacture its foundation.

3. Select an impartial jury lawfully

Learn what this juror can do in this case; do not predict beliefs from a group label.

3.1 Forum, jury size, and challenge counts

The recording's older distinction concerning certain New York City misdemeanors is no longer the governing general rule. Current CPL §340.40 provides jury trials for local-court misdemeanor charges, subject to waiver and statutory qualifications, including the provision concerning certain eligible youths. A violation-only prosecution is generally tried without a jury. Identify the actual charge and defendant's status before advising on entitlement. [6]

Trial setting	Regular jurors	Peremptory challenges
Local criminal court jury trial	Six	Three for each party under CPL §360.30.
Indictment charging a class A felony	Twelve	Twenty for each party.
Indictment charging a class B or C felony	Twelve	Fifteen for each party.
Other indictment trial	Twelve	Ten for each party.

The indictment counts depend on the highest applicable class charged, not a lawyer's impression of seriousness. Joint defendants do not each receive a multiplied party allotment. CPL §270.25 provides two additional peremptory challenges for each alternate juror to be selected; local-court alternate selection instead permits one peremptory challenge under §360.35, whether one or two alternates are selected. Track regular and alternate allotments separately. Cause challenges do not consume a peremptory. [7][8]

Application. The Rivera misdemeanor exercise ordinarily uses six jurors and three peremptories per party. A separately assumed indictment containing a class B felony uses twelve jurors and fifteen regular peremptories per party. A potential lesser misdemeanor does not convert the indictment trial into a six-person local-court trial. Jury waiver requires the applicable legal procedure and the client's informed choice; counsel cannot make the choice simply to avoid difficult voir dire. [1][6][7][8]

3.2 Questions that expose a relevant belief

Explain the rule briefly with the court's permission, then invite an answer that can reveal a difficulty. A question that asks everyone to agree to "be fair" may produce little useful

information. Respect privacy; ask for an individual sidebar when a sensitive experience warrants it, subject to the court's procedure.

Police credibility. “What experiences, if any, would affect how you evaluate an officer's testimony?” Follow with: “Would the uniform itself give that witness extra credibility before you hear what the witness actually observed?” A relative in law enforcement does not by itself establish bias. An expressed inability to assess the officer like another witness is a different fact.

Silence. “If the judge instructs that the accused has no obligation to testify, what concerns would you have about applying that rule?” If a juror says “I would need to hear their side,” ask what that means and whether the juror can decide solely on the evidence without drawing an adverse inference. Do not demand a promised verdict.

Relationship violence. “Would your experiences make it difficult to consider a claim that force was used in self-defense in a dispute between partners?” The purpose is to identify an individual limitation, not to assume that every survivor, man, woman, or resident of a neighborhood thinks alike. Do not solicit a declaration that a described group lies or is naturally violent.

3.3 Cause challenges need a record

A relevant ground under CPL §270.20 is a state of mind likely to prevent an impartial verdict based on the evidence. CPL §360.25 governs local-court cause challenges. The court determines the challenge; an equivocal expression of trying to be fair may not resolve an expressed bias. Seek a clear assurance addressing the actual concern and identify why the complete exchange does or does not dispel it. The words “try” or “believe” are not automatic disqualifiers; context controls. [9]

Completed application. Juror 8 says, “If Rivera does not testify, that probably means there is something to hide.” After the court explains the rule, the juror says, “I can try, but I would still want an explanation.” Counsel requests removal for cause, identifies both statements, explains that the answer continues to impose a defense burden, and asks for an express ruling. The objection is the stated inability to apply the rule, not the juror's occupation or address.

Changed answer. If further questioning produces an unequivocal assurance that the juror can follow the instruction and draw no inference, the court must evaluate that assurance in context. Counsel cannot transform a disappointing cause ruling into permission for discrimination. For a denied defense cause challenge, make a precise record of the peremptory used on that juror, remaining allotment, and exhaustion as required by the applicable statute. Preservation and reversal conditions are not satisfied merely by saying “exception.” [9]

The episode's jury-duty joke is not instruction: a juror should answer honestly, and counsel must not encourage fabricated bias to avoid service.

3.4 Batson: no free discriminatory strike

A peremptory ordinarily requires no cause showing, but it cannot rest on prohibited discrimination. Batson prohibits race-based exclusion; J.E.B. addresses sex discrimination; McCollum applies the race rule to criminal defendants as well as prosecutors. There is no permissible first or second discriminatory strike and no three-strike threshold. One challenged juror can suffice when the surrounding facts support the inference; a juror's race alone does not automatically prove discrimination. [10][11]

The three stages ask different questions. First, the objector identifies circumstances supporting an inference of discrimination. Second, the striking party supplies a facially neutral explanation. Third, the court determines whether purposeful discrimination has been proved. Passing the second stage does not establish that the explanation is true. In *People v Cruz*, the appellate court required the missing third-stage determination after a facially neutral demeanor explanation. [10]

Completed objection. Assume the prosecutor strikes Juror 4, a Black juror, saying the juror hesitated about police testimony. The recorded answers show Juror 4 said an officer should be evaluated like anyone else. Juror 9, who is white and was accepted, gave the same answer and paused longer. Defense counsel objects promptly before the juror is released, identifies the comparable answers and treatment, asks that the juror remain available, and requests the prosecutor's explanation and a step-three finding.

Response to the explanation. If the prosecutor cites "hesitation," counsel identifies the transcript exchanges, asks the judge to state any observed demeanor finding, and explains why the accepted comparator undermines the reason. If Juror 4 separately refused to follow an instruction and Juror 9 did not, that difference could support a genuine neutral explanation. The judge must resolve the facts; neither an invented comparator nor a neutral-sounding label completes the analysis. Request an appropriate remedy and a ruling while the court can still address the selection.

3.5 Completed cause exchange and exhaustion record

Fictional voir dire, V-1. Court: "The defendant is not required to testify. Can you decide without drawing an adverse inference from silence?" Juror 8: "I can try, but if I were innocent I would explain. I would still want Rivera to tell us." Defense: "Would the absence of that explanation count against Rivera even after the instruction?" Juror 8: "Probably, yes." Prosecutor: "You want to be fair?" Juror 8: "Of course." Defense: "Can you set aside the expectation you just described?" Juror 8: "I am not sure I can."

Application and adverse ruling. Defense: "For cause under CPL §§270.20 and 360.25. V-1's specific answers retain a burden on Rivera to testify. Wanting to be fair did not resolve the expressed inability to put that expectation aside. Please rule on that ground." Court: "Denied; I credit the juror's desire to be fair." Defense: "The defense objects to that ruling on the stated unresolved bias. We exercise regular peremptory 1 against Juror 8." The juror is

removed. The court's hypothetical ruling is not endorsed as correct. Counsel preserves the actual exchange, rather than replacing it with a summary that the juror was “bad.” [9]

Regular defense challenge log	Action and individual reason	Remaining local regular peremptories
Before Juror 8	All three available; cause challenge denied on V-1.	3
Juror 8	Peremptory 1 after denied cause; actual silence-bias answers recorded.	2
Juror 12	Peremptory 2; repeated insistence that an officer's uniform supplies extra credibility, despite a cause denial separately recorded.	1
Juror 15	Peremptory 3; stated automatic disbelief of any person asserting defensive force between partners, with precise answers retained.	0
Before selection completes	Counsel states exhaustion on the record, identifies the challenged cause rulings and preserves the selection transcript.	0

The supplied reasons concern individual answers, not occupation, gender, race or neighborhood proxies. In this hypothetical each cause denial is adverse; a correct cause grant would leave a peremptory unspent. CPL §270.20(2), applied through the local provision, ties reversal for the denied defense cause challenge to the statutory use/exhaustion conditions. This log documents them; it does not guarantee a meritorious cause argument or reversal. Keep the alternate pool separate. One or two local alternates still produce one alternate peremptory per party under §360.35. A class B indictment instead supplies fifteen regular peremptories per party and two for each alternate under §270.25. Two alternates there produce four alternate peremptories, not an increase in the regular allotment. [8][9]

Changed assurance. Replace V-1's last answer with: “I understand the rule now. I can decide solely on admitted evidence and will draw no inference from Rivera not testifying.” The judge still evaluates the whole exchange, its sincerity and context. The reported *People v Rivera*, unrelated to Sam Rivera, affirmed the cause rulings after considering the assurances as a whole; “try” and “believe” did not mechanically require removal. Do not cite that case as a holding that every initially hesitant juror must be dismissed. [9]

3.6 Completed three-stage Batson hearing

Separate selection variation, V-2. Juror 4 is Black; Juror 9 is white. The court and counsel contemporaneously record that Juror 4 paused two seconds and Juror 9 four seconds when asked whether an officer should receive automatic extra credibility. Each answered: “No. I

would evaluate an officer by the same standards as another witness.” Neither expressed a different relevant reservation in the supplied record. The prosecutor accepts Juror 9 and strikes Juror 4. The defense objects before release and asks that Juror 4 remain available. These comparative facts, not race alone, support the inference.

Stage one — objector. Defense: “We raise Batson as to Juror 4. V-2 records the same substantive police-credibility answer from Jurors 4 and 9, with a shorter pause from Juror 4. The People accepted Juror 9 and struck Juror 4. There is no separate stated reservation in this record. We request the explanation and a complete three-stage ruling while Juror 4 remains available.” Court: “Those circumstances support an inference; the People must give their reason.” There is no waiting period for a second or third discriminatory strike. [10][11]

Stage two — explanation. Prosecutor: “The pause concerned me; I thought Juror 4 was reluctant to credit officers.” Court: “That explanation is facially race neutral. We proceed to whether it is genuine.” This limited ruling does not find the explanation credible. A neutral description can still conceal purposeful discrimination.

Stage three — comparison, response and finding. Defense: “Juror 9 paused longer, gave the same answer and was accepted. Please identify any different demeanor the court actually observed; the supplied record contains none. We submit that the inconsistent application shows pretext.” Prosecutor: “I have no additional answer or observation to identify.” Court: “I observed no relevant difference beyond the timed pauses. I find the stated hesitation reason not credible as applied here; the matched accepted juror paused longer. On the full record I find purposeful discrimination proved. The challenge is disallowed, and Juror 4 remains in the panel for selection.” This is a completed fictional finding on supplied facts, not a rule that every comparator dispute must end that way. [10][11]

Changed record and reasoned opposite ruling. Add a previously omitted answer by Juror 4: “Even with an instruction, I could not believe any police witness because of my unresolved complaint.” Juror 9 expressly said the opposite. The prosecutor contemporaneously identifies that individual answer as the reason. Counsel must acknowledge the difference and may test whether the reason is consistently applied. On this changed record, the judge credits the identified answer and finds purposeful discrimination unproved; the challenge stands. The result changes because a material comparator difference is supported, not because a facially neutral phrase automatically wins at stage two.

Cases in their actual posture. Cruz withheld decision and remitted for the omitted stage-three inquiry; it did not itself decide that the prosecutor's explanation was pretextual or automatically order a new trial. Batson supplies the race-discrimination framework; McCollum applies it to defense strikes, and J.E.B. prohibits sex-based peremptories. A defense lawyer cannot justify a discriminatory strike as zealous advocacy. Ask about a person's experiences and capacity to follow the law, without substituting stereotypes for answers. [10][11]

4. Resolve the boundaries of evidence

The purpose for which an act is offered determines the analysis; an accusation is not proof of character.

4.1 Sandoval: credibility if the accused testifies

A Sandoval ruling prospectively addresses permissible impeachment of a testifying defendant by prior convictions or specific misconduct. The inquiry considers relevance to credibility and the danger of unfair prejudice, including the effect on the decision to testify. It is not automatic permission to repeat every bad allegation. An arrest alone does not establish the underlying act; a question about misconduct requires a good-faith basis and a proper connection to credibility. [12][13]

Absence of a conviction does not always make actual misconduct unavailable. Conversely, a conviction does not make every detail admissible. Seek a ruling identifying the act, permissible subject, and limits. The Guide to New York Evidence also distinguishes unrelated pending charges and conduct underlying an acquittal. These issues require attention to the particular proposed inquiry, not a generic request to exclude “the record.” [13]

Rivera variation. The prosecutor proposes asking about an old arrest dismissed without a conviction and an alleged false reimbursement submission. Defense counsel requests exclusion of the arrest label, challenges the factual basis and relevance of any underlying conduct, and separately addresses the alleged dishonesty. If the latter has a sound basis, counsel argues remoteness, disputed facts, prejudice, and a narrowly limited inquiry. Do not claim the court must exclude a supported dishonesty issue merely because it never produced a conviction.

4.2 Molineux: substantive use of another act

Molineux concerns other-act evidence offered for a material purpose beyond propensity, such as motive, intent, identity, or absence of mistake. Naming an exception is the beginning of analysis. Explain the nonpropensity inferential link, why the issue matters in this case, how the other act is proved, and why its probative value warrants the prejudice. When an uncharged crime is offered to establish identity, the prosecution must establish by clear and convincing evidence that the defendant committed that other crime. Generic similarity does not establish the required connection to the charged offense. [14]

“Mistaken identity” concerns whether this is the actor. “Absence of mistake or accident” concerns the nature of conduct by an identified actor. They are not interchangeable phrases. A prior argument does not become proof that Rivera committed this assault simply because the prosecutor says “intent.” If the only reasoning is that Rivera has an angry disposition and therefore probably attacked, it is propensity reasoning.

Worked dispute. Suppose the People offer a prior text threatening this partner and explicitly referring to the same dispute. They identify motive and the meaning of later conduct. Defense counsel should examine authentication, timing, context, whether motive is materially disputed, and whether a redacted or narrower presentation would suffice. Compare an unrelated complaint from a stranger years earlier: its relevance may depend entirely on bad-character reasoning. Neither example is automatically admissible or inadmissible without the actual offer and balancing.

4.3 Obtain a usable ruling

Weinstein reaffirms that both doctrines have limits. Its 2024 decision rejected improper other-act proof and an overbroad Sandoval ruling; it did not abolish either doctrine. In particular, degrading or selfish conduct cannot be used merely to destroy character under the heading of credibility. Apply the holding to the offered evidence rather than treating the case as a universal exclusion order. [14]

Model request. “Please identify each proposed act and its purpose. For substantive proof, the defense requests an advance ruling on relevance independent of propensity, the proof supporting the act, and prejudice. For impeachment, we request the precise permitted question and scope if Rivera testifies. We object to the bare arrest and to character proof unrelated to credibility. If any act is allowed, we request an appropriate limiting instruction and an instruction that counsel and witnesses stay within the ruling.”

CPL §245.20(3) requires disclosure of intended prior-act uses and their designated purposes within the applicable statutory process. Calendar that notice and the court’s hearing schedule using the current text and any order. Do not wait until cross-examination to discover what the prosecutor intends. After the ruling, update the testimony advice and opening; do not assume a pretrial exclusion permits the defense to open the door through misleading testimony. [15]

4.4 Completed notice, applications and precise rulings

Separate prior-act variation, notice PA-1. Before trial, the People identify four proposed subjects with their purposes under CPL §245.20(3): (A) a 2017 arrest dismissed without conviction, offered to impeach Rivera; the notice identifies no supported underlying misconduct; (B) a 2019 false expense claim, offered for credibility if Rivera testifies; a signed claim and contemporaneous employer audit supply the asserted good-faith basis; (C) an authenticated message to Vale two days before this encounter, stating, “If you destroy the documents again, I will make you pay,” offered on the People’s identified theory of retaliatory motive in the same documents dispute; and (D) an unrelated 2012 stranger’s complaint about an argument, offered as proof Rivera is an aggressive person. These are disclosed fictional facts, not findings that the acts occurred or automatic grounds of admission. [15]

Supplied support for PA-1. B’s signed July 12, 2019 claim seeks \$84 for a taxi to a client meeting. The audit records a contemporaneous signed response: “The trip did not occur. I

knew that when I submitted this claim.” Rivera now disputes the audit's account; counsel tests authenticity rather than treating the prosecutor's notice as an adjudication. C's complete relevant thread on June 13 reads: Vale, 8:14 p.m., “I tore up the envelope with the original papers. I will do it again if you leave them here.” Rivera, 8:15, “If you destroy the documents again, I will make you pay.” Vale, 8:16, “Then stop leaving them on the counter.” Vale identifies the participants, personally received the messages and will identify the accurate full exchange. This variation also adds Vale's trial testimony that the June 15 argument concerned those same papers and Rivera referred to their destruction immediately before the charged push. Those supplied linking facts support the material-motive analysis. They are absent from the base file and must not be imported into its closing.

Defense application. “Exclude A's arrest label; the People have identified neither proved conduct nor a credibility basis. For B, we contest the allegation and seek exclusion because its age and collateral dispute could distract from this trial and deter testimony. If permitted, limit it to a single factual question about knowingly submitting a false reimbursement claim; exclude any suggestion of conviction, theft charges or unrelated work disputes. For C, require the actual message thread and foundation. A dispute over documents may supply a nonpropensity link if retaliation over those documents is genuinely at issue, but an ambiguous threat is prejudicial and must not become character proof. Limit any admission to the authenticated exchange and identified motive. Exclude D; an unrelated old quarrel plus an aggression label is propensity reasoning, not identification or proof of this act.” [12] [13][14]

People's response. “We withdraw A because we lack an underlying-conduct proffer. B bears on truthfulness; we accept a narrow question and will not offer extrinsic proof solely to contradict a denial of that collateral act. For C, the complete thread identifies the same documents dispute and the witness will authenticate the account and exchange. We rely on motive, not an assertion that Rivera generally attacks people. We continue to seek D as showing aggressive intent.” The People do not satisfy relevance by attaching the word “intent” to D.

Court's completed Sandoval ruling. “A is excluded. B may be asked only if Rivera testifies: ‘In 2019, did you knowingly submit a reimbursement claim for an expense you had not incurred?’ The signed claim and audit establish a good-faith basis to ask, not a finding of guilt. The topic bears on honesty, but the permitted scope excludes an arrest, conviction label and collateral employment accusations. If Rivera denies the act, counsel may not introduce the audit merely to prove that collateral misconduct. Seek leave before any disputed follow-up. I have considered age, credibility value, unfair prejudice and the effect on the choice to testify.” Counsel records the exact question and objection. This hypothetical balancing result is defensible, not mandatory in every file. [12][13]

Court's completed Molineux ruling. “C may be offered after the promised authentication, limited to the complete relevant exchange. The identified common dispute makes retaliatory motive a material issue on this variation's evidence; the message does not prove the charged act through general character. Its limited probative use outweighs the remaining prejudice with a contemporaneous and final limiting instruction. D is excluded. Its offered aggression inference depends on propensity; the People have not established a material independent link. Do not mention D in opening or questioning. If the foundation or

materiality for C fails, obtain a new ruling before use.” A conditional ruling is not a license to skip its condition. [14]

Delivered limitation in this variation. “The message is received only for your consideration of the claimed motive arising from the identified dispute. It does not establish that Rivera is a person of bad character or that Rivera committed the charged offense because of other behavior. You decide what, if anything, the properly limited evidence proves. The People still bear the burden of proving this charge beyond a reasonable doubt.” If B is asked during testimony, a separate instruction limits that inquiry to assessing credibility; it is not substantive proof of the charged assault. [13][14][17]

Completed advice after ruling. Counsel tells Rivera that the judge may allow the precise reimbursement question if Rivera testifies. Counsel does not call it an admitted conviction or promise that silence avoids the separately admitted message. Counsel revisits what live testimony would add and the risk of answering truthfully about B, while keeping the final testimony decision with Rivera. These PA-1 rulings do not enter the base trial unless a variation expressly adopts them. [1]

4.5 Case analysis and changed-purpose test

Weinstein's 2024 majority found errors in other-act proof lacking a proper material nonpropensity use and in an excessively broad Sandoval ruling. It reversed for a new trial, rather than finding the accused innocent or abolishing either doctrine. Apply its reasoning to D's missing independent link and to an attempt to expand B into a general attack on Rivera's character. Sandoval requires a prospective, fact-sensitive credibility/prejudice assessment; a dismissed arrest is not a substitute for actual supported conduct. [12][14]

Changed facts. Replace C's thread with an unrelated message saying, “I hate crowded trains,” and replace the People's motive explanation with “It shows Rivera's temper.” The identified documents link disappears. The completed defense response is: “There is no material nonpropensity chain from dislike of trains to this assault; the offered inference is disposition to anger.” On those supplied facts the judge excludes it. A “mistaken identity” theory would require proof bearing on who committed the charged act, including clear and convincing proof that the defendant committed the other crime when it is offered to establish identity. It is different from absence of accident in conduct by an identified person. Merely using either phrase supplies neither foundation nor relevance. [14]

5. Open with a supportable theory

The opening supplies an orientation to anticipated proof. It does not supply missing evidence.

5.1 The burden stays precise

The presumption of innocence applies throughout the proceeding. The People must prove every element and identity beyond a reasonable doubt. The defense need not establish an alternative story to obtain an acquittal. Reasonable doubt is grounded in a reason arising from the evidence or its deficiencies; it is neither any imaginable doubt nor a numerical percentage. Use the court's approved formulation rather than an invented scale, puzzle, or mathematical threshold. [17]

Distinguish an ordinary defense from an affirmative defense. Under Penal Law §25.00, the prosecution must disprove an ordinary defense raised at trial beyond a reasonable doubt; a statutory affirmative defense generally places a preponderance burden on the defendant. Justification is an ordinary defense. Introducing defense evidence does not shift the prosecution's element burden. [17][22]

5.2 A model defense opening

Photograph variation, separate from the base file. For this opening, assume pretrial review supports the forecasts, the officer will concede arriving afterward, and photographs of the damaged microwave are expected to be admitted. Do not include a fact merely because it appears in the client interview. Section 5.4 supplies the opening tied to the base file and its written photograph stipulation.

Opening. “This case concerns a short encounter in a kitchen and two different descriptions of it. You will hear that the officer arrived after the encounter ended. The officer can describe what was visible afterward, but did not see who began using force. You will see photographs of the damaged microwave and hear evidence about when those photographs were taken. Listen carefully to what each witness actually saw, what each learned from someone else, and what remains uncertain. At the end, the judge will explain the law. We will ask you to evaluate the evidence under that law and the prosecution's burden.”

This opening avoids promising Rivera's testimony or claiming that kitchen damage identifies the aggressor. Omit excluded material. If the bat account depends on undecided client testimony, do not promise the complete defensive narrative.

5.3 Witness selection follows elements

The People must prove the case, not call every person involved in an investigation. To seek a missing-witness instruction, identify an uncalled witness with knowledge of a material issue who would be expected to favor the opposing party, and request the instruction as soon as practicable. The opponent may defeat the request by a supported explanation, such as unavailability, lack of material knowledge, cumulative testimony, or no relationship

supporting the expected favorable testimony. The requesting party need not negate cumulateness as part of its initial showing. A missing-witness instruction permits a negative inference; it does not license speculation about testimony or fill gaps in the prosecution's proof. Investigate the witness and the actual gap before promising an inference. [40]

The episode's driving illustration makes a transferable point: start with the particular statutory theory. VTL §1192 distinguishes impairment, per se alcohol concentration, and intoxication. A chemical result and an officer's observations do different work, and operation remains a separate issue. Do not turn "no breath test" into "no possible prosecution." [30]

5.4 Opening tied to the actual base file

Completed opening, O-1. "You will hear two different descriptions of a short encounter. Listen to how the complainant described it when the officer first asked for the complete account, and how it is described here. You will hear that Officer Lee arrived afterward. The officer's observations matter, but the officer did not see the kitchen confrontation. The parties have agreed on what the later photographs depict: damage, a red area and the location of a bat after the event. Those conditions do not themselves identify the person who began using force."

"You will also receive a statement the People intend to introduce. Listen to the sequence it describes, especially what happened after the bat was removed. The lobby evidence includes a departure, a return and a second departure. It does not show the kitchen. We will ask you to examine those limits carefully, together with all the admitted evidence. The judge will give you the law, and the People must meet their burden under that law."

Why each forecast is supportable. The first account is R-2; the officer's limits are R-5 and the expected TS-2; the actual Exhibit 3 stipulation replaces photographs for this simulation. The prosecution has confirmed its planned Exhibit 6 offer. R-7 includes the unfavorable return, which counsel acknowledges accurately. No sentence promises that Rivera will testify, that a forensic test excludes Rivera, or that the camera proves no second encounter. No PA-1 prior act enters the base opening. If the People withdraw the statement offer before opening and no admissible replacement is established, remove its forecast and reassess the defense instruction. [1][16][17]

Changed driving illustration. Suppose a separate information charges VTL §1192(2), but no admissible chemical proof supplies its specified alcohol-concentration element. Counsel must address that evidentiary deficiency for that count, not say every alcohol-related driving charge fails. A different §1192(3) intoxication theory or §1192(1) impairment theory has different elements and evidence. Conversely, signs of drinking do not automatically supply the numerical element of the per se count. Read the actual instrument and statute before adapting the opening. [30]

6. Examine with a defined purpose

Each question should produce an admissible fact, test reliability, or establish the foundation for the next step.

6.1 Direct examination: let the witness supply the fact

A leading question suggests the desired answer. A yes-or-no form is not automatically leading, and an open-ended form can still suggest an answer. Courts generally limit leading on direct but may permit it for introductory or undisputed matters, children, clarification, hostile witnesses, and other appropriate circumstances. Cross-examination ordinarily permits leading within the applicable scope. The judge controls the manner of examination. [18]

Compare “Did you take photographs?” with “You photographed the broken microwave immediately, correct?” The first asks whether an act occurred; the second supplies both subject and timing. For a contested account, “What happened after the bat fell?” invites information without placing counsel’s version in the witness’s mouth. If the witness cannot remember, do not substitute a suggestion for testimony.

6.2 Plan the direct examination and foundation

Photograph variation, separate from the base file. Assume a building employee saw Rivera leave and took a lobby photograph; this witness did not enter the apartment. The questions below are an examination plan. Section 6.5 supplies the answered examination, objections and rulings for the base file.

Questions. Where were you working that night? What could you see from that position? What drew your attention? Whom did you recognize? How did you know that person? What did you observe about the person’s movements? What, if anything, did you do with your phone? When did you take the photograph? What does this marked photograph depict? How does it compare with what you personally saw at that time?

Offer and limit. After establishing that the image fairly and accurately depicts the relevant observation, offer it and obtain a ruling before publishing it to the jury. This witness can describe an observed departure and authenticate a corresponding image. The witness cannot testify that Rivera acted in self-defense inside the kitchen merely because Rivera later said so. Personal knowledge, authentication, and hearsay are separate issues; satisfying one does not satisfy the others. [18][35]

Changed fact. If the image came from an automated camera and the witness never observed the event, the personal-observation foundation above does not fit. Establish a proper system-based foundation through a knowledgeable witness and the applicable evidence rules. Do not recite “fair and accurate” through someone who has no basis to know.

6.3 Cross-examination: earn the admission and stop

Build short sequences around facts with a reliable basis. One question should ordinarily contain one proposition. Avoid arguing with the answer. Listen for a qualification that changes what you can fairly claim. The goal is a useful record, not a visible concession that counsel has “won.”

Officer sequence. “You arrived after the emergency call?” “You were not in the apartment before that call?” “You did not see either person swing the bat?” “You photographed the microwave after arrival?” “That photograph does not show a person swinging the bat?” On the assumed answers, stop. The achieved point is limited firsthand knowledge. Asking “So the complainant could have caused everything?” invites speculation, objection, and an explanatory answer the officer is not equipped to give.

Unknown-answer variant. Counsel has not reviewed all body-camera footage and asks, “You never heard any explanation from Rivera, correct?” The officer may disclose a recorded statement counsel has not anticipated. The practical repair belongs before trial: review the complete statement evidence, rulings, and footage; decide whether the question helps; identify the precise source for any contradiction. A rule of thumb to know the answer is a preparation discipline, not a literal prohibition against every necessary exploratory question.

6.4 Prior statements: contradiction has a limited use

Assume the complainant testifies, “Rivera struck me three times with the bat,” while a signed statement from that night says, “Rivera pushed me once.” First fix the present testimony. Identify the earlier interview and statement, show the statement or disclose its content as required, and ask whether the witness made it. Permit the explanation. If the witness denies or cannot recall it, determine the proper route to prove the statement, subject to relevance and evidentiary limits. [19]

The contradiction ordinarily attacks credibility; it does not automatically make the earlier version substantive truth. If counsel needs the statement for its truth, identify a separate admissibility ground. Nor does every omission contradict later detail: ask whether the circumstances naturally called for that information. A brief emergency response to an unrelated question is different from a detailed account specifically addressing the disputed act. [19]

Proper closing use. “Consider whether those materially different descriptions affect your confidence in the testimony,” subject to the instruction. **Improper shortcut.** “The signed statement conclusively proves there was only a push.” The latter converts impeachment into substantive evidence without doing the necessary evidentiary work.

6.5 Completed direct, foundation and objection

Base direct of Ortiz, D-1. Q: Where were you working around 1 a.m.? A: “At the lobby desk, facing the street and stair doors.” Q: How did you know Rivera? A: “I had seen Rivera nearly every day for two years.” Q: What first drew your attention? A: “The stair door opened. Rivera crossed the lobby and went out.” Q: What did you observe about Rivera's hands? A: “They looked empty from the desk.” Q: What happened next? A: “Rivera came back, went through the stair door, then came down again with a jacket and phone.” Q: Did you follow through the stair door? A: “No.” Q: What could you see of the apartment? A: “Nothing.”

Q: Why did Rivera return? A: “Rivera must have wanted the phone—” Prosecutor: “Objection, lack of personal knowledge and speculation.” Court: “Sustained. The speculative answer is stricken.” Defense: “What did you personally see on the second departure?” A: “A phone and jacket.” Counsel stops there. The fact supports a possible inference in argument; the witness may not turn the inference into remembered intent. This adverse ruling improves the evidentiary boundary rather than destroying the useful observation. [18][35]

Actual diagram offer. Q: When did you enter the kitchen? A: “June 17, not during the incident.” Q: What does Exhibit 4 depict? A: “The kitchen walls, door, counter and refrigerator where I saw them on June 17.” Defense: “The parties stipulated to those fixed features as of June 15. We offer Exhibit 4 only as a measured demonstrative of that layout.” Prosecutor: “No objection with no incident positions inferred.” Court: “Received for that limited purpose.” Counsel does not ask Ortiz to authenticate a position Ortiz never observed. The diagram is actually supplied, and its text description states the same limitations.

Photograph variation — stipulation withdrawn. Assume Lee personally took Photo K and it is marked for identification. Q: When did you enter? A: “1:13.” Q: What did you observe about the microwave? A: “A dent in its door.” Q: Did you take a photograph? A: “Yes, at 1:20.” Q: How does marked Photo K compare with what you saw then? A: “It fairly and accurately shows that microwave and dent as I saw them.” Q: Does it show someone causing the damage? A: “No.” Counsel offers it; the court admits it to depict the post-event condition, subject to relevance and other objections. Lee's personal observation supplies this foundation; taking the picture is not invariably required if another witness has the necessary knowledge. Authentication does not prove who caused the depicted damage. The image is hypothetical here; the base exercise uses the complete written Exhibit 3 stipulation. [35]

Leading-question ruling. Defense asks on direct, “Rivera was obviously escaping danger, correct?” Prosecutor objects to leading and speculation. The court sustains both grounds. Counsel repairs the question to “What did Rivera do when the stair door opened?” An introductory question such as “Were you working at the desk?” is not automatically barred because it permits yes or no. Permission to lead on an appropriate introductory or hostile-

witness matter does not license counsel to supply a contested event or a legal conclusion. [18]

6.6 Completed cross and impeachment sequence

Officer cross, X-1. Q: You arrived at 1:13? A: “Yes.” Q: You were not present for the kitchen confrontation? A: “Correct.” Q: You did not see either person swing the bat? A: “Correct.” Q: Exhibit 3’s conditions were recorded afterward? A: “Yes.” Q: Those photographs do not show who caused the microwave damage? A: “Correct.” Q: No laboratory examination of the bat was requested? A: “Correct.” Counsel stops the sequence. The record now establishes observational and testing limits, not innocence.

Adverse answer and recovery. If counsel asks, “So you have no evidence connecting Rivera with the bat?” Lee answers, “Rivera said they took it away and threw it aside.” Counsel should not argue with that accurate Exhibit 6 statement. The repair is narrow: Q: That statement describes handling the bat after a claimed attack? A: “Yes.” Q: You did not observe whether that account is accurate? A: “Correct.” Stop. The source had warned counsel against an overbroad no-connection question. Do not erase the adverse answer or claim the missing laboratory work contradicts an admitted handling account.

Complainant impeachment, X-2. Q: Your testimony today is three bat strikes to the left forearm? A: “Yes.” Q: At 1:25 that night, did Lee ask you to describe what happened from the argument until Sam left? A: “Yes.” Counsel shows the complete Exhibit 2. Q: Is this the statement you read and signed? A: “Yes.” Q: It states, “Sam pushed me once. My left arm hit the counter,” correct? A: “Yes.” Q: Asked if there was anything else about how you were hurt, you answered, “That is what I remember right now”? A: “Yes.” Q: Does this complete statement describe three bat strikes? A: “No. I thought Lee already knew about the bat.” Q: The written prompt did not ask only about events after a bat strike, did it? A: “No.” Counsel stops after exposing the inconsistency and recording the explanation. [19]

Objection and instruction. Defense offers Exhibit 2 to assess credibility. Prosecutor: “Object if offered as proof the injury necessarily came from a push.” Court: “Received for credibility, not independently for the truth of the prior account. Consider the difference and the explanation when evaluating this witness.” A closing can argue that the different descriptions weaken confidence in the trial account. It cannot treat the statement’s signature as an automatic hearsay exception. If Vale denied or could not recall making it, counsel would need a proper extrinsic foundation and ruling; the present admission does not require a manufactured denial to justify the exercise. [19]

6.7 Video foundation: the 2026 warning and a repaired record

Matter of M.S. (M.H.) concerned an Article 10 proceeding and an inadequately authenticated recording. The Court of Appeals distinguished recognizing the people or setting from establishing that a recording accurately depicts the claimed event. The missing evidentiary links could not be supplied by assumptions about the clip's creation, preservation or reliability. The Court reversed and dismissed the petitions on that record; it did not decide that the clip was necessarily fabricated or announce a rule that only an eyewitness can authenticate video. Do not import the Family Court burden into this criminal trial. [36]

Failed offer, V-A. A neighbor forwards a 14-second apartment clip from an unknown sender. Ortiz recognizes the refrigerator but was not present during the event, does not know the camera, has not seen the original recording and cannot explain its date, export or editing. Counsel: “The room is familiar, so the clip is authentic.” Opponent objects. Court: “Foundation insufficient. Recognition of the room does not establish the event's accurate depiction. Mark for identification only.” Neither opening nor summation may treat the excluded clip as trial evidence. This file does not prove the clip is false; it proves the offered foundation is missing. [35][36]

Repaired offer, V-B; different supplied facts. Custodian Moss testifies: “I installed and maintain the lobby system. The camera covers these two doors continuously when operating. I checked operation before and after this interval. I personally exported the entire native hour on June 19 without selecting internal gaps. This is the preserved export; its export log and file-identification record match the copy offered. Playback shows no missing segment within the defined interval. The displayed clock was within one second of our reference on the recorded check. There is no audio. I retained the native record, and I know of no alteration.” Counsel identifies the log and offered copy, gives the opponent an opportunity to inspect them, and seeks a ruling. On these assumed facts the judge finds an adequate system and preservation foundation, subject to cross-examination; the clip's significance still remains for the factfinder. [35]

Cross exposing the remaining limit. Q: This camera cannot see an apartment? A: “Correct.” Q: Your checks do not tell you why Rivera went upstairs? A: “Correct.” Q: If the original had been overwritten before you reviewed it, would you have the same preservation basis? A: “No.” A reliability chain must actually exist; reciting the repaired script through a witness who lacks that knowledge does not create it. R-7 stipulates the schedule for the base exercise, while V-A and V-B teach the contested authentication question separately.

7. Motions and the defense case

Separate a legal-sufficiency decision from the jury's assessment of credibility and reasonable doubt.

7.1 The same legal standard at both stages

CPL §290.10 permits a trial order of dismissal at the close of the People's case or all the evidence when the proof is legally insufficient to establish the charged offense or any lesser included offense. Local-court motion practice follows §360.40, with submission of information counts governed by §360.50. [34] The statute also addresses reserved decisions and the effect of evidence erroneously excluded from the People's case. The standard does not become a different final-stage requirement that the judge personally find guilt beyond a reasonable doubt. [20]

Legal sufficiency asks whether the competent proof, viewed with the required favorable inferences to the People, can establish the necessary elements; it does not authorize the trial judge to acquit simply because defense testimony seems more persuasive. A jury may find reasonable doubt even when the evidence survives that threshold. Identify the count and exact missing element. "The People have not made a case" gives neither the court nor reviewing counsel a clear issue. [20][21]

7.2 A specific motion, including the lesser-offense problem

Assumed variant. The People rest after testimony describing an intentional hard shove. The complainant says it caused a momentary sting, no continuing pain, and no impaired movement. There is a photograph of transient redness but no further injury proof. These added facts are for the motion exercise; they are not findings in the base file.

Model application. "The defense challenges the legal sufficiency of physical injury for the §120.00(1) count. The entire injury proof is momentary stinging and transient redness, with express denial of impairment or continuing pain. Even giving the People the favorable inferences, we submit that this record fails to establish impairment of physical condition or substantial pain. We request the appropriate ruling on the completed offense and an express determination whether any legally sufficient lesser included offense remains." Substantial pain is contextual; it is more than trivial, but neither medical treatment nor a particular duration is invariably required. Counsel must address all the evidence. [2][3][32]

Why full dismissal may fail. Evidence of a forceful intentional shove may support an attempt even when the completed injury element fails. CPL §290.10 does not authorize dismissal of the entire count if a legally sufficient lesser included offense remains. Analyze the intent and attempt proof, and distinguish dismissal from the later decision about which offenses go to the jury. Do not omit a viable lesser merely because the motion focuses on the completed assault. [20][26]

If the court denies the motion and the defense then presents evidence, renew the specific sufficiency grounds at the close of all evidence and address the expanded record. Defense testimony could supply a missing fact. Finch discusses the Gray specificity and Hines renewal rules while recognizing a limited situation involving a definitive earlier ruling on the same legal issue. That exception is not a reason to use generic motions or omit ordinary renewal. [21]

7.3 Whether Rivera should testify

The decision belongs to Rivera after consultation. Explain what testimony would add, admissible prior-act inquiry, prior statements, cross-examination risks, and how the theory stands without that testimony. Do not use a rule that defendants “must testify 95 percent of the time.” Obtain the actual ruling and actual trial record before giving a final recommendation. [1]

Record A. The People have introduced Rivera’s statement describing the bat swings, disarming, renewed attack, and defensive push. A reasonable view of that evidence may support justification without Rivera taking the stand. Counsel should seek the instruction on that record; whether live testimony helps remains a separate decision. **Record B.** No admitted evidence describes any threat or defensive act. The attorney’s private interview and opening are not evidence. Counsel must assess whether available admissible defense proof can establish the necessary factual basis. [24]

Preparation is not scripting. Review the obligation to tell the truth, listen, ask for clarification, and avoid guessing. Explain that “I do not remember” is appropriate when true. A lawyer may not knowingly present false evidence; a concern that the client will be unpersuasive is not knowledge of falsity. Address any actual ethical problem through the governing rules and appropriate advice, not by quietly inventing a replacement account. [1]

7.4 Completed two-stage dismissal record

Base motion at the close of the People, M-1. Defense: “Under CPL §§290.10 and 360.40, we challenge the legal sufficiency of Count 1’s physical-injury element and intentional injury causation. Exhibit 3 depicts a red area but cannot measure pain; Lee did not examine function. We acknowledge TS-1 L2–L3’s testimony of four hours of moderate pain and difficulty gripping a kettle, as well as TS-1 L1–L2’s charged push, counter impact and immediate increase in pain. We submit that the inconsistency with Exhibit 2 undermines the claimed mechanism, but recognize the court must apply the sufficiency standard rather than decide credibility. We request a specific ruling on each identified ground and any lesser included offense.” The admitted pain and functional-limit evidence makes this sufficiency challenge difficult. Counsel must address that evidence accurately and preserve the specific legal argument; omitting unfavorable proof does not strengthen the motion. [2][3][20][32][34]

People's response and court's denial. Prosecutor: “If credited, Vale's described deliberate push, counter impact, pain and functional consequence supply the elements. Lack of treatment is not a statutory prerequisite.” Court: “Denied. Viewed as required at this stage, the testimony supports intent, causation and physical injury. Its contradictions are for the jury. I am not finding guilt beyond a reasonable doubt.” Chiddick upheld physical-injury proof involving a bite, damaged fingernail, bleeding, pain and treatment; its analysis is contextual, not a mandatory treatment checklist. The base denial here does not compel a guilty verdict. [20][32]

Renewal after the defense, M-2. Defense: “We renew the specific Count 1 injury, intent and causation grounds stated in M-1 at the close of all proof. Ortiz's testimony at TS-3 concerns the lobby, not the injury mechanism or severity; it supplies no new injury proof. We preserve the same legal challenge on the full record and request an express ruling. Independently, we maintain the jury's reasonable-doubt and justification questions.” Court: “The renewed motion is denied for the same specified reasons; the added lobby testimony does not eliminate the sufficient prosecution evidence.” Counsel has not substituted a generic “renew all” for an identifiable argument. [20][21]

Changed injury record, M-3. Replace TS-1 L2–L3 entirely with: “It stung for a moment. I had no continuing pain and no trouble moving or using the arm.” Assume no other injury proof beyond transient redness, but competent proof of an intentional forceful shove directed to cause injury. Defense specifically seeks removal of the completed-assault submission because this record lacks impairment or substantial pain, and asks the court to address attempt. The People request attempted third-degree assault as a legally sufficient lesser. Court: “The completed injury proof is insufficient on the supplied record. The evidence permits a finding of intent to injure and conduct tending to cause injury, so I will not dismiss the count altogether. On the People's request, I submit the supported lesser under CPL §360.50(2).” Lack of completed injury is not proof of lack of intent or of accident. [3][20][26][34]

Changed defense proof, M-4. Instead assume the first motion is denied and a defense witness later supplies credible testimony of a fractured finger caused by the charged act. Renewal must address that added proof; counsel cannot freeze the record at the close of the People. Conversely, a stronger defense denial does not change the legal test into the judge's personal reasonable-doubt verdict. Finch's narrow exception for repeating a definitively resolved legal issue does not excuse ordinary specificity and renewal after new evidence. [20][21]

7.5 Completed testimony consultation and election

Private consultation after the People rest. Counsel: “Exhibit 6 already places your account of the renewed attack before the jury. Your live testimony could explain details and the return to the building, but it would be tested against that statement and cross-examination. In the PA-1 variation the limited reimbursement question would be allowed if you testify; in

the base file no such variation is automatically imported. The jury may reject the recorded account, but you do not have to testify to earn a supported justification instruction. I recommend that we compare the value of the added details against those specific risks, rather than assume that every defendant must take the stand.” [1][24]

Rivera responds: “I understand the statement is already evidence and that the jury can still disbelieve it. I have discussed the questions I could face. I choose not to testify.” Counsel records the informed choice and confirms it remains Rivera's decision. The note does not purport to be a universal required courtroom colloquy. Counsel does not tell the jury what this private consultation contained or use it to supply missing evidence. A later change of mind requires timely consultation and appropriate court procedure, not a secret alteration of the record.

Record B decision. Remove Exhibit 6 and every other admitted account of threatened or defensive force. Counsel must explain that private knowledge alone does not support the requested instruction. Investigate other admissible proof and reassess testimony with Rivera; do not assure the client that Rayford supplies facts missing from this case. Rayford involved a defensive account already introduced by the People, and the reasonable view could support justification despite an unintended injury. It does not force Rivera to testify or allow counsel to testify through argument. [24]

8. Instructions determine the legal questions

Write requests from the admitted record and the governing charge, then preserve an adverse ruling.

8.1 Justification is temporal and fact dependent

Penal Law §35.15 permits physical force when and to the extent the person reasonably believes it necessary to defend against another's use or imminent use of unlawful physical force, subject to statutory exceptions. The analysis includes both the actor's belief and its reasonableness. Provocation with the specified intent, initial aggression without the required withdrawal, and combat by agreement can matter. Insults or suspected infidelity do not themselves authorize physical retaliation. [22]

Analyze the force actually used. A bat swung toward a head may present a deadly-force issue; a particular push may or may not, depending on the circumstances. Deadly physical force carries additional statutory conditions, including the applicable duty to retreat when the actor knows retreat can be made with complete safety, and specified exceptions. Do not apply a single shorthand rule to every act throughout the encounter. [3][22]

The October 2025 revision to the model physical-force instruction specifically addresses an encounter in which force begins as justified and later becomes unjustified, with the latter force causing the relevant injury. Once the threat ends, earlier danger does not authorize punishment. Trace each act, the perceived threat at that moment, and injury causation. [23]

8.2 A completed request and opposing position

Assumed record. An admitted statement says the partner swung the bat, Rivera disarmed them, the partner immediately rushed again with raised fists, Rivera pushed once to create space, and then left. Counsel requests the applicable physical-force justification instruction, identifying the statement and testimony by exhibit and transcript location. Viewed favorably to Rivera, that evidence permits a finding of a reasonable defensive response. The People must disprove justification beyond a reasonable doubt if the defense is properly raised. [17][22][24]

Prosecution response. The bat was already removed; the injury and physical setting may support an inference that no further force was necessary. That may persuade the jury, but the charge threshold asks whether a reasonable view favorable to the accused supports the defense. The judge should not reject an otherwise supported instruction merely because the prosecution's account is stronger. Rayford illustrates that unintended injury during defensive conduct does not automatically defeat entitlement to a justification charge. [24]

Changed record. Admitted video shows the partner retreating, Rivera waiting, then returning to strike after the threat ended, and no other evidence supports a renewed threat. The original bat attack does not automatically justify the later act. Identify whether any reasonable view still supports the requested instruction for the charged conduct; do not use the private client account to fill an evidentiary gap. [22][23]

8.3 Lesser offenses and preservation

A lesser-offense request needs both legal inclusion and an evidentiary basis: the proposed offense must meet the applicable definition, and a reasonable view must support guilt of the lesser without guilt of the greater. For an indictment, CPL §300.50 requires a supported submission when either party requests it. The local information instead requires attention to §360.50(2), including the People’s request when the misdemeanor proof is insufficient but a lesser is supported, and the separate alternative-submission rule when the misdemeanor is supported. Do not treat a lower penalty as legal inclusion or import the indictment provision without analysis. The attempt variation still requires intent and conduct approaching completion; absence of injury alone is not enough. [26][34][39]

Prepare requests before the charge conference: exact instruction, counts, evidence, authorities, and any necessary limiting language. Under CPL §300.10, requests can be made before or after the charge; the court’s instructions follow summations. Learn the proposed charge in time to make an accurate closing. After delivery, object specifically to omissions or misstatements and request the needed correction before deliberations. CPL §470.05 governs preservation generally; §300.50 has its own express waiver rule for lesser submissions. [25][26][31]

Completed objection. “The defense requests the justification charge on Count 1 based on the admitted interview, exhibit 6, describing the renewed approach and single defensive push. We object to its omission because that evidence, viewed favorably to Rivera, supplies a reasonable basis for the instruction. We request the model language assigning the burden of disproving justification to the People.” Seek the judge’s ruling and ensure the charge request and identified exhibit are in the record. An unrecorded conference cannot substitute for a usable record.

8.4 Completed charge request, opposition and ruling

Written request C-1. “For Count 1, request the current intentional third-degree-assault elements and the physical-force justification instruction tailored to the final push against the counter. The operative extract R-1 identifies that push as the charged injury-causing act. Exhibit 6 L4–L8 describes a renewed immediate approach with raised fists, a push for space, and departure. TS-1 L1–L5 supplies the competing account and claimed injury. A reasonable view favorable to Rivera supports a belief in the need for a nondeadly defensive push, even though the People dispute it. Request the proper prosecution burden and acquittal direction

if justification is not disproved. No instruction may permit conviction merely because some other uncharged kitchen act occurred.” [2][17][22][23][24]

People's opposition. “The bat was already removed, Vale denies raising fists, and the described force caused injury. We submit that Rivera used retaliation, not defense.”

Defense: “Those are jury arguments. Removal of the bat is not conclusive if the admitted statement supplies a renewed attack. Rayford requires consideration of the favorable reasonable view; the statement is evidence even though Rivera does not testify. We do not rely on the private interview or opening.” Court: “The physical-force defense is supported for the final push. I will instruct on the identified count and place the burden of disproving justification on the People.” [24]

Boundaries settled on the record. Counsel confirms that Count 1 concerns the final push, not a free choice among unidentified kitchen acts. This is a teaching extract assuming an adequate information; an actual file requires attention to the instrument, amendments, prosecution theory and variance objections before closing. The charge conference also determines whether the force at issue is nondeadly or deadly and which exceptions have record support. A bat swing toward a head can implicate the deadly-force rules, but Rivera's admitted defensive account here concerns a push and denies defensive bat blows. Do not transplant a nondeadly-force instruction into a changed record of potentially deadly force. [3][22][23]

C-2 – operative core of the tailored instruction

The following is a completed editorial model of the disputed elements and defense portion, not the full charge for every trial. General instructions on deliberation, credibility, exhibits and verdict procedure must also be selected and delivered as required. Use the current official CJI and the court's ruling for an actual case. [17][23][25]

“The People must prove beyond a reasonable doubt that Rivera intended to cause physical injury and caused physical injury to Vale by the charged push against the counter. Intent to cause that result means it was Rivera's conscious objective to cause physical injury. An intentional movement alone does not necessarily establish that result-oriented intent. Physical injury means impairment of physical condition or substantial pain. Assess the evidence of the pain or impairment in context. A photograph, treatment decision or mark does not by itself dictate the answer.” [2][3][38]

“You must also consider justification. Rivera has no burden to prove that defense. The People must prove beyond a reasonable doubt that Rivera was not justified. For the nondeadly physical force at issue in this instruction, consider whether Rivera actually believed a push was needed to defend against Vale's use or imminent use of unlawful physical force and whether that belief, and the extent of force used, were reasonable in the circumstances. A reasonable belief can be mistaken. Evaluate the circumstances as Rivera

perceived them, together with the reasonableness of that perception; a bare assertion of fear does not settle the question.” [17][22][23]

“The fact that Rivera had already removed the bat does not alone decide whether any threat remained. Examine the evidence about the approach, fists and timing. Earlier danger does not authorize punishment after danger ends. If the charged push followed the end of any reasonably perceived threat and was unnecessary retaliation, it would not be justified. If you are left with a reasonable doubt whether the People disproved justification for that push, find Rivera not guilty of this charge. If the People disprove justification, you must still determine whether they proved every element beyond a reasonable doubt; disproving the defense alone does not establish guilt.” [22][23]

“A person who initiates the relevant physical aggression cannot rely on justification unless the applicable withdrawal requirements are met. An insult alone is not the initiation of physical aggression. Apply the initial-aggressor issue to the evidence and the charged conduct; do not assume that starting a verbal disagreement equals starting unlawful physical force. If Rivera withdrew from physical aggression, effectively communicated withdrawal, and Vale nevertheless continued or threatened unlawful physical force, evaluate the defense under the governing rule. The People retain the burden of disproving justification.” [22][23]

Tailoring annotation. This record supports a dispute about who initiated physical force. It does not supply combat by agreement or a supported separate claim that Rivera deliberately provoked an attack with the statutory intent to injure. Do not recite factually unsupported exceptions merely because they appear in a model. The instruction concerns the single identified push and injury. In a changed multiple-force record, distinguish initially justified force from later unjustified force that actually causes the charged injury, as addressed in the October 2025 CJI. A finding that later conduct was improper does not automatically prove that it caused an earlier injury. [22][23]

C-3 – lesser request and a preserved omission

Base lesser request. “If the jury could find intent and conduct tending to cause injury but reasonably doubt completed physical injury, request attempted third-degree assault. Identify both legal inclusion and that evidentiary route. The information is governed by CPL §360.50(2); we request a ruling under that local provision, not an unexplained importation of §300.50's indictment language.” Court: “On this exercise record I permit the alternative attempt submission, because the disputed severity could support the lesser without the completed injury. The same supported justification defense applies to that same act; failure to disprove it requires acquittal without recycling the identical defense question under a lesser label.” The minimal-injury M-3 variation separately removes the unsupported completed offense and, on the People's request, submits the supported lesser. [23][26][34]

Adverse-charge variation. The judge initially omits justification despite C-1. Defense, before deliberations: “We object specifically to omission of the physical-force justification

instruction for Count 1 and its attempt alternative. Exhibit 6 L4-L8 supplies the renewed threat and defensive push. We request the current instruction, including the People's burden to disprove the defense beyond a reasonable doubt and the resulting acquittal direction. We do not rely on Rivera's unadmitted interview." Court: "Objection and request noted; denied because the bat had been removed." Counsel ensures the complete request, exhibit and ruling remain in the record. That hypothetical denial overlooks the renewed-threat evidence; the prompt objection identifies a correctable legal issue. A later appeal would require the actual record and applicable review, not a promise of reversal. [24][25][31]

Changed force, different instruction. Replace the push with an admitted account that Rivera swung the metal bat at Vale's head. Analyze whether the manner of force was readily capable of causing death or serious physical injury, the reasonable belief required for deadly force, and retreat with complete safety and any applicable dwelling exception. A common apartment-building lobby is not automatically a person's dwelling for that exception. The supplied nondeadly instruction is no longer a complete answer. Likewise, a video actually proving a later retaliatory strike without a supported renewed threat changes the defense analysis; a familiar room in an unauthenticated clip proves neither proposition. [3][22][23][36]

C-4 – operative attempt instruction and decision sequence

"If the People have not disproved justification beyond a reasonable doubt for this same act, find Rivera not guilty of both the completed assault and its attempt alternative. Do not reconsider the identical defense under the lesser label. If justification is disproved, consider whether every element of the completed assault is proved beyond a reasonable doubt. If so, the verdict is guilty of that offense; do not return a second guilty verdict on its alternative lesser. If the completed offense is not proved, consider the permitted attempt alternative." [23][26][34]

"For attempted intentional third-degree assault, the People must prove beyond a reasonable doubt that Rivera intended to cause physical injury and engaged in conduct tending to bring about that injury, here the charged forceful push toward the counter. A mere intention without the necessary conduct is insufficient; absence of the completed injury alone does not prove the required intent. Evaluate whether the conduct came dangerously near completion of the intended offense, rather than treating a remote preparatory act as an attempt. The People must prove the attempt elements and disprove the same supported justification defense. If they fail to do so, the verdict is not guilty." [26][38][39]

Application to the supplied record. The forceful push into the counter, if found to have been intended to cause physical injury, is execution of the contemplated assault, not merely obtaining an object for a future plan. M-3 changes only the proof of completed injury; it does not create a finding of intent. The jury could reject intent to injure as well as completed injury and acquit. These directions describe the logical sequence for the selected offenses; a real verdict sheet and full charge must match the court's actual rulings and statutory procedure.

9. Summation: connect proof and law

Use the evidence the jury received and the legal questions it must decide.

9.1 Build an argument the record can support

The defense sums up before the People. Plan for the prosecution's strongest permissible response; the defense ordinarily has no second closing. A summation may draw reasonable inferences and challenge credibility, but counsel's personal assurance, facts outside the record, inflammatory appeals, and demands that the accused prove innocence do not supply lawful proof. Objections and requests for appropriate relief remain available during improper argument. [1][16]

Organize around decisive issues, not a retelling of every question. For Rivera: who observed the confrontation; what the physical evidence establishes; whether the testimony reliably proves the charged act and injury; and, if charged, whether the People disproved justification. Mark each proposed sentence against the exhibit, answer, or permitted inference supporting it. Remove any statement that depends on an excluded account.

9.2 A model summation with explicit assumptions

Photograph variation, continuing the assumptions in §5.2. Assume the jury heard Rivera's defensive account through an admitted statement, the officer conceded arriving afterward, the microwave photograph was admitted, and the judge will charge justification. This model applies those stated assumptions. Section 9.4 supplies the summation tied to the base file.

Summation. “The photographs show the condition of the kitchen after this encounter. They do not show who first swung the bat. The officer was candid about that limit: the officer arrived afterward and did not see the confrontation. You also heard Rivera's account of taking the bat away and pushing once when the partner approached again. Consider that sequence carefully. Taking away the bat is one moment; deciding whether force was still necessary is another.”

“An injury deserves careful attention, but injury by itself does not answer every legal question. The prosecution must establish the charged offense, and under the instruction you will receive, must also disprove justification beyond a reasonable doubt. Consider the evidence of the renewed approach, the single push, and the departure. If that evidence leaves a reasonable doubt about whether the push was justified, the prosecution has not met its burden. Evaluate every witness fairly, apply the judge's instructions, and return the verdict that those requirements demand.”

Why it works. The argument identifies the limited role of photographs and the officer, confronts the critical post-disarming moment, and links the defense to the correct burden. It does not ask for sympathy because Rivera is a teacher. It does not claim that every inconsistency proves a deliberate lie. The same paragraph would be improper if the defensive account never entered evidence or the court did not give the assumed

instruction; revise the argument to the actual record and ruling while preserving objections.

9.3 Respond to improper argument precisely

If the prosecutor argues, “An innocent person would have testified,” object promptly to the improper comment on silence and burden shift, request an appropriate instruction, and obtain a ruling. If the court sustains the objection but the prejudice warrants further relief, state and support that request; do not assume a sustained objection automatically grants a mistrial. If the argument instead fairly addresses actual defense evidence, explain the specific impropriety rather than treating every unfavorable response as misconduct. [1][17][31]

Preparation note. List the likely prosecution points beside the relevant record before closing: injury photograph; the partner’s account; the interval after disarming. Answer them with evidence and the law. An unsupported accusation that a witness was coached or that counsel knows the truth weakens the argument and creates an avoidable issue.

9.4 Completed closing with an evidence annotation

Base defense closing, S-1. “The issue is the charged push and whether the People have proved an intentional, unjustified injury. The allegation is serious. Vale described moderate pain and difficulty gripping a kettle. Consider that evidence fairly. The absence of a doctor does not by itself defeat this charge. But an injury does not answer every question you must decide.”

“Lee arrived at 1:13 and saw the aftermath. Lee did not see the kitchen confrontation. The agreed photographic descriptions show a dent, a red area and a bat after the event. None identifies who first swung the bat. The first signed account described a push and counter impact, and did not describe three bat strikes even when Lee asked for the full account and anything else about the injury. Vale gave an explanation here. Decide how much confidence that difference and explanation permit in the testimony; I do not ask you to treat the prior statement as independent proof of all its contents.”

“You also have Exhibit 6 because the People introduced it. It describes removal of the bat, an immediate renewed approach with raised fists, and one push to create space. Removing a weapon and ending every threat are different factual questions. The court will tell you how to assess the actual and reasonable belief in the need for that force. If the evidence leaves a reasonable doubt about the People's claim that the push was unjustified, the burden has not been met.”

“The lobby schedule does show Rivera returning, and we have not hidden that. Ortiz also saw the return. It may lead you to question a simple account of leaving once. But the camera cannot show what happened upstairs. A jacket and phone appear on the next departure; their appearance does not conclusively prove the reason for returning. Evaluate the actual limits, not a gap filled by either lawyer. Finally, lack of a laboratory test is not scientific proof that Rivera never touched the bat. Exhibit 6 itself describes handling it. The question remains whether the People have proved this charged assault and disproved the supported defense beyond a reasonable doubt. Apply the court's instructions to that evidence.”

Closing proposition	Admitted record	Boundary observed
Pain and grip difficulty	TS-1 L2-L4	Concedes adverse evidence; does not invent a treatment prerequisite.
Officer and photographs are aftermath	TS-2 L1-L3, L7-L8; Exhibit 3	No inference that the officer therefore has no useful evidence.
Different first account	TS-1 L6-L8; Exhibit 2 for credibility	Does not convert impeachment into substantive truth.
Renewed threat and push	Exhibit 6 L4-L8	Uses admitted statement, not counsel's interview or Rivera's silence.
Return and camera limits	Exhibit 7; TS-3 L2-L6	Acknowledges the return and uncertainty about upstairs events.
No requested testing	TS-2 L5 and Exhibit 6 L3	Does not claim an exclusion or deny admitted handling.

Strongest proper prosecution reply. “The first account did not say there were no bat strikes; Vale explained the omission. You may believe Vale's account of the charged push and immediate pain, and reject Rivera's claimed renewed threat. Consider whether the subsequent return fits the defense account. The People submit that the testimony and physical conditions establish the intentional assault and disprove justification.” Defense preparation must anticipate these permissible arguments. They do not become misconduct merely because they damage the defense. Counsel's reply opportunity ordinarily ends with the defense closing, so the burden and evidence limits should already be clear. [16][17]

9.5 Completed silence objection and remedy record

Improper-argument variation. Prosecutor: “If Rivera were innocent, Rivera would have come up here and explained the return.” Defense immediately: “Objection. Improper adverse inference from the defendant's silence and shift of the burden of proof. Request that the statement be stricken and the jury instructed that Rivera had no duty to testify or explain, with no adverse inference.” Court: “Sustained. Jurors, disregard that statement. Rivera was not required to testify or present an explanation. Do not draw an adverse inference from that choice. The People bear the burden of proof.” The defense expressly requests the instruction here; it is not an unrequested routine comment on silence. [17][25] [31]

Outside the jury's hearing, defense adds: “We request a mistrial because the remark directly used silence to fill the disputed gap about the return, a central issue. The instruction may not remove that prejudice. Please rule.” Court: “Denied. I find this isolated remark can be addressed by the immediate specific instruction. I will repeat the requested no-adverse-inference instruction in the final charge.” Defense: “Our request and grounds are maintained.” Counsel records the exact words, timing, instruction and denial. A sustained objection is not itself a mistrial ruling, and denial does not guarantee reversal. If the prosecutor instead discusses an actual inconsistency in admitted Exhibit 6, counsel must identify a real legal objection rather than assert that all criticism concerns silence. [31]

10. Deliberations, verdict, and learning

A trial remains an active legal proceeding after the last argument.

10.1 Respond to the actual jury question

CPL §310.30, applied in local court through §360.55, governs a deliberating jury's request for information or instruction. Counsel needs meaningful notice of the specific substantive request and an opportunity to participate in the response. The court must respond meaningfully in the required setting. Preserve the note as an exhibit, its complete text, the discussion, proposed response, objections, and the instruction or readback actually delivered. [27]

Worked note. “If Rivera took the bat away, does that mean self-defense ended?” Ask the court to read the full note into the record and confer with counsel. Propose an answer explaining that justification depends on whether and to what extent force was reasonably believed necessary at the time of the charged act, using the applicable instruction. The court should not direct a factual finding that disarming necessarily ended every threat. If clarification is needed, seek an appropriate clarifying inquiry rather than guessing what the jury meant. [22][23][27]

Morrison treats failure to provide meaningful notice of a substantive note as a mode-of-proceedings error in the circumstances it addresses. That rule does not make every disagreement about a response automatically preserved or every administrative message substantive. When counsel knows the content and disputes the proposed answer, object specifically and request the correct response. Do not remain silent in the hope that an avoidable error will generate an appeal. [27][31]

10.2 A useful and ethical post-trial review

Explain the verdict and the next procedural obligations to the client promptly. Preserve the complete record and identify any time-sensitive post-trial or appellate work for responsible counsel. This course does not supply a complete appeal-deadline guide. Do not promise reversal because a disputed ruling exists, or treat an acquittal as proof that every tactical choice was sound.

Post-discharge juror feedback may help counsel learn, but only within law and court orders. Respect a juror's refusal, avoid misrepresentation, coercion, harassment, and attempts to influence future jury service. The restrictions extend to relevant communications and investigations involving jurors' families; known improper conduct requires the response specified by the rule. [1]

Completed debrief. “The jury found the timing after disarming important. Our examination established when the officer arrived but did not clearly locate the partner when Rivera

pushed. Before the next similar trial, the preparation file should include a scaled layout where supported and a witness-by-witness chronology. This feedback concerns clarity; it does not establish a legal ground to impeach the verdict.” Record the lesson without treating a voluntary conversation as a substitute for admissible evidence or the trial record.

10.3 Completed jury-note sequence

Court exhibit J-1, received 2:14 p.m. Full written note: “If Rivera took the bat away, does that mean self-defense ended? Are we allowed to consider that Jordan came forward again?” The second sentence matters. Counsel should not accept a summary that the jury “has a question about self-defense.” The note is preserved in its entirety. [27]

Notice and conference, 2:18 p.m., on the record. The court shows J-1 to both counsel, reads both sentences into the record, confirms Rivera's presence for the proceeding and invites proposals before bringing the jury back. Defense: “Read the operative physical-force instruction again. Explain that disarming alone does not settle a continuing or renewed threat. The jury must decide the facts; Exhibit 6 supplies the renewed-approach account. Do not tell them that account is established.” Prosecutor: “Also explain that force after the reasonably perceived threat ends is not justified, and an earlier threat does not license retaliation.” Defense agrees to that accurate qualification.

The court proposes, “Since the bat was gone, they should focus only on whether Rivera could leave.” Defense objects: “That would omit the admitted renewed threat and substitute an incomplete legal test for the applicable actual and reasonable belief in the need and extent of nondeadly force. We request the balanced answer just discussed, with the People's burden and without finding facts.” Court: “Objection sustained. I will use the balanced answer.” Had the court overruled the objection, counsel would retain the complete objection and ruling. Knowledge of the note plus disagreement about the answer requires a timely specific protest; Morrison does not excuse silence in that situation. [22][23][27][31]

Answer delivered at 2:26 p.m., jury and required participants present. “The removal of the bat does not by itself determine whether justification ended. Consider the admitted evidence about whether Vale used or imminently threatened unlawful physical force at the time of the charged push. You decide whether the claimed renewed approach occurred. Under the instruction I will repeat, assess Rivera's actual belief in the need for force and whether that belief and the force used were reasonable. A threat that ended does not authorize retaliation. The People must disprove justification beyond a reasonable doubt; Rivera has no burden to prove it.” The court then repeats the applicable full defense instruction, including supported exceptions and the acquittal consequence. Counsel confirms the delivered language matches the ruling. The jury receives a legal answer, not a direction to believe a witness. [22][23][27]

Follow-up note J-2, 2:41 p.m. “Please read the entire recorded statement, not only the part about the fists.” The court discloses the complete note and confers. Both sides identify the

complete admitted Exhibit 6 L1–L8, including the two follow-up questions, as the requested material. The court provides that complete admitted statement in the proper proceeding, with Rivera present, and makes a record of exactly what was read. Counsel checks that no unadmitted interview or PA-1 material has been appended. If the scope were ambiguous, seek clarification before choosing a favorable excerpt. [27][34]

Morrison's bounded lesson. The Court addressed failure to provide meaningful notice of the substantive content, not a general exemption from preservation for any jury communication. Retain the note, notice, consultation, objection, ruling and actual response. The procedure gives counsel a chance to prevent error while it can be corrected; keeping an issue for appeal is not a reason to withhold a useful correction. [27][31]

10.4 Completed client and juror debrief

Assumed disposition for this practice branch. The jury acquits Rivera. This result is an exercise fact, not a prediction of what the supplied evidence requires. Counsel explains the verdict privately, obtains the actual disposition record, and checks the court's directions and any remaining related matters. Counsel does not tell Rivera that an acquittal automatically resolves employment, sealing, every order of protection or the separate driving case. Those questions require their own records and law. No appeal-deadline calculation is implied by this acquittal example.

Voluntary post-discharge contact, permitted by the assumed court order. Counsel: “The trial is over. The court permits voluntary feedback, and you are free not to speak or to stop. I would like to learn whether my presentation was clear. May I ask what was difficult to follow?” Juror: “I can answer one question. The timing after the bat was taken away was confusing until the judge answered us.” Counsel: “Thank you. I will use that feedback to improve clarity.” Juror: “I do not want to discuss deliberations further.” Counsel: “Understood. Thank you for your service.” The conversation ends. No repeated request, deceptive contact through family, pressure for a favorable statement or effort to influence future jury service follows. Any reported improper conduct must be handled under the applicable rule and procedure, not exploited as a learning exercise. [1]

Completed internal debrief. “The confusion concerned sequence, not lack of dramatic advocacy. The original layout supplied fixed features but no witness-supported positions. In a future case, develop a separate chronology and properly founded overlay for each account before trial. Keep the raw version and adverse facts. Do not claim this single voluntary comment identifies every juror's reasoning or a legal ground to impeach a verdict.” This lesson can improve preparation even though the result was favorable.

Follow-up owner	Completed instruction after this assumed verdict	Closure evidence or next check
Trial counsel Chen	Explain the verdict and obtain the entered disposition and actual court directions.	Same-day client note; confirm docket entry and any remaining orders before giving consequence advice.
Investigator Park	Preserve the complete exports, original statements and working-copy distinction.	Evidence index remains intact; no selective deletion after success.
Counsel and Rivera	Review unresolved employment question and separate driving matter with appropriate consent.	Confirm the actual next consultation and separate case date; do not carry forward a stale appointment or treat this acquittal as cancellation.
Reviewing lawyer	If the branch instead ends in conviction, immediately assign post-trial and appellate review using the actual judgment, service and custody facts.	Named owner and independently verified deadline entry required; this chapter is not a substitute for that calendar.

10.5 Unseen integrated problem: the missing foundation

Work this file before turning to §10.6. It is a separate hypothetical, not an additional Rivera record. Prepare a short recommendation, a precise request or objection, and a changed-fact explanation for each of the five issues. Maximum score: twenty, with four points per issue. A correct label without the decisive fact and requested action earns at most one point for that issue.

Dunn file. Adult Casey Dunn faces a local-court information for intentional third-degree assault arising from one identified push. Dunn is outside the special youthful-offender provision and has not waived a jury. Two alternates will be selected. A juror states, “I would always believe an officer over anyone else,” and, after instruction, “I still cannot put that aside.” The court denies cause while all defense peremptories remain.

The People introduce the complainant's testimony of six hours of moderate pain and inability to turn a door handle after the push. There is no medical visit. Dunn's private account describes defensive force, but Dunn's statement is not introduced and no admitted witness describes a threat. A friend supplies an unknown sender's cropped clip. The building employee recognizes the corridor but did not observe the event, operate the system or preserve the recording. Dunn declines to testify after a competent consultation; counsel cannot change that instruction.

Before trial, the prosecutor gave notice of an alleged false invoice from five years ago for impeachment, supported by an identified signed document. There is no conviction. The judge has not ruled on its permissible use. After the defense presents only neutral layout evidence, the jury sends: “We do not agree on pain. Does no hospital mean there was no injury? Also, what counts as impairment?” The court tells counsel only, “They ask about pain,” and proposes replying, “Use your common sense,” without showing the note.

Issue A — selection. State the regular-juror and peremptory numbers, the alternate allotment, and the steps after the denied cause challenge. **Issue B — proof and defense.** State the correct sufficiency analysis for pain and impairment, both motion stages, and whether this admitted record supports justification. **Issue C — video.** State the objection to the current offer and what materially different proof could cure it. **Issue D — testimony advice.** Address the invoice notice, lack of a conviction, need for an exact ruling and Dunn's authority. **Issue E — note.** State what counsel should request before any response and propose a legally responsive answer.

Changed fact. After a proper foundation and ruling, an intact recording is admitted and clearly shows the complainant lunging with raised fists immediately before Dunn's limited defensive push. Explain what changes and what does not. Do not use the fact in your base answer before it becomes admitted evidence.

10.6 Reasoned answer and scoring guide

A — four points. Six regular jurors; three regular peremptories per party; one alternate peremptory per party whether one or two local alternates are selected. The individual inability to evaluate police fairly supports a cause application; after denial, identify the exact answers and ruling, use an available peremptory on that juror and document the statutory exhaustion condition before selection ends. Merely saying “exception” or borrowing a class B felony allotment is inadequate. Award one point each for the regular numbers, alternate rule, fact-specific cause ground, and use/exhaustion record. [6][7][8][9]

B — four points. Duration and reported functional impairment can support legally sufficient physical injury without a hospital visit; a jury may still doubt the account. Specify the challenged elements at the close of the People, renew after the neutral defense proof and assess the whole record under the same legal standard. The private defensive account supplies no admitted foundation for justification. Counsel must investigate an admissible route without substituting opening or argument. Award one point each for injury reasoning, distinct sufficiency/credibility treatment, both motion stages, and the absent trial foundation. The changed authenticated recording supplies a reasonable-view basis for the requested defense; it does not compel acceptance of every fact or shift the burden to Dunn. [3][20][21][22][24][32]

C — four points. Recognition of a corridor does not establish the cropped clip's accurate depiction of the event. Identify the unknown source, missing original/continuity and the witness's lack of personal or system knowledge. Request exclusion or identification-only treatment pending a real foundation. An intact preserved recording supported by competent eyewitness, system or other adequate reliability proof can change admissibility; no single magic phrase is enough. Award one point for the correct boundary, one for concrete defects, one for a proper request, and one for a supported cure. M.S. does not prove all digital recordings false or require only an eyewitness. [35][36]

10.7 Remaining answers and transfer analysis

D — four points. No conviction does not automatically bar inquiry into supported conduct bearing on credibility. Obtain a Sandoval ruling distinguishing the specific invoice act, good-faith basis, prejudice, age and permitted question; contest improper collateral expansion and extrinsic contradiction. Explain how the actual ruling affects testimony advice without telling Dunn that testimony is mandatory. Dunn retains the choice after consultation. Award one point each for supported-conduct distinction, balancing/application, exact scope, and client authority. An independent substantive use would require its own purpose and ruling; do not treat an impeachment notice as blanket substantive admission. [1][12][13][14][15]

E — four points. Demand meaningful notice of the entire note, preserve its full text and request a recorded conference before the response. The omitted impairment question is material. Propose the statutory physical-injury definition and a balanced explanation: assess impairment or substantial pain from all admitted evidence; medical attendance alone determines neither element. Ask the court to avoid finding the injury for the jury. Object specifically if the court uses the incomplete “common sense” response after notice. Award one point each for full notice, complete recorded process, legally responsive content addressing both questions, and a timely particular objection. Morrison's notice rule does not remove the duty to object to a known defective answer. [3][27][31][32]

Transfer check. The admitted recording changes the justification foundation and may strengthen the factual defense. It does not change the six-person local jury, add peremptories, erase the People's injury proof, authorize the invoice question without a ruling, or eliminate the jury-note procedure. A learner who changes only the conclusion without identifying the new admitted evidence has not completed the exercise.

Review and application

Test the governing distinction before reading the model analysis.

1. A different charging document

Question. Police described a felony arrest. The operative local-court information charges only a misdemeanor. Which fact controls the ordinary trial setting?

Model analysis. Use the current accusatory instrument and procedural posture. Under the current misdemeanor rule, evaluate jury entitlement under §340.40 and the six-person local-court procedures. Do not assign a twelve-person jury or felony peremptory allotment from the arrest label. Confirm statutory qualifications and any proposed waiver. See Chapters 1 and 3.

2. A single discriminatory strike

Question. The prosecutor strikes one Black juror and accepts a white juror with the same relevant answers. Must the defense wait for a third strike?

Model analysis. No. Identify the comparable answers and other circumstances supporting the inference, object promptly, and develop all three stages. A facially neutral explanation does not end the pretext inquiry. If a real material difference exists, confront it; comparison must be accurate. See §3.4.

3. An arrest in the background check

Question. Rivera's old arrest was dismissed. Does that alone permit asking the jury to infer dishonesty? Is every underlying act automatically excluded?

Model analysis. Neither conclusion follows. A bare arrest is not proof of misconduct. Supported conduct may require a separate credibility and prejudice analysis even without conviction, subject to additional limits. Obtain an exact Sandoval ruling and update testimony advice. See Chapter 4.

4. A statement used for two purposes

Question. A witness admits making a contradictory statement. May defense counsel treat the old version as substantive proof simply because it is signed?

Model analysis. Not on the impeachment ground alone. Distinguish credibility use from a separately supported hearsay exception or other admissibility basis. Obtain the appropriate ruling and follow the limiting instruction in summation. See §6.4.

5. Injury proof changes during the defense case

Question. The defense challenges injury at the close of the People's case, then offers testimony describing substantial pain. Can it ignore the new testimony when renewing the motion?

Model analysis. No. Address the entire record at the renewed stage, distinguish the charged offense from any lesser included offense, and preserve the precise legal ground. The legal-sufficiency test does not change into a trial judge's personal verdict on reasonable doubt. See Chapter 7.

6. Justification without live client testimony

Question. The People introduce a recorded statement supporting defensive force. Rivera does not testify. Is justification therefore unavailable?

Model analysis. No automatic bar applies. Identify the admitted evidence and determine whether a reasonable view favorable to the accused supports the instruction. The client's testimony choice remains separate. If the only account exists in a private interview, it does not supply the trial record. See §§7.3 and 8.2.

7. A jury question that removes a condition

Question. A proposed response says all force after disarming is unlawful. What should counsel request?

Model analysis. Object to the categorical answer, identify the full note, and request the applicable instruction addressing necessity at the time of the act. Preserve the proposed response, objection, and ruling. The jury determines the relevant facts under a complete legal standard. See §10.1.

Glossary

Use these terms to distinguish the legal task from the tactical choice.

Accusatory instrument. The charging document; its operative counts and subsections matter more than an informal arrest label.

Affirmative defense. A statutorily designated defense generally assigned to the defendant to prove by a preponderance under Penal Law §25.00.

Batson challenge. An objection to discriminatory use of a peremptory strike, requiring the applicable three-stage inquiry.

Challenge for cause. A request to remove a juror on a legally recognized ground, determined by the court.

Foundation. Evidence establishing prerequisites for receiving or using an item or testimony for a particular purpose.

Impeachment. An attack on credibility; it does not necessarily make a prior statement substantive evidence.

Justification. A defense recognizing qualifying force as lawful; necessity, reasonableness, timing, and statutory limitations matter.

Legal sufficiency. A threshold inquiry into whether the evidence can establish the required elements, distinct from the factfinder's ultimate verdict.

Lesser included offense. An offense meeting the statutory inclusion test; submission also requires the appropriate evidentiary basis.

Molineux evidence. Other-act evidence offered for a legitimate material purpose independent of propensity, subject to the governing limits.

Peremptory challenge. A limited strike ordinarily not requiring cause, but never permission for prohibited discrimination.

Preservation. Creating a timely, sufficiently specific record and ruling to permit later review under applicable law.

Sandoval ruling. An advance ruling on the permitted scope of prior-act impeachment if the accused testifies.

Voir dire. Examination of prospective jurors to assess qualification and impartiality within the court's procedure.

Selected authorities

Primary authorities and official guidance checked October 12, 2026. Links support the identified propositions; recheck governing law and case history before use in a live matter.

1. New York Rules of Professional Conduct, Rules 1.1, 1.2(a), 1.4, 3.3, 3.4, and 3.5. Client authority, competence, truthful proof, and juror contact. [Read New York Rules of Professional Conduct, Rules 1.1, 1.2\(a\), 1.4, 3.3, 3.4, and 3.5](#)
2. Penal Law §120.00(1). Intentional assault in the third degree. [Read Penal Law §120.00\(1\)](#)
3. Penal Law §10.00(9)–(13). Injury, deadly physical force, and instrument definitions. [Read Penal Law §10.00\(9\)–\(13\)](#)
4. *Padilla v Kentucky*, 559 US 356, 369–374 (2010). Clear deportation law requires correct advice; uncertainty still requires risk advice; separate prejudice inquiry. [Read *Padilla v Kentucky*, 559 US 356, 369–374 \(2010\)](#)
5. USCIS, Consideration of Deferred Action for Childhood Arrivals, criminal-history criteria and 8 CFR §236.22(b)(6). Current individualized review required. [Read USCIS, Consideration of Deferred Action for Childhood Arrivals, criminal-history criteria and 8 CFR §236.22\(b\)\(6\)](#)
6. CPL §340.40. Local-court jury entitlement; current misdemeanor rule and qualifications. [Read CPL §340.40](#)
7. CPL §§270.05 and 360.10. Twelve-person indictment jury and six-person local-court jury. [Read CPL §270.05](#) · [Read CPL §360.10](#)
8. CPL §§270.25, 360.30, and 360.35. Peremptory allotments and local alternate selection. [Read CPL §270.25](#) · [Read CPL §360.30](#) · [Read CPL §360.35](#)
9. CPL §§270.20 and 360.25; *People v Rivera*, 33 AD3d 303 (1st Dept 2006). Cause grounds, exhaustion, and evaluating the full assurance of impartiality. The reported *Rivera* case is unrelated to the fictional file. [Read CPL §270.20](#) · [Read CPL §360.25](#) · [Read *People v. Rivera*](#)
10. *People v Cruz*, 228 AD3d 1019 (3d Dept 2024). A single-juror objection and distinct third-stage pretext determination. [Read *People v Cruz*, 228 AD3d 1019 \(3d Dept 2024\)](#)
11. *Batson v Kentucky*, 476 US 79, 96–98 (1986); *Georgia v McCollum*, 505 US 42, 59 (1992); *J.E.B. v Alabama ex rel. T.B.*, 511 US 127, 143–146 (1994). Primary opinions: prohibited race/sex discrimination and defense strikes. [Read *Batson v. Kentucky*](#) · [Read *Georgia v. McCollum*](#) · [Read *J.E.B. v. Alabama*](#)
12. *People v Sandoval*, 34 NY2d 371, 373–378 (1974). Prospective impeachment ruling and prejudice. [Read *People v Sandoval*, 34 NY2d 371, 373–378 \(1974\)](#)
13. Guide to New York Evidence, Rule 6.17. Impeachment by instances of misconduct; good faith, credibility, acquittals, pending charges, and extrinsic-proof limits. [Read Guide to New York Evidence, Rule 6.17](#)
14. Guide to New York Evidence, Rule 4.38; *People v Weinstein*, 42 NY3d 439 (2024), parts III–IV. Nonpropensity relevance, balancing, and limits on *Sandoval* inquiry. [Read Evidence Rule 4.38](#) · [Read *People v. Weinstein*](#)
15. CPL §245.20(3). Supplemental discovery identifying intended prior-act uses and purposes. [Read CPL §245.20\(3\)](#)
16. CPL §260.30. Ordinary order of criminal jury trial, including openings and summations. [Read CPL §260.30](#)

17. CJI2d, Presumption of Innocence, Burden of Proof, Proof Beyond a Reasonable Doubt; Penal Law §25.00. Element burden and ordinary/affirmative defense distinction. [Read the reasonable-doubt instruction](#) · [Read Penal Law §25.00](#)
18. Guide to New York Evidence, Rule 6.06. Scope and manner of examination; leading questions and exceptions. [Read Guide to New York Evidence, Rule 6.06](#)
19. Guide to New York Evidence, Rule 6.15. Prior inconsistent statements, foundation, omissions, and impeachment use. [Read Guide to New York Evidence, Rule 6.15](#)
20. CPL §§290.10 and 70.10(1). Trial dismissal and legally sufficient evidence; see also local-court provisions in authority 34. [Read CPL §290.10](#) · [Read CPL §70.10](#)
21. People v Finch, 23 NY3d 408, 412–416 (2014). Discussing People v Gray, 86 NY2d 10 (1995), and People v Hines, 97 NY2d 56 (2001); specificity, renewal, and a bounded preservation exception. [Read People v Finch, 23 NY3d 408, 412–416 \(2014\)](#)
22. Penal Law §35.15. Defensive force, reasonableness, exceptions, and deadly-force limitations. [Read Penal Law §35.15](#)
23. CJI2d, Justification: Physical Force in Defense of a Person, revised October 2025; companion Deadly Physical Force instruction. Tailor to the facts and charge. [Read the physical-force justification instruction](#) · [Read the deadly-force justification instruction](#)
24. People v Rayford, 213 AD3d 1337 (4th Dept 2023). Reasonable view favorable to the accused; unintended injury and admitted defensive account. [Read People v Rayford, 213 AD3d 1337 \(4th Dept 2023\)](#)
25. CPL §300.10. Requests and court’s charge. [Read CPL §300.10](#)
26. CPL §§1.20(37) and 300.50; Penal Law §110.00. Lesser-included definition, submission, and attempt. Local information submissions: authority 34. [Read CPL §1.20](#) · [Read CPL §300.50](#) · [Read Penal Law §110.00](#)
27. CPL §310.30; People v Morrison, 32 NY3d 951, 952–953 (2018). Jury requests and meaningful notice of substantive notes. [Read CPL §310.30](#) · [Read People v. Morrison](#)
28. New York Courts, CLE Format Requirements for Newly Admitted Attorneys. Skills format restrictions and stated exceptions. [Read New York Courts, CLE Format Requirements for Newly Admitted Attorneys](#)
29. Federal Defenders of New York, Felipe Garcia attorney directory. Professional biography and employer affiliation. [Read Federal Defenders of New York, Felipe Garcia attorney directory](#)
30. Vehicle and Traffic Law §1192(1)–(3). Distinct impairment, per se alcohol, and intoxication theories. [Read Vehicle and Traffic Law §1192\(1\)–\(3\)](#)
31. CPL §470.05(2). Timely protest and preservation of a question of law. [Read CPL §470.05\(2\)](#)
32. People v Chiddick, 8 NY3d 445, 447–448 (2007). Contextual evaluation of substantial pain. [Read People v Chiddick, 8 NY3d 445, 447–448 \(2007\)](#)
33. Penal Law §§110.00 and 125.25(1). Attempt and intentional murder; no automatic charge or sentence inferred from the hypothetical. [Read Penal Law §110.00](#) · [Read Penal Law §125.25](#)
34. CPL §§360.05, 360.40, 360.50, and 360.55. Local-court order, general conduct, count submission, and deliberations. [Read CPL §360.05](#) · [Read CPL §360.40](#) · [Read CPL §360.50](#) · [Read CPL §360.55](#)
35. Guide to New York Evidence, Rules 6.07, 9.13, and 9.14. Personal knowledge; photographic and video authentication. [Read Evidence Rule 6.07](#) · [Read Evidence Rule 9.13](#) · [Read Evidence Rule 9.14](#)

36. Matter of M.S. (M.H.), 2026 NY Slip Op 00825 (Court of Appeals, February 17, 2026), part II, *3–5. Video authentication; recognition of a setting versus proof of an accurate recording. Article 10 disposition and standard distinguished from criminal practice. [Read Matter of M.S.](#)
37. 8 CFR §236.22(b)(6) and (c), eCFR. DACA criminal-history criteria and discretion. Individual analysis and current litigation review remain necessary; no categorical state-label safe plea. [Read 8 CFR §236.22\(b\)\(6\) and \(c\), eCFR](#)
38. Penal Law §15.05(1). Intent and the conscious objective to cause the specified result. [Read Penal Law §15.05\(1\)](#)
39. CJI2d, Attempt to Commit a Crime, Penal Law §110.00. Intent, conduct dangerously near completion and the distinction from mere preparation. [Read CJI2d, Attempt to Commit a Crime, Penal Law §110.00](#)
40. Guide to New York Evidence, Rule 6.10.1, Missing Witness. Timely requests, expected favorable testimony, opposing explanations, and limits of the inference. [Read Missing-witness rule and commentary.](#)