

## STRIKING A WITNESS'S TESTIMONY<sup>1</sup>

As you are aware (specify) refused to answer certain questions. As a result, his/her testimony is stricken and you must disregard it as if it were never given. Further, you must not draw any inference favorable or unfavorable to either side from (specify)'s refusal to answer questions.

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This charge may given for example where a witness has given substantive answers to some substantive questions affecting guilt or innocence but where the witness “refused to testify on questions of matters ‘so closely related to the commission of the crime that the entire testimony of the witness should be stricken.’” *People v. Siegel*, 87 N.Y.2d 536, 544, quoting *People v. Cardillo*, 316 F.2d 606 (2d cir. 1963), cert. denied 375 U.S. 822, 857; see also *People v. Schneider*, 36 N.Y.2d 708 (1975). Depending on the degree of prejudice to the party whose right to cross-examine was impaired by the witness’s assertion of her 5<sup>th</sup> Amendment privilege, the court has wide discretion in determining whether to strike some or all of the testimony and might conclude that a partial striking of the witness’s testimony is appropriate. See *People v. Chin*, 67 N.Y.2d 22, 28, 29 (1986).