

ADVERSE INFERENCE: MISSING ROSARIO MATERIAL

Under our law, the People are required to have made available to a defendant any written [or recorded] statement made by a person whom the prosecutor intends to call as a witness at trial, which relates to the subject matter of the witness's testimony, and which was in the possession of the prosecutor or police.¹

In this case, (specify writing or recording) contained a statement of (specify name of witness) and that writing [recording] was in the possession of the [prosecutor][police] and was not provided to the defense, as required by law [because (specify if in evidence)].

In the absence of (specify writing or recording) you may, but are not required to, infer that it contained one or more statements of (specify name of witness) which are not consistent with his/her trial testimony.²

1 . CPL 240.45(1)(a). See *People v Rosario*, 9 NY2d 286 (1961); *People v Perez*, 65 NY2d 154 (1985); *People v Ranghelle*, 69 NY2d 56 (1986).

2 . See *People v Martinez*, 71 NY2d 937 (1988); *People v Wallace*, 76 NY2d 953 (1990). *People v. Joseph*, 86 NY2d 565 (1995).