

DISRUPTIVE DEFENDANT

Members of the jury, as I have explained, this case must be decided on the evidence and the evidence alone. The defendant's conduct in this courtroom is not evidence. [Likewise, his presence or absence is not evidence.] Therefore, you must disregard the defendant's conduct [and his absence] and you must not consider it [either] in any way for any purpose.¹

1. See *People v. Astacio*, 131 A.D.2d 686, 687 (2d Dept. 1987) (court instructed jury to disregard incident and base determination solely on evidence). See also *People v. Bussi*, 236 A.D.2d 317, 318 (1st Dept. 1997) (court instructed jury to disregard disruptive conduct); *People v. Connor*, 137 A.D.2d 546, 550 (2d Dept. 1988) (court should have instructed jurors to "blot" disruptive incident from their minds); *People v. Trippett*, 121 A.D.2d 485, 486 (2d Dept. 1986) (court instructed jurors to strike incident from their minds).