

Inconsistent Statements¹

You may consider whether a witness made statements at this trial that are inconsistent with each other.

You may also consider whether a witness made previous statements that are inconsistent with his or her testimony at trial.

[Add if appropriate:

You may consider whether a witness testified to a fact here at trial that the witness omitted to state, at a prior time, when it would have been reasonable and logical for the witness to have stated the fact. In determining whether it would have been reasonable and logical for the witness to have stated the omitted fact, you may consider whether the witness' attention was called to the matter and whether the witness was specifically asked about it.^{2]}

If a witness has made such inconsistent statements [or omissions], you may consider whether and to what extent they affect the truthfulness or accuracy of that witness's testimony here at this trial.

The contents of a prior inconsistent statement are not proof of what happened. You may use evidence of a prior inconsistent statement only to evaluate the truthfulness or accuracy of the witness's testimony here at trial.³

Consistency

You may consider whether a witness's testimony is consistent with the testimony of other witnesses or with other evidence in the case.

If there were inconsistencies by or among witnesses, you may consider whether they were significant inconsistencies related to important facts, or instead were the kind of minor inconsistencies that one might expect from multiple witnesses to the same event?

1. See *People v Duncan*, 46 NY2d 74, 80 (1978).

2. See *People v Bornholdt*, 33 NY2d 75, 88 (1973); *People v Savage*, 50 NY2d 673 (1980); *People v Medina*, 249 AD2d 166 (1st Dept 1998); *People v Byrd*, 284 AD2d 201 (1st Dept 2001).

3. CPL 60.35 (2).