

## MODEL JUSTIFICATION CHARGE REPORT

To: Office of Court Administration – Committee on Criminal Jury Instructions

From: The New York City Bar Association’s  
Committee on Criminal Justice Operations

Re: Proposed Supplemental Model Justification Charges

Date: May 19, 2008

The Office of Court Administration’s Criminal Jury Instructions 2d contain a compendium of model criminal jury instructions concerning, *inter alia*, generally applicable legal principles, penal law definitions, and penal law defenses. In many cases, these model instructions provide sufficient templates for instructing a jury (see attached model justification instructions, CJI 2d).<sup>1</sup>

But, not unexpectedly, the application of the law to complex and varied factual scenarios cannot always be reduced to a set of uniform charges. That is why both the Legislature and the Court of Appeals have made clear that, whenever appropriate, a trial court should supplement or tailor the model CJI instructions so that the jury will gather from the language of the charge the correct rules that should be applied during deliberations. See C.P.L. §300.10(2); *People v. Andujas*, 79 N.Y.2d 113 (1992) (noting

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<sup>1</sup>The model justification instructions were obtained from the CJI2d section of the Office of Court of Administration’s website. The website preface indicates that, “it is the only current and official publication of CJI2d charges, and replaces all CJI2d charges previously published in a printed format.” The effective date on the attached model instructions refers to the effective date of the relevant penal law provisions, not the instructions themselves. A “history of added charges”, which the Committee on Jury Instructions began compiling in September 2003, indicates that the justification/physical force instruction was last revised in August, 2006. It does not indicate when the deadly physical force instruction was last revised.

that giving the model CJI charge may be reversible error when viewed “against the background of the evidence provided at trial”). Although it is neither realistic nor reasonable to expect any model jury instruction to encompass every possible factual scenario, there are recurring factual scenarios not covered by the current CJI2d that can prove challenging to trial courts.

The New York City Bar Association’s Committee on Criminal Justice Operations has focused on a few recurring justification scenarios that it believes warrant model justification charges. This memorandum identifies the legal principles relevant to these areas of law that the model instructions do not currently address and proposes model language that could be included in the model CJI instructions.

### **Excessive Force**

Relevant law:

In *People v. Carrera*, 282 A.D.2d 614 (2d Dept. 2001), the Second Department reversed a conviction for second-degree manslaughter on the ground that the jury charge on excessive force misstated the applicable law. In taking this action, the Court explained the legal principles that apply to a jury’s treatment of excessive force:

Even if a defendant is initially justified in using deadly physical force in self-defense, if he or she continues to use deadly physical force after the assailant no longer poses a threat, a jury may find that the defendant is no longer acting in self-defense. *Where homicide is charged, the People must prove that it was excessive force which caused the death.*

*Id.* at 616 (emphasis added); accord *People v. Hill*, 226 A.D.2d 309 (1st Dept. 309 (1996) (medical evidence that deceased was shot in head six times did not preclude finding of justification since prosecution had burden of establishing that it was the excessive portion of the force that caused death); *People v. Perry*, 176 A.D.2d 901 (2d Dept. 1992); *People v. Patterson*, 21 A.D.3d 356 (1st Dept. 1964).

In *Carrera*, the trial court’s charge on excessive force misstated the applicable law and impermissibly permitted the jury to convict the defendant based upon a finding that he was not justified in inflicting nonfatal wounds while being justified in the infliction of fatal wounds. *Id.*

The current model CJI instructions on the defense of justification do not provide any guidance on the issue of excessive force.

Suggested Supplemental Charge:

[when applicable: when there are multiple acts of force, some of which may have been proven to be unjustified and some of which may have not]:

The defendant is responsible only for the results of any unjustified use of [deadly] physical force, not for the results of any justified use of [deadly] physical force. Thus, if you find that the People have proven, beyond a reasonable doubt, that some of the defendant's use of [deadly] physical force was not justified but you find that the People have not established that other of the defendant's uses of [deadly] physical force were unjustified, then the People must prove, beyond a reasonable doubt, that it was the defendant's unjustified use of [deadly] physical force that caused [the applicable injury: death, serious physical injury, etc.].

An alternative excessive force charge:

[when applicable: when there are multiple acts of force, some of which may have been proven to be unjustified and some of which may have not]:

You have heard testimony that the defendant has used multiple acts of [deadly] physical force – some [or all] of which are alleged to be justified. The defendant is responsible only for the results of any unjustified use of [deadly] physical force, but not for the results of justified use of [deadly] physical force. If you find that the People have failed to disprove, beyond a reasonable doubt, that any of the acts of the defendant were justified, then cease your deliberations on count [any of the counts as to which justification applies] and render a verdict of not guilty on that [those] count[s].

If, however, you find that some acts were justified and some were not, then you must focus on the unjustified acts. You must determine whether it was the unjustified acts of [deadly] physical force that caused the [applicable injury]. If you find, beyond a reasonable doubt, that those acts of [deadly] physical force were not justified and caused the [applicable injury] then you must find the defendant guilty of the charges in count \_\_\_\_.

## Victim's Prior Threats<sup>2</sup>

Relevant law:

When the victim has made prior threats as to the defendant, evidence of those threats is admissible regardless of whether the defendant knew about them, as bearing upon the victim's state of mind and the probability that the victim was the initial aggressor. *People v. Petty*, 7 N.Y.3D 277, 284 (2006). In *Petty*, the Court of Appeals so held: "evidence of a deceased victim's prior threats against defendant is admissible to prove that the victim was the initial aggressor, whether or not such threats are communicated to defendant." The Court reasoned that such threats may indicate an intent to act upon them, thereby creating a probability that the deceased victim has in fact acted upon them as the initial aggressor. *Id.*

While the current model CJI instructions on justification address evidence of a party's reputation for prior violence, they do not address evidence of the victim's prior threats as to the defendant.

Suggested supplemental charge:

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<sup>2</sup> For context, a brief discussion of the law related to the victim's prior violent conduct and his alcohol/drug use follows. Although proof of the victim's prior violent conduct is not admissible in New York to prove that he may have been the initial aggressor, the defense may introduce evidence of the victim's prior violent acts or reputation for violence when the defendant knew about them at the time of the incident, as material evidence relevant to the reasonableness of the defendant's fear of the victim. See, e.g., *People v. Miller*, 39 N.Y.2d 543 (1976). Evidence of the victim's recent alcohol or drug use is admissible and relevant to a justification defense when there is proof of some irrational behavior consistent with its use, even if the defendant is unaware of the victim's use of the drugs or alcohol, because a person acting under the influence of drugs or alcohol may be perceived as acting more dangerously. See *People v. Frazier*, 6 A.D.3d 455 (2d Dept.2004).

[where applicable, prior threats against the defendant] Evidence was presented that the victim made prior threats against the defendant. You may consider any such prior threats, regardless of whether the defendant knew about them, in determining whether the victim was the initial aggressor.

### **Defense of a Third Party: Initial Aggressor**

Relevant law:

As discussed below, New York law allows a defendant that comes to the aid of another to assert the justification defense, even if that other was the initial aggressor, and would himself be barred from raising the justification defense, so long as defendant neither knew, nor should have known, that that other was the initial aggressor.

Subsection 35.15(1)(b) generally prohibits a defendant from prevailing with the justification defense if he personally was the initial aggressor. While the Penal Law prohibits an initial aggressor from raising justification, it does not prohibit a defendant that innocently comes to the aid of an initial aggressor from raising the defense. The Penal Law formerly prohibited an intervenor from raising the justification defense if the person on whose behalf they intervened was the initial aggressor (*People v. Young*, 11 N.Y.2d 274 [1962][“the right of a person to defend another ordinarily should not be greater than such person's right to defend himself”]). But the current statute, revised in 1968, “now accepts the view that one who intervenes in a struggle between strangers under the mistaken but reasonable belief that he is protecting another who he assumes is being unlawfully beaten is justified.” Donnino, McKinney’s Practice Commentary, Article 35 — Defense of Justification, 2008 Cumulative Supplement, at p.79; see, e.g., *People v. Melendez*, 155 Misc.2d 196 (Kings Cty. Sup. Ct. 1992)(Theodore T. Jones, J.)(holding that “if the intervenor had nothing to do with the original conflict and had no reason to know who initiated the first conflict, then the defense is available.”).

New York law thus allows a “Good Samaritan” intervenor to raise the justification defense even if the person on whose behalf he intervenes was the initial aggressor, so long as the intervenor did not know he/she was the initial aggressor, and had no reasonable grounds to believe that he/she was the initial aggressor. *Melendez*, 155 Misc.2d at 202 (“[t]he meaning of the statute is that if the intervenor somehow initiated or participated in the initiation of the original struggle *or* reasonably should have known that the person being defended initiated the original conflict, then justification is not a defense”); see, e.g., *State v. Bryant*, 288 N.J. Super. 27, 671 A.2d 1058 (N.J. Superior Ct., App. Div.), *certification denied*, 144 N.J. 589, 677 A.2d 761 (1996)(“[w]hether the person the defendant seeks to protect was actually the aggressor in the situation is irrelevant if unknown to the defendant. The defense is valid if the defendant reasonably believed both that the person he sought to aid was unlawfully attacked and that the force used was necessary to protect that person from the attack.... Again, the reasonableness of the defendant's belief is judged from the perspective of a reasonable person in defendant's position under the circumstances existing at the time he intervened” [internal citations omitted]); *Commonwealth v. Martin*, 369 Mass. 640, 650 at n.15, 341 N.E.2d 885, 852 at n.15 (1976)(recognizing that justification defense should not be limited “to situations

where the third person is seen retrospectively to have been entitled to use force in his own defense”); Model Penal Code §3.05(1)(b) “Use of Force for the Protection of Other Persons” (“... the use of force upon or toward the person of another is justifiable to protect a third person when ... under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force . . . .”).

Though New York law allows a defendant that innocently comes to the aid of an initial aggressor to raise the justification defense, the pattern Criminal Jury Instructions provide no guidance to jurors on this important legal question. The instructions correctly explain that a defendant alleging the justified use of force in defense of another must pass the two-step subjective/objective test: they must *subjectively* believe that someone was using or was about to use physical force against another person, and that the defendant's own use of physical force was necessary to defend that other person from it; and, *objectively*, a reasonable person in the defendant's position, knowing what the defendant knew and being in the same circumstances, would have had those same beliefs.

But rather than relate that subjective/objective test to the defense-of-another initial aggressor question, the pattern instructions merely explain that a defendant who is the initial aggressor may not justifiably use physical force, ignoring the initial aggressor question as it applies to the defense of a third person:

Notwithstanding the rules I have just explained, the defendant would not be justified in using physical force under the following circumstances:

*Select appropriate alternative(s):*

(1) The defendant would not be justified if he/she was the initial aggressor;

\* \* \*

“Initial aggressor” means the person who first attacks or threatens to attack; that is, the first person who uses or threatens the imminent use of offensive physical force. The actual striking of the first blow or inflicting of the first wound, however, does not necessarily determine who was the initial aggressor.

A person who reasonably believes that another is about to use physical force upon him/her need not wait until he/she is struck or wounded. He/she may, in such circumstances, be the first to use physical force, so long as he/she reasonably believed it was about to be used against him/her [or someone else]. He/she is then not considered to be the “initial aggressor,” even though he/she strikes the first blow or inflicts the first wound. Arguing, using abusive language, calling a person names, or the like,

unaccompanied by physical threats or acts, does not make a person an initial aggressor and does not justify physical force.

This avoids entirely the question of how jurors should treat an intervenor who “innocently” comes to the aid of someone who may have been an initial aggressor. A juror hearing the current CJI instructions could conclude that, because the person on whose behalf the defendant has intervened is barred from the justified use of force since he/she is the initial aggressor, the innocently intervening defendant’s actions were not justified either. It cannot be assumed that, without careful instruction, jurors would come to the correct conclusion.

Whenever a jury is presented with a case in which a defendant raises defense-of-another justification, and there is a question as to whether the person assisted was the initial aggressor in the confrontation, the jury should be instructed in accordance with New York’s subjective/objective justification law. As a matter of New York law, provided defendant satisfies the other applicable justification requirements, an intervenor is justified in coming to the defense of another, unless:

First, the defendant knew the person on whose behalf he intervened was the initial aggressor; or

Second, a “reasonable person” in the defendant’s position, knowing what the defendant knew and being in the same circumstances, would have known that the person on whose behalf they intervened was the initial aggressor.

*See, Melendez*, 155 Misc.2d 196, at 201-03 (where evidence in Grand Jury raised question of fact as to whether person defended was the initial aggressor, prosecutor was required to instruct that “People had to *prima facially* disprove that defendant ... did not initiate the original force between the third party and another, nor did he have reasonable ground to believe the third party was the ‘initial aggressor’”). The pattern instructions should be supplemented to include an appropriate instruction accurately reflecting New York Law.

Suggested Supplemental Charge:

Notwithstanding the rules I have just explained, the defendant would not be justified in using physical force under the following circumstances:

*Select appropriate alternative(s):*

(1) The defendant would not be justified if he/she was the initial aggressor;

\* \* \*

(2) The defendant would not be justified if he/she came to the aid of the initial aggressor and he/she knew or should have known that the person on whose behalf he/she intervened was the initial aggressor. A defendant should have known that the person on whose behalf he/she intervened was the initial aggressor if a “reasonable person” in the defendant’s position, knowing what the defendant knew and being in the same circumstances, would have known the person was the initial aggressor.

**ADDENDUM-CJI MODEL CHARGES**

**JUSTIFICATION:**

**USE OF DEADLY PHYSICAL FORCE  
IN DEFENSE OF A PERSON**

**PENAL LAW 35.15  
(Effective Sept. 1, 1980)**

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*NOTE: This charge should precede the reading of the elements of the charged crime, and then, the final element of the crime charged should read as follows:*

*“and, #. That the defendant was not justified.”<sup>i</sup>*

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[With respect to count(s) (*specify*),] [T]he defendant has raised the defense of justification, also known as self defense. The defendant, however, is not required to prove that he was justified. The People are required to prove beyond a reasonable doubt that the defendant was not justified.

I will now explain our law’s definition of the defense of justification as it applies to this case.

Under our law, a person may use deadly physical force upon another individual when, and to the extent that, he/she reasonably believes it to be necessary to defend himself/herself [or someone else] from what he/she reasonably believes to be the use or imminent use of [unlawful<sup>ii</sup>] deadly physical force by such individual.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “deadly physical force” and “reasonably believes.”

DEADLY PHYSICAL FORCE means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.<sup>iii</sup>

[Serious physical injury means impairment of a person's physical condition which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.<sup>iv</sup>]

The determination of whether a person REASONABLY BELIEVES deadly physical force to be necessary to defend himself/herself [or someone else] from what he/she reasonably believes to be the use or imminent use of deadly physical force by another individual requires the application of a two-part test.<sup>v</sup> That test applies to this case in the following way:

First, the defendant must have actually believed that (*specify*) was using or was about to use deadly physical force against him/her [*or someone else*], and that the defendant's own use of deadly physical force was necessary to defend himself/herself from it; and

Second, a "reasonable person" in the defendant's position, knowing what the defendant knew and being in the same circumstances, would have had those same beliefs.

Thus, under our law of justification, it is not sufficient that the defendant honestly believed in his own mind that he was faced with defending himself/herself [or someone else] against the use or imminent use of deadly physical force. An honest belief, no matter how genuine or sincere, may yet be unreasonable.

To have been justified in the use of deadly physical force, the defendant must have honestly believed that it was necessary to defend himself/herself [or someone else] from what he/she honestly believed to be the use or imminent use of such force by (*specify*), and a "reasonable person" in the defendant's position, knowing what the defendant knew and being in the same circumstances, would have believed that too.

On the question of whether the defendant did reasonably believe that deadly physical force was necessary to defend himself/herself [or someone else] from what he/she reasonably believed to be the use or imminent use of such force by (specify), it does not matter that the defendant was or may have been mistaken in his/her belief; provided that such belief was both honestly held and reasonable.

*[Add if there was evidence of a party's reputation for violence:*

Now, you have heard testimony that (specify) had a reputation for violence and engaged in violent acts. Normally, the law does not permit such testimony. The reason is that every person, regardless of that person's relative worth to the community, has the right to live undisturbed by an unlawful assault. The character of (specify) is thus not in issue.

What is in issue, however, is whether the defendant did "reasonably believe" that the deadly physical force he/she used was necessary to defend himself/herself [or someone else] from what he/she "reasonably believed" to be the use or imminent use of such force by (specify).

In assessing that issue, you may consider whether the defendant knew that (specify) had a reputation for violence or had engaged in violent acts. If so, you may then consider to what extent, if any, that knowledge contributed to a "reasonable belief" that the deadly physical force the defendant used was necessary to defend himself/herself [or someone else] from what he/she "reasonably believed" was the use or imminent use of such force by (specify).<sup>vi</sup>

Further, provided the defendant believed (specify) had such reputation or engaged in such acts, it does not matter whether that belief was correct.]

*Add as applicable:*

Notwithstanding the rules I have just explained, the defendant would not be justified in using deadly physical force under the following circumstances:

*Select appropriate alternative(s):*

(1) The defendant would not be justified if he/she was the initial aggressor;

*[Add if applicable:*

except, that the defendant's use of deadly physical force would nevertheless be justified if he/she had withdrawn from the encounter and effectively communicated such withdrawal to (*specify*) but (*specify*) persisted in continuing the incident by the use or threatened imminent use of (unlawful<sup>vii</sup>) deadly physical force.]

"Initial aggressor" means the person who first attacks or threatens to attack; that is, the first person who uses or threatens the imminent use of offensive physical force. The actual striking of the first blow or inflicting of the first wound, however, does not necessarily determine who was the initial aggressor.

A person who reasonably believes that another is about to use deadly physical force upon him/her need not wait until he/she is struck or wounded. He/she may, in such circumstances, be the first to use deadly physical force, so long as he/she reasonably believed it was about to be used against him/her. He/she is then not considered to be the "initial aggressor," even though he/she strikes the first blow or inflicts the first wound. Arguing, using abusive language, calling a person names, or the like, unaccompanied by physical threats or acts, does not make a person an initial aggressor and does not justify physical force.

[A person cannot be considered the initial aggressor simply because he/she has a reputation for violence or has previously engaged in violent acts.<sup>viii</sup>]

(2) The defendant would not be justified if he/she knew that he/she could with complete safety to himself/herself and others avoid the necessity of using deadly physical force by retreating.

[The defendant, however, would not be required to retreat if the defendant was in his/her dwelling and was not the initial aggressor.<sup>ix</sup>

The term, “dwelling,” encompasses a house, an apartment or a part of a structure where the defendant lives and where others are ordinarily excluded. (The determination of whether a particular location is part of a defendant’s dwelling depends on the extent to which the defendant [and persons actually sharing living quarters with the defendant] exercise(s) exclusive possession and control over the area in question.)<sup>x]</sup>

(3) The defendant would not be justified if (specify’s) conduct was provoked by the defendant himself/herself with intent to cause physical injury to (specify).

(4) The defendant would not be justified if the deadly physical force involved was the product of a combat by agreement not specifically authorized by law.

The People are required to prove beyond a reasonable doubt that the defendant was not justified. It is thus an element of [each] count [specify] that the defendant was not justified. As a result, if you find that the People have failed to prove beyond a reasonable doubt that the defendant was not justified, then you must find the defendant not guilty of [all] count(s) [specify].<sup>xi</sup>

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**JUSTIFICATION:  
USE OF PHYSICAL FORCE  
IN DEFENSE OF A PERSON  
PENAL LAW 35.15  
(Effective Sept. 1, 1980)**

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*NOTE: This charge should precede the reading of the elements of the charged crime, and then, the final element of the crime charged should read as follows:*

*“and, #. That the defendant was not justified.”<sup>1</sup>*

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[With respect to count(s) (*specify*),] [T]he defendant has raised the defense of justification, also known as self defense. The defendant, however, is not required to prove that he was justified. The People are required to prove beyond a reasonable doubt that the defendant was not justified.

I will now explain our law’s definition of the defense of justification as it applies to this case.

Under our law, a person may use physical force upon another individual when, and to the extent that, he/she reasonably believes it to be necessary to defend himself/herself [or someone else] from what he/she reasonably believes to be the use or imminent use of [unlawful<sup>2</sup>] physical force by such individual.

The determination of whether a person REASONABLY BELIEVES physical force to be necessary to defend himself/herself [or someone else] from what he/she reasonably believes to be the use or imminent use of physical force by another individual requires the application of a two-part test.<sup>3</sup> That test applies to this case in the following way:

First, the defendant must have actually believed that (*specify*) was using or was about to use physical force against him/her [or someone else], and that the defendant’s own use of physical force was necessary to defend himself/herself [or someone else] from it; and

Second, a “reasonable person” in the defendant’s position, knowing what the defendant knew and being in the same circumstances, would have had those same beliefs.

It does not matter that the defendant was or may have been mistaken in his/her belief; provided that such belief was both honestly held and reasonable.

*Add as applicable:*

Notwithstanding the rules I have just explained, the defendant would not be justified in using physical force under the following circumstances:

*Select appropriate alternative(s):*

(1) The defendant would not be justified if he/she was the initial aggressor;

*[Add if applicable:*

except, that the defendant's use of physical force would nevertheless be justified if he/she had withdrawn from the encounter and effectively communicated such withdrawal to (specify) but (specify) persisted in continuing the incident by the use or threatened imminent use of (unlawful<sup>4</sup>) physical force.]

“Initial aggressor” means the person who first attacks or threatens to attack; that is, the first person who uses or threatens the imminent use of offensive physical force. The actual striking of the first blow or inflicting of the first wound, however, does not necessarily determine who was the initial aggressor.

A person who reasonably believes that another is about to use physical force upon him/her need not wait until he/she is struck or wounded. He/she may, in such circumstances, be the first to use physical force, so long as he/she reasonably believed it was about to be used against him/her [or someone else]. He/she is then not considered to be the “initial aggressor,” even though he/she strikes the first blow or inflicts the first wound. Arguing, using abusive language, calling a person names, or the like, unaccompanied by physical threats or acts, does not make a person an initial aggressor and does not justify physical force.

(2) The defendant would not be justified if (specify's) conduct was provoked by the defendant himself/herself with intent to cause physical injury to (specify).

(3) The defendant would not be justified if the physical force involved was the product of a combat by agreement not specifically authorized by law.

(4) A person may not use physical force to resist an arrest, whether authorized or unauthorized, which is being effected or attempted by a police officer or peace officer when it would reasonably appear that the latter is a police officer or peace officer.<sup>5</sup>

The People are required to prove beyond a reasonable doubt that the defendant was not justified. It is thus an element of [each] count [*specify*] that the defendant was not justified. As a result, if you find that the People have failed to prove beyond a reasonable doubt that the defendant was not justified, then you must find the defendant not guilty of [all] count(s) [*specify*].<sup>6</sup>

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<sup>i</sup>. See *People v. McManus*, 67 N.Y.2d 541, 549 (1986); *People v. Higgins*, 188 A.D.2d 839, 840 (3d Dept. 1992).

<sup>ii</sup>. If the lawfulness of this deadly physical force is in issue, then include the word “unlawful,” which appears in the statute [Penal Law § 35.15(1)], and explain how it applies to the case.

<sup>iii</sup>. Penal Law § 10.00(11).

<sup>iv</sup>. See Penal Law § 10.00(9)&(10).

<sup>v</sup>. *People v. Goetz*, 68 N.Y.2d 96 (1986)

<sup>vi</sup>. *People v. Miller*, 39 N.Y.2d 543, 550-51 (1976).

<sup>vii</sup>. If the lawfulness of this deadly physical force is in issue, then include the word “unlawful,” which appears in the statute [Penal Law § 35.15(1)(b)], and explain how it applies to the case.

<sup>viii</sup>. While evidence of the defendant’s knowledge of the victim’s reputation for violence or specific acts of violence is admissible to show that the defendant’s

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fears were reasonable, the evidence is not admissible “to show that the deceased was the aggressor, for if competent for that purpose, similar evidence could be given as to the reputation of the defendant as bearing on the probability that he was the aggressor.” *People v Rodawald*, 177 N.Y. 408, 423 (1904). See Prince, Richardson On Evidence, § 4-409, p172 (11th ed. Farrell).

ix. Penal Law § 35.15(2)(a). That statute also provides an exception to the duty to retreat for a police officer or peace officer, or a person assisting a police officer or a peace officer at the latter’s direction, acting pursuant to Penal Law § 35.30.

x. *People v. Hernandez*, 98 N.Y.2d 175 (2002).

xi. *People v. Roberts*, 280 A.D.2d 415 (1<sup>st</sup> Dept. 2001); *People v. Higgins*, 188 A.D.2d 839, 840-841 (3d Dept. 1992); *People v. Castro*, 131 A.D.2d 771, 773 (2d Dept. 1987).

<sup>1</sup>. See *People v. McManus*, 67 N.Y.2d 541, 549 (1986); *People v. Higgins*, 188 A.D.2d 839, 840 (3<sup>rd</sup> Dept. 1992).

<sup>2</sup>. If the lawfulness of this physical force is in issue, then include the word “unlawful,” which appears in the statute [Penal Law § 35.15(1)], and explain how it applies to the case.

<sup>3</sup>. *People v. Goetz*, 68 N.Y.2d 96 (1986).

<sup>4</sup>. If the lawfulness of this physical force is in issue, then include the word “unlawful,” which appears in the statute [Penal Law § 35.15(1)(b)], and explain how it applies to the case.

<sup>5</sup>. Penal Law § 35.27.

<sup>6</sup>. *People v. Roberts*, 280 A.D.2d 415 (1<sup>st</sup> Dept. 2001); *People v. Higgins*, 188 A.D.2d 839, 840-841 (3d Dept. 1992); *People v. Castro*, 131 A.D.2d 771, 773 (2<sup>nd</sup> Dept. 1987).