

DEFENDANT'S ELECTION NOT TO TESTIFY¹

As you know, (defendant) elected not to testify at trial. It is his/her constitutional right to remain silent.

You must not consider for any purpose or in any manner in arriving at your verdict the fact that (defendant) did not testify. That fact should not enter into your deliberations or discussions in any manner, at any time.

(Defendant) is entitled to have the jury consider all evidence presented at trial. He/She is presumed innocent whether or not he/she chooses to testify.

¹ The defendant's individual consent should be obtained when giving this charge. Also, where non-testifying defendants disagree as to whether the charge should be given, it is preferable to give the charge as to all defendants. See State v. McNeil, 164 N.J. Super. 27 (App. Div. 1978) and Lakeside v. Oregon, 435 U.S. 333 (1978). See also Malloy v. Hogan, 378 U.S. 1 (1964); Griffin v. California, 380 U.S. 609 (1965).; State v. McLaughlin, 93 N.J. Super. 435, 439 (App. Div. 1967); N.J.S.A. 2A:84A-17(1); U.S. v. Garguillo, 310 F. 2d 249, 252 (2 Cir. 1962); U.S. v. Kelly, 349 F. 2d 720, 769 (2 Cir. 1965), cert. denied 384 U.S. 947 (1966); State v. De Stasio, 49 N.J. 247 (1967).