



The Architecture of the Resisting Arrest Narrative

A Constitutional Audit of Derivative
Authority, Escalation, and Force

Official Legal Standard & Policy Briefing

The Executive Disconnect Between Street Culture and Statutory Reality

The Cultural Solvent



- Treated as self-executing and self-justifying.
- Operates as a cultural solvent to dissolve public scrutiny.
- Functions as a narrative device to convert weak seizures, bad tactics, and gratuitous force into an official-sounding justification.

The Statutory Reality

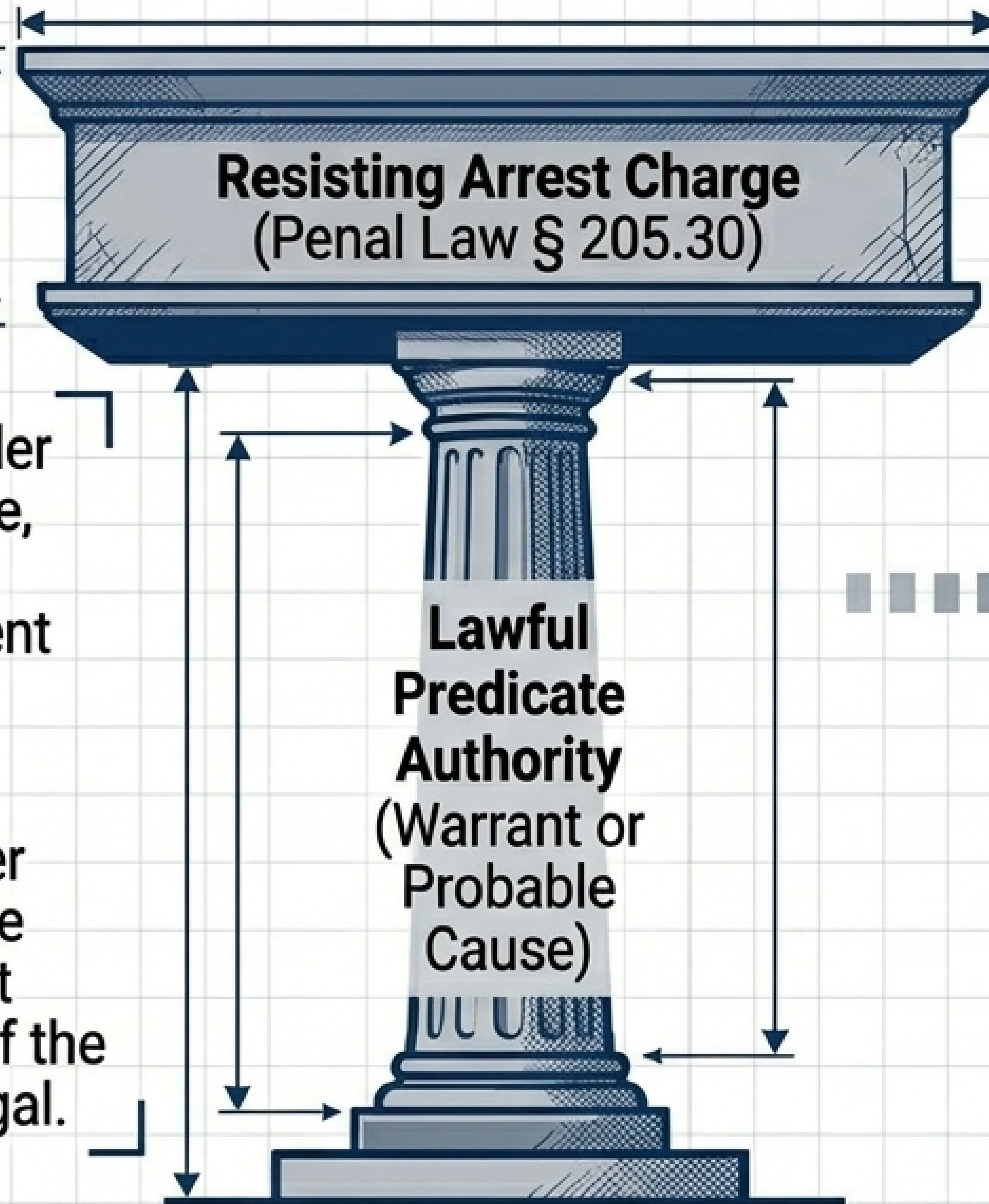


- Penal Law § 205.30 criminalizes the intentional prevention of an authorized arrest.
- It is not an independent source of police authority.
- It is a strictly derivative offense. If the underlying arrest lacked lawful foundation, the resisting arrest charge cannot exist.

Mapping the Deviation: Institutional Myth vs. Doctrinal Reality

	The Institutional Habit	New York Law
View of the Offense	An independent, standalone source of police authority.	A derivative dependency requiring an underlying lawful predicate.
Justification	The citizen's reaction retroactively justifies the seizure.	Lawful authority must exist before the physical struggle begins.
Scope of Force	"He resisted" is a blank check for unlimited, ongoing force.	Force remains strictly limited by necessity and proportionality at every stage.
Chronology	Analysis isolates the final seconds of the physical struggle.	Analysis demands the full sequence, including police-created escalation.

The Derivative Dependency Requires Prior Legal Authority

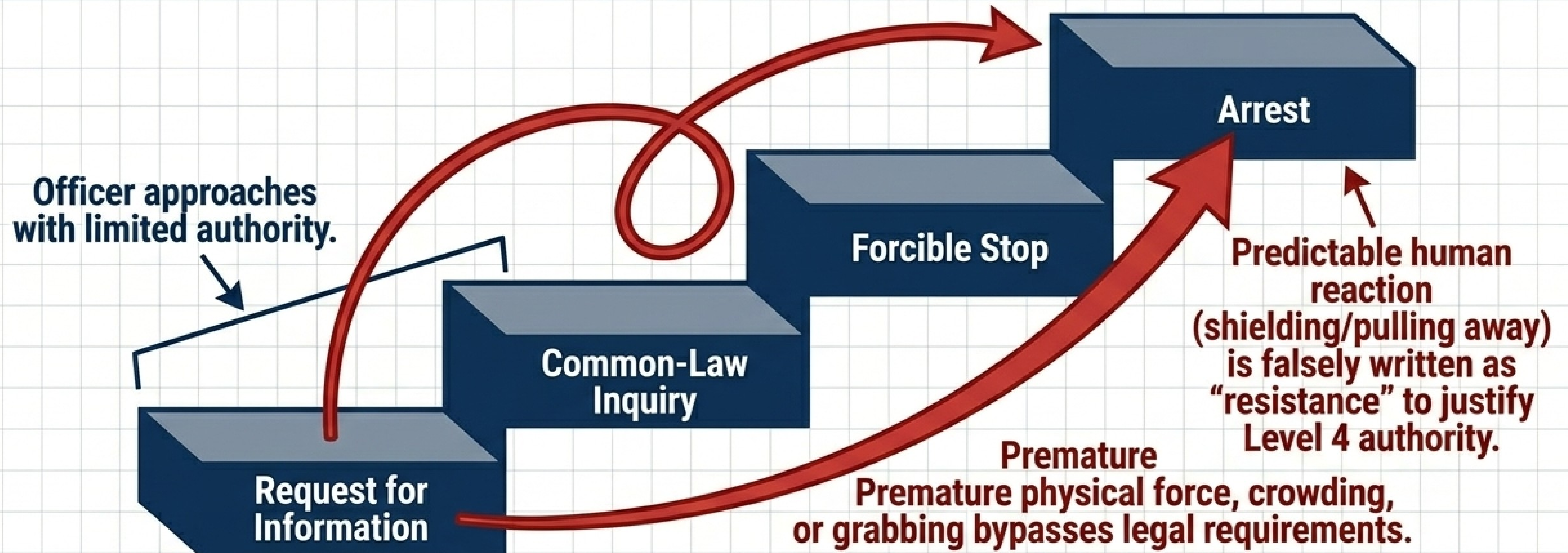


The Baseline Rule: Under *Curry v. City of Syracuse*, there must be probable cause for an independent offense apart from resisting arrest.

The NY Standard: Under *People v. Stevenson*, the crime of resisting arrest simply does not occur if the underlying arrest is illegal.

The Article 35 Misconception: Penal Law § 35.27 limits a citizen's right to self-help; it does not convert an unauthorized arrest into an authorized one.

Chronology Fraud and the Illegality of 'Jumping the Stairs'



Takeaway: New York law does not tolerate this sequencing trick. The state must justify its authority at each step before it imposes the next. Authority cannot be manufactured from a provoked reaction.

The “Force-is-Resisting” Paradox



Removing the Chronological Blinders: The Barnes Mandate

Police Tactical Choices & Escalation

The Struggle /
Moment of
Threat



The Old Script

Truncate the chronology.

Isolate the final second of movement to make force look inevitable.

The Supreme Court Correction

In *Barnes v. Felix* (2025), the Court explicitly rejected the 'freeze-frame' method.

Courts must now evaluate the full sequence of events leading up to the force.

Sloppy tactical choices, premature contact, weak predication, and escalating police pressure are permanently part of the constitutional analysis.

The Strict Limits of Lawful Force



Lawful Arrest

Core Principle: Even a 100% lawful arrest, and an actual resisting-arrest conviction, do not authorize limitless force.

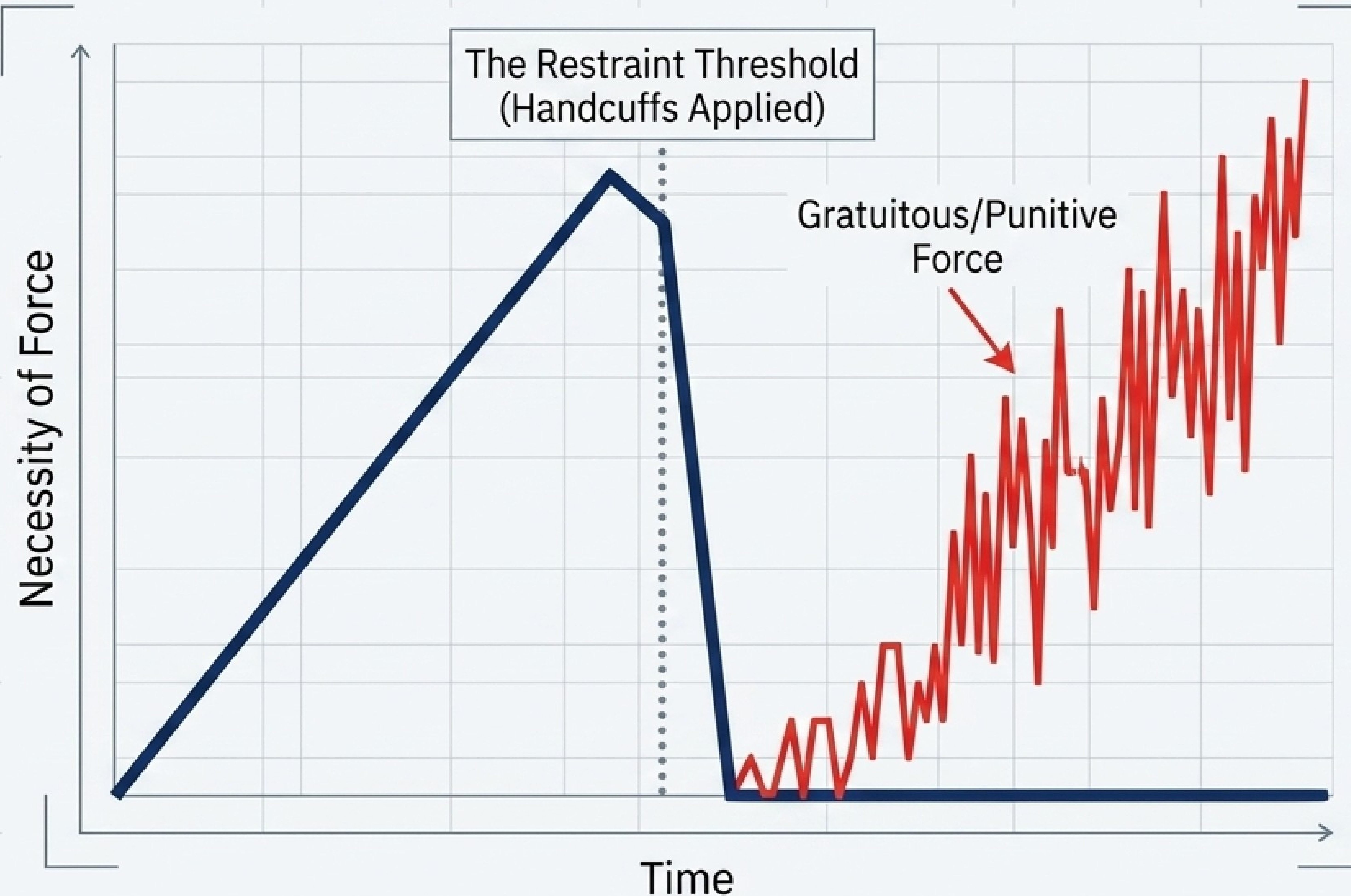
Statutory Anchor (Penal Law § 35.30): Force is permitted strictly “when and to the extent” reasonably necessary.



Federal Precedent (*Tracy v. Freshwater*): The Second Circuit established that pepper spray is a significant use of force. Gratuitous use on a restrained and unresisting arrestee violates the Fourth Amendment, regardless of earlier resistance.

“He resisted” is not an unlimited permission slip for pain.

The Restraint Threshold and the Pivot to Punishment

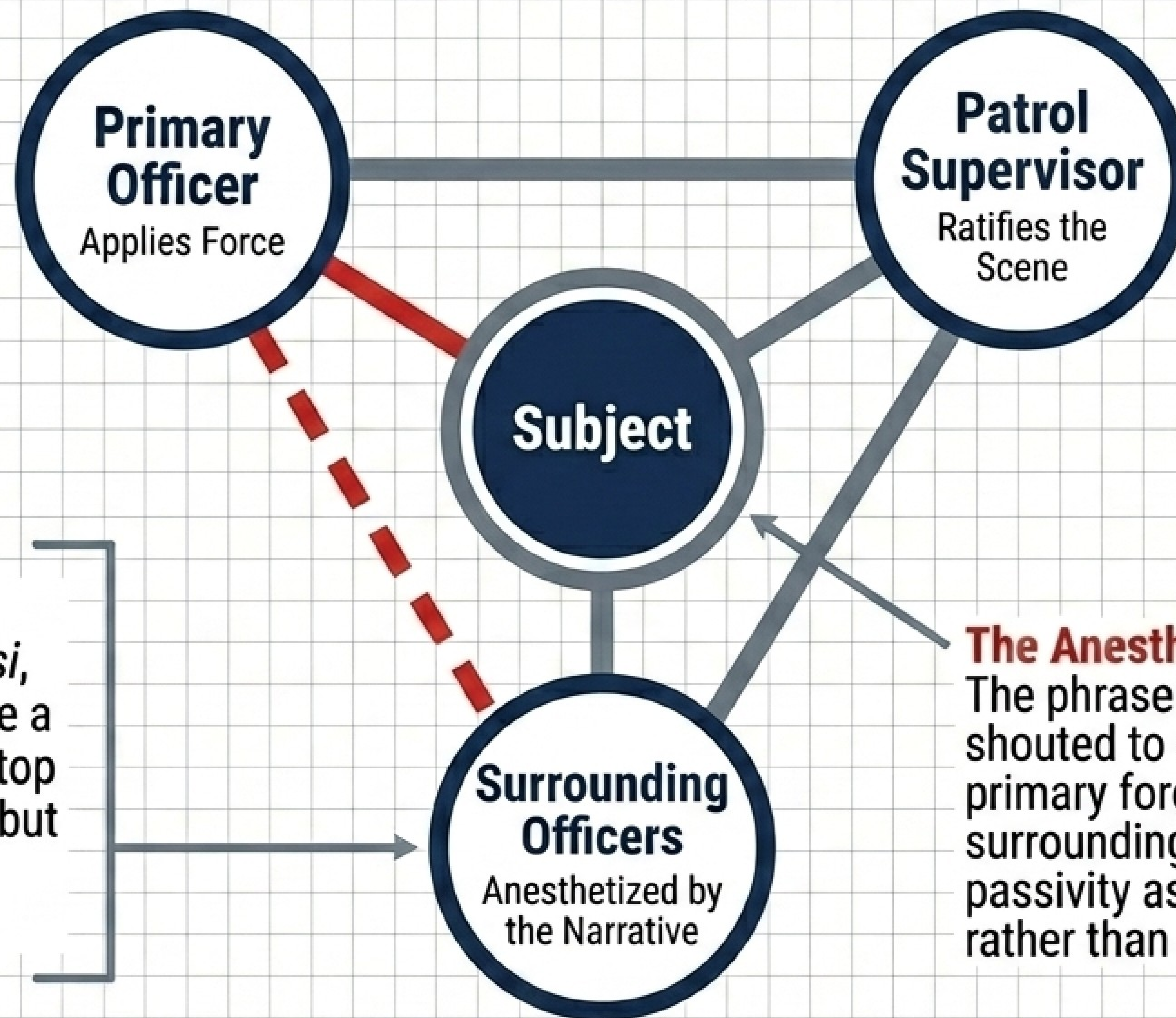


Jackson v. Tellado: Sustained excessive force liability when OC spray or strikes continue after control is achieved.

Once the subject is pinned, cuffed, or immobilized, the legal justification for continued force evaporates.

Post-restraint force ceases to be a tool of custody and becomes an unconstitutional method of anger or domination.

The Group Production of Resistance and Complicity



Supervisory Liability:
A supervisor who fails to stop preventable force or allows the charge narrative to congeal without testing the underlying predicate becomes complicit in narrative laundering.

Failure to Intervene:
Under *Sloley* and *Terebesi*, officers present who have a realistic opportunity to stop clearly excessive force—but do nothing—share constitutional liability.

The Anesthetic Effect:
The phrase “stop resisting” is shouted to excuse the primary primary force and invite surrounding officers to treat their passivity as professional restraint rather than constitutional failure.

Narrative Laundering: From Street Error to Fabricated Evidence

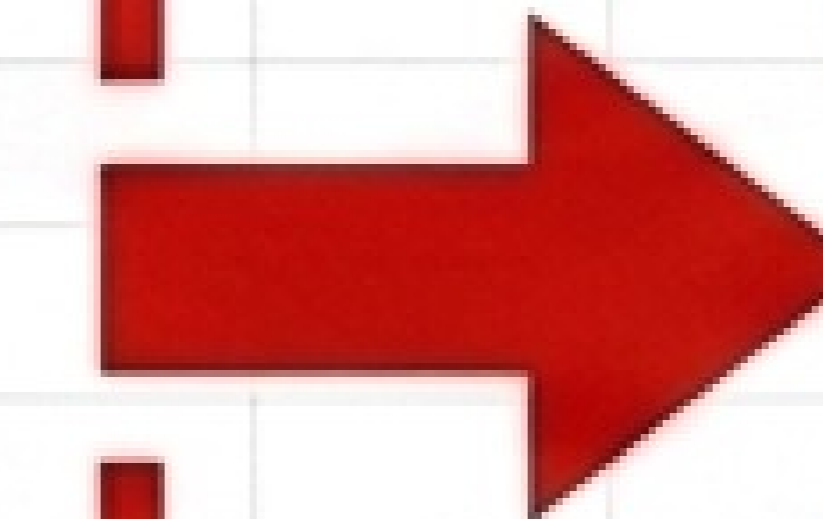
Stage 1: Street Error

A weak De Bour stop.



Stage 2: Paperwork Chain

Chronology is compressed
in the complaint room.



Stage 3: Prosecutorial Process

Deprivation of Liberty.



- **The Editing Process:** The narrative compresses the chronology, omits the weak predicate offense, and inflates facts to manufacture the required “authorized arrest” element.

- **State Criminal Liability:** Knowing presentation of false written instruments and false business records (Penal Law Arts. 175).

- **Federal Due Process Violation:** Under *Ricciuti*, *Garnett*, and *Ashley*, creating and forwarding a false chronology to prosecutors is **not** just a paperwork defect—it is **fabrication of evidence** violating the right to a **fair trial**.

Synthesis: The 7-Step Doctrinal Diagnostic

To properly evaluate any "resisting arrest" claim, the full sequence must be audited in strict chronological order:

- Predicate Identity:** What was the underlying offense? (Request, inquiry, stop, or probable cause?)
- Authorization:** Was the arrest legally authorized before physical escalation began?
- Specific Action:** What specific act constituted resistance, distinct from instinctive recoil?
- Police Escalation:** Did police create the danger or prematurely escalate a lower-level encounter?
- Control Achieved:** At what exact moment was the subject materially restrained?
- Bystander Action:** Did surrounding officers intervene when force continued post-restraint?
- Paperwork Accuracy:** Does the documentation reflect the full Barnes sequence, or an edited chronology?

The Constitutional Sequence Matters. The Law Goes First.