

PARTIAL VERDICT

CPL 310.70

CPL 310.70 sets forth the procedure for dealing with a “partial verdict.”¹ The statute applies when “a deliberating jury declares” that it has “reached a verdict with respect to one or more but not all of the offenses submitted to it, or with respect to one or more but not all of the defendants.”²

The trial court’s options are:

- (1) take a partial verdict and, if warranted, discharge the jury as deadlocked;*
- (2) take a partial verdict and, if warranted, direct the jury to continue deliberating on the remaining undecided counts; or*
- (3) refuse to take a partial verdict.*

As a predicate to the exercise of any one of the options, the trial court should acknowledge on the record the status of jury deliberations and the jury’s declaration of a partial verdict, normally by reading a jury note on the record in the presence of the jury.

E.g., Members of the jury I have your note, which reads:
(specify).

E.g., Members of the jury I have your note, which states that you have reached a partial verdict (that is, a verdict on some but not all of the counts and that you are unable to reach a verdict on the remaining counts).

If the court decides to take the partial verdict and then discharge the jury, the court should announce that decision to the jury and have the Clerk of the Court take the verdict. See NY Model Colloquies, Taking of a Verdict.

E.g., Members of the jury, I have decided to take your partial verdict (that is, the verdict on the count or counts upon which you have come to agreement). Will the Clerk of the Court please take the verdict?

After the verdict is entered, if the court decides to discharge the jury:

E.g., Members of the jury, given that you have not been able to reach a verdict on the remaining counts after an extensive period of deliberations, and that it is unlikely that you will reach one in a reasonable period of time, you are now excused. Thank you for your service.

If the court decides to take the partial verdict and have the jury continue with its deliberations, the court may consider adding an instruction applicable to a deadlocked jury.

E.g., Members of the jury, I have decided to take your partial verdict (that is, the verdict on the count or counts you have come to agreement on). Will the Clerk of the Court please take the verdict?

After the verdict is entered:

E.g. Members of the jury, I want you now to please continue to deliberate on the remaining counts (or specify the counts) with a view towards reaching a verdict on those counts. *(The court may consider adding an instruction applicable to a deadlocked jury. See CJI2d[NY] Jury Issues—Jury Deadlocked.)*

If the trial court decides not to take the partial verdict and to direct the jury to continue its deliberations, in addition to providing an instruction applicable to a deadlocked jury [Id.], the court must advise the jury that their further deliberations may be upon the entire case, including that portion upon which the jury had previously agreed.³ If subsequent to a decision not to take a partial verdict, the court decides to discharge the jury as deadlocked, the court should first inquire whether the jury has reached a partial verdict and if the jury has, the partial verdict must be taken unless the court decides to have the jury continue its deliberations.⁴

E.g., Members of the jury, I have decided not to take your partial verdict at this time, and instead to ask you to continue to deliberate. In doing so, you may deliberate upon the entire case, including that portion upon which you have previously agreed. *(The court may continue with a Deadlock instruction.)*

After continued deliberations without taking a partial verdict, and before discharge:

E.g. Members of the jury, I have your note that you continue to be deadlocked and I am prepared to discharge you. But before I do, I need to receive another note from you indicating whether you have still agreed upon a verdict for some, though not all, of the counts.

If the note indicates that the jury has a partial verdict, have the clerk of the court take the verdict and then discharge the jury. If the jury does not have a partial verdict, discharge the jury. In either case, in discharging the jury, the court may instruct them as follows:

E. g. Given that you have not been able to reach a verdict [on the remaining counts] after an extensive period of deliberations, and that it is unlikely that you will reach one in a reasonable period of time, you are now excused. Thank you for your service.

1. CPL 310.70 Rendition of partial verdict and effect thereof

1. If a deliberating jury declares that it has reached a verdict with respect to one or more but not all of the offenses submitted to it, or with respect to one or more but not all of the defendants, the court must proceed as follows:

(a) If the possibility of ultimate agreement with respect to the other submitted offenses or defendants is so small and the circumstances are such that if they were the only matters under consideration the court would be authorized to discharge the jury pursuant to

paragraph (a) of subdivision one of section 310.60, the court must terminate the deliberation and order the jury to render a partial verdict with respect to those offenses and defendants upon which or with respect to whom it has reached a verdict;

(b) If the court is satisfied that there is a reasonable possibility of ultimate agreement upon any of the unresolved offenses with respect to any defendant, it may either:

(i) Order the jury to render its verdict with respect to those offenses and defendants upon which or with respect to whom it has reached agreement and resume its deliberation upon the remainder; or

(ii) Refuse to accept a partial verdict at the time and order the jury to resume its deliberation upon the entire case.

2. Even where the jury has not made such a declaration on its own initiative, the trial court may inquire whether it has reached a partial verdict, and if the response is affirmative, follow the procedures set forth in CPL 310.70. *See People v. Johnson*, 87 N.Y.2d 1006 (1996); *Robles v. Bamberger*, 219 A.D.2d 243 (1st Dept. 1996). Whether to make such an inquiry in the absence of a jury's declaration of a partial verdict is within the trial court's discretion. *See Rivera v. Firetog*, 11 N.Y.3d 501, 509 (2008) ("Although our decision in *Oliver* was premised in large part on the [defendant's] failure to inquire into the status of a previously declared partial verdict, we did not suggest that a trial judge must question the jury about the possibility of a partial verdict as a matter of constitutional concern whenever requested by defense counsel.").

3. *See Oliver v. Justices of NY Supreme Court of NY County*, 36 N.Y.2d 53, 58-59, (1974) ("Following a court's refusal to accept a partial verdict pursuant to CPL 310.70 (subd. 1, par. [b], cl. [ii]), the jury should be clearly instructed that its further deliberations may be upon the entire case, including that portion upon which they had previously agreed.").

4. *See Oliver*, 36 N.Y.2d 53, at 58-59 ("Once a partial verdict has previously been refused, the court should ascertain, before discharging the jury at a subsequent time, whether the jury is then in agreement as to a partial verdict, or whether it is truly deadlocked upon all counts and as to all parties. If the jury still has a partial verdict, and the court is of the opinion that further deliberations would not be likely to produce ultimate agreement and wishes to discharge the jury as deadlocked, the partial verdict must then be accepted. (CPL 310.70, subd. 1, par. [a].)").