

Deadlock Charge¹

Members of the jury, I have your note indicating that you have been unable to agree on a verdict.

As I told you in my initial instructions, any verdict you return [on any count], whether guilty or not guilty, must be unanimous. If you cannot reach a unanimous agreement [on a particular count], you cannot return a verdict [on that count], and a new trial will have to be scheduled before a different jury.

It is not, however, uncommon for a jury to have difficulty initially in reaching a unanimous verdict, and it is not uncommon for a jury to believe that they will never be able to reach a unanimous verdict. But, after further deliberations, most juries are able to reach a unanimous verdict. And, so, I will ask you to continue your deliberations.

But before I do, I want to remind you that, when this trial began, many prospective jurors were called and questioned. Many were excused for one reason or another. But you ladies and gentlemen were selected to serve. That means that of all the prospective jurors called in this case, you were the ones in whom both sides expressed confidence. Both sides were convinced that each of you would be fair and impartial, that each of you would listen carefully to the evidence, to the arguments, and to the law, and that each of you would deliberate with your fellow jurors and work hard to reach a unanimous verdict that was consistent with the law and the evidence. Both sides continue to have confidence in you, as do.

Members of the jury, you make up a very good jury. There is no reason to believe that the presentation of this case again would be to a jury that is any more intelligent, reasonable, hardworking, or fair than you are.

I want to emphasize that I am not asking any juror to violate his or her conscience, or to abandon his or her best judgment. Any verdict you reach must be the verdict of each juror, and not mere acquiescence in the conclusion of others.ⁱⁱ But I am asking you to continue deliberating, and to resume your deliberations with an open mind.

Start with a fresh slate. Do not feel bound by how you felt before — whether you favored conviction or acquittal. Have the courage to be flexible. Be willing to change your position if a re-evaluation of the evidence convinces you that a change is appropriate. Do not, out of pride or stubbornness, adhere to an opinion or conclusion that you no longer believe is correct.

Be honest with yourselves and with the other jurors. Listen to the other jurors and evaluate what they have to say. Do not let anything prevent you from carefully considering what they say. Remember that each of you made a commitment when you became a juror that requires you to reason and deliberate together to reach a fair and a just verdict based only on the evidence. Of course, while a discussion among all jurors may at times be intense, I'm sure you understand that it can and should also be respectful of the feelings and opinions of other jurors.

I urge that each of you make every possible effort to arrive at a just verdict here. Make certain that the decision you reach is based solely on the evidence and the law, and is not influenced or affected by sympathy for or against any individual, or for or against either side. Be sure that no baseless speculation, no bias or prejudice for or against any individual, enters into your deliberations.

If I can help you in any way, whether through a further or

repeated readback, or through a clarification or restatement of the law, I stand ready to do so.

Again, please make every effort consistent with your conscience and the evidence in this case to harmonize your views and decisions in this case with those of the other jurors. To the best of your ability, I ask you to apply common sense and good judgment.

Finally, ladies and gentlemen, I appreciate that the process of deliberations can be difficult. Frankly, it wasn't intended to be easy. So, in accord with your oath [and your promise to me at the beginning of the trial], please continue to deliberate with a view towards reaching a verdict.

¹ See *Allen v United States*, 164 U.S. 492 (1896); *People v Aponte*, 2 N.Y.3d 304 (2004); *People v Pagan*, 45 N.Y.2d 725 (1978). See also *People v. Moore*, 213 A.D.3d 1213 (4th Dept 2023) (“with respect to the substance of the second *Allen* charge, we conclude that, read as a whole, it “was ‘encouraging rather than coercive’” Indeed, we note that the second *Allen* charge essentially tracked the deadlock charge that appears in the Criminal Jury Instructions”).