

SUPPLEMENTAL INSTRUCTIONS

10.02

**10.02 DUTY TO DELIBERATE (“ALLEN”
CHARGE)**

As stated in my instructions, it is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to a unanimous result you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if in your individual judgment the evidence fails to establish guilt beyond a reasonable doubt, then the defendant should have your vote for a not guilty verdict. If all of you reach the same conclusion, then the verdict of the jury must be not guilty. Of course the opposite also applies. If in your individual judgment the evidence establishes guilt beyond a reasonable doubt, then your vote should be for a verdict of guilty and if all of you reach that conclusion then the verdict of the jury must be guilty. As I instructed you earlier, the burden is upon the [government] [prosecution] to prove beyond a reasonable doubt every element of the crime[s] charged.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of

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the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. But I suggest that you carefully [re]consider all the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.¹

[Please go back now to finish your deliberations in a manner consistent with your good judgment as reasonable persons.]²

Notes on Use

1. A more expanded version of this instruction, 1A Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions: Criminal* § 20.08 (5th ed. 2000), has been approved by this Circuit. *See United States v. Smith*, 635 F.2d 716, 722–23 (8th Cir. 1980); *United States v. Singletary*, 562 F.2d 1058, 1060–61 (8th Cir. 1977); *United States v. Hecht*, 705 F.2d 976, 979 (8th Cir. 1983).

2. Use this sentence when this charge is being given after deliberations have begun.

Committee Comments

See 1A Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions: Criminal* § 20.08 (5th ed. 2000).

It is preferable that an “Allen” type instruction be given as part of the regular final instructions, before the jurors begin their deliberations. *United States v. Webb*, 816 F.2d 1263, 1266 n.4 (8th Cir. 1987); *Potter v. United States*, 691 F.2d 1275, 1277 (8th Cir. 1982), and cases cited therein. *See* Instruction 3.12, *supra*.

If that has been done, and if the circumstances are appropri-