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## **Jury Charges**

**David M. Gonzalez**

Author Contact Information:  
David M. Gonzalez  
Sumpter & Gonzalez, LLP  
Austin, Texas

david@sg-llp.com  
512.381.9955

## INTRODUCTION

Imagine you're in the jury room.

I mean *you*. Specifically. An appellate lawyer.

During jury selection of a complex civil dispute neither lawyer asked you many questions. You figured that you were in the back of the panel, you are a lawyer, and either you wouldn't be reached and certainly would be struck.

And then your name was called. As you sat in the jury box, you found yourself looking at your fellow jurors with the same surprised look.

Fast forward to today.

You're in the jury room. There's a 7-5 split over how the case should resolve. You're in the minority. As a lawyer, you know the jury charge is crucial. You have been elected the foreperson so you have the jury charge in your hand. As the foreperson you proceed gingerly – you don't want to influence the outcome of deliberations and continually try to engage all the jurors in the discussion of the case. You have been operating as a neutral discussion leader up until this point. In your opinion, the majority of the jury is simply misreading the charge.

You attempt to cite to particular phrase in the charge, and another juror says that you're bringing in your own meaning of those words. You admit: they're not defined in the judge's charge. Somebody suggests that you send a note to the judge for a definition and you comply, even though you know the response you're going to get: *everything you need to reach a verdict is contained within the court's charge*.

Deliberations continue for another day.

And then another.

The 7-5 split persists. There is no movement from either side. You are exhausted, you have a million other things to do at work, and there's no point arguing or trying to persuade. The majority of jurors simply do not understand the law, and the two sides are firmly entrenched. You send a note to the Judge that you have reached an impasse.

You know what you're going to hear:

I have your note that you are deadlocked. In the interest of justice, if you could end this litigation by your verdict, you should do so. I do not mean to say that any individual juror should yield his or her own conscience and positive conviction, but I do mean that when you are in the jury room, you should discuss this matter carefully, listen to each other, and try, if you can, to reach a conclusion on the questions. It is your duty as a juror to keep your mind open and free to every reasonable argument that may be presented by your fellow jurors so that this jury may arrive at a verdict that justly answers the consciences of the individuals making up this jury. You should not have any pride of opinion and should avoid hastily forming or expressing an opinion. At the same time, you should not surrender any conscientious views founded on the evidence unless convinced of your error by your fellow jurors. If you fail to reach a verdict, this case may have to be tried before another jury. Then all of our time will have been wasted. Accordingly, I return you to your deliberations.

But the *Allen* charge fails to do its job. By this point, the sides are so entrenched that nobody budes. You return to the courtroom and are asked three questions by the trial judge:

1. Is there anything else the court can do to assist in the jury's deliberations?"
2. Would an additional instruction assist in your deliberations?"
3. Would the rereading of any testimony help the jury reach a conclusion?"

You hesitate. You intended upon answering "no" to all the questions so that a mistrial would be declared. But your conscious gnaws at you. This is a dispute about a definition – and an additional instruction *would* be helpful to persuade the other jurors.

You ask for the court's indulgence, write a long note to the judge explaining the impasse and seeking an additional instruction.

Hours pass. All the other jurors are fuming at you.

When you finally receive a response from the judge, you are told that *everything you need to reach a verdict is contained within the court's charge.*

Everybody leaves the courthouse frustrated after a mistrial is declared.

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