

**1.20 SUPPLEMENTAL INSTRUCTIONS AS TO FURTHER
DELIBERATIONS BY JURY (Approved 4/96)**

You have informed me that you have been unable as a jury to reach a verdict in this case. I do not wish to know, and I direct each of you jurors not to tell anyone, how your vote stands.

Although you have a duty to reach a verdict, if that is possible, I have neither the power nor the desire to compel you to reach a verdict.

I do want to emphasize the importance and the desirability of your reaching a verdict in this case provided that each of you can do so without surrendering or sacrificing principle or personal convictions.

You will recall that upon assuming your duties in this case each of you took an oath. That oath places upon each of you the responsibility of arriving at a true verdict based upon your own opinion and not merely by agreeing with the conclusions of the other jurors.

However, opinions can be changed by discussions in the jury room. The purpose of the jury system is to reach a verdict by comparing views and by considering the evidence with the other jurors.

During your deliberations each of you should be open-minded. You should consider the issues with proper attention to and respect for the opinions of each other. You should not hesitate to reexamine your own views in the light of your discussions.

You should consider also that this case must be decided at some time. You are selected in the same manner and from the same source from which any future jury must be selected. There is no reason to suppose that the case will ever be submitted to six persons more intelligent, more impartial or more capable of deciding it, or that additional or clearer evidence will ever be presented by one side or the other.

You may retire and take as much time as is necessary for further deliberations upon the issues submitted to you for determination.

NOTE TO JUDGE

The above is suggested for use following an announcement by the jury that it has been unable to agree.

The Committee is aware that language similar to that contained in the next to the last paragraph of the proposed charge has been disapproved in criminal trials in this State. *State v. Czachor*, 82 N.J. 392, 294 (1980). However, neither the *Czachor* holding nor the Court's reasoning has been expressly extended to civil jury trials. *But see In re Stein*, 11 N.J. 584, 588 (1953), which predates *Czachor*. In *Stein*, the Court reversed a verdict in a civil case when a deadlocked jury

was instructed on the financial burden of a retrial. In *Czachor*, the Court cited *Stein* for the proposition that the instructions in that case were improperly coercive, but disapproved the language in *Stein* that assumed the coercive effect of such an instruction could be overcome or balance by language to the effect that no juror “should surrender his conscientious scruples or personal convictions.” 82 *N.J.* 401-02.

In the absence of an explicit court decision, the Committee does not have the authority to apply the *Czachor* holding to civil cases. Nor do we consider it appropriate to delete the next to last paragraph in the above-proposed charge without a court decision. However, members of the Committee feel that the language in 1.20A, Alternate Form, which was recommended in *Czachor* for criminal cases, would avoid any potential problems with the above charge.

A. ALTERNATE FORM

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is not necessary that each juror agree on the verdict. Your verdict must be by a vote of 6 - 0 or 5 - 1.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without compromising your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender you

honest conviction as to the weight or effect of evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

You are not partisans. You are judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

NOTE TO JUDGE

In *State v. Czachor*, 82 N.J. 392, 405 (1980), the Supreme Court recommended the ABA model charge in criminal cases where the trial court feels that further deliberations may produce a proper verdict. *Id.* at 405 n. 4. The Committee has modified the language for clarity without making any material changes in the recommended charge.