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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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BORDEN, J., with whom NORCOTT and VERTEFEUILLE, Js., join, concurring. I agree with the majority that our Chip Smith[1] jury instruction is not unduly coercive, and that the trial court's evidentiary ruling was proper. I also agree with the majority that the time has come for us, in the exercise of our supervisory power over the administration of criminal justice, to require that our trial courts in the future deliver a modified form of antideadlock instruction. I differ from the majority, however, in one respect: I would go one step further, and impose the same duty of redeliberation on both the majority and minority members of the jury. I would, therefore, adopt the instruction approved by the United States Court of Appeals for the Sixth Circuit, in *United States* v. *Frost*, 125 F.3d 346, 374 n.11 (6th Cir. 1997).[2]

This charge eliminates any distinction, in terms of an obligation to rethink one's conclusions, between members of the majority and the minority of the jury—a distinction that the majority's formulation retains. Each of us on this court has been the beneficiary of a collective decision-making process in which, from time to time, the initial majority on a given case—even what may be regarded as the ''much greater of'' us—has been persuaded to change its mind by reconsidering its conclusions at the urging of the initial minority—even what may be regarded as the ''much fewer of'' us. I would require the trial court to afford the jury the same opportunity by reminding it that *both* sides—majority and minority—should listen to the views of the other and change their minds if persuaded to do so. The formulation that I offer does so, in contrast to that of the majority, which imposes such an obligation of rethinking its conclusions only when the ''much greater number of you reach a certain conclusion''; in such a situation, under the majority's formulation, only the ''dissenting jurors should consider whether their opinion is a reasonable one . . . .'' I would impose the same obligation on both majority and minority jury members, irrespective of the size of each.

Furthermore, in contrast to our present Chip Smith charge, the majority's new formulation contains within it a seed of future ambiguity for jurors, namely, that the obligation of the members of the minority to rethink their position only comes into play when put next to a sort of supermajority, characterized by the description, the ''much greater number of you.'' The current charge, to be sure, contains the same language, but it modifies that, at least implicitly, by then referring simply to ''the majority'' and ''the minority.'' We can never know, of course, precisely how jurors talk to each other after hearing this charge, but it is reasonable to infer that at least some of a majority of one or two use the latter

references to persuade a bare minority to yield to the views of a bare majority.

The new formulation, however, is predicated on a supermajority of the "much greater number." In a twelve member jury, is that eight to four, or must it be nine to three or ten to two, or eleven to one? In a six member jury, is it four to two, or must it be five to one? It is foreseeable that future jurors will argue among themselves, or perhaps request that the trial court provide clarification, regarding what numbers constitute the "much greater number." I see little virtue in planting such a seed of ambiguity.

Furthermore, what is the obligation of the jurors, if any, to attempt to avoid a deadlock when they are separated *only* by a bare majority and bare minority—for example seven to five in a murder case? The majority opinion's focus on the "much greater number" of them suggests that there is no such obligation. I see little virtue in leaving that likely situation unaddressed by an approved antideadlock instruction.

In sum, a simpler and fairer instruction would be in accordance with the language suggested by the Court of Appeals in *United States* v. *Frost*, supra, 125 F.3d 374 n.11. I would, therefore, direct our trial courts accordingly.

[1] *State* v. *Smith*, 49 Conn. 376, 386 (1881).

[2] The instruction provides as follows: "I realize that you are having some difficulty in reaching unanimous agreement, but that is not unusual. And sometimes after further discussion, jurors are able to work out their differences and to agree.

"Please keep in mind how very important it is for you to reach unanimous agreement. If you cannot agree, and if this case is tried again, there is no reason to believe that any new evidence will be presented, or that the next [six or twelve, as the case may be] jurors will be any more conscientious and impartial than you are.

"Now, let me remind you that it is your duty as jurors to talk with each other about the case, to listen carefully and respectfully to each other's views, and to keep an open mind as you listen to what your fellow jurors have to say. And let me remind you that it is your duty to make every reasonable effort you can to reach unanimous agreement. Each of you, whether you are in the majority or the minority, ought to seriously reconsider your position in light of the fact that other jurors, who are just as conscientious and impartial as you are, have come to a different conclusion.

"Those of you who believe that the [state] has proved the defendant guilty beyond a reasonable doubt should stop and ask yourselves if the evidence is really convincing enough, given that other members of the jury are not convinced. And those of you who believe that the [state] has not proven the defendant guilty beyond a reasonable doubt should stop and ask yourselves if the doubt you have is a reasonable one, given that other members of the jury do not share your doubt. None of you should hesitate to change your mind if, after reconsidering things, you are convinced that the other jurors are right and that your original position was wrong.

"But remember this. Do not ever change your mind just because other jurors see things differently, or just to get the case over with. As I told you before, in the end, your vote must be exactly that—your own vote. As important as it is for you to reach unanimous agreement, it is just as important that you do so honestly and in good conscience.

"What I have just said is not meant to rush or pressure you into agreeing on a verdict. Take as much time as you need to discuss things. There is no hurry.

"I would ask that you now return to the jury room to resume your deliberations." (Internal quotation marks omitted.) *United States* v. *Frost*, supra, 125 F.3d 374 n.11.