

1 tell you there are some lesser included offenses that are
2 mentioned. You only -- it's not like you take all of
3 these options and spread them out on the table and say,
4 "Gee, this looks like a good one." You start at the top.
5 You start with capital murder and if this defendant, from
6 the evidence you find beyond a reasonable doubt that the
7 defendant is guilty of capital murder to each of those
8 counts, you check those boxes and the lesser included
9 offenses are not even to be considered.

10 And I trust that when you go back there -- you'll
11 carry a heavy responsibility -- but you'll do what the
12 law and the facts require and you'll return a verdict of
13 guilty. Thank you very much.

14 THE COURT: Alright, ladies and gentlemen, when you
15 reach the jury room you should elect one of your number
16 as foreperson and you will consider and complete one of
17 the following verdict forms and I'm going to read those
18 to you.

19 You will first take up and consider the charge --
20 charges of capital murder and that verdict form reads as
21 follows:

22 "We, the jury find Jessie Lloyd Misskelley, Junior
23 guilty of capital murder in the death of Michael Moore,
24 Stevie Branch, and Chris Byers", and there are three
25 separate blocks.

1 If that is your unanimous verdict, then you would
2 check the blocks that are applicable to your findings
3 because they're individual verdicts and the foreperson
4 would sign. However, all twelve of you must agree to
5 arrive at any verdict. And the foreperson would sign in
6 the place provided if that is your verdict.

7 If you are unable to arrive at a verdict on capital
8 murder, you would then take up and consider the charge of
9 first degree murder. You'll be given a verdict form that
10 reads as follows:

11 "We, the jury find Jessie Lloyd Misskelley, Junior
12 guilty of first degree murder in the death of Michael
13 Moore, Stevie Branch, and Chris Byers", and again, there
14 are three separate findings. If any one of those are
15 your findings, then you would check the appropriate block
16 and the foreperson would sign in the space provided, and
17 again, you're reminded that your verdict or verdicts must
18 be unanimous. That is, all twelve of you must agree.

19 If you are unable to arrive at a verdict on the
20 charge of capital murder or first degree murder, you
21 would then take up and consider the charge of second
22 degree murder. That verdict form reads similarly as
23 follows"

24 "We, the jury find Jessie Lloyd Misskelley, Junior
25 guilty of second degree murder in the death of Michael

1 Moore, Stevie Branch, and Chris Byers."

2 Again, there are three separate findings. If any
3 one of those is your finding that is unanimous then you
4 would check appropriately and the foreperson would sign.
5 If you are unable to arrive at -- strike that -- if you
6 unanimously agree that the defendant is not guilty you
7 would complete and sign the following verdict form which
8 reads as follows:

9 "We, the jury find Jessie Lloyd Misskelley, Junior
10 not guilty."

11 If that is your unanimous finding then the
12 foreperson would sign in the space provided.

13 In just a second I going to have the Sheriff --
14 we've tried to clean up the jury room back there and I'm
15 going to have the Sheriff escort you to the jury room and
16 the two ladies that have been the alternate jury --
17 jurors, I'm going to excuse you at this time with the
18 special thanks of the Court for your patience and your
19 participation. You're welcome to remain. I'm going to
20 feed the rest of them -- stay and eat, too, if you care
21 to. You just won't be able to participate in their
22 deliberations.

23 I'll probably send the Sheriff back to -- it's four-
24 twenty -- we have -- when we order food it will take
25 about an hour to get here, so we'll probably allow you to

1 write out what you want and we'll see to getting it here.

2 The evidence will be also delivered back to the jury
3 room. So, at this time the two alternates will be
4 excused---

5 MR. FOGLEMAN: Could we approach the bench?

6 THE COURT: Yes, what did I do?

7 MR. DAVIS: Nothing. We just wanted to approach one
8 more time.

9 THE COURT: Okay.

10 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT
11 OF THE HEARING OF THE JURY.)

12 MR. DAVIS: As a cautionary matter with this flu and
13 stuff going around, in the event the deliberations lasted
14 any length, do you think it might be a good idea to at
15 least keep the first alternate sequestered or something
16 so that---

17 THE COURT: Well---

18 MR. DAVIS: ---so that in case somebody got sick we
19 could have somebody to substitute?

20 THE COURT: Well, the only problem is is there is a
21 case out of Harrisburg where Judge Pearson -- well, of
22 course, he sent the juror home and then sent after them
23 and then put them back in.

24 MR. DAVIS: I mean I hate to do that to somebody,
25 but I'd sure hate to have to try this because somebody---

1 THE COURT: Okay. Okay, I think that's a good
2 point.

3 (RETURN TO OPEN COURT.)

4 THE COURT: Alright, I'm going to -- the lawyers
5 have pointed out a point that I have to agree with. To
6 my two alternates rather than send you home I'm going to
7 require that you stay here sequestered -- which means you
8 can sit in the jury box there or a comfortable place that
9 we find for you -- and ask that you stay in the event
10 that one of the twelve that goes back and deliberates
11 becomes ill. It being the flu season and I've heard an
12 unusual amount of coughing, so if I send you home then I
13 couldn't replace one of the jurors with you. So I'm
14 going to ask that you stay for at least a reasonable
15 period of time. Okay?

16 Alright, the twelve principal jurors can now retire
17 to the jury room to consider your verdicts.

18 (JURORS EXITING THE COURTROOM AT 4:20 P. M.)

19 (THE FOLLOWING HEARING WAS HELD OUT OF THE PRESENCE
20 OF THE JURY.)

21 THE COURT: Alright, let the record reflect that
22 this is a hearing out of the presence of the jury and
23 after the jury has proceeded to deliberations.

24 MR. CROW: Your Honor, we would move for a mistrial
25 on the following basis.