

1 out. I---

2 MR. FOGLEMAN: Well, even if you did -- even if that  
3 doesn't apply, you've always got the right to argue  
4 punishment.

5 MR. DAVIS: Yeah, and we didn't have the right to  
6 until---

7 MR. STIDHAM: Your Honor, we would submit that under  
8 the existing law at the time these acts occurred---

9 THE COURT: Well, but I think since it was  
10 bifurcated I think you're both entitled to a five or ten  
11 minute argument as to what the appropriate punishment is.

12 MR. STIDHAM: But they didn't come back with a  
13 verdict of capital murder.

14 THE COURT: I know, but you neither -- neither of  
15 you have really argued the law as to punishment in any of  
16 these things.

17 MR. CROW: We'll look at the law, your Honor.

18 (RECESS.)

19 THE COURT: Alright, Court will be in session and,  
20 ladies and gentlemen, again, I seem to have to be  
21 thanking you for your patience. That thirty minutes I  
22 indicated to you turned out to be a little better than an  
23 hour -- more than that -- and I do appreciate your  
24 indulgence on our delays.

25 I might explain to you that the delay was absolutely

1 necessary in order to allow the attorneys an opportunity  
2 to discuss whether or not they needed to produce  
3 additional testimony or evidence which they would have  
4 been entitled to. However, I'm informed -- am I correct,  
5 gentlemen -- that each of you just chose to do a brief  
6 additional argument and proceed. Is that correct?

7 MR. DAVIS: Yes, your Honor.

8 MR. STIDHAM: Yes, your Honor.

9 THE COURT: And you've consulted with the family  
10 members, with your clients, and with anybody that might  
11 be appropriate at this time. Have each of you done that?

12 MR. DAVIS: Yes, your Honor.

13 MR. STIDHAM: Yes, your Honor.

14 THE COURT: And you're satisfied that arguments are  
15 all that's necessary?

16 MR. STIDHAM: Yes, your Honor.

17 THE COURT: Alright, ladies and gentlemen, you have  
18 found Jessie Lloyd Misskelley, Junior guilty of first  
19 degree murder in the death of Michael Moore and found him  
20 guilty in the -- of second degree murder in the deaths of  
21 Stevie Branch and Chris Byers.

22 It's now necessary that you listen to additional  
23 arguments of the attorneys, which I hope are confined to  
24 about fifteen minutes a side, and then again retire and  
25 fix and impose -- fix the sentences for each of these

1 offenses.

2 And you are instructed that the range of punishment  
3 for first degree murder is a term of not less than ten  
4 years nor more than forty years or life in the Arkansas  
5 Department of Correction. You are further instructed  
6 that the range of punishment for second degree murder is  
7 a term of not less than five years nor more than twenty  
8 years in the Arkansas Department of Correction, or a fine  
9 not exceeding Fifteen Thousand Dollars, or both a term of  
10 not less than five nor more than twenty years in the  
11 Arkansas Department of Correction and a fine not  
12 exceeding Fifteen Thousand Dollars.

13 After the lawyers do their additional arguments,  
14 then I will read the verdict forms that you'll be asked  
15 to consider and complete.

16 Alright, gentlemen, you may -- how much time do you  
17 all want -- is fifteen minutes cutting you too close?

18 MR. DAVIS: No, your Honor.

19 THE COURT: Do you want to split -- are you going to  
20 split your arguments?

21 MR. DAVIS: Yes, your Honor.

22 THE COURT: Okay.

23 MR. DAVIS: Ladies and gentlemen, and I'm saying  
24 this with all sincerity, I know what a difficult decision  
25 you all had to make. This case is very emotionally

1 draining for anybody who is a party to it. Whether it's  
2 the victims' family, whether it's a juror, whether it's  
3 the Court Reporter -- anybody who has to view the  
4 photographs, who has to listen to this testimony, it is a  
5 gut wrenching experience. And you all the time hear  
6 people criticize the job that jurors do, but I want to  
7 tell you that we thank you for being willing and able to  
8 go through this process and to do your civic duty and  
9 serving on a jury, listening to the evidence, and  
10 rendering a decision as the law requires.

11 Now, you have to determine what is the appropriate  
12 punishment within the range allowed by the law that fits  
13 the crime that you found that this defendant committed.  
14 In the first count you will have the option in first  
15 degree murder for the death of Michael Moore -- the  
16 ranges -- you'll will be given a verdict form that shows  
17 ten to forty years or life. And you can fill that form  
18 in with anything from ten to forty years or you can put  
19 life in prison as the appropriate punishment for what  
20 this defendant did.

21 When you make that determination and you determine  
22 what is appropriate for the crime he's committed, I'll  
23 just ask that you think back again and I know it's hard,  
24 but again, fitting the punishment to the crime. You have  
25 found that he purposely took the life -- he was an

1           accomplice -- took the life of an eight-year-old boy.  
2           That -- and remember the evidence was that the beatings  
3           had already started. Damien had already started to hit  
4           the one boy when Michael Moore took off. And but for the  
5           action of that defendant who sits right there, Michael  
6           Moore would be alive today. And he brought him back to  
7           his ultimate death. The death of an eight-year-old boy.

8           And I put to you that appropriate punishment for  
9           someone who does that -- to take the life of an innocent  
10          eight-year-old -- under the circumstances that we know by  
11          the physical evidence what happened to him -- that that  
12          rates a life sentence. I can't think of a case that  
13          could be more appropriate to get the maximum sentence in  
14          the circumstances surrounding this.

15          The other two charges which are Class B felonies  
16          that you found the defendant guilty of second degree  
17          murder carried five to twenty year sentences. Anywhere  
18          within that range -- and there's also an option of a  
19          fine. Frankly, in this case with the taking of two lives  
20          I don't think a fine is even an appropriate consideration  
21          but that's up to you.

22          In regard to those two boys just remember in finding  
23          this defendant guilty you had to determine that he went  
24          out there with the intent to inflict serious physical  
25          injury on those two boys. That he acted -- he or an

1       accomplice acted and think back as to what injuries those  
2       individuals suffered. And I know it's something that as  
3       soon as you leave this courtroom you'll want to cut out  
4       of your memory as much as possible for the rest of your  
5       life, and I do, too. But when determining what is  
6       appropriate punishment within that range of five to  
7       twenty years, think for a little bit about the agony and  
8       the torture that those boys went through that afternoon,  
9       and that man right there, ladies and gentlemen, he's a  
10      man. He's eighteen years old. You found that he did it  
11      and somebody that put those three little boys through  
12      what he was involved in, twenty years is something that  
13      is clearly appropriate.

14           I normally don't get up here and say, "If the range  
15      is this, I think you should do that." Use your  
16      discretion, but in this case I sincerely believe that  
17      what happened to those three little boys merits the  
18      maximum punishment you can give out on all three  
19      offenses. And I ask you, please, to look back over that  
20      evidence, think hard, think long, and do what's right and  
21      give a punishment that fits this crime -- and fits the  
22      three crimes, and give this defendant the maximum  
23      sentences on all three counts.

24           In asking that, I do that because of not only what  
25      happened to the children, but what happened to their

1 families. And they've been here and you've had a chance  
2 to look at that and I don't think it's inappropriate to  
3 say when you determine punishment, think about what the  
4 effect has been, not only in the taking those three  
5 lives, but what impact it's had on the mothers, the  
6 fathers, and the other family members of those three  
7 boys. When you think about those things and you look at  
8 the evidence, I think it will be a clear and easy  
9 decision that the maximum punishment -- although it's  
10 something that's a heavy responsibility to deal out  
11 particularly to somebody who's eighteen years old -- I  
12 think it's clearly appropriate and it's something that  
13 you can feel that you've done something right in regard  
14 to having the courage to give out that type of punishment  
15 for this type of crime, but if people can see what the  
16 punishment is in this case and say that that fits what  
17 this defendant did. Thank you very much.

18 THE COURT: Are you all going to split or are you  
19 going to do it all?

20 MR. CROW: Do it all, your Honor.

21 THE COURT: Alright.

22 MR. CROW: Ladies and gentlemen of the jury, your  
23 Honor, Mr. Fogleman, Mr. Davis. I want to thank you  
24 all, too, for your patience, and your willingness to  
25 serve on the jury. It's been a hard three weeks for all