

1 and you're free to go until in the morning at nine-
2 thirty.

3 (ADJOURNMENT.)

4 CORNING, ARKANSAS, FEBRUARY 4, 1994, AT 9:30 A. M.

5 (JURY ENTERING JURY ROOM AT 9:30 A.M.)

6 (JURY ENTERING COURTROOM AT 12:00 P. M.)

7 THE COURT: Alright, ladies and gentlemen, have you
8 arrived at a verdict?

9 FOREPERSON: Yes.

10 THE COURT: If you would hand it to the bailiff,
11 please, or the Sheriff, please.

12 FOREPERSON: (COMPLYING.)

13 THE COURT: (EXAMINING.) Alright, ladies and
14 gentlemen, your verdicts are in good form and will be
15 accepted by the Court and I'll announce your verdict in
16 just a second.

17 Alright, ladies and gentlemen, I -- in the audience
18 -- I am acutely aware that your feelings are on edge,
19 that there is a great deal of emotion involved, and I
20 **certainly** can understand that, and everyone that
21 **participates** here can. But the Court cannot tolerate and
22 **will not** tolerate any verbal outburst, any display of
23 emotion whatsoever. So you're cautioned and warned as I
24 read the verdicts that you are not to show any outburst,
25 any emotion, or any display, and I recognize that that's

1 difficult, and that's why I'm warning you in advance.

2 The verdicts read as follows:

3 "We, the jury find Jessie Lloyd Misskelley, Junior
4 guilty of first degree murder in the death of Michael
5 Moore." Signed by T. J. Williams, foreman.

6 Is that your unanimous verdict, ladies and
7 gentlemen? All twelve of your agree?

8 JURORS: Yes.

9 THE COURT: Gentlemen, do you want the jury to be
10 polled on that verdict?

11 MR. STIDHAM: Yes, your Honor.

12 THE COURT: Alright, ladies and gentlemen, we're
13 going to go through a procedure called polling the jury
14 which simply means that when your name is called, if this
15 is your verdict answer "yes."

16 While the Clerk's getting the jury list, I'm going
17 to read your other verdicts.

18 "We, the jury find Jessie Lloyd Misskelley, Junior
19 guilty of second degree murder in the death of Stevie
20 Branch."

21 "We, the jury find Jessie Lloyd Misskelley, Junior
22 guilty of second degree murder in the death of Chris
23 Byers."

24 Again, signed by T. J. Williams, foreman.

25 Are those verdicts your unanimous verdict? That is,

1 all twelve of you agree upon each finding?

2 JURORS: Yes.

3 THE COURT: Alright, and in just a moment when the
4 Clerk returns with the jury list I'll ask her to call
5 your name and if these verdicts -- all three of them
6 reflect your individual findings -- then you should
7 answer "yes" as your name is called.

8 And while the Clerk is bringing the jury list I
9 might explain to you that your findings which the Court
10 has accepted will require you to return to the jury room
11 and consider the punishment. Before we do that, food has
12 been ordered and it should be here for you and I'm going
13 to ask that you take a break for lunch, take whatever
14 time you need to rest and enjoy the food that's being
15 provided. It won't be much. And after that then we'll
16 reconvene and I'll give you further instructions and
17 possibly if the lawyers care to there may be brief
18 arguments or brief presentation of additional facts.
19 That may not be necessary. It depends upon my discussion
20 with the lawyers.

21 I'm going to let the Clerk poll the jury at this
22 time. So if these represent your individual verdicts,
23 please answer yes as your name is called.

24 THE CLERK: Carla Price.

25 MS. PRICE: Yes.

1 THE CLERK: Steven Green.
2 MR. GREEN: Yes.
3 THE CLERK: James Rainwater.
4 MR. RAINWATER: Yes.
5 THE CLERK: Teresa Burgess.
6 MS. BURGESS: Yes.
7 THE CLERK: Ronnie Smith.
8 MR. SMITH Yes.
9 THE CLERK: Lloyd Champion.
10 MR. CHAMPION: Yes.
11 THE CLERK: Margie Woods.
12 MS. WOODS: Yes.
13 THE CLERK: Donna Ludena Moore.
14 MS. MOORE: Yes.
15 THE CLERK: Janet Luter.
16 MS. LUTER: Yes.
17 THE CLERK: April Lunsford.
18 MS. LUNSFORD: Yes.
19 THE CLERK: Aubrey Dicus.
20 MR. DICUS: Yes.
21 THE CLERK: T. J. Williams.
22 MR. WILLIAMS: Yes.
23 THE COURT: Alright, ladies and gentlemen, your
24 verdicts will be accepted by the Court as the verdicts in
25 this case and at this time you'll be allowed to recess

1 and I'm going to keep this area back here. You have
2 coffee, cold drinks, and food coming. If you want to go
3 outside in the back to smoke I'm going to provide
4 deputies out in that area. That will be fine.

5 But you may stand in recess for let's say thirty
6 minutes. Will that be sufficient time? Alright, you
7 may stand in recess for thirty minutes.

8 Gentlemen, I need to see the lawyers. Gentlemen,
9 could I see the lawyers at the bench?

10 (RECESS.)

11 (THE FOLLOWING DISCUSSION WAS HAD AT THE BENCH OUT
12 OF THE PRESENCE OF THE JURY.)

13 THE COURT: What I need to know from you all --
14 first of all I don't---

15 MR. STIDHAM: You're over the P. A., your Honor, if
16 you don't want to be. I don't know if you want to be or
17 not.

18 THE COURT: No, I don't really.

19 I guess under our new law you all are entitled to
20 put on aggravation or mitigation. I don't know whether
21 it's really necessary with these findings, but I think
22 that if you want to you're permitted to do so. I'm not
23 sure of the effective date of the new bifurcation---

24 MR. CROW: I though it was effective for crimes that
25 occurred after---

1 THE COURT: After the -- that's what I thought, too,
2 but now -- so I'm not sure that it's even appropriate or
3 applicable.

4 MR. DAVIS: What they're telling us out of the
5 Prosecutor's Coordinator's office is that it's applicable
6 to crimes that are tried after January first of this
7 year.

8 THE COURT: Which means you could do aggravation or
9 mitigation.

10 MR. DAVIS: Right. The biggest thing that -- you
11 know, there is an instruction that they've prepared that
12 instructs the jury on parole eligibility and that sort of
13 thing. I hadn't even given that any thought.

14 THE COURT: Well, that's why -- that's why I took
15 the recess because I haven't either and I haven't even
16 read that material, and I'm sure most of you all haven't.
17 I was on the -- the---

18 MR. STIDHAM: I discussed this matter with several
19 attorneys and it was my understanding that we had the
20 option of opting in or opting out.

21 THE COURT: That's kind of what I thought, too, but
22 I don't know.

23 MR. STIDHAM: And Mr. Crow and I don't feel any need
24 to go into mitigating---

25 MR. CROW: We want to opt out---

1 MR. STIDHAM: ---or aggravating matters since the
2 crimes were committed in May of ninety-three.

3 THE COURT: Do you all want to do a little research
4 on it and call and find out what you want to do and just
5 let me know. Whatever one of you wants to do---

6 By the way, do you all have any verdict forms that
7 fit this situation because I'm not sure you gave me any.

8 MR. CROW: I don't think those can get entered
9 today, your Honor. Quite frankly, I don't think we have
10 one.

11 MR. STIDHAM: Is there a book here? We can get
12 started on it.

13 THE COURT: Well, I need verdict forms, too---

14 MR. CROW: Okay.

15 THE COURT: ---that provide for---

16 MR. CROW: I don't have them prepared.

17 MR. STIDHAM: Let's find a typist and get them done.

18 THE COURT: Just let me instruct that the range of
19 punishment on first degree murder is ten to forty years
20 or life.

21 MR. DAVIS: I want to put on some argument real
22 brief.

23 MR. STIDHAM: I don't want to.

24 MR. CROW: We would object, your Honor.

25 THE COURT: Well, that's why I want you all to find

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