

26.00
CONCLUDING INSTRUCTIONS AND FORMS OF VERDICTS

INTRODUCTORY NOTE

The instructions in this chapter should be given at the conclusion of the court's charge to the jury.

The Committee is aware of instances where a confused jury has returned logically or legally inconsistent verdicts. (For examples of problems the Committee is seeking to avoid, see *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985) (guilty of murder, voluntary manslaughter, and involuntary manslaughter); *People v. Spears*, 130 Ill.App.3d 1006, 475 N.E.2d 8, 86 Ill.Dec. 202 (3d Dist.1985), judgment affirmed 112 Ill.2d 396, 493 N.E.2d 1030, 98 Ill.Dec. 9 (1986) (guilty of attempt murder, armed violence, and reckless conduct); *People v. Coleman*, 131 Ill.App.3d 76, 475 N.E.2d 565, 86 Ill.Dec. 351 (1st Dist.1985) (guilty of attempt murder and reckless conduct).) To avoid such confusion in future cases, the Committee has expanded these concluding instructions to be given to the jury and has made them more specific depending upon the particular charges to be considered by the jury and the relationship of those charges to each other.

As part of the Committee's plan to avoid jury confusion, the Committee has similarly expanded Chapter 2.00. (See Introductory Note to Chapter 2.00 and Instruction 2.01 *et seq.*) Thus the form of the 2.01 charging instruction should always correlate to the form of the 26.01 concluding instruction. For example, if Instruction 2.01E is given, then Instruction 26.01E must be given as well.

The Committee is aware that choosing among the 26.01 *et seq.* instructions at first may seem confusing and difficult. However, the Committee decided that having these options available to cover as many fact situations as possible would ultimately prove to be of great benefit to the bench and bar. Were these options not available, counsel and the court would be required in an appropriate case to concoct modifications of those instructions in IPI-Criminal closest to the case at hand. Devising instructions in the midst of a complex, perhaps hard-fought trial is not a desirable course of action. It is far preferable to permit the court and counsel to choose from among the detailed instructions provided by the Committee.

In the 28 instructions that comprise the 26.01 series, the Committee has attempted to provide a particular concluding instruction to meet any factual variation present when the jury is to be instructed about one or more of the following areas: second degree murder, involuntary manslaughter, lesser included offenses, the guilty but mentally ill verdict, and the insanity defense.

Only one instruction of the 26.01 series (and its corresponding partner from the 2.01 series) should be appropriate to any given set of facts. The Committee has attempted to anticipate and include all potential factual situations. If, however, the court determines that the Committee has failed to provide an instruction in the 26.01 series that is appropriate to the factual situation of the case on trial, the court should then utilize Instruction 26.01 and modify it as may be needed.

In *People v. Reddick*, 123 Ill.2d 184, 526 N.E.2d 141, 122 Ill.Dec. 1 (1988), the Illinois

Supreme Court changed how a jury should be instructed when it is to consider both murder and voluntary manslaughter as those offenses were defined prior to P.A. 84-1450, which created the offense of second degree murder. (See Committee Note to Instruction 7.02A.) The Committee believes that the instructions contained in parts II and III of the 26.01 series, dealing with first and second degree murder and involuntary manslaughter in various combinations, are fully applicable and useable to murder-voluntary manslaughter cases being tried under the statute in effect before amendments contained in P.A. 84-1450, with only three slight modifications: (1) any reference in a 26.01 instruction to first degree murder should be changed to murder, (2) any reference to second degree murder should be changed to voluntary manslaughter, and (3) the paragraph from each 26.01 instruction that refers to the defendant's burden of proving that he is guilty of the lesser offense of second degree murder should be deleted entirely. There is no need to substitute any language for the deleted paragraph.

Guidelines for Choosing Among the 26.01 Series Instructions

The 26.01 series has been divided into five parts to reduce the difficulty of finding the appropriate instruction for use in any given factual setting.

NEW TO THE FOURTH EDITION: THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM

The Committee has determined that in certain circumstances it would be valuable for the trial court to have the option to provide the alternative jury verdict choices for each charge on a single page. The Committee believes this would be particularly valuable where the jury is instructed as to lesser-included charges.

For example, in cases in which the jury is asked to select only one verdict from among several possible alternatives, the current practice is to present the jury with a separate page for each possible verdict. The trial judge instructs the jury to choose only one of the alternatives. The jury is told to sign only that one form and to leave the other pages blank. All the instructions in Chapter 26 are premised on this use of multiple forms printed on multiple pages.

As an alternative to this system, the Committee suggests that all alternative verdicts could be placed on one page. Jurors would then be told to check off the verdict they have chosen and then sign the form.

For example, assume a jury is faced with issues of first-degree murder and second-degree murder in the case of Arthur Fletcher. (This example is drawn from Sample Set 27.01 that appears in the next chapter.) Under the current system, the jury would receive the three alternative verdicts on three separate pages: one page for “not guilty”; one page for “guilty of first-degree murder”; and one page for “guilty of second-degree murder”. The jury is then asked to return only one signed form.

The proposed new system would consolidate these three alternative verdicts on one page. It would read:

“We, the jury, find the defendant:

1. ___ Arthur Fletcher not guilty.
2. ___ Arthur Fletcher guilty of first degree murder.
3. ___ Arthur Fletcher guilty of second degree murder.

Indicate your unanimous verdict by checking only one of the choices above.

[12 lines for the signatures of the Foreperson and eleven other jurors.]”

Throughout the Sample Sets in Chapter 27, an example of an alternative, single page, multiple verdict form is provided whenever applicable.

Please note that the use of this single page verdict form is merely optional. The instructions in Chapter 26 continue to assume the use of a separate page for each alternative verdict.

THEREFORE, IF THE TRIAL COURT DECIDES TO USE THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM, IT WILL BE NECESSARY TO REVISE THE INSTRUCTIONS FROM CHAPTER 26. The instructions should be revised to reflect the fact that the verdict options all appear on one page; that the jury must unanimously agree on one of those options; that the jury should indicate its choice by checking off the appropriate verdict; and that the form should then be signed by the jurors.

PART I.
GENERAL CONCLUDING INSTRUCTION

INTRODUCTORY NOTE

Instruction 26.01 is the general concluding instruction (with some modifications) that previously appeared in earlier editions of IPI-Criminal. It should be used when none of the 27 other, more specific, instructions from the 26.01 series is applicable.

26.01 Concluding Instruction--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Second Degree Murder

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict[s].

Your agreement on a verdict must be unanimous. Your verdict[s] must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of _____. You will receive two forms of verdict [as to each defendant]. You will be provided with both a “not guilty” and “guilty” form of verdict [as to each defendant]. From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict form [as to that defendant]. Sign only one verdict form [as to each defendant].

[or]

[2] The defendant[s] [(is) (are)] charged with the offenses of _____ and _____. You will receive _____ forms of verdict. As to each charge [and for each defendant], you will be provided with both a “not guilty” and “guilty” form of verdict. From these two verdict forms with regard to a particular charge, you should select the one verdict form that reflects your verdict on that charge [(as to each defendant) (as to a defendant so charged)] and sign it as I have stated. Do not write on the other verdict form on that charge [as to that defendant]. Sign only one verdict form on that charge [as to that defendant].

[or]

[3] The defendant[s] [(is) (are)] charged in different ways with the offense of _____. You will receive two forms of verdict pertaining to each particular way that the offense of _____ is charged. As to each particular way the offense of _____ is charged [and as to each defendant], you will be provided with both a “not guilty” and “guilty” form of verdict. >From these two verdict forms as to each particular way that the offense of _____ is charged, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict form [as to that defendant]. Sign only one verdict form as to each particular way that the offense of _____ is charged [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01 must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.

The “offenses” named in the blanks should reflect those charges the jury will consider. Do not use this instruction, however, if the jury is to be instructed on a lesser included offense; instead, use one of the instructions from Part III of the 26.01 series (Instructions 26.01Q through 26.01X).

See Introductory Note at 26.00.

Use paragraph [1] when there is a single charge. Use paragraph [2] when there are multiple offenses charged.

When a defendant is charged in multiple counts with an offense that can be charged with different elements, paragraph [3] may be used if the court believes its use will assist the jury in deciding the issues. An example would be a defendant charged in three separate counts with aggravated battery based upon his alleged (1) causing great bodily harm, (2) causing bodily harm to a police officer, and (3) committing a battery upon a public way. Each of these charges is called aggravated battery, but each contains an element that must be proved beyond a reasonable doubt that neither of the other charges contains. Accordingly, a court may choose to distinguish on the verdict forms between the ways in which aggravated battery can be committed. If the court so chooses, then the opening sentence of the issues instructions as well as the guilty and not guilty verdict forms should be expanded to distinguish among the different ways a particular charge is before the jury. Examples are the following:

1) “To sustain the charge of aggravated battery *causing great bodily harm, ...*” (opening clause of an issues instruction); “We, the jury, find the defendant ____ not guilty of aggravated battery *causing great bodily harm*” (not guilty verdict form); “We, the jury, find the defendant ____ guilty of aggravated battery *causing great bodily harm*” (guilty verdict form).

2) “To sustain the charge of aggravated battery *upon a police officer, ...*” (opening clause of an issues instruction); “We, the jury, find the defendant ____ not guilty of aggravated battery *upon a police officer*” (not guilty verdict form); “We, the jury, find the defendant ____ guilty of aggravated battery *upon a police officer*” (guilty verdict form).

3) “To sustain the charge of aggravated battery *upon a public way, ...*” (opening clause of an issues instruction); “We, the jury, find the defendant ____ not guilty of aggravated battery *upon a public way*” (not guilty verdict form); “We, the jury, find the defendant ____ guilty of aggravated battery *upon a public way*” (guilty verdict form).

The emphasis in each of the previous examples is added for clarification to point out the distinguishing language in each example. No emphasis should be present in the actual instructions or verdict forms when they are submitted to the jury.

The Committee wishes to emphasize that distinguishing among the various ways in which a given charge is brought is not required by law. In *People v. Travis*, 170 Ill.App.3d 873, 525 N.E.2d 1137, 121 Ill.Dec. 830 (4th Dist.1988), the court rejected the argument that such distinctions were mandatory and stated the following: “the best rule is that the jury need only be unanimous with respect to the ultimate question of defendant's guilt or innocence of the crime charged, and unanimity is not required concerning alternate ways in which the crime can be committed” *Travis*, 170 Ill.App.3d at 890, 525 N.E.2d at 1147, 121 Ill.Dec. at 841. (But see *Unhappy Birthday: Illinois' “One Good Count” Rule is 160 and Unconstitutional*, 76 Ill.B.J. 604 (1988), in which Professor O'Neill argues that distinguishing among the various ways a charge is brought when the jury deliberates is constitutionally required.) Even though use of paragraph [3] is not mandatory in view of the *Travis* decision, the Committee believes that the court has the discretion to utilize that paragraph whenever the court believes such use would assist the jury.

When multiple offenses are charged and one of the charges is brought in multiple counts with different elements (like the aggravated battery charges discussed above), the court may use either paragraph [1] or paragraph [2], whichever may be applicable, in combination with paragraph [3]. Under these circumstances, the first sentence of paragraph [3] should be amended to read as follows: “The defendant[s] [(is) (are)] also charged in different ways with the offense of ____.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.03.

**IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED,
THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26
AND CHAPTER 27.**

PART II.

FIRST AND SECOND DEGREE MURDER--NO INVOLUNTARY MANSLAUGHTER

26.01A Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms [as to each defendant]: “not guilty”, “guilty of first degree murder”, and “guilty of second degree murder”.

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01A must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed only on first and second degree murder.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on some charge other than first degree murder and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01I.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well

as for court and counsel and should be in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.01A.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

Amendment to Committee Note to 26.01A

This instruction requires the trial court to provide the jury with a general “not guilty” verdict as well as a “guilty of first degree murder” and “guilty of second degree murder” verdict. There is no such verdict form as “not guilty of second degree murder” under our present statutory scheme. *People v. Parker*, 358 Ill. App. 3d 371, 832 N.E.2d 858, 295 Ill. Dec. 408 (1st Dist. 2005). See the discussion concerning this issue in the Committee Note to Instruction 26.01B.

26.01B Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: “not guilty of first degree murder”, “guilty of first degree murder”, and “guilty of second degree murder”.

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of _____. You will receive two forms of verdict [as to each defendant] as to this charge. You will be provided with both a “not guilty of _____”, and a “guilty of _____” form of verdict [as to each defendant].

[5] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of _____.

Committee Note

Whenever this instruction is given, Instruction 2.01B must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01J.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a

lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01R in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01R to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder”.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.05.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01C Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “guilty of second degree murder”, and “guilty but mentally ill of second degree murder”.

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01C must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01K.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01D Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty of first degree murder”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “guilty of second degree murder”, and “guilty but mentally ill of second degree murder”.

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will be provided with three forms of verdict [as to each defendant] pertaining to the charge of ____: “not guilty of _____”, “guilty of _____”, and “guilty but mentally ill of _____”.

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of _____. Only one of these three verdict forms [as to each defendant] is to be signed by you.

Committee Note

Whenever this instruction is given, Instruction 2.01D must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used when the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01L.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be

instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If an additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01T in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01T to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, “not guilty of second degree murder.” Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01E Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

If you find that the State has proved the defendant[s] guilty beyond a reasonable doubt of the offense of first degree murder, you must then decide whether the defendant[s] [(has) (have)] proved by a preponderance of the evidence that [(the defendant) (either or both defendants)] [(is) (are)] guilty of the lesser offense of second degree murder.

Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “not guilty by reason of insanity of second degree murder”, and “guilty of second degree murder”.

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01E must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01M.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01F Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty of first degree murder”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “not guilty by reason of insanity of second degree murder”, and “guilty of second degree murder”.

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will be provided with three forms of verdict [as to each defendant] pertaining to the charge of ____: “not guilty of _____”, “not guilty by reason of insanity of _____”, and “guilty of _____”.

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of _____. Only one of these three verdict forms [as to each defendant] is to be signed by you.

Committee Note

Whenever this instruction is given, Instruction 2.01F must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used when the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01N.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for

the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder.”

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01V in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01V to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01G Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “not guilty by reason of insanity of second degree murder”, “guilty of second degree murder”, and “guilty but mentally ill of second degree murder”.

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01G must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used when the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01O.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.04B.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01H Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty of first degree murder”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “not guilty by reason of insanity of second degree murder”, “guilty of second degree murder”, and “guilty but mentally ill of second degree murder”.

[3] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will be provided with four verdict forms [as to each defendant] pertaining to the charge of ____: “not guilty of _____”, “not guilty by reason of insanity of _____”, “guilty of _____”, and “guilty but mentally ill of _____”.

[5] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of _____. Only one of these four verdict forms [as to each defendant] is to be signed by you.

Committee Note

Whenever this instruction is given, Instruction 2.01H must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01P.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01X in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01X to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED,
THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26
AND CHAPTER 27.**

PART III.
FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER

26.01I Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Accordingly, you will be provided with four verdict forms [as to each defendant]: “not guilty”, “guilty of first degree murder”, “guilty of second degree murder”, and “guilty of involuntary manslaughter”.

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

At the conclusion of your deliberations, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01I must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on first degree murder, second degree murder, and involuntary manslaughter. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, (3) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter, or (4) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

See Sample Set 27.06.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01J Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

[2] Accordingly, you will be provided with four verdict forms [as to each defendant]: “not guilty of first degree murder and not guilty of involuntary manslaughter”, “guilty of first degree murder”, “guilty of second degree murder”, and “guilty of involuntary manslaughter”.

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[7] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will receive two verdict forms [as to each defendant] as to this charge. You will be provided with both a “not guilty of _____” and a “guilty of _____” verdict form [as to each defendant].

[8] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. Do not write on the other verdict form pertaining to the charge of _____. Sign only one verdict form [as to each defendant] pertaining to the charge of _____.

Committee Note

Whenever this instruction is given, Instruction 2.01J must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be

used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is *not* to be instructed on first degree murder, second degree murder *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [6] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [7] and [8] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [7] and [8]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01R in place of paragraphs [7] and [8], modifying the first sentence of paragraph [1] of Instruction 26.01R to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder and not guilty of involuntary manslaughter.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.01K Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “guilty of second degree murder”, “guilty but mentally ill of second degree murder”, “guilty of involuntary manslaughter”, and “guilty but mentally ill of involuntary manslaughter”.

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

>From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01K must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the guilty but mentally ill verdict. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X

(issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01J and 24-25.01K.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter, or (3) the jury is *not* to be instructed on first degree murder, second degree murder *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with ...” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01L Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty of first degree murder and not guilty of involuntary manslaughter”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “guilty of second degree murder”, “guilty but mentally ill of second degree murder”, “guilty of involuntary manslaughter”, and “guilty but mentally ill of involuntary manslaughter”.

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of any one of these three offenses, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

[7] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[8] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of ____: “not guilty of _____”, “guilty of _____”, and “guilty but mentally ill of _____”.

[9] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of _____. Sign only one of these three verdict forms [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01L must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01J and 24-25.01K.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [7] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [8] and [9] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [8] and [9]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01T in place of paragraphs [8] and [9], modifying the first sentence of paragraph [1] of Instruction 26.01T to read, “The defendant[s] [(is) (are)] also charged with the offense of _____ [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder and not guilty of involuntary manslaughter.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

26.01M Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “not guilty by reason of insanity of second degree murder”, “guilty of second degree murder”, “not guilty by reason of insanity of involuntary manslaughter”, and “guilty of involuntary manslaughter”.

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01M must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the

jury is to be instructed on the insanity defense. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01E and 24-25.01G.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter, or (3) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01N Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty of first degree murder and not guilty of involuntary manslaughter”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “not guilty by reason of insanity of second degree murder”, “guilty of second degree murder”, “not guilty by reason of insanity of involuntary manslaughter”, and “guilty of involuntary manslaughter”.

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of one of these three offenses, you should go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

[7] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[8] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of ____: “not guilty of _____”, “not guilty by reason of insanity of _____”, and “guilty of _____”.

[9] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of _____. Sign only one of these three verdict forms [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01N must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01E and 24-25.01G.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1] through [7] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [8] and [9] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [8] and [9]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01V in place of paragraphs [8] and [9], modifying the first sentence of paragraph [1] of Instruction 26.01V to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree

murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder and not guilty of involuntary manslaughter.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendant are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.010 Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

Accordingly, you will be provided with ten verdict forms [as to each defendant]: “not guilty”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “not guilty by reason of insanity of second degree murder”, “guilty of second degree murder”, “guilty but mentally ill of second degree murder”, “not guilty by reason of insanity of involuntary manslaughter”, “guilty of involuntary manslaughter”, and “guilty but mentally ill of involuntary manslaughter”.

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

If you find the defendant has not proved that he is not guilty by reason of insanity, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

From these ten verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other nine verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01O must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on the guilty but mentally ill verdict. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01F and 24-25.01H.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01P Concluding Instruction--Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

[2] Accordingly, you will be provided with ten verdict forms [as to each defendant]: “not guilty of first degree murder and not guilty of involuntary manslaughter”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “not guilty by reason of insanity of second degree murder”, “guilty of second degree murder”, “guilty but mentally ill of second degree murder”, “not guilty by reason of insanity of involuntary manslaughter”, “guilty of involuntary manslaughter”, and “guilty but mentally ill of involuntary manslaughter”.

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of any one of these three offenses, you should then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

[7] If you find the defendant has not proved that he is not guilty by reason of insanity, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

[8] From these ten verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other nine verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

[9] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you

will be provided with four verdict forms [as to each defendant] pertaining to the charge of ____: “not guilty of ____”, “not guilty by reason of insanity of ____”, “guilty of ____”, and “guilty but mentally ill of ____”.

[10] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of ____ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of _____. Sign only one of these four verdict forms [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01P must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, (4) the jury is to be instructed on the guilty but mentally ill verdict, and (5) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01F and 24-25.01H.

This instruction should *not* be used if the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [8] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [9] and [10] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [9] and [10]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01X in place of paragraphs [9] and [10], modifying the first sentence of paragraph [1] of Instruction 26.01X to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of

second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder and not guilty of involuntary manslaughter.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

PART IV.
LESSER INCLUDED OFFENSES

26.01Q Concluding Instruction--Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] [also] charged with the offense of _____. Under the law, a person charged with [greater offense] may be found (1) not guilty [of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of [greater offense] “not guilty [of [greater offense] and not guilty of [lesser offense]”; “guilty of [greater offense],” and “guilty of [lesser offense].”

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] (If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].)

[5] [(Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].)]

Committee Note

Whenever this instruction is given, Instruction 2.01Q must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on one or more charges which include a lesser offense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and the lesser included offenses, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do not use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Repeat paragraphs [1], [2], [3] and either [4] or [5] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” in paragraph [1] for each additional charge, and then also include the bracketed words “of [greater offense] and not guilty of [lesser offense]” in paragraphs [1] and [2] for all the charges, inserting the greater and lesser included offenses where indicated.

Paragraph [4] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See *People v. Towns*, 157 Ill.2d 90, 623 N.E.2d 269, 191 Ill.Dec. 24 (1993). By definition, the jury should not be able to find that the State has proved the defendant guilty of both the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also 720 ILCS 5/2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [5] should be given whenever paragraph [4] is not to be used. Paragraphs [4] and [5] are mutually exclusive. Paragraph [5] explains to the jury that a defendant *cannot* be guilty of both the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). “Greater offense” in paragraph [5] means that offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [5] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clauses in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the codefendant's instruction should be similarly

modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01R Concluding Instruction--Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] ((is) (are)) [also] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of [greater offense]: “not guilty of [greater offense] and not guilty of [lesser offense],” “guilty of [greater offense],” and “guilty of [lesser offense].”

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign verdict form finding the defendant guilty of [lesser offense].]

[5] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

[6] The defendant[s] [(is) (are)] also charged with the offense of _____. You will receive two forms of verdict [as to each defendant] as to this charge. You will be provided with both a “not guilty of _____” and a “guilty of _____” form of verdict [as to each defendant].

[7] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of _____.

Committee Note

Whenever this instruction is given, Instruction 2.01R must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on one or more charges which include a lesser offense and (2) the jury is also to be instructed on some other charge or charges.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder, involuntary manslaughter, and some other charge or charges as well.

See Introductory Note at 26.00.

This instruction may have to be repeated for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the codefendants instruction should be similarly modified.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses. They should not refer at all to the charge(s) set forth in paragraphs [6] and [7].

Repeat paragraphs [1], [2], [3] and either [4] or [5] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” in paragraph [1] for each additional charge.

Paragraphs [6] and [7] should be repeated for each separate charge that the jury is to be instructed upon, other than the greater and lesser included offenses.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clauses in which the blank **entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.**

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Paragraph [4] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See *People v. Towns*, 157 Ill.2d 90, 623 N.E.2d 269, 191 Ill.Dec. 24 (1993). By definition, the jury should not be able to find that the State has proved the defendant guilty of both the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to

conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [5] should be given whenever paragraph [4] is not to be used. Paragraphs [4] and [5] are mutually exclusive. Paragraph [5] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). “Greater offense” in paragraph [5] means that offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [5] means the offense requiring proof that the defendant acted recklessly.

Select a different instruction from the 2601 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the codefendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01S Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty”, “guilty of [greater offense]”, “guilty but mentally ill of [greater offense]”, “guilty of [lesser offense]”, and “guilty but mentally ill of [lesser offense]”.

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01S must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on any charge other than the greater and the lesser included offenses, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental

state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). “Greater offense” in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01T Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty of [greater offense] and not guilty of [lesser offense]“, “guilty of [greater offense]“, “guilty but mentally ill of [greater offense]“, “guilty of [lesser offense]“, and “guilty but mentally ill of [lesser offense]“.

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of ____: “not guilty of _____”, “guilty of _____”, and “guilty but mentally ill of _____”.

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of _____. Sign only one of these three verdict forms [as to each defendant].

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense] you should select the verdict form finding the defendant guilty of [lesser offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01T must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense upon which the jury is to be instructed other than the greater and lesser included offenses.

Paragraph [6] should *not* be given when the lesser included offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Section 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See *People v. Towns*, 157 Ill.2d 90, 623 N.E.2d 269, 191 Ill.Dec. 24 (1993). By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). “Greater offense” in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a verdict form.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank **entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.**

The bracketed terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instructions submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01U Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty”, “not guilty by reason of insanity of [greater offense]“, “guilty of [greater offense]“, “not guilty by reason of insanity of [lesser offense]“, and “guilty of [lesser offense]“.

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01U must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental

state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). “Greater offense” in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank **entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.**

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01V Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty of [greater offense] and [lesser offense]“, “not guilty by reason of insanity of [greater offense]“, “guilty of [greater offense]“, “not guilty by reason of insanity of [lesser offense]“, and “guilty of [lesser offense]“.

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of ____: “not guilty of _____”, “not guilty by reason of insanity of _____”, and “guilty of _____”.

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of _____. Only one of these three verdict forms [as to each defendant] is to be signed by you.

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01V must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on

second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge[s] other than the greater and lesser included offenses about which the jury is to be instructed.

Paragraph [6] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). “Greater offense” in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive

a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01W Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty”, “not guilty by reason of insanity of [greater offense]“, “guilty of [greater offense]“, “guilty but mentally ill of [greater offense]“, “not guilty by reason of insanity of [lesser offense]“, “guilty of [lesser offense]“, and “guilty but mentally ill of [lesser offense]“.

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01W must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is not to be instructed on any charge other than the greater or lesser included offenses.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and lesser offenses, or (2) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985), cert. denied 474 U.S. 847, 106 S.Ct. 139, 88 L.Ed.2d 114 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). “Greater offense” in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01X Concluding Instruction--Jury Is To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict--Jury Is To Be Instructed On Some Other Charge Or Charges

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty of [greater offense] and [lesser offense]“, “not guilty by reason of insanity of [greater offense]“, “guilty of [greater offense]“, “guilty but mentally ill of [greater offense]“, “not guilty by reason of insanity of [lesser offense]“, “guilty of [lesser offense]“, and “guilty but mentally ill of [lesser offense]“.

[3] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4]

The defendant[s] [(is) (are)] also charged with the offense of _____. Accordingly, you will be provided with four verdict forms [as to each defendant] pertaining to the charge of ____: “not guilty of _____”, “not guilty by reason of insanity of _____”, “guilty of _____”, and “guilty but mentally ill of _____”.

[5] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of _____ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of _____. Only one of these four verdict forms [as to each defendant] is to be signed by you.

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

Committee Note

Whenever this instruction is given, Instruction 2.01X must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be

instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon, other than the greater and lesser included offenses.

Paragraph [6] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335, 88 Ill.Dec. 20 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 559 N.E.2d 1133, 147 Ill.Dec. 793 (4th Dist.1990). “Greater offense” in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

PART V.
NO LESSER INCLUDED OFFENSES

26.01Y Concluding Instruction--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of _____. Under the law, a person charged with _____ may be found (1) not guilty; or (2) not guilty by reason of insanity of _____; or (3) guilty of _____.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: “not guilty”, “not guilty by reason of insanity of _____”, and “guilty of _____”.

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01Y must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on a lesser included offense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 501 N.E.2d 767, 103 Ill.Dec. 450 (1st Dist.1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1] and [2] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, “The defendant[s] [(is) (are)] also charged with”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant

John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01Z Concluding Instruction--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is Not To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

When you retire to the jury room you first will elect one your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of _____. Under the law, a person charged with _____ may be found (1) not guilty; or (2) guilty of _____; or (3) guilty but mentally ill of _____.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: “not guilty”, “guilty of _____”, and “guilty but mentally ill of _____”.

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01Z must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on second degree murder.

Do *not* use this instruction if the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

This instruction may have to be repeated for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Paragraphs [1] and [2] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, “The defendant[s] [(is) (are)] also charged with”

Insert in the blanks all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In

either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.01AA Concluding Instruction--Jury Is Not To Be Instructed On A Lesser Included Offense--Jury Is To Be Instructed On The Insanity Defense--Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of _____. Under the law, a person charged with _____ may be found (1) not guilty of _____; or (2) not guilty by reason of insanity of _____; or (3) guilty of _____; or (4) guilty but mentally ill of _____.

[2] Accordingly, you will be provided with four verdict forms [as to each defendant]: “not guilty”, “not guilty by reason of insanity of _____”, “guilty of _____”, and “guilty but mentally ill of _____”.

[3] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other three verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

Committee Note

Whenever this instruction is given, Instruction 2.01AA must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on the insanity defense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is not to be instructed on a lesser included offense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, “The defendant[s] [(is) (are)] also charged with”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with” Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and

should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.04A.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

26.06 Death Penalty Verdicts

Committee Note

Death penalty verdict forms are contained in Instructions 7B.10 through 7B.12, and 7C.08 through 7C.09A.

26.07 Deadlocked Jury Supplemental Instruction

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

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 violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

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

Committee Note

This instruction is taken from *People v. Prim*, 53 Ill.2d 62, 289 N.E.2d 601 (1972). The Committee takes no position on whether this instruction should be given or under what circumstances it should be given. For a recent case applying *Prim*, see *People v. Cowan*, 105 Ill.2d 324, 473 N.E.2d 1307, 85 Ill.Dec. 502 (1985).

26.08 Suggested Rule 436 Instruction When Admonishing Jurors During Trial

As jurors in this case your job is extremely important. Your decision on your verdict is to be based only upon the evidence that you see and hear in this courtroom and the instructions of law I will give you. Therefore, to remain fair and impartial you must refrain from doing the following things until you are discharged from service on this case:

1. You must not converse with anyone on any subject connected with this case;
2. You must not read or listen to any outside comments or news accounts of this case;
3. You must not discuss among yourselves any subject connected with the trial or form any opinion on the cause until it is submitted to you for your deliberation on a verdict;
4. You must not view or go to the place where the offense was allegedly committed [other than with the court as a part of this proceeding].

If you hear or observe anything about this case outside this courtroom, whether inadvertently or otherwise, you must immediately inform me at the beginning of our next session. Do not discuss any of those things with your fellow jurors at any time.

Committee Note

See Supreme Court Rule 436(b).

Rule 436(b) provides that a trial judge should admonish jurors concerning several of their most important duties. The Committee is providing this suggested instruction as an aid to trial judges.

26.09 Suggested Rule 436 Instruction When Sending The Jury Home For The Night During Deliberations

Stop deliberating at this time. We will now recess for the evening. You [should return to your homes] [may go about your normal affairs] and you must not discuss this case with anyone, including family members, friends, or your fellow jurors. All deliberations are to be conducted only in the jury deliberation room when all jurors are present.

As I told you at the beginning of this case, your job as jurors is extremely important. Your decision on your verdict is to be based only upon the evidence that you see and hear in this courtroom and the instruction of law that I have given you. Therefore, to remain fair and impartial you must refrain from doing the following things until you are discharged from service on this case:

1. You must not converse with anyone on any subject connected with this case;
2. You must not read or listen to any outside comments or news accounts of this case;
3. You must not discuss among yourselves any subject connected with the trial or form any opinion on the cause until you continue your deliberation on the verdict when all of you are present;
4. You must not view or go to the place where the offense was allegedly committed.

If you hear or observe anything about this case outside this courtroom, whether inadvertently or otherwise, you must immediately inform me at the beginning of our next session. Do not discuss any of these things with your fellow jurors at any time.

You are to report tomorrow morning to continue your jury service in this case.

Committee Note

See Supreme Court Rule 436(b).

Rule 436(b) provides that a trial judge should admonish jurors concerning several of their most important duties. The Committee is providing this suggested instruction as an aid to trial judges.