7.01X
Explanation To Jury Of The Reason For Designating One Category Of First Degree Murder As (Type A) And Another Category Of First Degree Murder As (Type B)

The terms (Type A) and (Type B) that I use in referring to first degree murder have no legal significance. I use those terms simply to distinguish between different kinds of first degree murder.

Committee Note

Pursuant to 720 ILCS 5/9-2(a), as amended by P.A. 84-1450, effective July 1, 1987, a conviction of second degree murder cannot be based upon a charge of first degree murder under 720 ILCS 5/9-1(a)(3) (felony murder). Accordingly, when both kinds of first degree murder are charged, one kind under section 9-1(a)(3) (felony murder) and the other kind under section 9-1(a)(1) or 9-1(a)(2) (knowing or intentional murder), and when the court is also instructing the jury on the lesser offense of second degree murder, use Instruction 7.02 or 7.02B for the first degree murder count under section 9-1(a)(3) and use either Instruction 7.04 or 7.06 for the other first degree murder counts upon which the second degree murder instruction is based.

A similar distinction must occur where a defendant is charged with knowing or intentional murder (section 9-1(a)(1) or 9-1(a)(2)) and felony murder (section 9-1(a)(3)) and the defendant pleads an affirmative defense that does not apply to the felony murder charge, such as self-defense. In this instance, separate issues instructions must be given differentiating the knowing and intentional murder charge and the felony murder charge.

The jury must have a method to distinguish between the two different types of murder and their issues instructions. The Committee suggests using the designations (Type A) and (Type B) to distinguish between the two types of first degree murder. The purpose of this instruction is to explain to the jury why these designations are being used.

Only give this instruction when the jury is going to be instructed on second degree murder or on an affirmative defense that does not apply to felony murder, such as self-defense.

Give this instruction immediately after the applicable instruction from the 2.01 series. Failure to use this instruction has been held to be reversible error. *People v. Alvine*, 173 Ill.2d 273, 671 N.E.2d 713 (1996).

For a further discussion of this subject, see the Committee Notes to Instructions 7.02X, 7.04, and 7.06; see also Sample Instruction 27.05 for an example of the utilization of this instruction.

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