

Spring 3-1-2001

## Virginia Capital Case Clearinghouse Verdict Forms

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlucdj>

 Part of the [Criminal Procedure Commons](#), and the [Law Enforcement and Corrections Commons](#)

---

### Recommended Citation

*Virginia Capital Case Clearinghouse Verdict Forms*, 13 Cap. DEF J. 449 (2001).

Available at: <https://scholarlycommons.law.wlu.edu/wlucdj/vol13/iss2/17>

This Special content is brought to you for free and open access by the Law School Journals at Washington & Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Capital Defense Journal by an authorized editor of Washington & Lee University School of Law Scholarly Commons. For more information, please contact [lawref@wlu.edu](mailto:lawref@wlu.edu).

# Virginia Capital Case Clearinghouse Verdict Forms

The culmination of a capital case occurs when the trial judge instructs the jury and it retires to its room to decide the defendant's fate. The verdict forms are concrete and tangible "road maps" for the jury to use during deliberations. In light of the importance of capital verdict forms, the Virginia Capital Case Clearinghouse has substantially revised the Clearinghouse's recommended verdict forms.

Verdict forms are more important than instructions because the forms provide a clearer outline of the factors that the jurors must consider when deciding on sentence. Good verdict forms will cure bad instructions because jurors are forced to deliberate over each clause contained in a form before they can reach a unanimous decision about the sentence. Thus, it is more important to win the battle over verdict forms than the battle over instructions.

One of the most important curative effects of good verdict forms is the correction of misconceptions held by jurors. These new verdict forms are successful in this effort with regard to juror consideration of mitigation evidence. For instance, forms three through eight omit all references to mitigation evidence, thus avoiding the implications that defendants must present such evidence and that such evidence, if presented, must be probative. Forms nine through fourteen present the same elements as forms three through eight, with the additional consideration of mitigation evidence presented by the defense. Perhaps the most important misconception that these verdict forms succeed in curing is the belief that the jury must impose a death sentence if it convicts the defendant of capital murder. The use of these forms enhances the "never have to give death" instruction given in *Commonwealth v. Tice*.<sup>1</sup> In that case the judge instructed the jury in part as follows: "I want you to know that nothing in these instructions nor in the law requires you to sentence this defendant to death, no matter what your findings may be."<sup>2</sup> Of the seventeen verdict forms, the first fourteen empower the jury to return a sentence recommendation of life in prison, regardless of whether the Commonwealth has proved neither, one, or both of the statutory aggravating factors. The final three forms are the only ones that present the option of a death sentence. We recommend that you

---

1. *Commonwealth v. Tice*, Cr. Nos. 98-2980-00 and 98-2980-01 (Tr. at 1045) (Va. Cir. Ct. Feb. 14, 2000) (unreported decision) (Circuit Court for the City of Norfolk).

2. *Id.*

proffer the forms in the order listed, specifically that the "death" forms appear after the "life" forms. The following chart provides a convenient reference for choosing which verdict forms to proffer to the court:

*(FD indicates that future dangerousness was argued; V indicates that vileness was argued; B indicates that both aggravators were argued; M indicates that mitigation evidence was presented; NM indicates that no mitigation evidence was presented).*

Form number	B; NM	B; M	FD; NM	FD; M	V; NM	V; M
1	X	X	X*	X*	X**	X**
2	X	X	X*	X*	X**	X**
3	X					
4	X					
5	X		X			
6	X		X			
7	X				X	
8	X				X	
9		X		X		
10		X		X		
11		X				X
12		X				X
13		X				
14		X				
15	X	X	X	X		
16	X	X			X	X
17	X	X				

\* strike reference to vileness; \*\* strike reference to future dangerousness

The Supreme Court of Virginia has recently expressed interest in capital murder verdict forms.<sup>3</sup> In at least two cases pending in the Supreme Court of Virginia, the court has raised the issue of capital verdict forms in light of its decision in *Atkins v. Commonwealth*.<sup>4</sup> In *Commonwealth v. Hairston*,<sup>5</sup> the Circuit Court of the City of Martinsville responded favorably to these verdict forms by providing them to the jury. The *Hairston* jury found both statutory aggravating factors and returned a sentence of life imprisonment.<sup>6</sup> We hope that these new verdict forms will bring a similar measure of success in your capital trials.

---

3. In *Atkins v. Commonwealth*, the Supreme Court of Virginia held that a jury must be given a verdict form which sets forth the option of sentencing the defendant to life in prison if the jury determines that neither of the aggravating factors was proven beyond a reasonable doubt. *Atkins v. Commonwealth*, 510 S.E.2d 445, 456-57 (Va. 1999).

After oral argument in *Burns v. Commonwealth*, the Supreme Court of Virginia requested letter briefs addressing the issue of the verdict forms submitted to the jury at trial, in light of the court's decision in *Atkins*. Unfortunately, the court ruled that the issue was procedurally defaulted because the attorney had neither objected to the verdict forms at trial nor argued anything on appeal regarding the forms. *Burns v. Commonwealth*, 2001 WL 208453, at n.16 (Va. Mar. 2, 2001).

4. *Atkins v. Commonwealth*, 510 S.E.2d 445 (Va. 1999). The pending decisions are *Lenz v. Commonwealth* and *Powell v. Commonwealth*. Before oral argument, the court in *Lenz* requested letter briefs from the attorneys for the same reasons it requested such briefs in *Burns*. In *Powell*, at least one justice of the Supreme Court of Virginia raised the issue of capital verdict forms at oral argument.

5. Cr. Nos. 00000001 - 00000008 (Va. Cir. Ct. Mar. 16, 2001) (unreported decision).

6. *Commonwealth v. Hairston*, Cr. Nos. 00000001 - 00000008 (Va. Cir. Ct. Mar. 16, 2001) (unreported decision) (Circuit Court for the City of Martinsville).

**Verdict Forms  
Table of Contents**

1. Commonwealth Failed to Prove Aggravators (either/or), Life
2. Commonwealth Failed to Prove Aggravators (either/or), Life & Fine
3. Jury Finds Both Aggravators, Life
4. Jury Finds Both Aggravators, Life & Fine
5. Jury Finds Future Dangerousness, Life
6. Jury Finds Future Dangerousness, Life & Fine
7. Jury Finds Vileness, Life
8. Jury Finds Vileness, Life & Fine
9. Jury Finds Future Dangerousness, Mitigation, Life
10. Jury Finds Future Dangerousness, Mitigation, Life & Fine
11. Jury Finds Vileness, Mitigation, Life
12. Jury Finds Vileness, Mitigation, Life & Fine
13. Jury Finds Both Aggravators, Mitigation, Life
14. Jury Finds Both Aggravators, Mitigation, Life & Fine
15. Jury Finds Future Dangerousness, Mitigation, Death
16. Jury Finds Vileness, Mitigation, Death
17. Jury Finds Both Aggravators, Mitigation, Death

**DO NOT SUBMIT TABLE OF CONTENTS TO JURY**

The verdict forms were created by Virginia Capital Case Clearinghouse members Amanda Burks, Kate Calvert, and Ross Eisenberg.

**Verdict Form  
(Alternative #1)**

**Commonwealth**  
v.  
\_\_\_\_\_

**Case No.** \_\_\_\_\_  
**Date:** \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having considered all the evidence in aggravation and finding that the Commonwealth failed to prove beyond a reasonable doubt

**EITHER**

that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

**OR**

that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman,

fix his punishment at imprisonment for life.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

**STATUTE:** § 19.2-264.4(C).

**CASES:** *Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

**OTHER CITES:** Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #2)**

**Commonwealth**

v.

\_\_\_\_\_

Case No. \_\_\_\_\_

Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having considered all the evidence in aggravation and finding that the Commonwealth failed to prove beyond a reasonable doubt

**EITHER**

that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

**OR**

that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman,

fix his punishment at imprisonment for life and a fine of \$ \_\_\_\_\_  
(fine must be not more than \$100,000).

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

**STATUTE:** § 19.2-264.4(C).

**CASES:** *Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

**OTHER CITES:** Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #3)**

Commonwealth  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_  
Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having considered all the evidence in aggravation and finding unanimously and beyond a reasonable doubt that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

**AND**

that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
depravity of mind \_\_\_\_\_;  
aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

fix his punishment at imprisonment for life.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

STATUTE: § 19.2-264.4(C).

CASES: *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

OTHER CITES: Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #4)**

Commonwealth  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_  
Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having considered all the evidence in aggravation and finding unanimously and beyond a reasonable doubt that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

**AND**

that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
depravity of mind \_\_\_\_\_;  
aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

fix his punishment at imprisonment for life and a fine of \$ \_\_\_\_\_  
(fine must be not more than \$100,000).

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

STATUTE: § 19.2-264.4(C).

CASES: *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

OTHER CITES: Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #5)**

Commonwealth  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_  
Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society, fix his punishment at imprisonment for life.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

STATUTE: § 19.2-264.4(C).

CASES: *Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

OTHER CITES: Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #6)**

**Commonwealth**

v. \_\_\_\_\_

Case No. \_\_\_\_\_

Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society, fix his punishment at imprisonment for life and a fine of \$ \_\_\_\_\_ (fine must be not more than \$100,000).

\_\_\_\_\_  
**FOREMAN**

MEMORANDUM

STATUTE: § 19.2-264.4(C).

CASES: *Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

OTHER CITES: Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #7)**

**Commonwealth**

**Case No.** \_\_\_\_\_

**v.**

**Date:** \_\_\_\_\_

\_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
 depravity of mind \_\_\_\_\_;  
 aggravated battery to the victim beyond the minimum necessary to  
 accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

fix his punishment at imprisonment for life.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

**STATUTE:** § 19.2-264.4(C).

**CASES:** *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

**OTHER CITES:** Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #8)**

**Commonwealth**

v.

\_\_\_\_\_

Case No. \_\_\_\_\_

Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
 depravity of mind \_\_\_\_\_;  
 aggravated battery to the victim beyond the minimum necessary to  
 accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

fix his punishment at imprisonment for life and a fine of \$ \_\_\_\_\_  
 (fine must be not more than \$100,000).

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

**STATUTE:** § 19.2-264.4(C).

**CASES:** *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

**OTHER CITES:** Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #9)**

**Commonwealth**  
v.  
\_\_\_\_\_

**Case No.** \_\_\_\_\_  
**Date:** \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

**AND**

having considered the evidence in mitigation of the offense, fix his punishment at imprisonment for life.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

**STATUTE:** § 19.2-264.4(C).

**CASES:** *Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

**OTHER CITES:** Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #10)**

Commonwealth  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_  
Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

AND

having considered the evidence in mitigation of the offense, fix his punishment at imprisonment for life and a fine of \$ \_\_\_\_\_ (fine must be not more than \$100,000).

\_\_\_\_\_  
FOREMAN

MEMORANDUM

STATUTE: § 19.2-264.4(C).

CASES: *Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

OTHER CITES: Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #11)**

Commonwealth

v.

Case No. \_\_\_\_\_

Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
 depravity of mind \_\_\_\_\_;  
 aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

AND

having considered the evidence in mitigation of the offense, fix his punishment at imprisonment for life.

\_\_\_\_\_  
FOREMAN

MEMORANDUM

STATUTE: § 19.2-264.4(C).

CASES: *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

OTHER CITES: Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #12)**

Commonwealth

v.

\_\_\_\_\_

Case No. \_\_\_\_\_

Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
depravity of mind \_\_\_\_\_;  
aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

AND

having considered the evidence in mitigation of the offense, fix his punishment at imprisonment for life and a fine of \$ \_\_\_\_\_ (fine must be not more than \$100,000).

\_\_\_\_\_  
FOREMAN

MEMORANDUM

STATUTE: § 19.2-264.4(C).

CASES: *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

OTHER CITES: Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #13)**

**Commonwealth**  
v.  
\_\_\_\_\_

**Case No.** \_\_\_\_\_  
**Date:** \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

AND

that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
depravity of mind \_\_\_\_\_;  
aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

AND

having considered the evidence in mitigation of the offense, fix his punishment at imprisonment for life.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

**STATUTE:** § 19.2-264.4(C).

**CASES:** *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

**OTHER CITES:** Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #14)**

Commonwealth

v.

Case No. \_\_\_\_\_

Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

**AND**

that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
depravity of mind \_\_\_\_\_;  
aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

**AND**

having considered the evidence in mitigation of the offense, fix his punishment at imprisonment for life and a fine of \$ \_\_\_\_\_ (fine must be not more than \$100,000).

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

STATUTE: § 19.2-264.4(C).

CASES: *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Justus v. Commonwealth*, 220 Va. 971, 266 S.E.2d 87 (1980).  
*Smith v. Commonwealth*, 219 Va. 455, 248 S.E.2d 135 (1978).  
*Atkins v. Commonwealth*, 257 Va. 160, 510 S.E.2d 445 (1999).  
*Bailey v. Commonwealth*, 259 Va. 723, 529 S.E.2d 570 (2000).

OTHER CITES: Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #15)**

**Commonwealth  
v.**  
\_\_\_\_\_

**Case No.** \_\_\_\_\_  
**Date:** \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt after consideration of his history and background that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

**AND**

having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #16)**

**Commonwealth**  
**v.**

**Case No.** \_\_\_\_\_  
**Date:** \_\_\_\_\_

\_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
depravity of mind \_\_\_\_\_;  
aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

**AND**

having considered the evidence in mitigation of the offense, fix his punishment at death.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

**STATUTE:** § 19.2-264.4.

**CASES:** *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Jones v. United States*, 526 U.S. 227 (1999).  
*Richardson v. United States*, 526 U.S. 813 (1999).

**OTHER CITES:** Virginia Model Jury Instruction 33.130.

**Verdict Form  
(Alternative #17)**

Commonwealth  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_  
Date: \_\_\_\_\_

We, the jury, on the issue joined, having found the defendant guilty of capital murder and having found unanimously and beyond a reasonable doubt after consideration of his history and background that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society

**AND**

having found unanimously and beyond a reasonable doubt that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved

torture \_\_\_\_\_;  
depravity of mind \_\_\_\_\_;  
aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder \_\_\_\_\_;

[Foreman must initial one or more of the above elements only if found beyond a reasonable doubt and unanimously agreed upon.]

**AND**

having considered the evidence in mitigation of the offense, fix his punishment at death.

\_\_\_\_\_  
**FOREMAN**

**MEMORANDUM**

STATUTE: § 19.2-264.4.

CASES: *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).  
*Jones v. United States*, 526 U.S. 227 (1999).  
*Richardson v. United States*, 526 U.S. 813 (1999).

OTHER CITES: Virginia Model Jury Instruction 33.130.

