

A Guide to the Governor Timothy M. Kaine, Executive Office-Counselor's Office, Records, 2001-2009 (bulk 2006-2009)

Governor Timothy M. Kaine, Executive Office-Counselor's Office, Records 2001-2009 (bulk 2006-2009)
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Author: Roger E. Christman

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Administrative Information

Access Restrictions

Collection is open to research.

Use Restrictions

Confidential, privacy-protected and attorney-client privileged records are closed for 75 years per Code of Virginia, 2.2-3705.1, 2.2-3800 and 42.1-78.

Acquisition Information

Office of the Governor, Patrick Henry Building, 1111 E. Broad Street, Richmond, Virginia, 23219, accession 44694 transferred on 14 January 2010.

Processing Information

Series III. Special Counsel Files has been processed using minimal processing standards: the original arrangement has been maintained, the container list is brief and simple, and the records have not been refoldered.

Preferred Citation

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Biographical Information

The Executive Office is a division of the Office of the Governor in the Executive Branch of Virginia state government. Members of the Executive Office include the Governor, Chief of Staff, Counselor to the Governor and their assistants. The Counselor in the Kaine administration provided legal advice to the Governor, including liaison with the judiciary and the Office of the Attorney General. The Counselor also provided broader advice to the Governor on political and personal matters as assigned. The Counselor was the chief liaison with the Democratic Party, the Moving Virginia Forward PAC, and outside political constituency groups.

The Counselor was assisted in these responsibilities by a Senior Advisor, a hybrid position, who provided legal assistance to the Counselor and legislative assistance to the Policy Director. The Senior Advisor was available to mediate important policy disputes for the Governor, or with the Governor's consent, for legislators and other external constituents. The following individuals held these positions during Governor Timothy M. Kaine's administration (2006-2010): Lawrence Roberts, Counselor to the Governor (January 2006-May 2009) and Mark E. Rubin, Senior Advisor to the Governor and Deputy Counselor (January 2006-May 2009) and Counselor to the Governor (May 2009-January 2010).

Scope and Content

The Governor Timothy M. Kaine, Executive Office-Counselor's Office, Records are housed in 33 boxes. The collection is arranged into five (5) series. Series have been designated for: I. General Files of the Counselor to the Governor; II. Judicial Appointments; III. Special Counsel Files; IV. Attorney General Settlements; and V. Files of Lawrence Roberts, Counselor and Shane Emmett, Legal Fellow. These records include agreements, reports, correspondence, e-mail, memorandums, legal briefs, legal files, budget documents, agendas, handouts, meeting notes, and invitations. This collection documents the actions of Governor Kaine's Counselor's Office. **The majority of this collection is closed for 75 years per Code of Virginia, 2.2-3705.1 (attorney-client privilege).**

Related Material

OFFICE OF THE GOVERNOR-TIM KAINÉ

[A Guide to the Governor Timothy M. Kaine Administration Electronic Files, Email, 2002-2010 \(bulk 2006-2009\)](#). This collection includes the email of [Tim Kaine](#), [Lawrence Roberts](#), [Mark Rubin](#), and [Shane Emmett](#). The [Library of Virginia Email Project - Governor Tim Kaine Portal](#) provides access to the Kaine email collection and includes guides to other Kaine administration records.

The [Governor Tim Kaine Administration Web Archive Collection, 2006-2010](#) contains archived versions of websites for the Governor's Office, his initiative sites, and the sites of his cabinet secretaries. Also included are the related sites for the First Lady (Anne Holton), as well as the Lt. Governor (Bill Bolling), and Attorney General (Bob McDonnell and William C. Mims), two statewide officials elected in the same cycle as Governor Kaine.

The [Executive Orders Digital Collection](#) includes 110 executive orders and 9 executive directives issued by Governor Kaine.

[A Guide to the Governor Timothy M. Kaine, Policy Office, Records, 2002-2010 \(bulk 2006-2009\)](#). The Policy Office Records of Governor Timothy M. Kaine are housed in 174 boxes. The collection is arranged into five (5) series. Series have been designated for: I. Decision Briefs; II. Regulations; III. Legislative Files; IV.

Executive Orders and Directives; and V. Policy Analyst Files. These records include agendas, decision briefs, correspondence, memorandums, legislative files, briefing books, meeting notes, subject files, reports, talking points and regulations. These records document the legislative and policy priorities of the Kaine administration (2006-2010). This collection also includes records from Governor Mark Warner's administration (2002-2006).

[A Guide to the Records of the Virginia Tech Review Panel, 2007-2009 \(bulk 2007\)](#). The Virginia Tech Review Panel Records, 2007-2009 (bulk 2007), are organized into five series. Series have designated for Files of Virginia Tech Review Panel Members, Files of TriData, Files of Skadden, Arps, Slate, Meagher and Flom LLP, Files of the Office of the Governor, and Freedom of Information Act Request. These records document Virginia's official investigation into the 16 April 2007 mass shooting at Virginia Tech.

Arrangement

This collection is arranged into the following series:

- I. General Files of the Counselor to the Governor, 2005-2009
- II. Judicial Appointments, 2006-2009
- III. Special Counsel Files, 2001-2006
- IV. Attorney General Settlements, 2006
- V. Files of Lawrence Roberts, Counselor and Shane Emmett, Legal Fellow, 2006-2009

Contents List

I. General Files of the Counselor to the Governor, 2005-2009.

Boxes 1-4 (box)

Extent

Extent: 1.40 cubic feet (4 boxes).

Scope and Content

The General Files of the Counselor to the Governor series is housed in four boxes and is arranged alphabetically by subject. This series contains the records of Mark E. Rubin, Counselor to the Governor (May 2009-January 2010) and Senior Advisor to the Governor and Deputy Counselor (January 2006-May 2009). The Senior Advisor was a hybrid position, providing legal assistance to the Counselor and legislative assistance to the Policy Director. Rubin's records reflect both of these roles. **The policy related material is open; attorney-client material is closed for 75 years per Code of Virginia, 2.2-3705.1. Restricted material has been removed from the series and boxed separately (box 4).**

Notable subjects include: electric regulation, indigent defense, wine industry, 2006 budget notes, and appointments for Supreme Court of Virginia and Court of Appeals of Virginia, 2007 (Justice Elizabeth Lacy, Supreme Court, and Judge James W. Benton, Jr., Court of Appeals, retired).

Notable documents on electricity regulation include: memorandum to Governor Kaine through Mark Rubin from Stephen Walz, Dept. of Mines, Minerals and Energy, 10 January 2006, summarizing current legislative landscape for electric re-regulation; briefing for Governor Kaine on electric restructuring in Virginia, 22 August 2006; memorandum to Governor Kaine from Mark Rubin, 18 November 2006 (draft) and 20 November 2006 (final version), summarizing current legislative landscape regarding electric deregulation; e-mail to Mark Rubin from Stephen Walz, 16 November 2006, containing his thoughts on Senator Clark Hogan's draft legislation; memorandum to Governor Kaine from Hullahen Williams Moore, former chair of the Virginia State Corporation Commission, 3 January 2007 on Dominion Virginia Power Draft Electric Restructuring Legislation; list of members of Electric Utility Regulations Working Group and two e-mails to Mark Rubin from Stephen Walz, 17 January 2007, containing Walz's meeting notes from two January 17 Working Group meetings; memorandums to Governor Kaine from Hullahen Williams Moore, 26 January 2007 and 2 February 2007, on Dominion Virginia Power Draft Electric Restructuring Legislation; memorandum to Governor Kaine through Mark Rubin from Stephen Walz, 14 March 2007, outlining proposed amendments to HB3068/SB 1416 on electric regulation; and recommended changes to Electric Re-regulation Legislation HB3068/SB1416, 20 March 2007. (all b1, f3-4)

Notable documents on the wine industry include: agendas and notes for HB 1435 Task Force Meetings (b2, f8 and b3, f1)

Notable documents on the appointments for the Supreme Court of Virginia and Court of Appeals of Virginia in 2007 include: list of candidates under consideration, Mark Rubin's handwritten notes on candidates, outline for selecting Supreme Court vacancy, memorandum to Lawrence Roberts and Mark Rubin from Shane Emmett, Legal Fellow, 31 May 2007, on Governor's authority to appoint judges while Assembly is

not in session (b4, f2); and memorandum to Mark Rubin from Andrew Bosse and J. Ryan Harvey, Legal Fellow, 17 September 2007, on Governor's appointment of members of General Assembly to the bench (b4, f3). These records are restricted for 75 years per Code of Virginia, 2.2-3705.1.

Correspondence, 2007-2009

Box 1

Folder 1

Dual Appointment, 4 June 2009

Box 1

Folder 2

Electricity Regulation, 2006-2007

Box 1

Folder 3

Electricity Regulation, 2007

Box 1

Folder 4

Freedom of Information Act (FOIA) Requests, 2006-2009

Box 1

Folder 5

Indigent Defense, 2006-2007

Box 1

Folder 6

Jurisdiction Swaps (Deed of Cession), 2006

Box 1

Folder 7

Machinery and Tools Tax, 2006-2007

Box 2

Folder 1

Pay Day Lending, 2008

Box 2

Folder 2

Gabriel Prosser, 2007

Box 2

Folder 3

Virginia Re-Entry Policy, 2006

Box 2

Folder 4

Red Horse Settlement, 2005-2006

Box 2

Folder 5

Red Horse Settlement, 2006-2009

Box 2

Folder 6

Virginia Voter Residency, 2009

Box 2

Folder 7

Wine Industry Issues, 2006 (part one)

Box 2

Folder 8

Wine Industry Issues, 2006 (part two)

Box 3

Folder 1

Wine Industry Issues, 2006 (part three)

Box 3

Folder 2

RESTRICTED - DO NOT SERVE

Budget Notes, 2006

Box 4

Folder 1

Judicial Appointments, Supreme Court and Court of Appeals, 2007 (part one)

Box 4

Folder 2

Judicial Appointments, Supreme Court and Court of Appeals, 2007 (part two)

Box 4

Folder 3

SB 817, Constitutional Analysis of the "Choose Life" license plate legislation, 23 March 2009

Box 4

Folder 4

Settlement of Case of Dr. Douglas Gross and Dr. Sarah Bissconer vs. John Favret and Dr. Deborah Mazzarella, 2009 (part one)

Box 4

Folder 5

Settlement of Case of Dr. Douglas Gross and Dr. Sarah Bissconer vs. John Favret and Dr. Deborah Mazzarella, 2009 (part two)

Box 4

Folder 6

II. Judicial Appointments, 2006-2009.

Boxes 5-11 (box)

Extent

Extent: 2.45 cubic feet (7 boxes).

Scope and Content

The Judicial Appointments series is housed in 7 boxes and is arranged by court (Virginia Supreme Court, Virginia Court of Appeals, State Corporation Commission and Circuit Courts). Judges of the Circuit Court, Court of Appeals, Supreme Court of Virginia are elected by a majority of each house of the General Assembly (8 year terms for Circuit Court and Court of Appeals; 12 year term for the Supreme Court of

Virginia). State Corporation Commissioners are elected by the General Assembly for 6 year terms. Interim appointments are made by the Governor subject to election by the General Assembly at the next regular session. Records for each applicant usually include: letter of interest, letters of support, resume, Virginia State Bar Judicial Questionnaire, and Statement of Economic Interest. **This series contains confidential, privacy-protected and attorney-client privileged records and is closed for 75 years per Code of Virginia, 2.2-3705.1, 2.2-3800 and 42.1-78.**

During his administration, Governor Kaine appointed two justices to the Virginia Supreme Court. On 10 October 2007, he selected Chesapeake Circuit Judge S. Bernard Goodwyn to replace Associate Justice Elizabeth B. Lacy, who retired in August 2007. Kaine appointed Virginia Court of Appeals Judge LeRoy F. Millette, Jr. on 15 August 2008. Millette replaced Associate Justice Steve Agee who was appointed in 2009 by President Barack Obama to the 4th U.S. Circuit Court of Appeals. Obama also appointed Associate Justice Barbara Keenan to the 4th U.S. Circuit Court of Appeals in 2009 but she was not confirmed prior to the end of the Kaine administration. Keenan was confirmed by the United States Senate in March 2010. The General Assembly, still in session, selected William C. Mims to fill the vacancy on the Virginia Supreme Court. The Judicial appointments series contains applicant files for the 2007, 2008 and 2009 (tentative) vacancies.

Governor Kaine made two appointments to the Virginia Court of Appeals. He appointed LeRoy F. Millette, Jr. on 27 November 2007. After Millette's appointment to the Virginia Supreme Court in August 2008, Kaine selected Chesterfield Circuit Judge Cleo F. Powell to fill the vacancy on the Virginia Court of Appeals.

Kaine selected one State Corporation Commissioner. Theodore V. Morrision, Jr., retired on 31 December 2007. When the divided General Assembly (Republicans controlled the House of Delegates; Democrats controlled the State Senate) could not agree on a selection, Governor Kaine appointed James C. Dimitir on 15 August 2008.

Notable documents include: memorandum to Governor Kaine from Mark Rubin and Larry Roberts, 17 July 2008, outlining the selection process for a Supreme Court Justice and a State Corporation Commissioner. The memo provides a brief synopsis of each candidate (b11, f8); and letter to Lawrence Roberts from Mark Rubin, dated 6 May 2009, confirming Roberts pro bon legal advice and counsel to the Governor related to the 2007 Virginia Tech shooting (b11, f10).

Supreme Court of Virginia, 2007 Candidates

Allen, Michael C.

Box 5

Folder 1

Booker, Lewis T.

Box 5

Folder 2

Elder, Larry G.

Box 5

Folder 3

Felton, Jr., Walter S.

Box 5

Folder 4

Frank, Robert P.

Box 5

Folder 5

Goodwyn, S. Bernard

Box 5

Folder 6

Hall, Mary Jane

Box 5
Folder 7

Hamblen, William D.

Box 5
Folder 8

Humphreys, Robert J. (filed under 2008 candidates)

Kelsey, D. Arthur (see also 2008 candidates)

Box 5
Folder 9

Langhorne, Arelia S.

Box 5
Folder 10

Mims, William C.

Box 5
Folder 11

Ney, R. Terrence

Box 6
Folder 1

Pigeon, Sharon M.B.

Box 6
Folder 2

Spencer, Margaret Poles

Box 6
Folder 3

Starr, Jr., Edward H.

Box 6
Folder 4

Supreme Court of Virginia, 2008 Candidates

Alper, Joanne F.

Box 6
Folder 5

Gibb, Colin R.

Box 6
Folder 6

Horne, Thomas D.

Box 6
Folder 7

Humphreys, Robert J. (2007 and 2008)

Box 6

Folder 8

Kelsey, D. Arthur (see also 2007)

Box 6

Folder 9

Millette, Jr., Leroy F.

Box 6

Folder 10

Padrick, Jr., H. Thomas

Box 6

Folder 11

Taylor, Jr., Richard D.

Box 6

Folder 12

Weckstein, Clifford R.

Box 7

Folder 1

Wetsel, John E. (recommended by private citizen; Wetsel did not apply)

Box 7

Folder 2

Supreme Court of Virginia, 2009 Candidates

Baskervill, Pamela S.

Box 7

Folder 3

Edwards, John S. (Supreme Court and United States 4th Circuit of Appeals)

Box 9

Folder 6

Kemler, Lisa B.

Box 9

Folder 7

Raphael, Stuart A.

Box 7

Folder 4

Roush, Jane Marum

Box 7

Folder 5

General Correspondence, 2009

Box 7

Folder 6

Virginia Court of Appeals, 2007 Candidates

Friedman, Frank K.

Box 7

Folder 7

Powell, Cleo E. (see 2008 candidates)

Virginia Court of Appeals, 2008 Candidates

Morrison, Johnny

Box 7

Folder 8

Powell, Cleo E. (also 2007 candidate)

Box 7

Folder 9

State Corporation Commission, 2008 Candidates

Cramme, III, C. William

Box 7

Folder 10

DeBoer, Jay W.

Box 7

Folder 11

De Haas, Philip R.

Box 8

Folder 1

Dimitri, James C.

Box 8

Folder 2

Fisher, Richard L.

Box 8

Folder 3

Lake, Julia (part one)

Box 8

Folder 4

Lake, Julia (part two)

Box 8

Folder 5

Lalor, Peter

Box 8

Folder 6

Maddux, Robert

Box 8
Folder 7

Nolte, JoAnne L.
Box 8
Folder 8

Parker, Allen B.
Box 9
Folder 1

Taylor, Richard
Box 9
Folder 2

Thomas, Michael D.
Box 9
Folder 3

Walz, Stephen
Box 9
Folder 4

General Correspondence
Box 9
Folder 5

Circuit Court

1st District

Brown, John W.
Box 9
Folder 8

Olds, Eileen A.
Box 9
Folder 9

2nd District

Brydges, James E.
Box 9
Folder 10

Huff, Glen A. (part one)
Box 9
Folder 11

Huff, Glen A. (part two)
Box 9
Folder 12

Smith, Chester

Box 10

Folder 1

Woolard, Gene A.

Box 10

Folder 2

General Correspondence, 2008

Box 10

Folder 3

3rd District

Sharpe, Jr., Leo Francis

Box 10

Folder 4

4th District

Griffith, Charles

Box 10

Folder 5

Laibstain, Linda S.

Box 10

Folder 6

Mahoney, Joan E.

Box 10

Folder 7

Mathews, James S.

Box 10

Folder 8

Pearson, Jr., John Y.

Box 10

Folder 9

8th District

Phillips, Bradford Carter

Box 10

Folder 10

10th District

Candidate submissions

Box 10

Folder 11

12th District

Cogbill, John
Box 10
Folder 12

15th District

Sharp, Charles S.
Box 11
Folder 1

19th District

Cassidy, Michael J.
Box 11
Folder 2

DiGiosia, Lori
Box 11
Folder 3

Tran, John M.
Box 11
Folder 4

Letters of Recommendation, 2008
Box 11
Folder 5

Correspondence

Letters of Recommendation, Virginia Supreme Court, 2008
Box 11
Folder 6

General Correspondence, 2007
Box 11
Folder 7

General Correspondence, 2008
Box 11
Folder 8

General Correspondence, 2009 (part one)
Box 11
Folder 9

General Correspondence, 2009 (part two)
Box 11
Folder 10

III. Special Counsel Files, 2001-2006.

Boxes 12-16 (box)

Extent

Extent: 1.75 cubic feet (5 boxes).

Scope and Content

The Special Counsel Files series is housed in 5 boxes. This series documents the appointment of outside counsel to represent state employees and constitutional officers in legal action. Requests for the appointment of a special counsel were sent to the Counselor to the Governor by either the Virginia Department of Treasury, Division of Risk Management or the Office of the Attorney General. The records in this series are for requests from the last year of the administration of Governor James S. Gilmore (2001), the administration of Governor Mark R. Warner (2002-2006) and the first year of the administration of Governor Tim Kaine (2006). Records for each file usually includes: request for the appointment of special counsel, background information on the legal action, detailed legal bills, and requests for approval of special counsel legal fees by the Governor's Counselor (Robert Blue, 2002-2005; Robert Crouch, 2005-2006; and Lawrence Roberts, 2006). **This series contains confidential, privacy-protected and attorney-client privileged records and is closed for 75 years per Code of Virginia, 2.2-3705.1, 2.2-3800 and 42.1-78.**

Judicial Inquiry and Review Commission vs. Judge J. Robert Stump, 2002-2003

Box 12

Folder 1

Judicial Inquiry and Review Commission vs. Judge John C. Quigley, Jr., 2002-2004

Box 12

Folder 2

Fathy M.A. Saleh vs. Eddie N. Moore, Jr., et al., 2002-2004

Box 12

Folder 3

Judicial Inquiry and Review Commission vs. Judge Woodrow Lewis, 2001-2002

Box 12

Folder 4

Jean R. Cobbs vs. Virginia State University, et al., 2001-2003

Box 12

Folder 5

MCI Worldcom - Appeal to Virginia Supreme Court, 2002-2003, 2005

Box 13

Folder 1

MCI Worldcom - State Corporation Commission, 2001-2002

Box 13

Folder 2

Hanover Commonwealth's Attorney, Writ of Prohibition, Hanover County Circuit Court, 2001-2002

Box 13

Folder 3

Terry W. Givens vs. Joey O'Quinn, et al., 2003 [Request Denied]

Box 13

Folder 4

Library of Virginia vs. James S. Gilmore, III, 2002-2003

Box 13

Folder 5

Robert G. Marshall, et al., vs. Mark R. Warner, et al., 2004-2005

Box 13

Folder 6

Interstate Agreement on Detainers, 2006

Box 13

Folder 7

John Atkins vs. Commonwealth of Virginia, et al., Services Rendered 24 April-23 June 2006

Box 13

Folder 8

Counselor's 15 September 2006 Memorandum to Division of Risk Management concerning retention of Robert Dying in the case of Darick Walker

Box 13

Folder 9

Franklin E. Wymer vs. Commonwealth of Virginia and Ronye Davis, 2005-2006

Box 13

Folder 10

Loudoun Hospital Center vs. Robert B. Stroube, et al., 2005

Box 13

Folder 11

Judicial Inquiry and Review Commission vs. Judge Bernard B. Milbourne, 2005

Box 13

Folder 12

Gordon Hannett, Virginia Supreme Court (Judge Ray Grubbs), 2005-2006

Box 13

Folder 13

Carolyn Jacqueline Whigham vs. Circuit Court, Chesterfield County, 2005

Box 13

Folder 14

Virginia State Police vs. Susan R. Stevick, Deputy Commissioner of the Virginia Workers' Compensation Commission, 2005-2006

Box 13

Folder 15

Appointment for Tevis Brandon-John Atkins vs. Commonwealth of Virginia, et al. (Beaumont Juvenile Correctional Center), 2005

Box 14

Folder 1

Judicial Inquiry and Review Commission vs. Judge Archie Elliott, Jr., 2004-2006

Box 14

Folder 2

Judicial Inquiry and Review Commission vs. Judge Paul M. Peatross, Jr., 2004-2005

Box 14

Folder 3

Judicial Inquiry and Review Commission vs. Judge Timothy J. Hauler, 2004

Box 14

Folder 4

Tony Darden vs. Camilla D. Martin, 2004

Box 14

Folder 5

Ourania Carpenter vs. Dr. Rufus Neville, 2004

Box 14

Folder 6

Judicial Inquiry and Review Commission vs. Judge Richard C. Pattisall, 2004

Box 14

Folder 7

Judicial Inquiry and Review Commission vs. Judge George W. Harris, Jr., 2003-2004

Box 14

Folder 8

Carrie Sutherland vs. Judith Williams Jagdmann, 2005

Box 14

Folder 10

Carrie Sutherland vs. Jerry W. Kilgore, Attorney General, et al., 2005

Box 14

Folder 15

Jonathan Moseley vs. Dianna Price, et al., 2003-2004

Box 14

Folder 16

Earl Washington, Jr. vs. Kenneth H. Buraker, et al., 2003-2006

Box 15

Folder 1

Judicial Inquiry and Review Commission vs. Judge Lynn S. Brice, 2003

Box 15

Folder 2

Judicial Inquiry and Review Commission vs. Judge E. Robert Giammittorio, 2003-2005

Box 15

Folder 3

Judicial Inquiry and Review Commission vs. Judge Richard C. Pattisall, 2002-2003

Box 15

Folder 4

Isaac T. Hockett, III, et al. vs. Johnny R. Acosta, 2003-2005

Box 15

Folder 5

Robert Allen Bane vs. Department of Corrections, et al., 2002-2004

Box 16

Folder 1

Grandt and Stevens vs. Virginia State University, et al., 2002

Box 16

Folder 2

Bolling vs. William F. Quillian, III, 2002

Box 16

Folder 3

Siddiqi vs. Virginia State University, et al. and Upadhyay vs. Virginia State University, et al., 2002

Box 16

Folder 4

Joseph Lee Garrett vs. Lt. McClanahan, et al., 2003-2003

Box 16

Folder 5

Judicial Inquiry and Review Commission vs. Judge A. Elisabeth Oxenham, 2002-2003

Box 16

Folder 6

Judicial Inquiry and Review Commission vs. Judge Duane E. Mink, 2002-2003

Box 16

Folder 7

IV. Attorney General Settlements, 2006.

Boxes 17-18 (box)

Extent

Extent: 0.70 cubic feet (2 boxes).

Scope and Content

The Attorney General Settlement series is housed in two boxes. This series contains copies of settlement agreements between individuals and state agencies requiring the approval of the Governor. The agreements usually include a request for settlement from the Attorney General (Robert McDonnell) which provides the background of the case, an approval of settlement letter from the Governor to the Attorney

General, the settlement and other supporting documents. Writs of Habeas Corpus are also interfiled within this series. **This series contains confidential, privacy-protected and attorney-client privileged records and is closed for 75 years per Code of Virginia, 2.2-3705.1, 2.2-3800 and 42.1-78.**

2006 (part one)

Box 17

Folder 1

2006 (part two)

Box 17

Folder 2

2006 (part three)

Box 17

Folder 3

2006 (part four)

Box 17

Folder 4

2006 (part five)

Box 17

Folder 5

2006 (part six)

Box 18

Folder 1

2006 (part seven)

Box 18

Folder 2

2006 (part eight)

Box 18

Folder 3

V. Files of Lawrence Roberts, Counselor to the Governor, and Shane Emmett, Legal Fellow, 2004, 2006-2009.

Boxes 19-33 (box)

Extent

Extent: 5.25 cubic feet (15 boxes).

Scope and Content

The Files of Lawrence Roberts, Counselor to the Governor, and Shane Emmett, Legal Fellow series is housed in 15 boxes. The provenance of this series is unclear; most of the records appear to be from Roberts. However, the records were received from Emmett in January 2010. This series contains clemency petitions from prisoners submitted to the Governor. The clemency petitions usually include: petition from prisoner, constituent letters (for and against clemency), court documents and opinions, summary of the case provided by the Office of the Attorney General, and a memorandum to Governor Kaine from Counselor to the Governor (Lawrence Roberts, 2006-2009) and/or Shane Emmett, Legal Fellow, providing background information on the case, analysis of petition and conclusion/recommendation to Governor. Files are arranged chronologically (by date of execution, clemency, or stay of execution). This series also includes a few conditional pardon applications, and records related to the Jens Soering case and right-to-life license plate. **This series contains confidential, privacy-protected and attorney-client privileged records and is closed for 75 years per Code of Virginia, 2.2-3705.1, 2.2-3800 and 42.1-78.**

Clemency petitions and/or correspondence were submitted on behalf of: Dexter Lee Vinson (executed 27 April 2006); Brandon Hedrick (executed 20 July 2006); Michael Lenz (executed 27 July 2006); John Yancey Schmitt (executed 9 November 2006); Kevin Green (executed 27 May 2008); Percy Levar Walton (death sentence commuted to life in prison without parole, 9 June 2008); Robert Yarbrough (executed 25 June 2008); Kent Jackson (executed 10 July 2008); Christopher Scott Emmett (executed 24 July 2008); Edward Nathaniel Bell (executed 19 February 2009); John Powell (scheduled 14 July 2009 executed stayed by United States Supreme Court, executed on 12 March 2010); Norfolk Four (conditional pardon granted on 6 August 2009); John Allen Muhammad (executed 11 November 2009); and Larry Bill Elliott (executed 17 November 2009).

Notable documents include: memo to Governor Kaine from Delacey Skinner, Communication Director, 20 April 2006, discussing the drafting of Kaine's first clemency statement in the case **Dexter Lee Vinson** (Kaine opposed the death penalty but pledged to carry out death sentences) (b19, f1).

Notable documents in the **Brandon Hedrick** file include: memorandum to Governor Kaine from Roberts, dated 17 July 2006 on Hedrick's clemency request (b19, f2); annotated petition (probably by Roberts) for clemency on behalf of Hedrick, undated, submitted by Robert Lee and James Broccoletti (b19, f2); and handwritten letter to Kaine from Hedrick, dated 7 June 2006, asking Kaine to commute his sentence to life in prison and declaring his innocence (b19, f3).

Notable documents in the **Michael Lenz** file include: two versions of a memorandum to Governor Kaine from Roberts, dated 24 July 2006 on Lenz's clemency request (b19, f4); and annotated petition (probably by Roberts) for clemency on behalf of Lenz, 11 July 2006, submitted by Matthew L. Engle and Jennifer L. Givens (b19, f4).

Notable documents in the **John Yancey Schmitt** file include: letter to Governor Kaine from Bill Beachy, Schmitt's step-father, dated 10 November 2006, describing the final meeting between Schmitt and his mother, Carol Beachy (b20, f1); memorandum to Governor Kaine from Roberts, dated 2 November 2006, providing background of case and making cases both for and against clemency (b20, f1); Roberts' notes from 27 October 2006 meeting with Schmitt's attorneys (b20, f1); Roberts' notes from 25 October 2006 meeting with Schmitt's mother, Carol Beachy (b20, f1); and highlighted clemency petition on behalf of John Yancey Schmitt, 19 October 2006 (b20, f2).

Notable documents in the **Kevin Green** file include: memorandum to Governor Kaine from Roberts, dated 22 May 2008, on Green's clemency petition (b20, f5); Roberts' notes from 20 May 2008 meeting with Green's attorneys (b20, f5); and highlighted clemency petition on behalf of Kevin Green, 15 May 2008 (b20, f5).

Percy Levar Walton killed three innocent people over a two-week period in November 1996 and was sentenced to death. A few days before his scheduled execution date of 28 May 2003, the United States District Court for the Western District of Virginia granted Walton a stay of execution in order to determine Walton's mental competence. In July 2003, the court ruled that Walton was competent to be executed. A three-judge panel of the United States Court of Appeals for the Fourth Circuit vacated the lower court ruling, directing a broader inquiry into Walton's mental state. Before that inquiry took place, the entire U.S. Court of Appeals for the Fourth Circuit reconsidered the panel's decision in an en banc review. On 9 March 2006, the court found Walton competent to be executed by a narrow 7-6 majority. Walton's attorneys submitted a clemency petition to Governor Kaine on 22 May 2006, presenting evidence that Walton had schizophrenia and that his mental state had deteriorated since 2003. Kaine delayed Walton's June 2006 execution date until 8 December 2006 for the purpose of conducting an independent evaluation of Walton's mental condition and competence. After a six month review, Kaine concluded that Walton was serious mentally impaired and that he met the United States Supreme Court's definition of mental incompetence. Kaine acknowledged that Walton's mental impairment was not permanent and delayed the execution by 18 months, to 10 June 2008. Walton's condition did not improve during that time and on 9 June 2008 Kaine commuted his sentence to life in prison without parole.

Notable documents in the **Walton** file include: Marion Correctional Treatment Center, Admission Psychological Evaluation of Walton, dated 9 September 2008, and Greensville Correctional Center, Psychological Evaluation of Walton, dated 3 July 2008, both records provided to Roberts by Secretary of Public Safety John Marshall (b22, f1); memorandum to Governor Kaine from Roberts, dated 28 November 2006, following up on Kaine's June 2006 reprieve; the memo describes the arrangements made for Dr. Mark J. Mills and Dr. Anand Pandurangi to interview and evaluate Walton; Mills interviewed Walton on 10 November 2006; Pandurangi interviewed Walton on 22 November 2006; both interviews were conducted at an interview room at Sussex Prison and were recorded by a hidden video camera (b22, f1); digital video cassette tape, DVD copy, and 2 audio CDs of Dr. Mills' 10 November interview of Walton at Sussex Prison; 2 digital video cassette tapes, DVD copy and 2 audio CDs of Dr. Pandurangi's 22 November 2006 interview of Walton at Sussex Prison (b22, f2); 18 October 2006 meeting notes on procedures for evaluating Walton; attending: Larry Roberts, Walter "Mac" McFarlane, Gene Johnson, Dept. of Corrections Director, Robin Hubert, Dept. of Corrections Medical Staff, Secretary John Marshall and Deputy Secretary Clyde Cristman (b22, f3); memorandums to Governor Kaine from Roberts on establishing independent procedures to

evaluate Walton, 2 October 2006 and 27 September 2006 (b22, f3); notes from 31 August 2006 conference call between Roberts and Mac McFarlane and John Howley, Jennifer Patterson and Arthur Brown, Walton's attorneys (b22, f3); memorandum to Governor Kaine from Roberts, dated 3 June 2006, on Walton's clemency request (b22, f3); e-mail to Roberts from Walter "Mac" McFarlane, Virginia Dept. of Correctional Education, dated 31 May 2006, describing McFarlane's thoughts on the Walton clemency petition (b22, f3); application for clemency on behalf of Walton, 23 May 2006 (b22, f4); documents in support of clemency petition (b22, f5-b23, f4); and copies evaluations of Walton by Dr. Mark J. Mills, Ruben C. Gur, Ph.D., Dr. Alan J. Arikian, Dr. Miller M. Ryans, Dr. Patricia General, Allen Glasgow, Stanton Samenow, Ph.D., and Dr. Anand K. Pandurangi (b23, f5-b24, f2).

Notable documents in the **Robert Yarbrough** file include: memorandum to Governor Kaine from Roberts, dated 23 June 2008, on Yarbrough's clemency petition (b24, f3).

Notable documents in the **Kent Jackson** file include: memorandum to Governor Kaine from Roberts, dated 9 July 2008, on Jackson's clemency petition (b25, f1); and notes from 7 July 2008 meeting between Roberts and McFarlane and Andy Protogyrou and Colston Jones, Jackson's attorneys (b25, f1).

Christopher Scott Emmett was convicted of murdering his friend and co-worker John Fenton Langley on 10 October 2001. Emmett was sentenced to death and was scheduled to be executed on 13 June 2007. Emmett filed a writ of certiorari with the United States Supreme Court seeking review of his conviction, as well as a motion to stay his execution. The Court denied his stay motion, with four Justices voting to grant his stay. However, the Court had yet to consider Emmett's writ of certiorari and would not consider it until September 2007. Governor Kaine granted a stay of execution until 17 October 2007 in order for Court to consider Emmett's writ. The Court denied the writ on 1 October 2007. Emmett's lawyers petitioned the courts, and filed a supplemental petition with Governor Kaine, challenging the constitutionality of lethal injection as a method of execution. On 17 October 2007, the United States Supreme granted a stay of execution while it reviewed the issue. The Court upheld the constitutionality of lethal injection as a method of execution in the Court's 16 April 2008 *Baze v. Rees* case. The Court lifted Emmett's stay of execution in May 2008. Emmett was executed on 24 July 2008.

Notable documents in the **Emmett** file include: Robert's notes from telephone call with Matthew Engle, Emmett's attorney, dated 15 October 2007 (b25, f5); Roberts' notes from 9 October 2007 meeting with the Office of the Attorney General (b26, f2); Roberts' notes from 6 June 2007 meeting with Matthew Engle, Emmett's attorney (b26, f5); and memorandum to Roberts from Shane Emmett, dated 29 May 2007, on Emmett's clemency petition (b26, f5).

Notable documents in the **Edward Nathaniel Bell** file include: memorandum to Governor Kaine from Roberts, dated 6 February 2009, on Bell's clemency petition (b27, f3); and letter to Roberts from Kelly Timbrook, widow of Sgt. Ricky Timbrook, Bell's victim, dated 5 January 2009, imploring Kaine not to commute Bell's sentence (b27, f3).

Notable documents in the **Paul Warner Powell** file include: memorandum to Governor Kaine from Mark Rubin and Shane Emmett, dated 8 July 2009, on Powell's clemency petition (b27, f5).

The **Norfolk Four** refers to the men (Derek Tice, Daniel Williams, Joseph J. Dick, Jr., and Eric C. Williams) convicted in the rape and murder of Michelle Moore-Bosko in 1997 in Norfolk, Virginia. The Norfolk Four alleged their confessions were coerced by threats from law enforcement that if they didn't confess they would receive the death penalty. Wilson served his full 8 and a half year sentence. On 6 August 2009 Governor Kaine granted a conditional pardon to Tice, Williams and Dick; the convictions remained on their record but the men were released from prison.

Notable documents in the **Norfolk Four** file include: notes from meetings between attorneys for the Norfolk Four and Counselor to the Governor (b28, f2 and f5); memorandum to Governor Kaine (probably from Roberts), ca. 11 May 2009, on the impact of the Norfolk Four on the clemency process (b28, f2); memorandum to (either Governor Kaine or Roberts) from Helen F. Faye, Chair of the Virginia Parole Board, dated 8 May 2009, on the Norfolk Four clemency petition (b28, f2); briefing binder to Governor Kaine and Roberts from Shane Emmett, dated 19 December 2008, containing documents regarding the Norfolk Four clemency petition (b28, f3-f4); memorandum to Roberts from D.J. Hansen Commonwealth's Attorney, City of Chesapeake, dated 5 March 2009, rebutting allegations in the Norfolk Four clemency petition and book "The Wrong Guys" (b28, f5); e-mail to Shane Emmett from Helen Fahey, dated 21 April 2009, express her views on the Norfolk Four case (b28, f5); and memorandum to Carrie Henderson, Deputy Scheduler, from Roberts, dated 25 January 2008, on Norfolk Four meeting with Governor Kaine (b29, f1).

John Allen Muhammad, the "Beltway Sniper", was convicted of the murder of Dean Meyers on 17 November 2003 and was sentenced to death. Mohammad was executed on 11 November 2009. Notable documents include: memorandum to Governor Kaine and Mark Rubin from Shane Emmett, dated 2 November 2009, providing factual background, clemency petition summary and analysis (b29, f2); petition for executive clemency for John Muhammad submitted in video format, submitted 15 October 2009 (b29, f3); and memorandum to Rubin and Emmett from Dave Roberts, Legal Fellow, dated 18 October 2009, on standards for the insanity defense and commutation of death penalty sentences for allegedly insane

offenders (b29, f3).

Notable documents in the **Larry Bill Elliott** file include: memorandum to Governor Kaine and Rubin from Emmett, dated 6 November 2009, providing factual background, clemency petition summary and analysis (b29, f4); memorandum to Rubin from Katherine Burnett, Senior Assistant Attorney General, dated 11 September 2009, providing her perspective on several aspects of Elliott's clemency petition (b29, f5); letter to Kaine from Elliott, dated 31 August 2009 (b30, f1); and clemency petition on behalf of Elliott, 28 August 2009 (b30, f1-5).

Larry Fowlkes, convicted in 1995 of murder and sentenced to 45 years in prison, filed a clemency petition to Governor Mark Warner in 2004 asking for his release based on his claim of innocence and on medical grounds. Warner did not act on the petition prior to leaving office in January 2006. Fowlkes' attorneys submitted an additional petition to Governor Kaine in July 2006. Fowlkes died in prison in May 2008 without Kaine acting upon his petition. Notable documents include: original petition submitted to Governor Warner in December 2004 and supplemental petition submitted to Governor Kaine in July 2006 (b31-b32, f3).

Dexter Lee Vinson, executed 27 April 2006

Box 19

Folder 1

Brandon Hedrick, executed 20 July 2006 (part one)

Box 19

Folder 2

Brandon Hedrick, executed 20 July 2006 (part two)

Box 19

Folder 3

Michael Lenz, executed 27 July 2006 (part one)

Box 19

Folder 4

Michael Lenz, executed 27 July 2006 (part two)

Box 19

Folder 5

Michael Lenz, executed 27 July 2006 (part three)

Box 19

Folder 6

Michael Lenz, executed 27 July 2006 (part four)

Box 19

Folder 7

John Yancey Schmitt, executed 9 November 2006 (part one)

Box 20

Folder 1

John Yancey Schmitt, executed 9 November 2006 (part two)

Box 20

Folder 2

John Yancey Schmitt, executed 9 November 2006 (part three)

Box 20

Folder 3

Kevin Green, executed 27 May 2008 (part one)

Box 20

Folder 4

Kevin Green, executed 27 May 2008 (part two)

Box 20

Folder 5

Kevin Green, executed 27 May 2008 (part three) (2 volumes)

Box 21

Percy Levar Walton, 2006 and 2008 [commuted to life without parole, 9 June 2008] (part one)

Box 22

Folder 1

Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008] (part two)

Box 22

Folder 2

Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008] (part three)

Box 22

Folder 3

Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008] (part four)

Box 22

Folder 4

Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008] (part five)

Box 22

Folder 5

Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008] (part six)

Box 22

Folder 6

Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008] (part seven)

Box 23

Folder 1

Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008] (part eight)

Box 23

Folder 2

Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008] (part nine)

Box 23

Folder 3

**Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008]
(part ten)**

Box 23

Folder 4

**Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008]
(part eleven)**

Box 23

Folder 5

**Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008]
(part twelve)**

Box 23

Folder 6

**Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008]
(part thirteen)**

Box 24

Folder 1

**Percy Levar Walton, 2006 [commuted to life without parole, 9 June 2008]
(part fourteen)**

Box 24

Folder 2

Robert Stacy Yarbrough, executed 25 June 2008 (part one)

Box 24

Folder 3

Robert Stacy Yarbrough, executed 25 June 2008 (part two)

Box 24

Folder 4

Robert Stacy Yarbrough, executed 25 June 2008 (part three)

Box 24

Folder 5

Robert Stacy Yarbrough, executed 25 June 2008 (part four)

Box 24

Folder 6

Kent Jermaine Jackson, executed 10 July 2008 (part one)

Box 25

Folder 1

Kent Jermaine Jackson, executed 10 July 2008 (part two)

Box 25

Folder 2

Kent Jermaine Jackson, executed 10 July 2008 (part three)

Box 25

Folder 3

Christopher Scott Emmett, executed 24 July 2008 (part one)

Box 25

Folder 4

Christopher Scott Emmett, executed 24 July 2008 (part two)

Box 25

Folder 5

Christopher Scott Emmett, executed 24 July 2008 (part three)

Box 25

Folder 6

Christopher Scott Emmett, executed 24 July 2008 (part four)

Box 26

Folder 1

Christopher Scott Emmett, executed 24 July 2008 (part five)

Box 26

Folder 2

Christopher Scott Emmett, executed 24 July 2008 (part six)

Box 26

Folder 3

Christopher Scott Emmett, executed 24 July 2008 (part seven)

Box 26

Folder 4

Christopher Scott Emmett, executed 24 July 2008 (part eight)

Box 26

Folder 5

Christopher Scott Emmett, executed 24 July 2008 (part nine)

Box 27

Folder 1

Christopher Scott Emmett, executed 24 July 2008 (part ten)

Box 27

Folder 2

Edward Nathaniel Bell, executed 19 February 2009 (part one)

Box 27

Folder 3

Edward Nathaniel Bell, executed 19 February 2009 (part two)

Box 27

Folder 4

Paul Warner Powell, death sentenced stayed by U.S. Supreme Court on 13 July 2009 [executed 12 March 2010] (part one)

Box 27

Folder 5

Paul Warner Powell, death sentenced stayed by U.S. Supreme Court on 13 July 2009 [executed 12 March 2010] (part two)

Box 27

Folder 6

Paul Warner Powell, death sentenced stayed by U.S. Supreme Court on 13 July 2009 [executed 12 March 2010] (part three)

Box 28

Folder 1

Norfolk Four, conditional pardon granted 6 August 2009 (part one)

Box 28

Folder 2

Norfolk Four, conditional pardon granted 6 August 2009 (part two)

Box 28

Folder 3

Norfolk Four, conditional pardon granted 6 August 2009 (part three)

Box 28

Folder 4

Norfolk Four, conditional pardon granted 6 August 2009 (part four)

Box 28

Folder 5

Norfolk Four, conditional pardon granted 6 August 2009 (part five)

Box 28

Folder 6

Norfolk Four, conditional pardon granted 6 August 2009 (part six)

Box 29

Folder 1

John Allen Muhammad, executed 11 November 2009 (part one)

Box 29

Folder 2

John Allen Muhammad, executed 11 November 2009 (part two)

Box 29

Folder 3

Larry Bill Elliott, executed 17 November 2009 (part one)

Box 29

Folder 4

Larry Bill Elliott, executed 17 November 2009 (part two)

Box 29

Folder 5

Larry Bill Elliott, executed 17 November 2009 (part three)

Box 29

Folder 6

Larry Bill Elliott, executed 17 November 2009 (part four)

Box 30

Folder 1

Larry Bill Elliott, executed 17 November 2009 (part five)

Box 30

Folder 2

Larry Bill Elliott, executed 17 November 2009 (part six)

Box 30

Folder 3

Larry Bill Elliott, executed 17 November 2009 (part seven)

Box 30

Folder 4

Larry Bill Elliott, executed 17 November 2009 (part eight)

Box 30

Folder 5

Richard Michael Wolfe case, correspondence to Governor Kaine from Terri Steinberg (Wolfe's mother), 2007

Box 30

Folder 6

Tahliek Taliaferro case, notes from 10 June 2009 meeting between Office of the Counselor to the Governor and Undie Brown, Kaa Caputo (Taliaferro's mother), and Wayne (mother's boyfriend)

Box 30

Folder 7

Larry Fowlkes, 2004 (part one)

Box 31

Folder 1

Larry Fowlkes, 2004 (part two)

Box 31

Folder 2

Larry Fowlkes, 2004 (part three)

Box 31

Folder 3

Larry Fowlkes, 2004 (part four)

Box 31

Folder 4

Larry Fowlkes, 2004 (part five)

Box 31

Folder 5

Larry Fowlkes, 2004 (part six)

Box 32

Folder 1

Larry Fowlkes, 2004 (part seven)

Box 32

Folder 2

Larry Fowlkes, 2006 and 2008

Box 32

Folder 3

Correspondence re: Joseph Dick and Davey J. Reedy, 2006

Box 32

Folder 4

Jackie Everette Rife, Conditional Pardon, 22 November 2006

Box 32

Folder 5

Mario A. Bustillo, Conditional Pardon file, 2006-2007 and 2009 (part one)

Box 32

Folder 6

Mario A. Bustillo, Conditional Pardon file, 2006-2007 and 2009 (part two)

Box 32

Folder 7

John Thomas Bailey Harrison III, Conditional Pardon request, 2009

Box 32

Folder 8

Subject Files

Jens Soering petition, 2008 (part one)

Box 33

Folder 1

Jens Soering petition, 2008 (part two)

Box 33

Folder 2

James Monroe Memorial Foundation, 2009

Box 33

Folder 3

Caroline County, 2008

Box 33

Folder 4

Virginia State Board of Elections/Virginia Office for Protection and Advocacy, 2006

Box 33

Folder 5

SB 817: Constitutional Analysis of the "Choose Life" license plate legislation, 2009 (part one)

Box 33

Folder 6

SB 817: Constitutional Analysis of the "Choose Life" license plate legislation, 2009 (part two)

Box 33

Folder 7

Library of Virginia