

Questions and Answers about the Executive Board meeting, April 10, 2007

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Baptists treasure truth and grace. They cherish the principle of individual accountability and openness, but they also respect individual dignity and fairness. Some Missouri Baptists have asked how the Executive Board and the Ad Hoc Investigating Committee incorporated these principles into their decision-making.

The Executive Board tried to make sure that its decision was sound, and that the process was fair, dignified, and respectful of individuals. The public spectacle of an emotional “show trial” would not have served that end. At the same time, it is important that Baptists outside the meetings have enough information to have confidence that the process was fair and the decision was sound.

In some awkward, delicate moments, the Board has sometimes erred on the side of caution, not to hide anything, but to be discrete in the way it deals with difficult personnel decisions. Discretion still prevents disclosure of all the facts so that every individual can “retry” the case for himself. Still, the Executive Board wants to provide enough information so that fair-minded persons can evaluate the fairness of process. We, too, are accountable. Hence, the following questions and answers.

1. **What was the motion which created the Ad Hoc Investigating Committee? (“IC”)**

On December 12, 2006, the Executive Board (EB) of the Missouri Baptist Convention, a motion was made by Wesley Hammond that a five-member investigating committee be formed to be chaired by the First Vice President and to include the Second Vice President, the Recording Secretary, and two past presidents enlisted by the three aforementioned officers (provided they [past presidents] do not currently serve on the Executive Board) **to investigate rumors affecting the character of our Executive Director, our Executive Board Staff, our Executive Board members and the members of our Convention committees**, which, if true, could render some our leaders unworthy of service; and that the committee be instructed to follow the Biblical principles of discipline and reconciliation and bring back a report to the full Board at our April 10 meeting.

No one will accuse Wesley Hammond of being a political adversary of Dr. Clippard, and the composition of the committee he recommended and the Board approved should say something about the intention to be fair to Dr. Clippard. Two past presidents and close friends of Dr. Clippard, including his pastor, assured the committee would be more than fair.

2. **What was the role of Dr. McCoy’s group?**

The job of Dr. McCoy’s group was “truth and consequences.” Find the facts, decide what’s true, and reach conclusions about discipline and reconciliation using Biblical principles. Not only was Dr. McCoy’s group the “finder of fact,” it served as the “trier of fact” examined evidence, weighed credibility of witnesses, and decided what facts are true. Sensitive personnel discipline decisions are not appropriate for public board

meetings. This committee was elected in December so that it could give the time and focused attention necessary to do the type of fact-finding and fair evaluation that a 54-person board cannot fairly do at a 1-day quarterly, business meeting, with a full agenda of other work to address. It was understood that much of the work of this committee would involve communications with people in confidence, and so it was foreseeable that they would not publicly expose details which would divulge a confidence. Neither would they make decisions based on unsubstantiated rumors or opinions. It was a “blue ribbon” committee of spiritually respected leaders who had the confidence of Dr. Clippard and the Board to make prayerful, careful and wise recommendations.

3. What process did Dr. McCoy’s committee follow?

Dr. McCoy had initial meetings to identify issues and rumors. He divided the labor of investigating, interviewing, and compiling data, among various members on the team. Monte Shinkle and Lisa Albert were assigned to interview MBC staff in the Baptist Building to assess morale, identify rumors affecting morale, and investigate facts regarding the rumors. Dr. Bob Curtis was assigned to investigate rumors about individuals whose actions might have violated MBC governing documents or ethical standards. He interviewed persons, including Roger Moran, regarding rumors about the nominating committee process. Dr. Jim Cogdill suffered some health problems in December and January, and in light of his need to work from home, he was assigned to review governing documents related to the 2006 motion which had removed Pathway from the Executive Director’s supervision. Dr. McCoy was primarily responsible for investigating issues regarding Dr. Clippard’s performance. Dr. McCoy interviewed the insurance company attorney assigned to defend Dr. Clippard and the convention in a 2004 lawsuit, and reviewed the legal file.

4. Did Dr. Clippard have an opportunity to be heard by Dr. McCoy and his team?

Yes, Dr. McCoy talked to Dr. Clippard frequently during the process and tried always to welcome his input, both oral and in writing, both formally and informally. Dr. Shinkle has been Dr. Clippard’s pastor at Concord Baptist Church, Jefferson City, and they talked about the matter informally at church and even while fishing together. Dr. McCoy believed that he had communicated that They have been personal friends who fish together, and thus had occasion to talk about some of these issues on an informal basis, too. On every major topic addressed by the report, the Dr. McCoy sought to give Dr. Clippard substantial opportunity to provide input, orally and in writing. As to the finding about a prior lawsuit, Dr. McCoy talked several times to Dr. Clippard as well as to the attorney provided by the insurance company to defend Dr. Clippard and the convention.

5. Why wasn’t there a “trial” before the Executive Board, to re-investigate all the facts, and re-hear all the witnesses, including Dr. Clippard, to see if they agreed with Dr. McCoy’s committee?

First, this was not a ‘trial,’ so analogies to a court process, even when helpful, are likely to cause confusion. This was an employer’s decision not to continue an employment relationship. It was not a lawsuit or a criminal prosecution. In the business world (and some ministry organizations), a common model for making this kind of decision is to put it all in the hands of a boss, who makes a hiring or firing decision, without any appeal or due process for the employee. The Executive Board wisely determined to use some more

thorough and deliberate process, to exceed the usual standards, even though they were not (and are not) required to do so.

Second, the Board did not think it was necessary or proper to “re-try” the recommendations of the blue ribbon committee. They had heard from Dr. Clippard and others in numerous meetings before. The Board received the report of the committee, heard summaries of the evidence supporting their findings, and decided to trust Dr. McCoy and his committee as to the recommendations.

6. Why did the Executive Board go into executive session to hear the IC report?

Personnel and discipline matters normally require executive session. Executive Board Bylaws, Article III, Section 5, contemplate that the chairman will call the Board into executive session when necessary to consider matters of personnel, discipline, etc. Chairman Mike Green called the board into executive session. A motion was made to appeal the order of the chair. The chair was affirmed by a large majority and the board moved into executive session. Chairman Green designated that board members, the recording secretary, the parliamentarian, the Ad Hoc committee and its counsel David Gibbs should remain in the room. All other persons including the Executive Director were asked to leave.

7. Is the Executive Director a member of the Board with the right to attend executive sessions?

No. Executive Board Bylaws Article II, Section 2, defines members. The Executive Director is not a member as defined by this section. The Board could have decided to invite Dr. Clippard into the room at some point, even if he did not have the right to do so, but under the circumstances, no such motion was made.

8. Did the Dr. McCoy inform Dr. Clippard about the their loss of confidence before April 10?

Yes. On April 4, Bruce McCoy, Monte Shinkle and Bob Curtis talked with Dr. Clippard as friends. The written report had not yet been finalized and they felt that it would be inappropriate to give him a copy of the draft report or specific details about it in advance. At this point, the IC vote on the loss of confidence had been unanimous, 5-0. They expressed their personal concern for him and asked him to consider resignation as Executive Director, rather than putting himself and the convention through a forced termination process. The group believed that Dr. Clippard was open to this suggestion at the time, although he had stated that he had a clear conscience about his conduct.

9. Did Dr. McCoy inform the President and the Administrative Committee about the loss of confidence before April 10?

Yes. On April 4, Dr. McCoy talked to President Green and to Rev. Scribner, chairman of the Administrative Committee after the IC’s final meeting on April 3. Dr. McCoy told them in general terms about the report and that the committee was unanimous in recommending a “loss of confidence” in Dr. Clippard. He also shared that he had raised the issue of possible resignation with Dr. Clippard.

10. Did Board officers discuss with Dr. Clippard the possibility of a resignation in lieu of discharge?

Yes. On April 5, President Green and Rev. Scribner had a conference call with Dr. Clippard to discuss the loss of confidence recommendation. Rev. Scribner asked if there was any reason to discuss the option of resignation with a severance agreement. Dr. Clippard was open to discussing it. Rev. Scribner arranged for the drafting of a proposed separation agreement and sent it to Dr. Clippard. On April 6, Dr. Clippard responded with suggestions for a joint press release, and for some other terms for negotiation, if he resigned. On Monday morning, April 9, he said he had decided not to resign but to proceed with the Committee report.

11. Did Dr. McCoy share about its report with the Administrative Committee prior to April 10, and did the Administrative Committee join in the recommendations?

Yes. Dr. McCoy's committee met with the Administrative Committee in executive session on April 9. At this point, Dr. Jim Cogdill had changed his vote, and the loss of confidence recommendation was presented on a 4-1 vote. Attorney David Gibbs assisted the McCoy in summarizing the report and answering questions. The Administrative Committee then adopted a motion to join the IC in its recommendations. The vote was unanimous.

12. Did Dr. Clippard know about the Administrative Committee vote to join the recommendation?

Yes. After the Administrative Committee vote on April 9, Jay Scribner went to meet with Dr. Clippard, along with two Administrative Committee members, Gary Barkley and Randy Comer. Rev. Scribner orally reviewed with him the draft report presentation generally, and read each of the six findings which dealt with him. (The final version was still being drafted by Dr. McCoy and counsel.) Dr. Clippard made notes of the six points and asked questions and offered explanations about various findings. Rev. Scribner shared some examples in support of the 6 points, in answer to Dr. Clippard's questions. Rev. Scribner shared his opinion about the gravity of the report and the unanimous vote of the Administrative Committee to affirm it. He told Dr. Clippard he believed that the Board majority would likely affirm the joint recommendation, resulting in Dr. Clippard's termination. He asked if Dr. Clippard wanted to reconsider a severance agreement, with some reduction from what had been previously discussed. At the end of the day, Dr. Clippard declined the opportunity to resign with a severance agreement.

13. What were the six findings of the Ad Hoc Investigating Committee?

The six items as listed on the MBC IC Report on the MBC website (as redacted or rephrased by legal counsel, indicated by brackets [...]) are:

Finding One: Employee morale at the Baptist Building is low because of David Clippard.

Finding Two: The reputation of Missouri Baptists' is being portrayed unprofessionally because of David Clippard's conduct and comments.

Finding Three: [David Clippard has not always been sufficiently forthright when confronted on various issues.]

Finding Four: [David Clippard acted unwisely in managing the settlement of a lawsuit against the Convention, the Executive Board and himself,] [by providing insufficient information to the Board about the facts of the case and the terms of a settlement and confidentiality agreement entered by Clippard on behalf of himself, the Convention and

the Board, his employer, in a case in which he was the employee-defendant accused of wrong-doing, and by asserting the authority to sign the settlement and confidentiality agreement for the Convention and the Board, without adequate knowledge or approval by the Board.]

Finding Five: [Attorney client communications regarding the risk of future lawsuits or liabilities being brought against the MBC.]

Finding Six: David Clippard demonstrated a spirit toward the Investigative Committee that was divisive.

14. What was the recommendation by the Ad Hoc Investigating Committee?

By a vote of 4-1, based on the evidence reviewed by the investigative committee, we have lost confidence in David Clippard continuing to serve as Executive Director of MBC, and we would recommend that he be discharged of these responsibilities effective immediately.

15. Why was the Executive Director not invited to come into the meeting during executive session?

- a. In view of the number of prior meetings in which Dr. Clippard had participated, and in view of the process afforded to Dr. Clippard by Dr. McCoy, the president believed that excluding Dr Clippard from this session would best assure candid deliberation on the report, and would not be unfair to Dr. Clippard. No motion was made by any member to invite Dr. Clippard to be in the room during or after the report. There was discussion about the possibility of doing so after Dr. McCoy's report, but the consensus seemed to be that such a step would not be helpful for anyone, including Dr. Clippard. Those who would second-guess whether this was fair or courteous must recall that all the people who best know all the facts about the history of this process were there, and no one made the motion.
- b. After the vote, the board recessed for lunch break, after agreeing that no member would speak about the vote outside the room so that Dr. Clippard could be personally informed first. Mike Green, Monte Shinkle, Jay Scribner, Bruce McCoy and Mike Whitehead went to Dr. Clippard's office to inform him. They reviewed the results of the morning session briefly and asked Dr. Clippard if he had any questions they could answer. Dr. Clippard asked why he had been excluded from the meeting and individuals offered their reasons. The president acknowledged that it was his parliamentary decision, that the body had affirmed it, and no one had made a motion otherwise. Dr. Clippard did not ask to come to the meeting after the break, and the others did not suggest it. The discussion turned to a process to finalize a severance agreement pursuant to a recommendation by the Administrative Committee adopted by the Board. The meeting closed with prayer by Monte Shinkle.
- c. Full board sessions are not the time or place for a re-investigation of facts, confrontation of accusers, cross-examination of witnesses, or hearing "closing argument" from the employee facing discipline. The blue ribbon committee was used as a better alternative, rather than a "show trial" process.

16. Did Dr. Jim Cogdill resign from the Committee on April 10 in protest?

Yes. Dr. Cogdill resigned by letter delivered to Bruce McCoy the morning of April 10, received just as the board went into executive session. The letter was read in executive session by Bruce McCoy, before he began his report presentation. Dr. Cogdill expressed his frustration and concerns with convention politics and its impact on this decision. His

resignation also included stepping down as Second Vice President, and from the Resolutions Committee. He did not attend any of the Executive Board sessions on April 10.

17. Did convention legal counsel serve as legal counsel to the Dr. McCoy's committee or participate in the report presentation?

No. Convention legal counsel was asked to serve as parliamentarian for this meeting, but did not otherwise participate in the report presentation. For personal reasons, Bruce McCoy had contacted a long-time friend in Florida, Mr. David Gibbs, III, Gibbs Law Firm, P.A., <http://www.gibbsfirm.com> and general counsel for Christian Law Association, a *pro bono* legal ministry to churches and Christian schools.¹ Mr. Gibbs offered advice and counsel throughout the process and then volunteered to come to Jefferson City to assist the committee in drafting and presenting its final report. At Mr. Gibbs suggestion, chairman McCoy had contacted Convention legal counsel to ask him to obtain certain legal documents relevant to the IC's work. He obtained the documents from an insurance lawyer and furnished them to Dr. McCoy.

18. What other facts did Dr. McCoy discover regarding the 2004 lawsuit settlement?

- a. The 2004 lawsuit file was not, in fact, "under seal" and unavailable to Board members as he had been told. Dr. McCoy initially understood that this file was under court seal and a confidentiality agreement which barred access to Board members and convention legal counsel. Dr. McCoy discovered this was not correct.
- b. The settlement agreement had never been disclosed to the full board or convention legal counsel, supposedly because of a confidentiality clause excluding the Board.
- c. The Board had never known or approved the amount of the settlement or the terms of the agreement, including the confidentiality clause. Board members heard the settlement amount for the first time on April 10, 2007. The settlement amount is still covered by the confidentiality agreement, which prevents the Board from discussing the amount publicly, but the agreement did not prevent the Board from knowing the amount or other terms of the agreement.
- d. The confidentiality clause was not requested by the plaintiff Mrs. Kaylor or her counsel.
- e. In 2004, Dr. Clippard had asserted to the insurance defense lawyer that he had authority to settle the case on behalf the Convention and the Board, as his employer, as well as for himself as the employee.
- f. On December 9, 2004, Dr. Clippard signed the settlement agreement, on three separate pages, one for himself, one for the Convention and one for the Executive Board, noting that he was acting as Executive Director. The Board did not know or approve the settlement terms or expressly authorize a settlement in advance.
- g. On December 13, 2004, Dr. Clippard told the Board at its meeting that the case was settled, but that he could not divulge the terms of the settlement because it was "sealed."
- h. The Court entered a judgment in favor of Dr. Clippard and the Convention on the sexual discrimination count, but the Court had not ruled in favor of the convention on

¹ See: <http://www.christianlaw.org> Mr. Gibbs is best known for representing Terry Schiavo, as described in his book, *Fighting for Dear Life*, See: http://www.christianlaw.org/announcements/ministry/pre-order_fighting_for_dear_life.html

the other two counts, alleging defamation and retaliation, as some had understood. Because of the settlement payment, the plaintiff agreed to dismiss the other two counts. The judgment by the court was based on a stipulation by the parties and not by a review of evidence by the judge or an actual finding of fact.

- i. The deposition of Dr. Clippard, which Dr. McCoy obtained, stated that Mrs. Kaylor was not “caught red handed” in Dr. Clippard’s office at his computer, as had been stated publicly, but that she was seen at the reception desk 35-40 feet away, during the incident in question. This was alleged by plaintiff to be a material fact in the defamation count.

Dr. McCoy and his committee did not seek to “re-try” or “re-open” this settled case, but accepted the judgment of the court and the settlement agreement of the parties. However, the above facts were discovered during this committee’s work and were relevant to the committee’s findings and recommendations about current management behaviors.

19. One media report says that the “official reasons” for the termination of Dr. Clippard’s employment were “remarks about Islamic extremists that he made last October at the Missouri Baptist Convention and an alleged sexual harassment complaint.” Is this true?

Absolutely not. Neither the IC report nor the Board actions cited such matters. The official reasons are stated in the report, and they relate to Board judgments about management and leadership performance. The Board’s concerns about the 2004 lawsuit are related to management accountability and use authority, and there was absolutely no re-hashing of the facts claimed by the plaintiff in her gender bias claim. Speculation about other motives or details serves no purpose except to fuel gossip. It is unfair to Dr. Clippard and to the Board for media and others to speculate about what was in the minds of individual board members, or to use language which disparages the moral character of any party.

20. Was Dr. Clippard’s employment terminated because of the headlock incident mentioned in the report?

No.