

# **Report of the Independent Investigation**

## **Appendices Volume 1**

The Southern Baptist Convention Executive Committee's  
Response to Sexual Abuse Allegations and an Audit of the  
Procedures and Actions of the Credentials Committee

May 15, 2022



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Appendix A1  
Letter of Engagement

October 5, 2021

Dr. Bruce Frank  
Task Force Chair  
Southern Baptist Convention  
[bfrank@biltmorechurch.com](mailto:bfrank@biltmorechurch.com)

Pastor Rolland Slade  
Southern Baptist Convention  
Executive Committee  
[pastor@meridianbaptist.com](mailto:pastor@meridianbaptist.com)

*VIA EMAIL*

Dear Dr. Frank and Dr. Slade,

**Engagement**

1.1 This letter confirms that, in accordance with the mandate given by the Southern Baptist Convention (“SBC”) Messengers (“SBC Motion”), the SBC, through and under the leadership of the Task Force has retained Guidepost Solutions LLC and its agents (collectively, “Guidepost”), to conduct an independent investigation into the Executive Committee (the “Engagement”) and an audit of the procedures and actions of the Credentials Committee under the terms and conditions set forth in this engagement agreement (the “Agreement”).

**Client**

2.1 Our client in this matter will be the Task Force of the SBC. As authorized by the SBC, Guidepost will act under the leadership and take direction and guidance from the SBC Task Force appointed by President Litton in July 2021, while engaging with the Committee on Cooperation of the Executive Committee as described further herein.

2.2. The Committee on Cooperation of the Executive Committee (“Committee on Cooperation”) will be headed by the President of the SBC, who will also be a member of the Committee. The remaining four members will be members of the Executive Committee who were appointed to their first term on the Executive Committee in June 2021. Two members of the Committee will be chosen by the Executive Committee, and two will be chosen by the Task Force.

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[www.guidepostsolutions.com](http://www.guidepostsolutions.com)

2.3. The Committee on Cooperation will ensure that the Executive Committee fulfills its fiduciary obligations to the SBC and the Messengers. Specifically, the Committee is charged with the following:

- Financial oversight of the independent investigation in addition to the financial oversight exercised by the Task Force.
- Electing, in cooperation with the Task Force, a liaison between the Executive Committee and Guidepost Solutions to ensure smooth flow of information and response to information requests.
- Receipt of periodic monthly updates noting document, witness, and information requests made to the Executive Committee, to ensure information sought is consistent with and responded to in cooperation with the Motion passed by the Messengers at the SBC Convention in June 2021.
- Ensuring that the Executive Committee and SBC are fully cooperative in this matter.

### **Scope of Engagement**

3.1. In accordance with the SBC Motion, the purpose of the Engagement is for Guidepost to conduct an independent investigation into the Executive Committee of the SBC, and an audit of the procedures and actions of the Credentials Committee.

Specifically, and as directed by the SBC Motion, Guidepost will investigate:

- Allegations of abuse by Executive Committee members.
- Mishandling of abuse allegations by Executive Committee members between January 1, 2000, to June 14, 2021.
- Allegations of mistreatment of sexual abuse victims by Executive Committee members from January 1, 2000, to June 14, 2021.
- Patterns of intimidation of sexual abuse victims or advocates from January 1, 2000, to June 14, 2021.
- Resistance to sexual abuse reform initiatives from January 1, 2000, to June 14, 2021.

In addition, Guidepost will perform an audit of the procedures and actions of the Credentials Committee after its formation in mid-June 2019, using best standards and practices designed to ensure accountability, transparency, and care for the wellbeing of survivors of sexual abuse.

Guidepost will only request documents and interview relevant to the items specified above from the Motion.

3.2 The key principles of Guidepost's work will include but not be limited to the following best practices:

- Trauma-Informed Survivor and Witness Interviews: Compassion and Care.
- Anonymity and Confidentiality for Survivors and Witnesses, where permitted by law.

- Independence: No Attorney-Client Privilege.
- Transparency: Public Report.
- Dedicated, Publicly-Advertised, Reporting System for Survivors and Witnesses to Contact Guidepost and Provide Information.
- Voluntary Listening Sessions, Focus Groups and Sexual Abuse Climate Survey focused on the specific requirements in the Motion, such as resistance to sexual abuse reforms.
- Structural Audit of the Credentials Committee and Practical Recommendations that are Trauma-Informed and Scripturally Guided.
- Commitment to Provide the SBC with a Comprehensive Framework to Implement Sexual Abuse Reforms in a Fully Transparent Manner.

3.3 Except as expressly set forth in Section 2, neither the Executive Committee nor the Committee on Cooperation of the Executive Committee will conduct, direct, or otherwise manage or influence our independent investigation in any manner. Though the Task Force is overseeing the investigation, Guidepost will remain independent. No attorney-client relationship will be formed between Guidepost and any other party. Accordingly, communications between Guidepost (including its employees and agents) on the one hand, and the Committee on Cooperation, the Task Force, the SBC, the Executive Committee, and/or the Credentials Committee will not be protected by the attorney-client privilege.

3.4 At the conclusion of the investigation and audit, Guidepost will prepare a complete set of factual findings and a comprehensive recommended framework within which the SBC can operate in order to continue to address the concerns raised by the SBC Motion in a transparent, accountable, and scriptural manner that prioritizes survivor support and care and enhances practices for the prevention of sexual abuse, harassment, and violence.

3.5 For the sole purpose of ensuring the factual accuracy of its report, Guidepost will provide a draft of any factual information contained in the report to the Task Force and the Committee on Cooperation 35 days prior to submitting it to the Task Force. The Committee on Cooperation may review the draft with Guidepost together with any supporting documents and/or information, in order to confirm the accuracy of the factual information presented in, relied upon, or related to matters and/or issues contained in the draft Report. Guidepost shall allow the Committee on Cooperation five (5) calendar days to review and dispute the factual information presented in, or relied upon, and/or related conclusions reached in the draft Report, and to provide supplemental documents and/or information to Guidepost.

3.6 No later than thirty calendar days prior to the 2022 SBC Annual Meeting, Guidepost will provide this report to the Task Force. No member of the Committee on Cooperation, Task Force, the SBC, the Executive Committee, or the Credentials Committee shall be permitted by Guidepost to edit the report prior to its public release. A written report will be made public in its entirety prior to the 2022 SBC Annual Meeting.

3.7 To ensure appropriate levels of independence for the Guidepost investigation and audit, the Task Force, the SBC, the Executive Committee, or the Credentials Committee, or any member thereof, will not request, receive, or claim ownership of Guidepost's work product, including but not limited to interview notes, internal memoranda, and draft, non-public reports.

3.8 Guidepost's investigative process will include interviews of survivors, witnesses, and others, as well as reviews of existing and new documentation and evidence. Survivor and witness interviews will be trauma-informed and will offer privacy and confidentiality if desired and permitted by law. The SBC, the Committee on Cooperation, the Task Force, the Executive Committee, the Credentials Committee, and members of the aforementioned will not have access to names of, or identifying information about, survivors or witnesses without the consent of the survivors or witnesses.

3.9 Guidepost will establish an independent, 24/7 reporting mechanism to facilitate communication, either anonymously or otherwise, with Guidepost and encourage all those with relevant information to come forward. The establishment of the reporting mechanism will be publicized by the Task Force to the SBC community and the public, including the contact information for the 24/7 reporting mechanism established for contacting Guidepost, and the email and mail addresses designated by Guidepost. Such notice shall inform the SBC community and the public that they may communicate with Guidepost anonymously or in true name, and that the SBC community and the public shall be protected from retaliation and not be penalized in any way or form for providing information to Guidepost. In addition, such notice shall direct that, if anyone is aware of any violation of any law or any unethical conduct that falls under the scope of this investigation and audit, that the individual is encouraged to report such violation or unethical conduct to Guidepost.

3.10 In order to provide appropriate support for survivors, Guidepost will consult with the Task Force to create a dedicated and trauma-informed resource to assist survivors by serving as an additional reference and communication point for the survivors during the investigation, including but not limited to assisting with access to accurate information and support. Guidepost will subcontract for this resource.

### **Access to Information**

4.1 Guidepost shall have the authority to take such reasonable steps, in Guidepost's view, as necessary to be fully informed about the operations of the SBC, the Executive Committee, and the Credentials Committee as is required by this Agreement.

4.2 The SBC, the Committee on Cooperation, and the Task Force will take all reasonable steps to ensure that all relevant persons within the SBC, the Executive Committee, the Credentials Committee, and the Task Force cooperate fully with Guidepost and provide Guidepost with access to all relevant records, documents, reports, systems, software and hardware, or other information that Guidepost may seek in the performance of its duties hereunder. In the event that any such officer, employee, agent, or consultant fails to cooperate

with Guidepost or withholds from Guidepost the access described above, the Task Force shall take appropriate action regarding said lack of cooperation and endeavor to obtain cooperation.

4.3. Guidepost will treat and maintain as confidential and private all information that has been or will be communicated or provided to Guidepost relating to any survivor or witness identity and will not reveal or utilize it in any way except with appropriate survivor approval; provided, however, that, subject to the provisions of Article 7 of this Agreement, Guidepost may reveal such information pursuant to a lawful, final judicial or administrative order. Upon receipt of any government process requesting such information, Guidepost will provide notice to the Task Force and the Committee on Cooperation. In addition, when possible and to the extent permissible by law under the circumstances, Guidepost and this Agreement requires the SBC to challenge such process to protect the anonymity of all anonymous survivor identities at their sole expense.

### **Indemnification**

5.1 The SBC agrees to indemnify Guidepost for any actions, judgments, or claims against Guidepost arising out of the Engagement, including but not limited to reimbursement for all Guidepost time charges, fees, costs, reasonable attorney's fees and disbursements and defense or other costs associated with any such actions, judgments, or claims, unless and until it were to be finally adjudicated that Guidepost's actions were negligent, tortious, or beyond the scope of the Engagement.

### **Lawful Conduct and EU-U.S. Privacy Shield Program**

6.1 In the course of the Engagement, Guidepost shall not knowingly engage in any activity, undertaking, or project that is unlawful or illegal under U.S. law or the laws of the place in which the activity occurs.

6.2 Guidepost has EU-U.S. and Swiss-U.S. Privacy Shields documenting its intent to comply with the requirements of the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks, in any engagement to which the Privacy Shield Framework is applicable. Our Privacy Shield Policies appears on our website ([www.guidepostsolutions.com](http://www.guidepostsolutions.com)).

6.3 For any Engagement involving the export of Personal Data from the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, Task Force recognizes Task Force is the Data Controller as that term is used under the General Data Protection Regulation 2016/679 of the European Union. Task Force Regents recognizes and agrees that Task Force has sole responsibility to provide any notice which may be required by any applicable law to the subject of the Engagement, including a link to the Guidepost Privacy Shield.



### **Subpoena or Third-Party Efforts to Thwart the Engagement**

7.1 Guidepost shall notify the SBC of any effort (a) either by subpoena or otherwise to gain access to information, documents, materials, or work product, or information of any kind in the possession of Guidepost that has been generated, obtained, or learned as a result of the work performed by Guidepost under the Engagement, or (b) to otherwise stop, interrupt, or interfere with the performance of Guidepost's work in connection with the Engagement, whether by judicial action or other means. To the extent feasible and permissible by law under the circumstances, Guidepost shall follow lawful directions from the SBC with respect to Guidepost's response to any such effort. Consistent with paragraph 4.3 above, unless the survivor provides express consent, Guidepost shall not reveal information about their identity gathered during the monitorship absent a lawful, final judicial or administrative order.

7.2 The SBC agrees to pay, reimburse, indemnify, and/or hold harmless Guidepost for all Guidepost time charges, fees, costs, reasonable attorney's fees and disbursements that may be incurred or generated by Guidepost or that may arise out of or relate to any effort that Guidepost may undertake in response to any effort or judicial process or pursuant to any direction from you as provided in this Agreement.

### **Guidepost Liability**

8.1 In no event shall Guidepost be liable to the SBC, the SBC Executive Committee, the Committee on Cooperation or Task Force for any claims for incidental, special, indirect, or consequential damages of any nature connected with or resulting from Guidepost's performance of the Engagement under this Agreement and the Task Force waives any and all right it may have to hold Guidepost liable for any such damages.

### **Fees**

9.1 Unless you request otherwise in writing, Guidepost shall submit invoices to the Committee on Cooperation on a monthly basis. In order to maintain the independence of our investigation, the Committee on Cooperation agrees that we may omit from our invoices those details that we determine could reveal the course and/or progress of our investigation. Guidepost will retain our customary detailed billing records, including a description of the tasks performed and time worked by each person working on the Engagement, as well as a statement of the total amount of out-of-pocket expenses and disbursements incurred with subtotals by category. Guidepost will review the detailed billing records with the Task Force at its request. Unless otherwise requested by you, Guidepost's bills will be sent to Rev. Slade's attention at the above email address.

9.2 Our discounted professional rates for the services to be performed under this Engagement will be between the range of \$200 - \$575/hour depending on the Guidepost team member performing the services.

We will bill you a separate charge for any actual out of pocket costs, such as travel expenses and other disbursements. Other expenses that are generated as part of the internal services that we utilize in our office, including database fees, will be allocated in a way to fairly reflect your usage of and benefit from those services.

9.3 The SBC will process Guidepost's billings promptly and will remit payment to Guidepost within thirty days after an invoice is received by you. Payments should be sent to Guidepost Solutions LLC, 260 Madison Avenue, Third Floor, New York, NY 10016. Instructions for payment by wire transfer will be provided upon request.

9.4 If bills remain outstanding for more than thirty (30) days, Guidepost reserves the right to stop all work.

9.5 If Guidepost must engage counsel or otherwise expend funds to collect bills over 60 days old, the SBC agrees to reimburse Guidepost for all associated fees and costs, plus interest on the outstanding balance.

9.6 Certain of Guidepost's services may be subject to mandatory state or local sales taxes.

### **Conflict of Interest**

10.1 The SBC agrees that the Engagement and any assignments performed thereunder to assist the Task Force pertain to a discreet matter, and that our undertaking any assignment pursuant to this Agreement would not provide a basis for precluding our future services for clients adverse to the SBC on matters that are not substantially related to the matter Guidepost is handling as part of this Engagement.

10.2 Guidepost is not aware at this time of any conflict of interest that would preclude Guidepost from providing services to the Task Force in this Engagement. Should Guidepost become aware, however, of any such conflict, upon reasonable notice to you, Guidepost may withdraw from and terminate the Engagement at that time. In that event, the SBC agrees to pay and/or reimburse Guidepost for all fees, out-of-pocket expenses, disbursements, and applicable taxes accrued or incurred as of the date of such withdrawal, including but not limited to all fees, out-of-pocket expenses, disbursements, and applicable taxes associated with the transition, if any, from Guidepost to a replacement provider of the same or similar services provided by Guidepost as part of this Engagement.

### **Termination**

11.1 The agreements, terms, and understandings set forth in this letter shall survive the termination of any and all work performed pursuant to the Engagement.

11.2 Either party may terminate the Engagement upon 30 days written notice to the other. Termination shall become effective 30 days following the date any such notice is received by the other party. If the Engagement is terminated, the SBC agrees to pay and reimburse Guidepost pursuant to the terms set forth in this Agreement for all fees, costs, and disbursements accrued or incurred as of the effective date of the termination.

11.3 Pursuant to its Records Management Policy ("RMP"), at the conclusion of the Engagement, Guidepost will notify you that the Engagement is closed, and that it will return to you any material provided by you, or if you do not respond to our inquiry, we will, after 30 days, or if you so direct, destroy such material. Materials which we are required to maintain, according to the RMP, will be electronically or physically maintained for the required period, after which they too will be destroyed.

### **Jurisdiction and Applicable Law**

12.1 The parties consent to the jurisdiction of the federal, state, and local courts in or for the County of New York, State of New York.

12.2 The interpretation and application of the terms of this Agreement shall be governed and construed according to the laws of the State of New York as specified in the previous paragraph, excluding (to the greatest extent a court of such state would permit) any rule of law that would cause application of the laws of any jurisdiction other than the law of the state so specified.

### **Arbitration**

13.1 At the option of Guidepost or the Task Force or SBC, any disagreement or controversy arising out of or relating to this Agreement and/or Engagement, including but not limited to any dispute concerning Guidepost's fees or expenses, can be submitted for resolution to arbitration before three arbitrators according to the then prevailing Commercial Rules of the American Arbitration Association. The arbitration shall be held in the location specified in paragraph 12.1 above. The award rendered in said proceeding shall be made in writing and shall be final and binding upon both parties and judgment upon the award may be entered in any court having jurisdiction thereof. The arbitrators shall award reasonable attorneys' fees and the costs of the arbitration to the prevailing party, except that the fees and expenses of the arbitrators, if any, shall be borne equally by the parties. At the request of any party, the arbitration will be conducted in secret.

13.2 The arbitrators shall not have authority to amend, alter, modify, add to, or subtract from the provisions of this Agreement. The award of the arbitrators, in addition to granting the relief prescribed above and such other relief as the arbitrators may deem proper, may contain provisions commanding or restraining acts or conduct of the parties or their representatives and may further provide for the arbitrators to retain jurisdiction over the Agreement and the enforcement thereof. If any party shall deliberately default in appearing before the arbitrators, the

arbitrators are empowered, nonetheless, to take the proof of the party or parties appearing and render an award thereon. The arbitrators shall state in writing the reasons for their award.

### **No Waiver**

14.1 Guidepost's failure to put into effect, exercise, or enforce (in a timely manner or otherwise) any term, condition, or provision of this Agreement shall not be deemed to be a waiver of such term, condition, or provision, or of Guidepost's right to enforce it.

### **Signings and Headings**

15.1 Should any part of this Agreement be rendered or declared illegal, legally invalid, or unenforceable by a court of competent jurisdiction or by the decision of an authorized governmental agency, such invalidation of such part of this Agreement shall not invalidate the remaining portions thereof.

15.2 Section headings are for convenience only and are not part of the Agreement.

### **Modification of Agreement and Notice**

16.1 There have been no representations, inducements, promises, or agreements of any kind that have been made by either party or by any person acting on behalf of either party that are not embodied within this Agreement. This Agreement may not be changed or altered except in writing duly executed by a duly authorized agent of all parties hereto.

16.2 Notices and communications directed to Guidepost shall be sent to the undersigned at the address shown above. Notices and communications directed to the SBC and Task Force shall be sent to the addressees of this Agreement.

### **Effective Date**

17.1 The Engagement and the terms of this Agreement shall be deemed to be effective as of September 1, 2021.

### **Execution of the Agreement and Signatures**

18.1 The Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same Agreement and each of which shall be an original. This Agreement shall be binding on all parties and their respective heirs, successors, and assigns.

Please execute and return this letter of engagement at your first opportunity.

We look forward to working with you toward a successful completion of the Engagement.

Very truly yours,



\_\_\_\_\_  
Julie Myers Wood  
Chief Executive Officer  
Guidepost Solutions, LLC

\_\_\_\_\_  
10/6/2021  
Date

AGREED AND ACCEPTED:

DocuSigned by:  
  
B35F1A535AFB495...

\_\_\_\_\_  
Dr. Bruce Frank

\_\_\_\_\_  
10/6/2021  
Date

AGREED AND ACCEPTED:

\_\_\_\_\_  
Pastor Roland Slade

\_\_\_\_\_  
Date

Appendix A2  
Signature Page Addendum



Please execute and return this letter of engagement at your first opportunity.

We look forward to working with you toward a successful completion of the Engagement.

Very truly yours,

\_\_\_\_\_  
Julie Myers Wood  
Chief Executive Officer  
Guidepost Solutions, LLC

\_\_\_\_\_  
Date

AGREED AND ACCEPTED:

\_\_\_\_\_  
Dr. Bruce Frank

\_\_\_\_\_  
Date

AGREED AND ACCEPTED:

A handwritten signature in black ink, appearing to read "R. Slade", written over a horizontal line.

Pastor Roland Slade

10-5-21

\_\_\_\_\_  
Date

## Appendix B

Guidepost Initial Document Request to SBC 10.11.21 FINAL



October 11, 2021

Greg Addison  
Executive Vice President  
Southern Baptist Convention  
Executive Committee  
[gaddison@sbc.net](mailto:gaddison@sbc.net)  
*via email*

Dear Greg,

Pursuant to Guidepost Solutions' ("Guidepost's") engagement to conduct an independent investigation into the Executive Committee and an audit of the procedures and actions of the Credentials Committee, through and under the leadership of the Sexual Abuse Task Force ("Task Force") appointed by the President of the Southern Baptist Convention ("SBC"), please accept this as Guidepost's initial document request in this matter.

In this request, we request production of any/all documents and communications in the Executive Committee's possession, control or custody that were applicable, in effect, prepared, written, generated, sent, dated or received at any time from January 1, 2000, to June 14, 2021 (the "Review Period"):

**Executive Committee**

1. Relevant organizational charts for the SBC as it relates to the Executive Committee ("EC"), and the Credentials Committee ("CC") during the period from June 1, 2019, to June 14, 2021.
2. Relevant internal organizational charts for the EC and EC staff, and a list of all past and present EC staff, officers, and members who served during the Review Period. Please provide years served and the title or capacity in which the individual served.
3. Copy of current document retention policy for the EC and CC, as well as all past document retention policies in effect during the Review Period, if different.
4. Minutes of all regular, special meeting, and executive session EC meetings that contain agenda items or discussion of sexual abuse, survivor reports of abuse within

SBC entities or churches, allegations of abuse by EC members, mishandling of abuse allegations by EC members, allegations of mistreatment of sexual abuse victims by EC members, reports of intimidation of sexual abuse victims or advocates, or resistance to sexual abuse reform initiatives.

5. Relevant documents, meeting minutes, and communications of EC and EC staff that relate to funds allocated to the sexual abuse response initiatives of the SBC.
6. A list of relevant EC committees, sub-committees, working groups, and dedicated task forces, including lists of all individuals currently and previously assigned to such committees/groups. Also include the purpose and scope of work of each committee/group.
7. All hiring and promotion policies, employee handbooks, and procedures in place for EC staff.
8. Any applicable Codes of Conduct, Statement of Values, sexual harassment policies, and protection from retaliation policies. Any documents that demonstrate monitoring, auditing or compliance with these policies.
9. Any investigative procedures or guidance regarding the reporting of sexual assault allegations.
10. Any internal or external assessment(s) related to EC's treatment of sexual misconduct/assault matters, and/or culture relating to sexual misconduct/assault.
11. Documents related to any known sexual harassment/abuse allegations against SBC EC member or staff and resolutions for each allegation.
12. List of all non-disclosure agreements ("NDA") entered into, by, or with the SBC EC related to sexual misconduct/abuse.
13. List of all settlement agreements entered into, by, or with the SBC EC related to sexual misconduct/abuse.
14. List of all terminations and sanctions/discipline of any SBC EC member or staff related to sexual misconduct/abuse.
15. All documentation related to sexual abuse training courses attended by EC staff, EC members, or CC members including but not limited to attendance documentation records, content of training, and communications related to attendance.
16. All policies and procedures related to any whistleblower program and/or retaliation policies in place to protect survivors or reporters.
17. All motions regarding sexual abuse made at the Southern Baptist Convention annual meeting during the Review Period which were referred to the EC.

18. All documents, meeting minutes, and communications of EC and EC staff related to the motions regarding sexual abuse made at the Southern Baptist Convention annual meeting referred to the EC.
19. All recordings of EC, CC, or By-Laws Working Group meetings where sexual abuse was discussed.
20. All documents, meeting minutes, and communications of EC and EC staff related to any individual who was identified to the EC or EC staff as a survivor or victim of sexual abuse, including but not limited to:
  - a. Christa Brown
  - b. Jennifer Lyell
  - c. Tiffany Thigpen
  - d. Debbie Vasquez
  - e. Hannah Kate Williams
  - f. Jules Woodsen

### **Credentials Committee**

21. A list of all CC member names for any/all past and present members who served on the CC, including bios and credentials of all past/present members, for the period January 1, 2019, to June 14, 2021.
22. All documents, meeting minutes, and communications related to the formation, purpose, scope of work of the CC in 2019.
23. Names of all employees/staff/volunteers employed by, reporting to, or serving the CC from January 1, 2019, to June 14, 2021.
24. All documents, meeting minutes or communications related to the selection or appointment process of CC members.
25. All minutes from the CC meetings related to sexual abuse, survivor reports of abuse within SBC entities or churches, allegations of abuse by EC members, mishandling of abuse allegations by EC members, allegations of mistreatment of sexual abuse victims by EC members, reports of intimidation of sexual abuse victims or advocates, or resistance to sexual abuse reform initiatives for the period January 1, 2019, to June 14, 2021.
26. All documents, meeting minutes, or communications regarding the process that the CC followed in accepting and processing submissions of mishandling of sexual abuse by cooperating churches for the period January 1, 2019, to June 14, 2021.

27. All submissions related to sexual abuse received on the CC submission form published on the SBC website for the period January 1, 2019, to June 14, 2021.
28. All communications of CC, EC, and EC staff related to submissions regarding sexual abuse made to the CC for the period January 1, 2019, to June 14, 2021.
29. All research, recommendations, communications, internal investigations, or notes regarding churches reported to the CC for "in cooperation review" if related to the handling of sexual abuse matters for the period January 1, 2019, to June 14, 2021.
30. All communications with individuals who completed the submission form published on the SBC website in regard to an individual church's mishandling of sexual abuse matters for the period January 1, 2019, to June 14, 2021.
31. All communications with or documents provided by SBC churches referenced in a CC submission regarding the church's alleged mishandling of sexual abuse matters for the period January 1, 2019, to June 14, 2021.
32. All communications with any state and/or local Baptist convention regarding submissions and SBC churches named in submitted complaints of mishandling of sexual abuse for the period January 1, 2019, to June 14, 2021.
33. All meeting minutes, memoranda, reports, recommendations, research, and supporting documentation of the CC related to the submissions received through the SBC website submission form as related to the handling of sexual abuse matters for the period January 1, 2019, to June 14, 2021.
34. All communications of CC related to the recommendations and reports pertaining to submissions received through the SBC website submission form as related to the handling of sexual abuse matters for the period January 1, 2019, to June 14, 2021.
35. All documents, meeting minutes, and communications related to the EC determinations on the CC's recommendations for churches not in cooperation based on the handling of sexual abuse matters for the period January 1, 2019, to June 14, 2021.
36. All documents, meeting minutes, and communications of EC or CC regarding the resources provided to survivors on the recovery process and local resources regarding sexual abuse matters for the period January 1, 2019, to June 14, 2021.
37. Any documents, memoranda, or other written communications referencing the use or creation of a central repository or notification system that would contain information regarding the results of any sexual misconduct/abuse investigations for the period January 1, 2019, to June 14, 2021.

### **By-Laws Working Group**

38. A list of the By-Laws Working Group ("BWG") member names for members who served in 2019.
39. Relevant organizational charts and list of names of employees and staff reporting to the BWG during 2019.
40. All documents, communications, meeting minutes of the BWG regarding the formation, purpose, scope of work related to sexual abuse.
41. Any documents, meeting minutes, and communications of the BWG regarding the process that the BWG follows in making a determination of cooperation regarding the mishandling of sexual abuse by a cooperating church.
42. All documents, meeting minutes, and communications of the BWG related to churches named by President J.D. Greear in his report presented to the EC in February 2019.
43. All communications of the BWG with the churches named by SBC President J.D. Greear.
44. All documentation provided to the BWG by churches in response to the above-described request.
45. All of the BWG communications with state and local Baptist conventions regarding churches named by President J.D. Greear.

### **Baptist Press**

46. Relevant organizational charts for the Baptist Press ("BP") and a list of all past and present employees and staff who served during the Review Period. Please provide years served and the title or capacity in which the individual served during the Review Period.
47. All communications of Baptist Press staff and EC staff/members regarding survivor Jennifer Lyell, the publication of the March 8, 2019 story that referenced Jennifer Lyell, or relating to allegations of abuse by EC members, mishandling of abuse allegations by EC members, allegations of mistreatment of sexual abuse victims by EC members, reports of intimidation of sexual abuse victims or advocates, or resistance to sexual abuse reform initiatives.
48. All version drafts of the March 8, 2019 article and follow-up articles related to Jennifer Lyell.

49. All communications between BP, EC, and EC staff regarding the follow-up articles related to the March 8, 2019 story.

Respectfully submitted,



Julie Myers Wood

cc: Pastor Rolland Slade  
[pastor@meridianbaptist.com](mailto:pastor@meridianbaptist.com)

Appendix C  
Declined Interviews

Witness	Outcome
Mr. Preston Bailey	When contacted by telephone, Mr. Bailey stated that it had been a while since he had been on the Executive Committee, and he did not believe he could be much help. He stated that he would rather not set up a meeting to have a conversation.
Dr. Mark H. Ballard	Dr. Ballard declined via written statement.
Rev. Charles W. Boling	Rev. Boling declined via telephone to be interviewed due to his age; he is 90-years old.
Rev. Mark R. Elliott	Rev. Elliott stated that he does not know anything about the sexual abuse conduct that occurred. He stated that he was not trying to hide anything but that he does not have any information and prefers not to participate. Due to these statements no interview was scheduled during the phone conversation.
Mr. Kenneth G. Frizzell, III	Mr. Frizzell stated via telephone that he had nothing to offer.
Dr. Claude Thomas	Dr. Thomas declined via telephone to be interviewed.
Rev. Donald W. Tillman	Rev. Tillman declined via telephone and stated that he had no information to offer; that he was only in the audit committee.
Dr. Rob Zinn	Dr. Zinn left a voice message stating that he was not interested.
Dr. Morris Zizz	Dr. Zizz declined via telephone to be interviewed.
Mr. Martin Johnson	Mr. Johnson declined via telephone to be interviewed.
Rev. Eddie W. DeHondt	Rev. DeHondt stated that he served on the EC when he lived in Louisiana but left when he moved to Texas. He stated that he did not have time for an interview because he was preparing to have more than 50 people travel to Israel very soon and is trying to coordinate all of the details for the trip which is very challenging. He stated that he does not have any time.
Mr. Bryan Easley	Mr. Easley state that he was not interested in a meeting. He had received the email but it had been a few years since he had been on the EC.
Dr. Bruce O. Martin	Dr. Martin declined via telephone to be interviewed.



Rev. Milton F. Steck	Rev. Steck stated that it was not a good time for him when contacted via telephone and declined to set up an interview.
Mrs. Barbara A. Norris	Mrs. Norris stated via telephone that she did not want to be contacted.
Dr. Ida South	Dr. South initially agreed to an interview but then stated that she had a problem with her voice and expressed doubts as to whether the investigation was legitimate so decided not to participate.
Mr. Jae Min Lee	Mr. Lee initially agreed to be interviewed but we could not find a mutually convenient time. He then stated via telephone that he was no longer interested.
Mr. Bobby L. Kirk	<p>Mr. Kirk declined via email due to health issues.</p> <p>I shared with someone from your group recently that my dad, Bobby Kirk, is 85 and in the middle of some health issues and surgery. He has enough stress with his medical issues. Please let your organization know he <b>won't be available until all this is behind him.</b></p>
Dr. R. Ron Madison	<p>Dr. Madison declined via email to be interviewed.</p> <p>As I have read over the topics listed I doubt an interview would be helpful. You no doubt have access to the specific areas of my service on subcommittees during my time on the EC and have already learned that most, if not all, sensitive issues are dealt with by the officers. I have absolutely no recollection of any issues related to the subject matter you are investigating that came before any subcommittee I served on or before the full EC for that matter. I trust the work of Guidepost Solutions will result in positive outcomes for everyone involved and will pray toward that end.</p>
Mrs. Carol A. Yarber	<p>Mrs. Yarber declined via email to be interviewed.</p> <p>Guidepost EC Investigation Team: I received your letter requesting an interview regarding SBC EC's treatment of sexual abuse issues. I served for 10 years on multiple committee's as well as serving as Secretary for 2 years and NEVER was anything ever brought up or thrown under the rug regarding the allegations that have been charged. I have never worked with a more open and Christlike group to further the Kingdom of God. I therefore will not participate in the investigation. Please take my name off of the list. Please send me a confirmation that you received my letter.</p>

Mr. Bobby L. Welch	Mrs. Welch declined on behalf of her husband due to his health issues.
Judge Paul Pressler	Judge Pressler declined through his wife for unconfirmed health issues.
Dr. Paige Patterson	Dr. Patterson declined through his attorney and stated that he had no recollection of the events during the last six (6) months of his service.
Dr. Jack Graham	Dr. Graham offered full access to his Presidential Papers as participation; after Guidepost confirmed we already had access and requested an interview at his convenience, we received no response to that request (all communication through assistant).

Appendix D1  
Long Version BWG Feb 2007 minutes

Executive Committee of the Southern Baptist Convention  
Nashville, Tennessee

**Bylaws Workgroup  
of the  
Administrative Subcommittee**

February \_\_, 2007

The Bylaws Workgroup of the Administrative Subcommittee of the Executive Committee of the Southern Baptist Convention met Monday, February \_\_, 2007, at the Southern Baptist Convention Building in Nashville, TN.

Workgroup Members Present: Mitchell E. Gavin, chair; Stephen D. Wilson, vice chair; David H. Shepherd, secretary; Randall L. James; Chris Osborne; Martin F. Davis; L. Douglas Passmore; Stephen N. Rummage; Royce J. Sweatman, and Conley J. Bordeaux, ex officio.

Visitors present: Jeremy Smith, Metropolitan/Davidson County Government; Mike Coode, SNAP; Bob Allen, *Ethics Daily.com*; Christa Brown, SNAP; Michael Foust, Baptist Press; Rodney A. Harrison, MBTS; Carlos Ferrer, NAMB; Mitch Crowe, NAMB; Bobby Reed, ERLC; Ryan Hutchinson, SEBTS; Clark Logan, SBTS; Charles Warren, MBTS; David Steverson, IMB; Jeff Billinger, GSFR; Curt Sharp, GSFR; Dean Combs, chair of the EC Audit Workgroup; John Revell, EC staff; Will Hall, Baptist Press; Frank Page, SBC president.

SBC Counsels present: James P. Guenther, James D. Jordan

Executive Staff Present: Morris H. Chapman, President, D. August Boto, General Counsel & Vice President for Convention Policy

1. Chairman Gavin called the meeting to order.
2. Rummage gave a brief devotion and led in prayer.
3. Secretary Shepherd called the roll.  
All visitors were asked to add their name and the entity they represented to a list that was circulated.
4. A motion to approve the Minutes of the September 18, 2006, meeting was made by James and seconded by Passmore. The motion carried unanimously.
5. Shepherd made a motion to adopt the proposed Agenda. Wilson seconded the motion, and it carried unanimously.
6. Items for Consideration:
  - (1) Amendments to paragraph 13 of the Business and Financial Plan. Boto gave a background on the matter. In September the workgroup reviewed the amendments found in the background information. What differs at this time is the subject matter that is contained on page 33 of the notebook, which describes a process that occurred in a natural way and resulted from a meeting of the entity CFOS who tendered some refinements to the amendments and improvements that you adopted in September. Jack Wilkerson and Boto met with an appointed subcommittee of the CFOs by phone and discussed the suggestions that were made which all

agreed could be beneficial and which should be submitted to you for review and approval. These are found in the current recommendation. Refining the recommendation made in September making sure that the designated accountant is not someone internal. Chairman Gavin asked Guenther and Jordan as well as the CFO's present if they were in agreement with the proposed changes. All were in agreements.

The motion to approve this item was made by Sweatman and seconded by James. The motion carried unanimously.

2) Discussion of requests made by Survivors Network of Persons Abused by Priests and Other Clergy (SNAP).

Boto spoke to unusual requests that are made to the Executive Committee and explained the process for handling these requests. This is one of those unusual situations where a request has been made to the Executive Committee by this group. Members of that group were present for the meeting. Boto spoke to the exchange of correspondence between SNAP and the Executive Committee staff. Copies of that correspondence had been forwarded to each workgroup member. The Press had been dealing with certain aspects of the SNAP approach and misunderstanding many of them. In addition to the material already forwarded to members, Boto disseminated another piece of information that was passed out in front of the SBC building by SNAP the day before the meeting. The item included a statement by Ms. Christa Brown (SNAP) indicating that they had received no response to their September 26, 2006 letter; however, they did receive a response to the letter that was attached.

Chairman Gavin opened the floor for discussion by members as to whether or not to grant SNAP representatives an opportunity to address the workgroup.

One member stated they did not appreciate the spirit in which the group was attacking Boto and Convention leadership and asked that they be dismissed from the meeting.

Gavin stated he would like to start with a clean slate and discuss the issue. Gavin said that we have these "powerful lawyers" that represent the Convention and asked them to stop him if he was misstating anything and correct him.

Davis stated that he was for allowing them to remain in the meeting and that we have nothing to hide. He was against, due to the flavor of their past correspondence even as late as their letter from yesterday, He would like to see positive correspondence with organizations such as this to help resolve this travesty. This is a sensitive issue - I don't think at this point that I would like to hear from the group.

Randall James - in the spirit of cooperation, I believe we ought to give them a set time to speak and to close the outside discussion except for staff, we make our consideration and go forth.

Another member agreed with that saying that if we send them out they are going to say that we wouldn't let them talk and fuel that problem.

Wilson felt that it was a moral imperative that we let them speak.

Gavin asked Page for input - Page indicated that he believes that charges have been made against us that are untrue of unresponsiveness and therefore a lack of concern. He had no difficulty in letting them speak but does have difficulty with us being painted in a way that is unfair and untrue. If sharing concerns helps pull from that untrue picture - good - he had serious doubts that that would occur but we would have made every effort. He was in favor of allowing that in a

limited setting. He will abide by the decision of the workgroup. If there is a discussion, he wanted it to be known that there have been requested made by the SBC that have not been abided by either.

Shepherd withdrew his objection.

Expressing hopes for accomplishing a common solution, Gavin called on SNAP representatives to speak.

Christa Brown spoke and referred to Chapman's address from the previous night addressing trustworthiness and said that there are Southern Baptist pastors that are not men of trust. SNAP is asking what is the SBC going to do about that. She understands that Southern Baptist Churches are autonomous. She asks for a resource to turn to - an independent review board of people who have some understanding and professional experience in the dynamics of this problem and that would receive reports of child sexual abuse . . . and could relate that objective information to the autonomous individual congregations so that they would have objective information and could make responsible decisions. The churches cooperate on all manners of endeavors and surely there is nothing more worthy than this. They are asking that the SBC take action.

Mike Coode, Middle Tennessee Coordinator for SNAP, spoke urging the SBC to take action.

Gavin then spoke to addressing the issue of the lack of responsiveness from the leaders of the SBC. The Workgroup has been furnished copies of responses. Christa Brown indicated that she was unaware of any responses and had not seen Boto's letter of September 29<sup>th</sup>. She was given a copy of that letter. The letter was addressed to David Clohessy and Brown felt certain that he would have given her the letter if it had been received and was certain that he had never seen it. Brown stated an apology upon seeing that there was a letter of response.

Gavin stated that saying that we were not responding was perhaps good for the press, it was not really accomplishing what we are trying to accomplish together and that he wanted to make sure that she understood that we responded to every correspondence we have had. He was speaking for Dr. Page, Dr. Chapman, Mr. Boto - it is not our intent not to respond to communications from you.

Gavin stated that perhaps we should respond directly to Brown and not to Clohessy in Chicago. Brown responded that there was nothing wrong with sending correspondence to SNAP's main headquarters at the Chicago address, and that if it was sent there it should have made its way to her.

Bordeaux spoke to his distain with having the news media crews at the building and the calling of news stations trying to paint the SBC as unconcerned. Southern Baptists have always been cooperative in their spirit and are more than willing to help while we detest as they detest sexual abuse of children or anyone it is a problem and the Catholic church brought it to light many years ago and agree that there are some things that happen in Baptist churches that are swept under the rug and should not be. What concerned him is on page 3 of the SNAP's February 19<sup>th</sup>, 2007, letter which was handed out. It has been explained to Ms. Brown and the SNAP people that we are an autonomous body. We do not tell our churches what to do. He objects to bringing news crews out and making statements to the press is doing anything to improve a relationship that we would like to have. Page 3 the last line - we can provide you with some suggested names and in addition we request that the review board also contain representatives from survival groups such as SNAP. It bothers me in that it is almost a self invitation - we want you to include us. It also talks about the establishment of an independent review board such as an auxiliary. If you are

talking about something on the level of WMU within the SBC. Then the next line saying with adequate and insured funding from SBC - that troubles me - it sounds to me like a threat - we will bring the news media out here - we will publish it and we will paint you in a negative light if you are not willing to fund us and help us to get our message out. I'm willing to work with anybody, but Mr. Chairman, this almost sounds like an idle threat of blackmail, and I don't appreciate it. You have been more than fair to let them speak but we don't need to speak in front of the television cameras to get our point across. Adequate responses are not an issue. We did send responses. I would suggest that Ms. Brown find out where the correspondence is because there has been correspondence back. Dr. Page sent correspondence back. I think we are walking on a razor's edge here.

Gavin indicated that we cannot tell SNAP how to conduct their business, but I want the Bylaws Workgroup to demonstrate an openness and I think the SBC wants to demonstrate an openness. This issue has been addressed previously and there was no resolution in the past dealing with this. The problem exists in society in all churches. I think that we as a Convention will certainly want to be open. We are not going to try to do anything to cover up anything of this nature.

Davis - my sentiments are the same as Bordeaux and for the same reason. He was bothered by the "committee thing." The flavor of SNAP's communication has not been good. He thinks Southern Baptists need to do more and believes that we will.

Brown informed the workgroup that she is very accessible. She had given Dr. Page her phone number in an email as well as her email address and wished that someone had told her that a letter had gone out on September 29. She stated that she was sorry she was unaware of the letter but will not (she emphasized this) apologize for seeking press coverage. She then related her story stating that when she found out that the man who had molested and raped her when she was a kid was still working as a children's minister in a Southern Baptist church. She started at the local church and went to everyone she could; went to the state convention; and she herself tried to track him because she got no help from anyone else. He had a common name and was difficult to track; sent a couple of certified letters return receipt to Nashville and got no help from anyone. She stated she got concern but no help. Because she got no help and he was still working as a children's minister, the only recourse she had was to try to get press attention. Only after the Orlando Sentinel wrote a short story that he was finally asked to resign. No one doubted her story and no one ever did anything. This is why she did and continues to seek press attention.

Brown's response to why SNAP requests to be on a review panel. She believes the credibility of the panel is essential. Survivors will not come forward if they believe it is a hostile situation. That is the reason for asking that a SNAP representative be on the panel - to try to lend credibility to it in the survivors view.

Wilson commended Gavin for the way in which he conducted the meeting and was in support of establishing a clean slate. He stated it may take a while, even a number of months and that we would trust the EC staff to look at this and give guidance and direction and that it is an imperative that we address the issue.

Davis brought out the point of contradiction in Brown's statement that only after the Orlando Sentinel's story was he finally asked to resign. In the news article itself, paragraph 7, the pastor of the church where the perpetrator was serving says that when he asked Gilmore about the suite, Gilmore said that he could not discuss based on the advice of his attorney and offered his resignation. The pastor accepted his resignation. Davis said this was different than being removed from the position.

Shepherd addressed Brown saying that he was not her enemy and that she was not his enemy. He stated that his daughters had suffered sexual molestation and that he is sympathetic to her cause. But he advised that she need not come here and jump on us. We are in the same boat; we have got to get to the same place. We know the Scripture; we believe in your cause. We just take offense that you made us the enemy. I want to help you; I want to find some way to help women and children who have been abused or molested. But, this is not the way to do it. Don't fight me. Don't fight the Convention. We're friends and we appreciate your passion. We're on your side but please don't say that we are stonewalling - that we are egregious and ignoring you. You have come with your stinger out and expect us to hug you. So, if you'll work with us, we will work with you. There's not a man in here who wants to cover up a predator. I could execute one and sleep well. Don't fight us; work with us. And, if we don't do this as fast as you want us - if we don't choose the exact method that you want - OK. But, we're on your side. It's just your approach that we find so difficult. Your public statements are offensive. Perhaps they are out of frustration; perhaps they are out of desperation. I assume they come from your heart, not from malice.

Brown - I have never yet had anyone to tell me that they were on the side of child molesters. Every minister who has talked with me has told me that they are on my side. What I am looking for is deeds and not words and if I seem impatient, then yes I am. And I will not apologize for that.

Sweatman indicated to Brown that she may not have gotten the letters and it is obvious that you had not received. There were some answers to some of your questions about our structure and how we work and how like the United Way cannot tell a business what they do. As a denomination, we do ministry together and we have no authority and we have tried to explain that. I want you to understand that we appreciate your heart - we want to help. But, we are away from the church. There are other organizations like local associations where if we could work through them who are closer to the church, who are able to work with them locally. We need to look at this thing across the board of our structure and how we work to do it. But, a national thing may be so far away that it still slips through the cracks. I work with 56 churches and am very close to them. Even my local church can refuse my help. So, we have no authority. I want you to know that we understand and I believe I speak for everyone in that we want to help. But, our hands are, in a sense, strapped. What we have to do is work through the present structure that we have and it will be a major loop to try to do this. But, I promise we will try to do something. But I can't say today what it will be but my heart goes out to you. I really regret to see what has happened in your life and hope it never happens in anyone else's. I will do all I can with the churches that I work with in my area to stop that from happening.

Davis that the polity of the SBC be explained.

Boto asked the Workgroup to look at the SNAP press release of the previous day, February 29, 2007, that was passed out in front of the SBC building, page 2 (a copy of their September 26, 2006). The only thing at issue about SNAP not having received the response letter dated September 29, 2006 (they have received the other four communications) - in the first line of their September 26 letter they state they appreciate our August 15 letter. So, six months ago they did get and acknowledged getting the explanatory thing containing United Way. Boto asked Brown if she got the explanatory lengthy letter that contained the United Way comparison. Brown stated that she did not remember the reference to United Way nor a lengthy letter but maybe a one page. Boto stated that the August 15 letter was included in the notebook distributed to the Workgroup members. So, you know how many pages it was and you know what it explains. So, in regard to explaining polity, they have received a letter and they know that - I just wanted you to know that they got it.



Sweatman stated that he just wondered if they had not received all of those letters. Boto stated that they have.

Brown - I'm sorry - what other letters are we talking about. The September 29<sup>th</sup> letter - I acknowledge I did not receive.

Boto - On July 6, 2004, Deborah Boone Dale wrote us on your behalf and it was responded to on July 26. Brown acknowledged that letter. Boto indicated that he was talking about all the approaches that you or SNAP have made. On August 2<sup>nd</sup> you addressed a letter to Dr. Page which was responded to twice. It was responded to by Dr. Page on August 15. It was responded to by me on September 18<sup>th</sup>.

Brown - A letter from you?

Boto - yes mam

Brown - oh, I'm sorry that was the September 29<sup>th</sup>.

Boto - no, the September 18<sup>th</sup> letter from me - You don't have that -

Brown - no sir.

Boto - OK, that was addressed to David Clohessy. You need to talk to your Executive Director.

Gavin - Ms. Brown, what we will do - one thing that might help is, we will furnish you copies of letters that we have sent in response to letters from SNAP - either from you or others. We all have the letters and that is why it is a little confusing for us to understand why your position has been that we have not responded to the letter.

Brown - I will say that I am generally aware of your position on congregational autonomy.

Gavin ask for other comments from the workgroup.

Davis asked if Boto had addressed the polity. Boto stated that he had address that in the letter.

Davis stated that we had addressed the matter in a resolution but it had been stated that it didn't make much difference. We can't go tell the churches that the polity has changed. But, we can do more to equip churches with research material through whatever - LifeWay has quite a few books - there are other resources than LifeWay offers. I think there's a chance that we can create some form of "here's a place to go - not necessarily the only place to go and here's a list of resources for churches when they want to do their investigation of a staff member or a children's volunteer because it happens with volunteers as well. I think we can move in that direction - can we make a decision today on how that will happen - I don't think so. But, I think we can move in that direction to better equip which is what we as the Executive Committee is to do is to help our churches to more effectively do their ministry. I think there are some things we can do in that area. Can we meet the request that their letter - I think that has already been addressed - some of those things as far as our structure goes are prohibitive. But, I think we can make sure resources available and make sure the churches are aware of it as best as is possible. We have SBCLife; we have Baptist Press - there are some avenues we can take to publicize those resources.

James - you know sometimes we have such a deep compassion for something it doesn't seem to move very fast - we get the idea that nothing is happening but - just thinking back - I don't know

where it came from or where the emphasis came out in the last 5 or 6 years we really do background checks on all of our - whether preschool workers, children's workers, staff workers, or anybody that works with kids and this really came to a consensus that this is really what we need for security - against this whole thing - and so in fact we just got through staffing . . . somewhere this is being put out because we picked up on it that this needs to happen and somebody in other churches I know about around - so at least there are some things moving that direction in our . . . . . I guess the real key is how can we speed that along. How can we keep encouraging not only just clergy . . . there is really a lot - we really need to do background checks on everybody who works with youth . . . how can we accelerate that? How can we keep it going?

Page - I just want to say thank you for the handling of this - I think it is incumbent upon this group and the larger Executive Committee and the SBC as a whole to do whatever we can to deal with this issue - it is of extreme importance and I congratulate you upon your desire and your spirit. I deeply, deeply appreciate that very, very much. It is something that is not brought to bear by the staff request it is something that we know that many have been dealing with for quite a while at many levels of SBC life. And yes, churches are now beginning to do some things to safeguard their children and youth. Unfortunately, sometimes that's been done because insurance companies say that they will no longer insure you unless you do and that is unfortunate. So I just encourage this group to do whatever is appropriate and responsible in whatever way we can to protect precious lives. I am also assuming that as an outgrowth of this communication today that we will see a plethora of news articles to go out to all the blogs, to all the news agencies apologizing for the picture that has been painted of the president, the executive committee, and subgroup for being non-responsive. I'm assuming those articles will come out forthwith to say we were wrong. This group was not stonewalling. They have not neglected nor ignored our correspondence. We apologize, too, and I assume we are going to see names to whom an apology is due in the coming days because that kind of spirit does not heighten cooperation. I think apologies would indeed encourage many to realize that we are not enemies that we are working toward a common goal. So, I think corrections must be made as much as possible and I hope they will.

Brown - Dr. Page, I have no way of knowing for sure - we send our communications to you all with return receipts requested. Until I can see, I have no way to track this - and certainly when I can see that indeed SNAP offices received this - yes, I will apologize for the fact that we received this - but I will not apologize - I don't want you to have undue expectations of me for some of the things I said because I am looking for deeds not words. And, as for an apology, the truth is that at this point for me there is nothing from me because I thought that for so long - but, I ask you all to think in your heart - I won't be the last person to stand before you - there are countless others out there. The next time some person in my shoes comes before you by letter or in person or by email or by phone - the first thing you need to say to that person is I am so sorry. And so for you, not for my sake and for the sake of the next person down the line - . . .

Dr. Page dismissed the meeting in prayer. Praying for a spirit of reconciliation and understanding - for the leadership of the group both elected and paid staff.

“That the Executive Committee of the Southern Baptist Convention report to the Southern Baptist Convention meeting in San Antonio, Texas, June 12-13, 2007, that it declines to undertake a study of SBC entity trustee boards because the information requested is published in the 2006 SBC *Annual* and in the Convention’s governing documents which are posted on SBC.net.”

Following discussion, Davis made a motion to accept the Recommendation. Sweatman seconded the motion, and it passed unanimously.

(2) The second item for consideration was SBC Referral: SBC Bylaw 26B Amendment Changing the Two-thirds Majority. The Recommendation read as follows:

“That the Executive Committee of the Southern Baptist Convention report to the Southern Baptist Convention meeting in San Antonio, Texas, June 12-13, 2007, that the Executive Committee declines to recommend the proposed amendment to SBC Bylaw 26 B, in that issues involving the internal operations or ministries of the several entities should be sufficiently compelling to sustain the two-thirds vote required to preempt the referrals normally made to the entities involved.”

Following discussion, Davis made a motion to accept the Recommendation. The motion was seconded by Wilson, and it passed unanimously.

(3) The next item to be considered was SBC Referral: Limiting SBC Entity Trustee Terms. The Recommendation read as follows:

“That the Executive Committee of the Southern Baptist Convention report to the Southern Baptist Convention meeting in San Antonio, Texas, June 12-13, 2007, that it affirms the present shorter length of trustee terms and the option of approval for repeat service, and therefore declines to recommend extending the length of trustee terms to seven years and limiting trustees to one seven-year term of service.”

After discussion, Sweatman made a motion to accept the Recommendation. The motion was seconded by Davis, and it passed unanimously.

(4) The fourth item for consideration was SBC Referral: Amendment of SBC Bylaw 20. Committee on Resolutions - Reducing the Required Vote from Two-Thirds to a Simply Majority. The Recommendation read as follows:

“That the Executive Committee of the Southern Baptist Convention report to the Southern Baptist Convention meeting in San Antonio, Texas, June 12-13, 2007, that, after evaluation, the Executive Committee reaffirms the 2002 action of the Southern Baptist Convention, which made extensive amendments to SBC Bylaw 20 - Committee on Resolutions, and declines to recommend changing the language of “two-thirds” to “majority” vote in that the careful determinations of the Resolutions Committee should only be altered by reasons sufficiently compelling to support a two-thirds vote.”

Davis made a motion to approve the Recommendation; Sweatman seconded, and it passed unanimously.

(5) The next item was SBC Referral: Amendment of SBC Bylaw 20. Committee on Resolutions - Changing Submission Time of Resolutions.

The Recommendation read as follows: “That the Executive Committee of the Southern Baptist Convention report to the Southern Baptist Convention meeting in San Antonio, Texas, June 12-13, 2007, that the Executive Committee, as it did in its report to the 2005 SBC annual meeting, continues to affirm the 2002 action of the Southern Baptist Convention, which made extensive amendments to SBC Bylaw 20 - Committee on Resolutions, and declines to recommend a revision that would limit thoughtful deliberation by the Resolutions Committee.”

Shepherd spoke for the Recommendation and moved approval. The motion was seconded by Davis and passed unanimously.

(6) The Recommendation regarding SBC Referral: SBC Committee on Nominations Appointments read as follows:

“That the Executive Committee of the Southern Baptist Convention report to the Southern Baptist Convention meeting in San Antonio, Texas, June 12-13, 2007, that, given the fact that the Bylaws of the Southern Baptist Convention do not preclude trustee or committee service by those under the age of 40, and also recognizing that trustees under the age of 40 are regularly appointed and elected to virtually all Convention committees and entity boards, the Executive Committee respectfully declines to recommend amendment of the SBC Bylaws to depart from the long-established and well-accepted selection process for service by Southern Baptists who are well qualified, without regard to their age, gender, or ethnicity.”

Wilson made a motion to approve the Recommendation. James seconded and the motion was approved unanimously.

(7) The next Recommendation for consideration was SBC Bylaw Amendment: Bylaw 15(I) Committee on Nominations. The Executive Committee of the Southern Baptist Convention recommended that SBC Bylaw 15(I) be amended to read as shown below:

“I. No person who has served on the board of an entity or on the Executive Committee shall be eligible to serve on the board of any entity or on the Executive Committee until two years after the conclusion of his or her term of office, except that a person may be re-elected to an authorized successive term or serve by virtue of a separate office.”

The motion to approve the Recommendation was made by Wilson and seconded by Passmore. The motion passed unanimously.

(8) The last Recommendation to be considered was SBC Referral: Financial Analysis of SBC Entities Receiving Cooperative Program Funds.

RECOMMENDATION:

That the Executive Committee of the Southern Baptist Convention report to the Southern Baptist Convention meeting in San Antonio, Texas, June 12-13, 2007, that the Executive Committee affirms the division of responsibility stated and implied by the provisions of SBC Bylaw 18 and organizational structure of the Southern Baptist Convention and its entities as it is described throughout the Convention's governing documents, and in keeping therewith, respectfully declines to undertake certain requests contained in the referred motion which tend to usurp the role or invade the province of trustees. However, the Executive Committee does appreciate the spirit and intent of the motion, and therefore recommends

That the Southern Baptist Convention meeting in San Antonio, Texas, June 12-13, 2007, respectfully request the trustees of the SBC entities to continue to be mindful of their duty of fiscal responsibility and good stewardship to the Lord and to Southern Baptists, particularly in the areas of human resource and ministry expenses, and adopt amendments to SBC Business and Financial Plan Article XIII, Financial Report, and Article XVII, Business Procedures, as follows: (Please see Attachment A.)

The Committee participated in lengthy discussion. Boto stated that the staff felt this was a significant step toward reminding trustees and reminding southern Baptists that these details are being looked at and attended to in a proper way. That's the underpinning of the rationale behind the staff recommendation. The officers have approved this

Shepherd requested that the minutes reflect that he asked that entity CFOs be consulted about the Recommendation and draft language be supplied to the Administrative Subcommittee.

The motion to approve the Recommendation was made by Wilson and seconded by James. The motion passed by majority vote.

There being no further business, the meeting adjourned.

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Mitchell E. Gavin, Chair

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David H. Shepherd, Secretary

Appendix D2  
Short Version BWG Feb 2007 minutes

Executive Committee of the Southern Baptist Convention  
Nashville, Tennessee

**Bylaws Workgroup  
of the  
Administrative Subcommittee**

February 20, 2007

The Bylaws Workgroup of the Administrative Subcommittee of the Executive Committee of the Southern Baptist Convention met Monday, February 20, 2007, at the Southern Baptist Convention Building in Nashville, TN.

Workgroup Members Present: Mitchell E. Gavin, chair; Stephen D. Wilson, vice chair; David H. Shepherd, secretary; Randall L. James; Chris Osborne; Martin F. Davis; L. Douglas Passmore; Stephen N. Rummage; Royce J. Sweatman, and Conley J. Bordeaux, ex officio.

Visitors present: Jeremy Smith, Metropolitan Nashville/Davidson County Government; Mike Coode, SNAP (Survivors Network of those Abused by Priests and other clergy); Bob Allen, *Ethics Daily.com*; Christa Brown, SNAP; Michael Foust, Baptist Press; Rodney A. Harrison, MBTS; Carlos Ferrer, NAMB; Mitch Crowe, NAMB; Bobby Reed, ERLC; Ryan Hutchinson, SEBTS; Clark Logan, SBTS; Charles Warren, MBTS; David Steverson, IMB; Jeff Billinger, GSFR; Curt Sharp, GSFR; Dean Combs, chair of the EC Audit Workgroup; John Revell, EC staff; Will Hall, Baptist Press; Frank Page, SBC president.

SBC Counsels present: James P. Guenther, James D. Jordan

Executive Staff Present: Morris H. Chapman, President, D. August Boto, General Counsel & Vice President for Convention Policy

1. Chairman Gavin called the meeting to order.
2. Rummage gave a brief devotion and led in prayer.
3. Secretary Shepherd called the roll.  
Gavin circulated a list for all visitors to sign.
4. A motion to approve the Minutes of the September 18, 2006, meeting was made by James and seconded by Passmore. The motion carried unanimously.
5. Shepherd made a motion to adopt the proposed Agenda. Wilson seconded the motion, and it carried unanimously.
6. Items for Consideration:

(1) Amendments to paragraph 13 of the Business and Financial Plan. Boto gave a background on the matter. At the September meeting of the workgroup amendments were approved to Paragraph 13 of the Business and Financial Plan. Following that approval, entity CFOs have now tendered some refinements to the amendments designed to improve and bring up-to-date the language adopted in September. Jack Wilkerson, Executive Committee vice president for Business and Finance, and Boto met with an appointed subcommittee of the CFOs by phone and discussed the suggestions being made which all agreed would be beneficial. These were submitted to the workgroup for review and approval. These amendments/refinements were found in the current recommendation. Refining the recommendation made in September makes sure that the designated accountant is not someone internal. Chairman Gavin asked Guenther and Jordan as well as the CFO's present if they were in agreement with the proposed changes. All were in agreement.

The motion to approve this item was made by Sweatman and seconded by James. The motion carried unanimously.

2) Discussion of Requests Made by Survivors Network of Persons Abused by Priests and Other Clergy (SNAP).

Boto spoke to unusual requests that are made to the Executive Committee and explained the process for handling these requests. Members of SNAP, Christa Brown (SNAP's assigned representative for Southern Baptists) and Mike Coode (SNAP's middle Tennessee coordinator) had made an unusual request to the Executive Committee through previous correspondence. Their request centered on requiring the Southern Baptist Convention to form a review board (perhaps to include members provided by SNAP) and generate a listing of Southern Baptist ministers and others involved in child sexual abuse issues.

Boto spoke to the exchange of correspondence between SNAP and Executive Committee staff. Copies of that correspondence had previously been forwarded by mail to each workgroup member. This material did include an explanation of the SBC polity of the autonomy of the local church. Boto disseminated to members another piece of information distributed the previous day in front of the SBC building by Brown and Coode who had also notified the press of their activities. A previous press conference had also been called by Brown and Coode last fall in front of the SBC building. The items distributed included a statement by Brown indicating that the SBC had been unresponsive to SNAP's requests/correspondence and stating that the SBC had not responded to their September 26, 2006, letter. However, Boto had responded by letter dated September 29, 2007. A copy of that response was among material previously provided to the workgroup.

Following much discussion, both pro and con, by workgroup members and SBC president Frank Page, as to whether SNAP's representatives should be allowed to speak to the workgroup, Gavin called on them to speak for a limited amount of time.

Brown referred to Chapman's address from the previous night addressing trustworthiness and said that there are Southern Baptist pastors that are not men of trust. She asked what the SBC was going to do about that. She understands that Southern Baptist Churches are autonomous. Brown asked for an independent review board comprised of people with understanding and professional experience in the dynamics of child sexual abuse who would receive reports of abuse and would relate that information to the churches so that they would have information and could



make responsible decisions. She stated that Southern Baptist churches cooperate on all manners of endeavors, and nothing is more worthy than this. She asks that the SBC take action.

Mike Coode, Middle Tennessee Coordinator for SNAP, spoke urging the SBC to take action.

Gavin then addressed Brown's accusation of the lack of responsiveness from the leaders of the SBC and stated that the Workgroup had been furnished copies of responses. Brown indicated that she was unaware of any responses and had not seen Boto's letter of September 29<sup>th</sup>. She was given a copy of that letter which was addressed to David Clohessy, SNAP's Executive Director. Brown felt certain Clohessy had never seen the letter because he would have forwarded it to her. Gavin stated that saying that we were not responding was perhaps good for the press, but that it was not good for establishing any kind of relationship with the SBC and that he wanted to make sure that she understood that we responded to every correspondence we have had. He felt he was speaking for Page, Chapman, and Boto in stating that it wasn't our intent not to respond to communications from SNAP.

Gavin stated that perhaps we should respond directly to Brown and not to Clohessy in Chicago. Brown responded that there was nothing wrong with sending correspondence to SNAP's main headquarters at the Chicago address, and that if it was sent there it should have made its way to her.

Bordeaux spoke to his distain for having the news media summoned to the SBC building and the calling of news stations in an attempt to paint the SBC as unconcerned. What troubled him was found on page 3 of the SNAP's February 19<sup>th</sup>, 2007, letter and stated that it has been explained to Ms. Brown and the SNAP people that we are an autonomous body. We do not tell our churches what to do. In the letter he referred to, page 3, the last line reads - we can provide you with some suggested names and in addition we request that the review board also contain representatives from survival groups such as SNAP. Bordeaux was concerned that this was a self invitation. He stated that the letter also talks about the establishment of an independent review board such as an auxiliary, and that the next line talks about adequate and insured funding from the SBC. This troubled him in that it sounded like a threat of blackmail in that that they will bring the news media out here and will publish articles, and will paint the SBC in a negative light if it is not willing to fund SNAP and help get their message out. He felt that it was more than fair to let them speak but that we don't need to speak in front of the television cameras to get our point across. He felt that adequate responses are not an issue in that we did send responses. He suggested that Brown find out where the correspondence was.

Gavin stated that we are not going to try to do anything to cover up anything of this nature.

Davis spoke of his agreement with Bordeaux. Davis believes that Southern Baptists need to do more and believes that we will.

Brown informed the workgroup that she is very accessible. She had given Dr. Page her phone number in an email and wished that someone had told her that a letter had gone out on September 29. She stated that she was unaware of the letter but emphatically stated that she will not apologize for seeking press coverage. She then related her story of abuse.

Brown's response as to why SNAP requests to be on any review panel was that she believes it would add credibility to the panel. Survivors will not come forward if they believe it is a hostile situation.

Wilson commended Gavin for the way in which he conducted the meeting. He stated it may take a while, even a number of months and that the workgroup would trust the EC staff to look at this and give guidance and direction and that it is an imperative that we address the issue.

Davis brought out a point of contradiction in Brown's statement in which she defended her use of the press. In regard to her law suit against Gilmore, Brown's statement was that only after the Orlando Sentinel's story was he finally asked to resign. In the news article itself, paragraph 7, the pastor of the church where the perpetrator was serving says that when he asked Gilmore about the law suit filed by Brown, Gilmore said that he could not be involved in discussion based on the advice of his attorney and offered his resignation. The pastor accepted his resignation. Davis said this was different than being removed from the position, and the news story did not cause the departure, it reported it.

Shepherd addressed Brown saying that no one wants to cover up a predator and that while we may not take action as quickly as she would like or choose the exact method she preferred, we are not her enemy. He also stated that there was difficulty with her approach and that her public statements regarding the SBC are offensive.

Brown - stated that she is looking for deeds and not words and if she seems impatient, she is. She emphatically stated that she will not apologize for that.

Sweatman indicated to Brown that included in the correspondence she did not receive were some answers to some of her questions about our structure and how we work. He stated that as a denomination, we do ministry together but have no authority and that we have tried to explain that. He expressed that we need to look at this thing across the board of our structure. Sweatman stated that a national effort may be so distanced from the local church that things still slip through the cracks. He gave an example of his work with 56 churches with whom he is very close and said that even his local church can refuse his help. He indicated that we have to work through the present structure, and that it will be a major loop to try to do this. Sweatman stated that he couldn't promise when something would be done but that an effort will be made to do something. He expressed regret for what happened to Brown and stated that he would do all he can with the churches that he works with to stop that from happening to anyone else.

Boto asked the Workgroup to look at page 2 of SNAP's September 26, 2006, letter. He brought to their attention that in that letter, SNAP stated they appreciate our August 15 letter. His point being that six months ago they did get and acknowledged getting an explanation of SBC polity using the United Way example as discussed during the day's meeting. Boto asked Brown if she got the explanatory letter that containing the United Way comparison. Brown stated that she did not remember the reference to United Way nor a lengthy letter but maybe a one page letter. Boto stated that the August 15 letter was included in the notebook distributed to the Workgroup members so they know how many pages it was and what it explained. Therefore, Boto indicated, SNAP had received a letter explaining SBC polity.

Sweatman stated that he just wondered if they had not received all of those letters. Boto stated that they have.

Brown asked what other letters were referred to and again stated she did not receive the September 29<sup>th</sup> letter.

Boto responded that on July 6, 2004, Deborah Boone Dale wrote the Executive Committee on Brown's behalf, and it was responded to on July 26. Brown acknowledged that letter. Boto indicated that he was talking about all the approaches that she or SNAP had made. On August 2<sup>nd</sup> SNAP addressed a letter to Dr. Page which was responded to by Dr. Page on August 15 and by Boto on September 18<sup>th</sup>.

Brown stated that she had not received a letter dated September 18<sup>th</sup> from Boto. Boto indicated that it was addressed to David Clohessy at SNAP's Chicago address and suggested that Brown talk with Clohessy in that regard.

Gavin indicated to Brown that we would furnish her with copies of letters that have been sent in response to correspondence from SNAP and stated that we have copies of the letters and that it is confusing for us to understand why her position has been that we have not responded.

Brown indicated that she was generally aware of our position on congregational autonomy.

Gavin ask for other comments from the workgroup.

Davis stated that we had addressed this matter in a resolution and indicated that we cannot tell the churches that the SBC polity has changed, but, that we can do more to equip churches with research material. He indicated to Brown that our structure is prohibitive to some things.

Another member stated that for the last 5 or 6 years their church had done background checks on all of their staff

Page thanked the Workgroup for their handling of the matter, their desire and spirit and stated that he thinks it is incumbent upon this group and the larger Executive Committee and the SBC as a whole to do whatever we can to deal with this issue and that it is of extreme importance. He stated that churches are now beginning to do some things to safeguard their children and youth. He encouraged the group to do whatever is appropriate and responsible in whatever way we can to protect precious lives. He stated that he is expecting as an outgrowth of this communication today that we will see a plethora of news articles to go out to all the blogs and to all the news agencies apologizing for the picture that has been painted of the SBC president, the Executive Committee, and the subgroup for being non-responsive and is assuming those articles will come out forthwith to say they were wrong and that we were not stonewalling and including the fact that we have not neglected nor ignored their correspondence. He thinks apologies would indeed encourage many to realize that we are not enemies that we are working toward a common goal.

Brown indicated to Page that she has no way of knowing for sure that those letters were mailed and that she has no way to track them. She will check with SNAP offices, and if the letters were received, she will apologize but indicated that she does not want the SBC to have undue expectations of her because she is looking for deeds not words.

There being no further business, Page dismissed the meeting in prayer, praying for a spirit of reconciliation and understanding and for the leadership of the group both elected and paid staff.

There being no further business, the meeting was adjourned.

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Mitchell E. Gavin, Chair

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David H. Shepherd, Secretary

Appendix E1  
Guenther Database Memo

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April 30, 2007

From: Jim Guenther

To: D. August Boto

Re: Plan for responding to child sex abuse issues

Confidential

## Introduction

This memorandum explores some basic issues and offers one plan by which the Southern Baptist Convention might address sexual misconduct in churches in friendly cooperation with the Convention. While some of the impetus for all this is media and special interest attention regarding child sex abuse by ministers, we recognize that persons other than ministers engage in sexual misconduct which affects churches. And, we recognize that not only children are victims. Sexual misconduct affecting churches, their ministries and witness, often arises from instances of misconduct of other church employees and volunteers and often victimizes adults, most often adult women.

Further, any prudent pre-employment screening by churches should include inquiries concerning *any* criminal conviction, not just criminal convictions regarding sexual misconduct. And, churches need to be sensitive to the backgrounds of volunteers, as well. Therefore, while child sex abuse issues present some unique challenges for churches, it seems to me that if we are going to undertake to help churches be prudent

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in employment and in the selection of volunteers, we ought not arbitrarily limit our cautionary efforts to sex abuse of children by ministers.

The questions being considered include:

What should the Southern Baptist Convention, its Executive Committee, and the entities of the Convention do to help churches deal with these problems? How can the Convention do what it deems it ought to do in a way which is legally prudent, that is, in a way which is both legal and a prudent management of the Convention's and the entities' legal risks. (In this memo I sometimes use the SBC and the EC interchangeably.)

And what are the elements of a plan which are essential to the preservation of the autonomy of the local church, that autonomy being the heart of the SBC's defense when one undertakes to impute liability for the church's wrongdoing to the SBC. Whatever we do, we ought to do in a manner consistent with church autonomy, both because that is what we believe, that is what we declare, and that practice is our best defense to suits against the convention for church negligence.

The scope of the efforts which ought to be undertaken, at this point, remains a question. And, exactly what a data base should address remains a question yet to be answered by the EC. For example, should a data base:

- Be confined to ministerial child sex abuse by ministers;
- Include sexual misconduct generally committed by any church employee;
- And add sexual misconduct committed by church volunteers;
- Or, should it address any criminal conduct by church employees and some criminal conduct by volunteers;
- And how much, if any, distinction should be made as to where the conduct occurred?

And, exactly what conduct should be logged in the data base? I am proposing that we log only judicially adjudicated guilt in criminal cases and of liability in civil cases.

### An SBC Plan

I have reviewed the approach the Baptist General Convention of Texas has taken on this issue. That convention provides churches with resources designed to help the



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churches as they evaluate employees and prospective employees and establish policies and practices designed to prevent child sex abuse in the churches. You have already begun to provide similar services on the SBC's web site. You intend to expand that. I think that is wise. Therefore, I will not discuss that aspect of an SBC plan further, but I think it is that aspect, coupled with efforts by SBC entities, which will best serve the churches.

I will turn later to the "data base" aspect of an SBC plan. My data base proposal differs from the BGCT plan in several respects. My proposed SBC plan would provide information to anyone, not just churches in friendly cooperation with the Convention, about not only ministers of Southern Baptist churches who are child sex offenders, but also about any employee of a Southern Baptist church who is found guilty of criminal or liable for civil damages involving any kind of sexual misconduct in any context, and also about Southern Baptist church members and volunteers who are found guilty of sexual misconduct in criminal cases or liable for civil damages when the conduct has a nexus with their church activities. However, my proposed plan will not track the BGCT plan's publication of names on the basis of extra-judicial admissions or the judgement of SBC lawyers as to the presence of substantial evidence of wrongdoing.

I recommend immediate action to signal the Convention's desire that the EC and the entities begin a more aggressive effort in this area. First, I think that it would be wise for the EC to ask the SBC to adopt a motion offered by the EC to request the EC and the entities of the Convention to help the churches as the churches exercise their autonomy in these areas of employee and volunteer selection, retention and supervision, and in establishing policies and procedures regarding safety in this area.

Each entity would ask itself how it is uniquely equipped to help the churches and would take the initiative to develop strategies to deliver that assistance. This effort, to help the churches do what the churches ought to do for both legal and moral reasons, would be the main thrust of the SBC model.

### Immediate action proposed

I think the EC should, in June, act on a recommendation to the SBC in this coming annual session. I offer some thoughts on what that action might be if the decision is to go forward addressing only child sex abuse. If you want to enlarge it to sexual



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misconduct as I suggest, of all church employees and volunteers against any person, not merely children, it would be modified as necessary. Likewise, if you want to enlarge it still further to include criminal convictions of ministers or of all church employees, or whatever, modification could occur.

One public relations advantage I see to action on a scope broader than child sex abuse is that it would appear we are not simply reacting to pressure on this narrow issue, that we are thinking "bigger."

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### Executive Committee Background and Motion

**Background:** Southern Baptists have been sensitive to and concerned about every instance of child abuse, especially when it occurs in a church. While the public has primarily followed the tragedies involving Roman Catholic priests, Southern Baptists have recognized that child sex abuse can, and sometimes does, happen in a Baptist church. The abuse of a child is so offensive to Southern Baptist values and so antithetical to the teachings of Jesus Christ, it is difficult for Southern Baptists to adequately express their condemnation of it.

Southern Baptists want help--education, ideas, and strategies--as they continue to work at the eradication of child abuse. The Executive Committee of the Southern Baptist Convention wants to do its part to provide that help. The Executive Committee's motivation is to help cleanse the denomination of this obscenity, to prevent harm to children, and to save the church's witness for the Gospel of Jesus Christ.

The Executive Committee recognizes that no one outside the local Baptist church has any authority over or right to control the local church. The right to select, retain, and supervise the minister and other employees of the local church is exclusively the right of the local church. No one outside the local church has any authority over the programs and activities of the local church, or over the selection, retention, and supervision of church members and workers.

The autonomy of the local church is a fundamental concept in Baptist polity; the principle is declared in the Constitution of the Southern Baptist Convention:

Authority: While independent and sovereign in its own sphere, the Convention does not claim and will never attempt to exercise any authority over any other Baptist body, whether church, auxiliary organizations, associations, or convention.

Therefore, given our polity, the Executive Committee and the Southern Baptist Convention itself lack any authority over a church, an association, or another convention. But, the Southern Baptist Convention is "independent and sovereign in its own sphere."



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So, the question is: "What more can the Southern Baptist Convention do, 'in its own sphere,' to help protect children?"

While the Convention is in session a mere two days each year, the entities fostered by the Convention, and the Convention's Executive Committee, are engaged in ministries throughout the year. Each of these bodies has its unique ministry, but all share in a common commitment that children should be celebrated, nurtured, and protected.

Individually and collectively, the entities and the Executive Committee comprise a potentially powerful force among Southern Baptists, a force which can and should be applied to the protection of children. Each of these bodies has its own purpose and programs, and each has its own universe of operations. Each of these bodies employs people chosen for their religious conviction, their devotion to the institution's purpose, and for their gifts, skills, and special competencies. Each entity has its own means and opportunities.

The Executive Committee of the Southern Baptist Convention is charged with the duty "To act in an advisory capacity on all questions of cooperation among the different entities of the Convention, and among the entities of the Convention and those of other conventions, whether state or national." Given this assignment, it is appropriate for the Executive Committee to consider the challenges and the needs arising from the child abuse tragedy which is afflicting our society, and even our churches, and to envision how cooperation among the entities and with associations and other conventions might be utilized to address this crisis.

The Executive Committee believes Southern Baptists should speak with a prophetic voice and should act in regard to this problem in an assertive manner, in ways which become Southern Baptists.

Each entity best knows its work, its capacity, and its specialized abilities. The entities are already concerned about this crisis and are engaged in efforts to address it.

The Executive Committee's role should be to ask itself what more the Executive Committee appropriately should do within its own ministries, and how the Executive Committee might and should focus this issue before the messengers to the annual

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meeting of the Convention, and before the churches, associations, and other Baptist general bodies.

**Recommendation:** It is therefore recommended that the Executive Committee of the Southern Baptist Convention direct its President and Chief Executive Officer:

1. To undertake new and more vigorous efforts, consistent with the Executive Committee's ministry, to help Southern Baptists attack the evil of child abuse, and especially of child sex abuse in the context of Southern Baptist churches; and

2. To request the Resolutions Committee of the Southern Baptist Convention to offer a resolution on this subject to the messengers constituting the 2007 annual meeting of the Southern Baptist Convention; and

It is further recommended that the Executive Committee of the Southern Baptist Convention advise the messengers constituting the 2007 annual meeting of the action which the Executive Committee has taken, and that the Executive Committee recommend that the messengers adopt the following motion:

Recognizing the evil of child abuse, and convinced of their own need and the need of all Southern Baptists to make every effort to protect children in the care of churches, the Southern Baptist Convention meeting in San Antonio, Texas, June , 2007, requests its Executive Committee and the entities of this Convention to maximize their efforts to this end and to report their efforts to the 2008 annual meeting of the Convention.

The following would be printed in the Bulletin:

Recommendation \_\_:

The Executive Committee of the Southern Baptist Convention reports for information that the Executive Committee, meeting in San Antonio, Texas, June , 2007, adopted the following motion: That the Executive Committee of the Southern Baptist Convention direct its President and Chief Executive Officer:



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1. To undertake new and more vigorous efforts, consistent with the Executive Committee's ministry, to help Southern Baptists attack the evil of child abuse, and especially of child sex abuse in the context of Southern Baptist churches; and

2. To request the Resolutions Committee of the Southern Baptist Convention to offer a resolution on this subject to the messengers constituting the 2007 annual meeting of the Southern Baptist Convention.

Further the Executive Committee recommends that the Southern Baptist Convention, meeting in San Antonio Texas, June 2007, adopt the following motion:

Recognizing the evil of child abuse, and convinced of their own need and the need of all Southern Baptists to make every effort to protect children in the care of churches, the Southern Baptist Convention meeting in San Antonio, Texas, June , 2007, requests its Executive Committee and the entities of this Convention to maximize their efforts to this end and to report their efforts to the 2008 annual meeting of the Convention.

### An SBC Data Base

The EC could then, in response to the SBC's broad request of it, increase its present efforts to publish information and resources on the SBC site which would be helpful to the churches as they attempt to address sexual misconduct. The SBC web site would contain a link to, among other things, a data base listing the names of persons the EC has identified by certain explained categories. It might read something like the following:

The following is a list of every person known to the Executive Committee of the Southern Baptist Convention who is believed by the Executive Committee to have engaged in *sexual misconduct* since 19\_\_, and who is also believed to be a person who was either (a) employed at any time by any *church* or *entity*, without regard to whether the conduct was in any way related to the employment; or (b) was a member of a *church*, or a volunteer in the activity of a *church* or *entity*, and the Executive Committee believes the conduct was in some way *related to that person's activities as*

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*a member or volunteer.*

### Definitions:

1. A "church" is a church which is believed by the Executive Committee to have been at any time in friendly cooperation with the Southern Baptist Convention.
2. An "entity" is a corporation which the Executive Committee believes was at some time one whose directors were elected or appointed in whole or in substantial part by the Southern Baptist Convention or by another general body of Southern Baptists.<sup>1</sup>
3. "Sexual misconduct" means conduct which is believed by the Executive Committee to involve sex, committed by a person who, the Executive Committee believes was at the time of the conduct eighteen years of age or older, and which
  - (a) was found by a court to have been a violation of a criminal statute or ordinance in the United States, whether felony or misdemeanor, including convictions which may have been appealed and ultimately reversed, and convictions which may have been quashed or otherwise redacted from the court record, or
  - (b) resulted in a judgment in a civil action for a common law tort, without regard to any pending appeal or the outcome of any appeal.
4. "Related to that person's activities as a member or volunteer" means related in any manner deemed relevant by the Executive Committee, without regard to any notion of agency or other legal connection between the wrongdoer and the church or the entity.

Each name is accompanied by (1) a categorical indication of employment status if any (ministerial or professional staff, others, or none), (2) the age of the wrongdoer at the time of the conduct or adjudication (3) the date of the conviction or entry of judgment, (4) the court in which the conviction or judgment occurred, (5) the offense or civil wrong for which conviction occurred or judgment entered, and (6) any sex offender registry on which the Executive Committee has found the person to be registered.

Appropriate caveats would be set forth. A procedure would be drafted for the guidance of the Executive Committee employees who would maintain this list.



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This end note discusses possible expansions of the data base which I considered and rejected.<sup>2</sup>

### Major virtues of this plan.

The proposed plan involves reasonably manageable risks. Presently, the SBC and its EC and entities have no legal duty in the local church's selection, retention, and supervision of its ministers, employees, and volunteers. But, if the Convention and/or its EC and entities insinuate themselves into that arena, they may assume a duty and for the violation of that duty they may cause themselves to be legally liable in damages.

The plan creates no risks to the churches. I believe this plan is crafted in such a way, and can be administered in such a way, that it will not represent an assumption of any new duty by the EC, the Convention, or its entities, other than the duty to make no false statement. Conviction or the entry of a civil judgment is a determinable event. We can hardly err in making such a statement. It requires little judgment on the part of the SBC. It does not require the SBC to establish criteria of ministerial misconduct by which judgment is made. It does not involve any need for investigation beyond a confirmation from the court. We do not need to engage in adjudications and publish opinions. We do not need to set up strategies to try to get the SBC into the qualified privilege "common interest" category in defamation law.

This proposed plan is centered in "assist churches." All the ministry statements of the EC and the Convention's entities begin with "Assist churches . . . ." Thus, it would fit our polity and present ministries to help churches in this area of child abuse and sexual misconduct by advising and counseling churches concerning prudent employment and volunteer-choosing policies and procedures and the like. Playing that role is valid, helpful, respectful of church autonomy, responsible, socially appropriate, spiritually sound and traditional. It is also fairly risk-free. It acts out our representations: This is the responsibility of the churches.

### End Note

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1. I do not anticipate that entities of the Southern Baptist Convention would be required to report to the EC regarding entity employees or volunteers. Therefore, an entity could exercise its

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judgment regarding whether it should report an employee's sexual misconduct to the EC or not. However, if the EC learned about it, from whatever source, the EC should publish it, whether the entity informed the EC of it or did not, in my opinion. This can be addressed in the EC management guidance.

2. I do not recommend broadening this data base. However, I will comment on two areas which I considered.

First, it is anticipated that the SBC site should be one where a church can find help for all its policies and practices concerning the prudent selection of ministers and volunteers. Any prudent screening process, at least of ministers and probably of those volunteers in high risk areas, would entail an inquiry into criminal convictions broadly, not merely into criminal convictions involving sexual misconduct. Our educational materials can teach this.

I asked myself if we should go further, however, and expand the data base to include a listing of all church employees who have been convicted of any felony, or perhaps even of any misdemeanor as well. This information would be more difficult to obtain and therefore the listing may be inadequate to accomplish its purpose. I have deemed this beyond what I think we should undertake.

I considered confessions carefully. I considered, for example, adding the following category:

The names of those ministers, other church employees, and volunteers, who have made what appears to be voluntary confessions, which are clear, without any evidence of an intention that the confession not be shared broadly, of sexual misconduct in the church context.

These confessions would be in writing and signed by the confessor, and accompanied by verifying affidavits. The confession would need to be judged by the SBC to be of misconduct deemed to be worthy of publication. I doubt we would get one very often. That is part of the reason I would not urge this broadening.



Appendix E2  
Guenther BGCT Memo

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May 1, 2007

To: D. August Boto

From: Jim Guenther

Re: Baptist General Convention of Texas Model

VERY VERY CONFIDENTIAL

At your request I offer you this analysis of the BGCT's plan by which the state convention addresses child sex abuse in the churches. This analysis serves as a springboard for the development of an SBC plan which I offer you in a separate memorandum. The reason for separating these comments regarding the BGCT's plan from a plan proposed for the SBC is to enable us to keep this analysis of the BGCT plan highly confidential. My analysis of the BGCT plan, if it became public, could be damaging to the BGCT and, because the SBC's attorney was the source of the criticism, to the SBC as well.

The BGCT plan deals exclusively with child sex abuse by ministers. It uses the state convention's web site to educate churches on the subject of sex abuse in churches. It offers advice on pre-employment background investigations and other polices related to church employment. It offers materials and identifies resources related to prevention, intervention, and rehabilitation. *All that effort seems clearly worthy of emulation by the Southern Baptist Convention.*

"Data base" of sex offenders

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That leaves us to focus on the data base element of the BGCT Plan. The state convention accumulates information on clergy who are child sex offenders. It solicits this information from churches related to the state convention. It offers information from that data on-line to church and institutional officers. I believe the Southern Baptist Convention can do something like this, but I will recommend a different plan, one that provides information to anyone, not just churches of the Southern Baptist Convention, about not only ministers of Southern Baptist churches who are child sex offenders, but about *any employee of a Southern Baptist church who is found guilty of criminal or liable for damages arising out of any civil charges involving any kind of sexual misconduct in any context, and also about Southern Baptist church members and volunteers who are found guilty in criminal cases when the conduct has a nexus with their church activities.* However, my proposed plan will not track the BGCT plan's publication of names on the basis of extra-judicial admissions or the judgment of SBC lawyers as to the presence of substantial evidence of wrongdoing.

**The BGCT data base.** The BGCT maintains a "confidential file of church incidents related to sexual misconduct of clergy." It says that it relies on churches to provide information, and it "strongly" encourages churches "to share their experiences of clergy sexual misconduct," presumably including reporting to the BGCT.

The state convention specifically receives information only from "an elected officer of the church" and from "the officers of Baptist institutions and organizations." The information "includes such items as statements of confession by offending clergy; documentation of legal conviction, testimony or depositions of victims and accounts of church action when confession or conviction are not forthcoming. Testimonies and or depositions will aid legal counsel for the Baptist General Convention of Texas to make determination of substantial evidence."

It declares:

A case is put into the BGCT file only when a minister:  
Confesses to the abuse of sexual misconduct (sic);  
There is a legal conviction; or  
There is substantial evidence that the abuse took place. The issue of whether substantial evidence is present is always reviewed by Convention attorneys.

Information is received by the BGCT only from, and information will be provided by the



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BGCT only to, "an elected officer of the church" or of "Baptist institutions and organizations." It is not clear if the church must be one cooperating with the BGCT or the institution must be one related to the state convention. In my opinion, however, that is implied. The information is provided for the purpose of assisting in employment decisions regarding clergy.

The statement by the state convention is made *in response* to the written and sworn representation regarding the identity of the requestor. The request for information must be clergyman-specific, that is, the requestor must ask about a named clergyman.

If the request is approved, the only information provided will "indicate that the clergyman in question has met one or more of these criteria: (1) Confession of Clergy Sexual Misconduct, (2) Conviction of Clergy Sexual Misconduct, or (3) Substantial Evidence of Clergy Sexual Misconduct as determined by legal counsel of the Baptist General Convention of Texas" (The statement the BGCT will provide is not declared in exactly the same words as the description of what will cause the case to go into the BGCT files.)

None of the key terms, "sexual misconduct," "abuse of sexual misconduct," "the abuse," "substantial evidence," or "Clergy Sexual Misconduct," are defined. Legal conviction of exactly what crime is not described. The BGCT declares no standard against which it measures the misconduct.

The BGCT will not, apparently, indicate which of the three criteria was found to exist in a given case, that is for example, it will not differentiate between a minister who has confessed as compared to a finding by the BGCT attorneys of substantial evidence. The BGCT will not tell the inquirer that the minister confessed, much less exactly what the minister confessed to, or if he made the file because he was convicted, much less of or by what court or when, or what the BGCT relied upon to make its finding of substantial evidence. The BGCT will merely state that the minister falls into one or more of the three classifications. Apparently the BGCT is only interested in "church incidents" of child sex abuse by ministers.

## My Evaluation of the BGCT Plan data base as a model for the SBC

I find the BGCT plan's data base to be unnecessarily and unwisely narrow in a number

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of ways.

The BGCT plan provides information only:

*When it is received from an officer of a church or entity.* The fact that the church is requested by the state convention to provide the information may help the church in the event it is sued for defamation as the result of its reports to the state convention. Some case law suggests that it is safer for one to make a defamatory statement about another as the result of being asked to make a statement, as compared to taking the initiative to publish a statement to someone who has not requested a statement.

Because of the common interest qualified privilege in defamation law, discussed later, and because the church and the BGCT are both making statements which they may have trouble proving to be true, it is important that the state convention take special care to try to craft and operate a plan which would put it in this qualified privilege of common interest. This is especially problematical, as my memo will discuss later, because neither the church nor the state convention has a duty to the other. The church has no duty to make a report to the BGCT, and the Convention has no duty or even right to act in regard to the subsequent employment decisions of a church regarding its minister. The absence of these duties work against a Southern Baptist church and a Southern Baptist general body when it comes to their efforts to come within the protection of the qualified privilege.

And I fear that a request from a Baptist general body to a church, or a church's voluntary report to the general body, will be argued to show that the church had a duty to report. And, if the church has a duty on the church's part to report to the general body, then the general body has control over the church, and control, of any kind, breaks the principal and the legal shield of church autonomy.

All told, I think we the SBC is better served, the churches are better served, and our autonomy polity and legal defenses are best preserved, if we do not elicit reports from churches.<sup>1</sup> And, I suggest, we do not need the church to report unless we want to venture into information which only churches know because the matter has been kept secret. And, that is precisely where I recommend we not venture.

*When a minister is the offender.* Churches need to exercise care in the employment of



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persons in every position, not just in ministerial positions. And, churches need to exercise care in the selection of non-employees as well as employees, of church volunteers, who will be placed in positions of trust.

*When the victim is a child and the incident was a "church incident."* It is not *entirely* clear that the BGCT intends to only alert church and entity officers regarding incidences of child sex abuse by a minister occurring in the church context according to some definition of "church incident." Be that as it may, we propose an SBC Plan which is clearly more broad. While *child* sex abuse is the wrongdoing which has drawn the most media attention, we know from experience that persons other than children are sometimes victims of sexual abuse in churches. Women, and especially women in counseling, are often the victims.

And, churches need to know about a potential employee, especially an employee, who has engaged in sexual misconduct wherever he found the victim, not only in instances arising in the church context. For example, it may have occurred within the minister's own family.

However, I do not think the SBC ought to publicly identify a non-employee of a church or entity, that is a church member or volunteer, who has engaged in sexual misconduct outside the context of a church. That is my judgment. I reach that conclusion after balancing the value to churches of the information of prior sexual misconduct against the task of gathering the information, the "invasion of privacy," and legal risks to the SBC which that publication would entail. But, perhaps the EC will reason differently.

*To a church or entity officer of a BGCT church or institution.* Since the BGCT Model calls for the BGCT to report not only convictions, but confessions and even opinions regarding substantial evidence of wrongdoing, the BGCT has restricted to whom it will report. It would be my guess this was done to lessen the risks to the BGCT. For example, this limitation on to whom it will make a statement will help the state convention when it comes to the common interest defense in suits for defamation.

However, this limitation arguably could also put the BGCT at risk. For example, if a Texas Baptist church which had chosen not to be in friendly cooperation, or a Georgia Southern Baptist church, asks for information, the BGCT refuses to give it, and the church hires or retains a minister who abuses again, the family of the victim may argue



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that but for the BGCT's failure to give the information the injuries to the child would not have occurred, and that the convention failed in the performance of a duty to warn. It raises the question of whether the convention could convince a court that it was reasonable for the state convention to undertake to warn some churches but to refuse to warn others.

I think the SBC ought to publish the information it gathers on the internet as a service to anyone who wants to have the information. My suggested limitation on exactly what information the SBC will publish, which I discuss shortly, makes this feasible.

The BGCT publishes a statement privately by letter to a church or entity officer only declaring that the name of a person given by the requestor either does not appear in the BGCT file, or that it does, and if it does the BGCT indicates that this only means that the person falls into one or more of the following three categories, the BGCT not being any more specific, and not providing any further information from its files.

1. Convictions. Receiving and releasing information concerning convictions is essentially risk-free. Convictions are easily verified. There is little risk of error and unfairness. Publication of a criminal conviction does not give rise to suit for defamation. This publication serves a purpose even though a church could presumably find on the internet whether the individual is a convicted child sex abuser. It gives the churches a source of information which deals only with offenders uniquely related to Texas Baptist churches.

2. Confessions. A bit more problematic when it comes to risk analysis. Was the confession made in a privileged forum, that is from one minister to another in what would constitute a priest-penitent relationship, and if so, of what legal significance is that? Was it made with the expectation that it would not be revealed, or at least that it not be revealed to the convention and to other churches? What exactly does the confession confess to? Is it clear and without ambiguity? Does it amount to conduct worthy of being deemed "the abuse of sexual misconduct?"

3. Substantial evidence that the abuse took place. What is "substantial evidence?" What "abuse?" Would the BGCT need to declare some conduct standard against which confessions, and, absent confessions, evidence is measured?



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This remainder of this memo discusses the BGCT plan's use of confessions and the use of opinions by legal counsel of substantial evidence and my problems with these criteria when it comes to an SBC Plan.

My experience with lay-produced "confessions" is that they often are not entirely unambiguous and one is left not knowing exactly what was confessed. Confession of sexual misconduct are often especially vague since the confessor and those to whom the confession is made are not accustomed to or comfortable with graphic details. We don't know under what circumstances it was made, whether it has been subsequently denied, the mental competence of the maker, etc. It also smacks of star-chamber adjudication of guilt by confession by an ecclesiastical body who did not have the persons who made the confession before it. It is a role far beyond any ever anticipated, much less performed, by the EC.

I especially find the BGCT policy problematical when it comes to what it is the minister must confess to in order to qualify the minister's name to go on file as the result of his confession. The policy says, in two places, consistently, that it is the confession "to the abuse of sexual misconduct." What is that? This may be a typo, and they may be trying to say "sexual abuse or sexual misconduct."

Even if it said "sexual child abuse" and "sexual (broadly) misconduct" we would be left with the need for definition. Is it sexual child abuse only if it is deemed by the BGCT's attorneys to be a confession of a criminal act of sexual child abuse, or might it be sufficient if it is a confession that the confessor once (twice, often) used words of a sexual nature around a child--what words-- a child of what age--in what context? Is it sexual misconduct for a man to touch a woman here, but not there, in this context, but not in that context, once, twice or repeatedly, with or without her apparent consent, privately or in public, whether it was deemed offensive to her or not, etc.?

Is sexual misconduct only conduct which would constitute a criminal act or give rise to a cause of action for damages which would, if confessed or if the attorneys deemed there was substantial evidence, cause the minister to be reported on in the affirmative to inquirers?

I am uncomfortable with attorneys for the SBC evaluating testimony and depositions for the purpose of declaring a finding that there is "substantial evidence that the abuse took place." The "abuse" in the BGCT model seems to be "the abuse of sexual misconduct"



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or "sexual misconduct of clergy." I do not know what the former is. As to the latter, it might be interpreted to suggest that there is a code of conduct regarding sex which is uniquely applicable to "clergy." "Sexual misconduct of clergy" sounds a bit like "clergy malpractice," claims over which the courts have refused to take jurisdiction, declaring that the courts ought not establish a standard of care for the clergy. If the SBC is going to measure confessions and judge the existence of substantial evidence, the SBC would need to decide if it should declare a standard against which judgment would be made. A judgement without a standard is the definition of arbitrariness. Who will establish the standard? To what would the EC point as the SBC's delegation of authority to the EC to establish a standard, if the EC is the one who will establish the standard? Does the EC want to (ought the EC) devote the energy and resources which would be required to adjudicate these confessions or, more significantly, the charges which are denied but which are accompanied by affidavits and depositions, etc.?

The SBC or the EC may be uncomfortable acting to declare a standard by which a minister's conduct is measured for the purpose of an ecclesiastical pronouncement by the Executive Committee that it has a confession of a violation of that standard by Rev. X, or has concluded that there is "substantial evidence" that Rev. X violated that standard. Would this standard come to be argued by plaintiffs who would be advantaged by the argument that this is a standard of care by which civil courts should measure a minister's conduct in suits for damages?

While finding only that there is substantial evidence is easier than finding there is a preponderance of the evidence or evidence beyond any reasonable doubt, I think we would be ill-equipped to even comfortably declare there is substantial evidence. To do that we would have to evaluate the evidence, the credibility of witnesses, etc.

We would only have one side of the story. Elementary fair process would require that the accused be afforded an opportunity to be heard in his defense. The BGCT plan affords the accused who denies the accusation no right at all.

Absent any opportunity of that kind, it seems our process might not pass judicial muster which might become relevant in the event the Convention is sued for interference with business opportunities, outrageous conduct, negligence, defamation or whatever tort a plaintiff might try to prove. For example, if the plaintiff sued for defamation, discussed at some length below, our procedure's fairness would be considered as evidence



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regarding the presence of malice. Even if we won the suit, it seems we would have evidenced an attitude of fundamental unfairness in our procedures.

If we undertake to adjudicate these matters we must do so with that care a reasonable person would exercise in the same or similar circumstances. Failing, we would be guilty of negligence.

We lack the wherewithal to conduct trials. But, under the BGCT model, there is nothing resembling a trial, only the accusers are heard (absent a confession). We would not get to see the demeanor of the witness, we could ask the witness no questions (or at least we could not count on being able to interview the witness in any satisfactory manner), we have no subpoena power, we have no way of knowing what motives the witness has for telling an untruth. Again, my experience with lay-produced "statements," like "confessions," is that they are often unclear and incoherent. Often it is not possible to know what the witness claims to know of her own knowledge, what is hear-say, rumor, speculation or opinion. Often one cannot tell what opportunity the witness had to know what she claims to know, etc. There is no way the determination could be made according to the rules of evidence. And, to what extent would it be reasonable to vary from those rules?

Finally, I am uncomfortable with the idea that the EC would have possession of a file, the truth of whose contents we could not vouch for, potentially career and life-threatening, subject to discovery in cases we probably cannot anticipate. I am uncomfortable with the risk of having such a file while promising that it is "confidential," setting ourselves up to be required to try to defend a claim that someone in the employ of the EC, or its attorneys, leaked the information in that file.

If the EC were to declare that it had in its possession "confessions" of a minister or that its attorneys had determined the EC had in its possession "substantial evidence of clergy sexual misconduct" committed by a minister, the EC would set itself up for suits by the minister and the EC would have to defend those suits and hope it could win them.

### Legal Theories of SBC Liability for Church Wrong

The following are the legal theories most likely to be utilized by the victim of child abuse

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caused by a pastor, or other employee, member, or worker in a local church who wishes to undertake to hold the wrongdoer and the church liable for damages.

(For the victim to successfully hold the Southern Baptist Convention liable for damages, the victim would have to show either (a) Negligence by the Convention itself, or by an employee or officer of the Convention, or perhaps by an employee or officer of the Executive Committee of the Convention, proximately causing the damages, or (b) Some relationship between the Convention and the church or wrongdoing employee, member or worker in the church which would support some theory of law which would cause liability for the wrongdoing to be imputed to the Convention. Those theories are primarily veil-piercing, agency, and joint enterprise. Veil-piercing and agency require a showing of control by the Convention over the wrongdoer. Joint enterprise is improbable, both as an accepted theory generally, and especially when applied in the religious context.)

1. Respondeat Superior. Applies only against an employer whose employee has engaged in wrongdoing within the scope of his employment. The SBC can show the wrongdoer was not the employee of the SBC. (The SBC has no employees, and certainly it does not employ those who serve local churches.)

2. Agency. The wrongdoer must be shown to be subject to the control of the SBC. Requires an analysis of the SBC's right and authority to control the wrongdoer and whether the wrongdoer was acting on behalf of and for the benefit of the SBC. The SBC's recognition of church autonomy and its disavowal of control and authority over the local church, and the absence of any SBC control over employees, members, and workers in local churches should suffice to defeat agency claims.

3. Negligent selection, retention, or supervision. Assumes a right to select, retain or supervise.

No duty of care exists between the Convention and the victim where the Convention had no control or right of control over the wrongdoer, his selection, retention, or supervision.

4. Outrageous conduct, (intentional infliction of emotional distress). Requires proof that the conduct of the Convention or of one whose wrongdoing is being imputed to the Convention, was reckless, outrageous, and not tolerated by civilized society, and that



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the conduct caused substantial injury.

5. Strict liability. For example, the Convention's failure to report child sex abuse as required by a state statute.
6. RICCO, the federal racketeering law. Claims of actionable conspiracy under this law not successful to date even against hierarchical bodies.
7. Failure to fulfill a duty to warn. Officers of the Convention and the Executive Committee are sensitive to the circumstances under which a duty to warn might arise.
8. Negligent misrepresentation. Negligence in regard to what is said, or what should have been said, by the Convention's officers, and perhaps the Executive Committee's officers and employees, when it comes to representations concerning what was known or should have been known about a wrongdoer's past. Cases at §8:29 *Religious Organizations and the Law*.
9. Sexual harassment under federal or state employment discrimination law when an employee is victim. Attempt to hold SBC liable would require piercing the veil, agency, or some other theory of vicarious liability.
10. Sexual assault. Would require vicarious liability imputation.
11. Abuse of authority relationships.
12. Violation of fiduciary duty.
13. Violation of federal Violence Against Women Act which establishes a right to be free from crimes of violence motivated by gender.

Defamation may be the most likely cause of action brought against the church by the minister or other person declared to be a wrongdoer by the church or by the SBC.

### Defamation Law

The BGCT model invites officers of churches and entities to make statement to the

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BGCT. Those statements may result in suits for defamation against the officers. Likewise, if the BGCT makes defamatory statements about a minister, the question arises as to whether the state convention could be sued successfully for defamation. For example, if the SBC adopted the BGCT model and the SBC makes a statement that it had a confession (however we would describe the confession) of wrongdoing, or if the SBC declared that its attorneys had formed a judgment that substantial evidence existed of the minister's wrongdoing, then the question would be whether the SBC could be sued for defamation and required to prove the truthfulness of its statement.

So, I am concerned here with the BGCT Model which asks churches to report, for fear it is asking the church to assume a legal risk of defamation about which the church is uninformed and thus not able to independently evaluate the risk. And, I am concerned about the risk of defamation to the SBC if it were to make the statements anticipated by the BGCT Model.

Defamation is "the publication (in writing a "libel," orally a "slander") of anything which is injurious to the good name or reputation of another person, or which tends to bring him into disrepute." *Ballentine*. If the statement is not true, the injured person has a cause of action against the maker of the statement for damages. That is, unless some exception to the general rule applies.

Words injurious on their face and without aid of extrinsic proof are defamatory *per se*. To say, for example, that a minister has engaged in child sex abuse is defamatory *per se*. Damages are presumed and may be recovered without proof of actual pecuniary loss where publication is libelous *per se*. Damages include injuries to character or reputation, to feelings, mental suffering or anguish and other like wrongs and injuries incapable of monetary valuation, together with identifiable loss of business. *Venn. v. Tennessean Newspapers, Inc.*, 301 F.Supp 47. Libel and Slander 9(4) Clergyman, See Decennial Digest and Westlaw.

Defenses:

These are among the defense which may be most likely offered:

1. Truth. A defamation is not actionable if it is true. This defense would be particularly important in evaluating the risks of the proposed SBC plan. We ought to be able to



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prove the truth of what we publish since we will only publish a statement indicating a court has found one guilty of a crime or liable for damages in a civil action..

2. Opinion. If the statement is an opinion, not a statement of fact, the defendant is not liable for a defamation. The BGCT plan has its lawyers offering an opinion.

If the suit against the SBC or EC arises out of a claim that the minister was defamed by the EC's statement that it had substantial evidence of clergy sexual misconduct, the EC might argue that this was an opinion, not a statement of fact which can constitute defamation, unless the EC in fact did not have "substantial evidence" and that leaves the question of what is substantial.

3. Consent. It is not likely that we or the BGCT could show that the minister or other wrongdoer who is reported upon has consented to the report. This defense would be useful in association cases in which, for example, a member has consented to publications about him by the association. And the church officers are not likely to be able to use this defense. While the minister would have consented to an evaluation of his conduct by certain persons within the church, it would not be likely that he consented to a communication concerning those findings to the SBC, for example.

Some denominations might be able to show consent. But, the minister who claims to have been slandered would not have consented to the SBC's evaluation of him or to the SBC's release of information about him. If the SBC had an arbitration medium in which the minister and the accusers participated, it might be structured in such a way that his consent to arbitration would be deemed his consent to the release of the results of the arbitration. (*Berman v. Shatnes Laboratory*, 350 N.Y.S.2d 703) (1973). But that is not within any contemplated plan for the SBC.

4. Qualified Privilege. There are some areas in the law of defamation in which persons enjoy some degree of insulation from the normal rules of defamation. They are called areas of "qualified privilege." The "qualified" means that the privilege does not extend to false statements which are made with *malice*. Earlier I referred to my concern that the BGCT Model of receipt of information might be deemed to be so one-sided as to be evidence of malice; if malice is shown then no qualified privilege exists.

Employment provides an example of how this qualified privilege works. An employer



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may have a qualified privilege under the relevant state law to respond to an inquiry from another employer regarding an employee. And, within the ranks of an employer there are those who may make evaluations and judgments concerning an employee and do so under conditions of a qualified privilege.<sup>2</sup>

If the minister sues the individuals who made the statements to the SBC, would those individuals be able to establish a qualified privilege? What if the minister sues the SBC for statements it makes. The employment-related defense only protects those who make statements to those within the employer's ranks who are among those who need to hear statements in order to make employment-related decisions, and to a prospective employer who inquires.

But, statements by an employer about an employee is only one example of a broad defense, or a broad area of qualified privilege known as "common interest."

*Common interest.* Courts have held, for instance, that church members can talk to each other, absent malice, about their minister and not be liable for defamation, even when the statements said are untrue.<sup>3</sup> But, that is an intra-employer statement. Could a church convince a court that this common interest qualified privilege exists in its church-to-SBC communication, and could the SBC successfully defend its SBC-to-whomever statement? It is not likely that everybody to whom the SBC could broadcast a statement would have a common interest. This common interest qualified privilege is why the BGCT confined those from whom and to whom it received and made statements; the churches and entities of the BGCT and the BGCT all most arguably have a common interest.<sup>4</sup> However, it would be much easier to show a common interest if the hiring church requests the information from and receives it from the former church.

If the church had a duty to report to the BGCT, and the BGCT had the power to use that information to prohibit subsequent employment, the risks would be minimal. But, that is not our polity.

Elements of the common interest qualified privilege are: Good faith, an interest to be upheld; a statement limited in its scope to this purpose; a proper occasion; a publication in a proper manner to the appropriate parties only. Good faith requires a reasonable belief (a) there is information that affects a significantly important interest of the

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publication and (b) the recipient's knowledge of the defamatory matter will be of service in the lawful protection of the interest.<sup>5</sup>

(An archbishop's speech to the congregation charging a priest with being irresponsible and disobedient was not privileged because the plaintiff-priest was not under the archbishop's guidance and was not shown to have been made in good faith and in the belief that the speaking was the discharge of his duty to the congregation.)<sup>6</sup>

To fit into this privilege, the occasion must be one which makes a publication under the reasonable belief that it is of information that affects a sufficiently important interest of the recipient or a third person, and the recipient is one to whom the publisher is under a legal duty to publish the defamatory matter or *is a person to whom its publication is otherwise within the generally accepted standards of decent conduct*. In evaluating a publication in this latter category it is an important factor if a family or other relationship exists between the parties.

This privilege is abused by a reckless disregard as to the statement's truth or falsity. Therefore, a negligent investigation, etc. would cause one to lose the qualified privilege.

We offer no opinion as to whether the church or entity which makes a statement to the BGCT and/or the BGCT which makes a statement to a church or entity is likely to be able to demonstrate that it acted within this qualified privilege. Our bottom line is that if we avoid asking churches to make statements to the SBC we help the church with its risks. And, if we make our statements on matters where truth will be a defense, we need not worry whether we are in a qualified privilege or not. The BGCT has dug its trenches at the qualified privilege line; we are digging ours at the truth line. I like that position for many reasons, both legal and moral. It would not be a moral victory to win a lawsuit on the "technicality" of a qualified privilege if the fact of the matter is the SBC told an untruth about a minister.

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### End Notes

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1. For example, I recommend that we ask LifeWay to allow us to think with them on how the church's annual profile or letter is phrased.
  2. Key number 44(3); *American Tel. & Tel. Co. v. Fry*, 8 Tenn.C.C.A. 159, 8 Higgins



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159.

3. Key number 45(2); *Massee v. Williams*, 207 F. 222, 124 C.C.A. 492; *Holbrook v. Harman Automotive, Inc.*, 58 F.3d 222; *Pate v. Service Merchandise Co., Inc.*, 959 S.W.2d 569, appeal denied, rehearing denied 1996 WL 614201, adopting Restatement (Second) of Torts §598.

4. *Southern Ice Co v. Black*, 189 S.W. 861, 136 Tenn. 391.

*Hanseen v. Our Redeemer Lutheran Church*, 938 S.W.2d 85 (Tex. Ap. 1007).

*Church of Scientology v. Green*, 354 F. Supp. 800 (S.D.N.Y. 1973).

*Willenbucher v. McCormick*, 229 F. Sup. 659 (D. Colo. 1964).

*Herndon v. Melton*, 105 S.E.2d 531 (N.C. 1958).

*Cimijotti v. Paulsen*, 219 F. Supp. 621 (N.D. Iowa 1963), appeal dismissed, 323 F.2d 716 (8th Cir. 1963).

*Browning v. Gomez*, 332 S.W.2d 588 (Tex. 1960).

*Joiner v. Weeks*, 383 So.2d 101 (La. App. 1980).

*Mosley v. Evans*, 630 N.E.2d 75 (Ohio App. 11 Dist. 1993).

*Gorman v. Swaggart*, 524 So.2d 915 (La. App. 1988).

*McCartney v. Oblates of St. Francis de Sales*, 609 N.E.2d 216 (Ohio App. 6 Dist. 1992).

*Kelly v. Diocese of Corpus Christi*, 832 S.W.2d 88 (Tex. App. Corpus Christi 1992).

5. Restatement (Second) of Torts §§593, 594, 595.

6. *Hellstern v. Katzer* (1899) 102 Wis. 391, 79 NW 429; See in re the proper discharge of his clerical duty: *Sevatus v. Pichel* (1874) 34 Wis. 292; 63 A.L.R.649; *Flanders v. Daley* (1904) 120 Ga. 885.