

**QUINCY COLLEGE
BOARD OF GOVERNORS**

Meeting of August 2, 2005

Minutes

The meeting was called to order at 6:05 PM. The member roll was called. The following members of the Board of Governors were present: Simon Chan; Joanne Condon-Walsh; William Grindlay; Dr. Joseph Nicastro; Richard Nici; Peter O'Neill, Esq., First Vice Chair; Jerrell Riggins; Walter White; Theresa Lord-Piatelli, Esq., Chair. David Dennis arrived at 6:08 PM. Daniel Raymondi, Esq., arrived at 6:13 PM. Also present were: Martha Sue Harris, President, and Secretary to the Board of Governors; Pushap Kapoor, Interim Vice President for Enrollment Management; Steven Higgins, CFO; Robert E. Baker, Jr., Esq., Interim Vice President for Academic Affairs, and Clerk to the Board of Governors; Robert Quinn, Esq., First Assistant City Solicitor, City of Quincy; David Cunningham, Esq., attorney for President Sean Barry; Marge Donovan, Esq., attorney for President Sean Barry. At the direction of the Chair, the Pledge of Allegiance was recited and a moment of silence was observed.

Motion by Ms. Condon-Walsh that agenda item # 4, Personnel Matters, be taken out of order. Mr. Riggins seconded the motion. There was no discussion on the motion. The motion was passed unanimously (Mr. Dennis and Mr. Raymondi not having yet arrived) on a voice vote. There were no votes in opposition to the motion, and no abstentions.

After the vote on the motion, Mr. White asked if the proceedings could be delayed for a few moments to allow for the arrival of Mr. Raymondi (Mr. Dennis already having arrived). The Chair ruled that such a request would have been proper as discussion on the motion, but since the motion had been voted on and passed, the meeting would proceed.

The Chair called upon Attorney Quinn to address the Board of Governors. Attorney Quinn appeared before the Board of Governors and stated that the matter at hand is the possible discipline of President Barry. He described his job as assisting the Board of Governors in this process by providing information and the standards to be used in making the decision on whether to discipline President Barry. He also introduced Attorneys Cunningham and Donovan, who represent President Barry. Attorney Quinn stated that President Barry's attorneys have asked for a delay of possibly two weeks in these proceedings because of President Barry's medical condition. Attorney Quinn stated that he had asked President Barry's attorneys for substantiation of his medical condition, including medical documentation and an affidavit signed by President Barry, and that he had prepared and forwarded to Attorney Donovan an affidavit for President Barry's signature. He stated that he received a doctor's letter and a "somewhat altered" affidavit. Attorney Quinn went on to say that it has been represented that because of President Barry's medical condition, he would be unable to fulfill his duties on a full time basis until late September. Attorney Quinn stated that President Barry's attorneys also have asked to participate in the proceedings. Attorney Quinn then distributed to the Board of Governors a letter from him to the Board, dated August 1, 2005 in which he makes recommendations to the Board about the nature of the involvement in the proceedings of President Barry's attorneys. Attorney Quinn stated that his recommendations now are consistent with those in the letter.

Mr. White asked for the sentiment of the members of the Board of Governors about delaying the proceedings for several weeks, given President Barry's medical condition. Mr. Grindlay replied that his understanding was that the Chair did not receive from President Barry the requested medical documentation.

The Chair asked Attorney Quinn if he had any information that President Barry was medically unable to attend this meeting. Attorney Quinn referenced a letter that he had received from

President Barry on August 1, 2005, in which it was stated that President Barry was hospitalized from July 5, 2005, through July 11, 2005, is currently undergoing physical therapy, and is on pain medication. The Chair asked Attorney Quinn if he had received from President Barry an affidavit in which he stated that he had attended a family reunion. Attorney Quinn replied that in his affidavit, except for that one event, President Barry stated that he has been unable to leave his home for more than three hours at a time.

Attorney Cunningham was recognized and stated that President Barry did undergo surgery, and offered a letter in verification. This letter was distributed to the members of the Board of Governors. Mr. Cunningham stated that he and Attorney Donovan had received written notice last week of this meeting, but he did not receive the documents which the Board of Governors were using during the hearing ("the binder") until 3:00 PM on August 1, 2005, and that Attorney Donovan had not received the documents until today. Attorney Cunningham stated that Attorney Donovan was of the belief that, based on a letter received from Attorney Quinn, today's hearing could be continued until August 16, 2005, upon two conditions, provision of medical documentation and an affidavit from President Barry, having been met. Attorney Cunningham stated that the client (President Barry) is not here, his attorneys are not able to consult with him, and they are unable to represent him given the short notice. Attorney Cunningham stated that fundamental concepts of fairness call for a postponement.

Motion by Mr. Grindlay that the procedure for the conduct of the hearing as set forth in Attorney Quinn's letter of August 1, 2005, be adopted. Dr. Nicaastro seconded the motion.

Attorney Quinn stated that he first heard of the medical issues last week. He stated that he sought, by letter, medical documentation indicating that President Barry was unable to attend, and President Barry's signature on an affidavit prepared by Attorney Quinn. Attorney Quinn suggested that neither documentary response was adequate and asked that the Board go forward with the proceedings. Mr. Raymondi asked for a copy of the letter sent by Attorney Quinn. This letter was distributed to the members of the Board of Governors by Attorney Cunningham. Attorney Quinn said that on Friday (July 29, 2005) afternoon he had a conversation with Attorney Donovan in which he stated that since no medical documentation had been received, the opportunity to postpone was withdrawn.

Motion by Ms. Condon-Walsh to move the question (of adoption of the procedures for the conduct of the hearing, the subject of Mr. Grindlay's motion, above). Mr. Dennis seconded the motion to move the question. On the motion to move the question, Mr. Raymondi stated that any action on possible termination should be accompanied by the same fairness and dignity as hiring. It is unreasonable to think that, given documentation of this magnitude, adequate preparation could be done. Also, Mr. Raymondi stated, both conditions for postponement were met. He stated that he believes that process is important. At that point, the Chair declared Mr. Raymondi out of order and called for a roll call vote on the motion to move the question.

On the motion to move the question (of adoption of the procedures for the conduct of the hearing), the following members of the Board of Governors voted in favor of the motion: Ms. Condon-Walsh; Mr. Dennis; Mr. Grindlay; Dr. Nicaastro; Mr. O'Neill; Mr. Riggins; Ms. Lord-Piatelli (Chair). The following members of the Board of Governors voted in opposition to the motion: Mr. Nici; Mr. Raymondi; Mr. White. The following member of the Board of Governors abstained: Mr. Chan. The motion passed.

On the motion to adopt the procedures for the conduct of the hearing as set forth in Attorney Quinn's letter of August 1, 2005, the following members of the Board of Governors voted in favor of the motion: Ms. Condon-Walsh; Mr. Dennis; Mr. Grindlay; Dr. Nicaastro; Mr. Nici; Mr. O'Neill; Mr. Riggins; Ms. Lord-Piatelli (Chair). The following members of the Board of Governors voted in opposition to the motion: Mr. Raymondi; Mr. White. The following member of the Board of Governors abstained: Mr. Chan. The motion passed.

The Chair then called upon Attorney Quinn to make his presentation to the Board of Governors, allowing him forty five minutes to do so. Attorney Quinn began by explaining the various documents (the binder) provided to the Board. The first reference was to President Barry's contract and its terms, particularly those provisions dealing with duties. He then explained the grounds for termination, and the procedures attendant thereto. He then described the just cause basis for termination.

Attorney Quinn stated that President Barry breached his fiduciary duty to the Quincy College Foundation (the bank figures relative to the Foundation are reflected on p. 3 of the documents). In this time, according to Attorney Quinn, twenty per cent of Foundation funds went to scholarships. \$53,000.00 was spent on out of state travel. Additional money was spent on a surveillance system and a handwriting expert. Attorney Quinn asserted that in addition to the depletion of Foundation assets, municipal finance laws were violated because the purchase of the surveillance system was not done subject to bid and the handwriting expert was not hired pursuant to a request for proposals. Attorney Quinn also stated that there is no accurate list of directors of the Foundation. The make-up of the Foundation Board did not follow the terms of the statute that created the Foundation. He also stated that there was a failure to follow procedures regarding acceptance of gifts to the College in that these were not presented by President Barry to the Board of Governors for approval. He also said that the Foundation did not receive financial reports from its treasurer. Attorney Quinn declared that in January, 2004, the College stopped reimbursing the Foundation for travel expenses. He stated that President Barry did not convey this information to the Foundation. He stated that taxes, and filings with the Secretary of State's Office and Attorney General's Office have not been filed for 2004. He stated that President Barry acquired Marriott Member Points for himself while traveling on behalf of the College. Mr. White asked how this was known. Attorney Quinn stated that this is based on records received from Marriott. Attorney Quinn also stated the following: President Barry and others were getting faster travel reimbursement than others by virtue of being reimbursed by the Foundation; the majority of the money donated to the Foundation was from a few sources, most particularly College Courses Incorporated; President Barry failed to inform the Board of Governors of activities of the Foundation. Attorney Quinn stated that an audit of the Foundation is underway. He received an initial report today (Attorney Quinn gave copies of this initial report to President Barry's attorneys and left it to them as to whether it would be distributed to the Board of Governors). Attorney Quinn further asserted that the Foundation checkbook contained nine blank checks, but which already were signed by one of the signatories. Attorney Cunningham asked to be recognized and asked to voice an objection to the distribution of the auditor's initial report. His objection was based on his not having seen the initial report, and the incomplete nature of the report. The initial report was not distributed.

Attorney Quinn then raised the subject of the Surgical Technology Program. He provided a copy of the Melanson and Heath audit of the Program and referred to certain portions of the Executive Summary. Attorney Quinn stated that the Program was running amok and was properly closed down by the College in 2003 – 2004. He stated that the Program's problems were directly related to the President and his duties to directly supervise the College. He also stated that the problems had not been corrected. Attorney Quinn also referred to a letter, dated October 14, 2004, from President Barry to Charles Cook of the New England Association of Schools and Colleges containing four representations that had not been fulfilled. Attorney Quinn also referred to a letter from the Board of Higher Education regarding the Surgical Technology Program's site visit, listing deficiencies in the Program.

Attorney Quinn then stated that President Barry had appointed himself as an adjunct professor in American Government, Journalism, and Management. He did not fulfill his duties, did not teach, but instead used a mentoring program and had the mentees teach the courses. Bryan Walsh, by affidavit, stated that he taught the American Government course. He received \$500.00 as mentee, and President Barry received \$200.00 as mentor plus his adjunct salary. This also occurred in the fall of 2004 in the Management course, except that in this case the mentee left the

College in November and was never paid. Attorney Quinn described President Barry's use of the mentoring program as an abuse of his authority.

Attorney Quinn then referred to an enrollment report that was obtained after President Barry was placed on leave. He stated that the report showed that enrollment at all levels had dropped precipitously. He stated that when President Barry's contractual obligations are examined in light of the just cause standard and President Barry's conduct examined, that just cause has been met. He stated that the Board first needed to determine whether or not there is just cause and then what, if any, disciplinary action to impose.

Mr. White, on a point of order, stated that the integrity of the Board was on the line. He was struck by the comments of President Barry's attorney that they have not had time to adequately review, prepare, and respond. He also restated his objection that the First Assistant City Solicitor was still representing the Board in this matter.

Mr. White moved for a postponement. Ms. Condon-Walsh, on a point of order, stated that the Board already had adopted the process. She stated that the integrity of the College, not the Board, is at issue. She further stated that the information presented to the Board this evening is not new. She saw it before when she was sued by President Barry.

Mr. Raymondi sought to ask some questions of Attorney Quinn. The Chair stated that questions would not be allowed at this time, nor until the process has been completed. The Chair then ruled Mr. White's motion for a postponement to be out of order.

President Barry's attorneys were then recognized. Attorney Donovan brought to the Board's attention that she had received Attorney Quinn's letter on July 27, 2005, without the documentation that was before the Board this evening. She further stated that a letter from Attorney Quinn was received by fax on July 28th seeking medical documentation and an affidavit in order for a postponement to be considered. Attorney Donovan stated that she had less than twenty four hours to comply and secure and forward the medical certificate. The only change to the affidavit was changing a reference to three hours to two hours. Attorney Donovan stated that when she conveyed to Attorney Quinn on Friday that they were awaiting medical documentation, he did not say that the offer to postpone was off the table. She then said that she first saw the documents the subject of this evening's meeting today at Attorney Cunningham's office. The Chair asked that the record reflect that it was now 7:20 PM and that Attorney Donovan had started her presentation at 7:15 PM.

Attorney Cunningham began his presentation and sought a poll of the Board to determine which members had filed their required financial statements. He indicated that any Board member who had not so filed should be ineligible to participate in these proceedings. All members indicated having filed except Mr. Chan. Attorney Cunningham reiterated his need for a continuance and that neither he nor Attorney Donovan have had any real chance to represent President Barry. He went on to state that since it appeared that the Board was going forward this evening, he and Attorney Donovan would do the best they could. The Chair stated that the members of the Board had received the documents on Wednesday, President Barry had received them on Tuesday, and that he had an obligation to share them with his attorneys. Attorney Cunningham disagreed.

Attorney Cunningham stated that the votes taken by the Board on May 25, 2005, were done without the benefit of any information indicating any improprieties. He would assume that the Board would want to see the results of the independent investigation before making a decision. He stated that if the Board goes forward this evening, it will do so on the representations of Attorney Quinn. Attorney Cunningham stated that the charges leveled this evening were not supported by testimony and were such that President Barry has not had the opportunity to respond to them. He described Attorney Quinn's presentation as allegations, some of which may or may not prove to be true. He stated that when President Barry was placed on leave, it was done so solely on the basis of allegations involving the Foundation. He also said that there were

individuals who recently left the employ of the College who would be able to provide the Board with information that they do not have today.

Attorney Cunningham then referenced the minutes of the Board of Governors' meeting of February 4, 2003, and the renegotiation of President Barry's contract, which resulted, shortly thereafter, in a contract. That contract called for an annual evaluation which, Attorney Cunningham stated, has never occurred. He stated that the minutes are replete with praise for President Barry and his staff. He said that the minutes clearly showed that President Barry was taking trips on behalf of the College. Attorney Cunningham further stated that he had to believe that the Board was aware of the difficulty in being reimbursed. All of this indicated to him that President Barry believed that he was acting with the knowledge of the Board. Attorney Cunningham then referred to checks drawn on the Foundation account, but said that of the \$100,000.00 expended, \$73,000.00 were spent on scholarships and computers. He said that there were trips, but also expenditures by the Foundation to raise money. Attorney Cunningham then asked if it was the fault of the College President that there were enrollment fluctuations over a fairly short period of time, and suggested that the Board take a look at a ten to twenty year period to see if such fluctuations were common. He said that the enrollment numbers cited by Attorney Quinn were unaccompanied by any analysis.

Attorney Cunningham said that the Board was being asked to terminate President Barry based on just cause, referred to Attorney Quinn's handout, and said that the handout referred to a statute and case law not referenced in the contract. He then said that the only person speaking against President Barry did so by affidavit, to which he had not had the chance to respond. Attorney Cunningham doubted that there were any Marriott statements before the Board and said that there was no information regarding any impropriety in the President Barry's use of Marriott member points.

Attorney Cunningham asked the members of the Board if they had fulfilled all of their duties in monitoring the activities of the College and of the Foundation. He asked if anyone on the Board wondered how the College's participation in parades took place. He stated that someone within city government had undertaken audits and there were no scathing revelations in their reports. He stated that in almost twenty years as an attorney, he has never had a case in which he has had no opportunity to prepare, until now. He was outraged that a two week extension was denied which, if granted, would have allowed President Barry to prepare for a proceeding that will cost him his employment. Attorney Cunningham referenced a memo done by a former CFO to President Barry, which ends by saying "there is no longer a financial issue". While the memo deals with procurement, Attorney Cunningham said that he did not know what the memo meant and he challenged the Board to know what it meant. He stated that the College and the City have had an ongoing debate over issues involving money, and it has now reached the point that it may cost people their jobs. He further stated that: if President Barry had the ability to attend this evening, he would have been able to explain what has been discussed; if he had the ability to place employees and former employees before the Board, they could explain the matters before the Board. He said that there was documentation someplace to explain the checks for travel.

At 8:03 PM, the Chair asked Attorney Cunningham to take a few minutes to wrap up. He said to the Board, "Be it on your heads". He said that he did not mean this in a vindictive way, but out of a concern for justice and fairness, and he expressed concern that justice and fairness were missing in this case because the client was unable to attend and his attorneys were unable to prepare.

Attorney Quinn was recognized for the purposes of rebuttal. In reference to Attorney Cunningham's comment that Attorney Quinn was being directed by the Mayor, he stated that he, Attorney Quinn, is an employee of the City of Quincy and this matter has not been directed by the Mayor, the mayor's office, or City Hall. Attorney Quinn said that he has had several conversations with the Board Chair and several members of the Board. He also expressed the belief that he has been fair in dealing with President Barry and counsel.

Attorney Cunningham spoke again and stated that if the Board receives information that would lead it to believe that there exists just cause to fire President Barry, then it should do so. He said that tonight, however, that information is not before the Board. He asked the Board not to vote on the basis of a lack of knowledge, but rather on the basis of knowledge. Attorney Donovan reiterated Attorney Cunningham's request that the Board be fair to President Barry. She stated that in the termination of a previous president, that person received every available right and degree of fairness. She asked that President Barry be given the opportunity to participate.

Mr. Raymondi asked several questions of Attorney Quinn including about Foundation check entries and bank statements, withdrawals occurring in January, February, and March of 2004, and where in the document packet checks from January, 2004, were. He asked if it was Attorney Quinn's position that a decrease in Foundation funds by about \$100,000.00 over a seventeen month period was a reason for disciplining the President. Attorney Quinn replied that, among other things, it was.

The Chair, after stating that Mr. Raymondi's questions were straying from the discussion of President Barry, then addressed the level of information that the Board had received from President Barry. She stated that she knew nothing of President Barry's unfettered use of Foundation funds. She expressed disappointment that the information she had received from President Barry was sanitized and in many cases not true. As to President Barry's ability to answer questions about his use of Foundation funds, the Chair stated that President Barry has refused to do so by refusing to return her telephone calls and, on May 25, 2005, by refusing to answer the Board's questions.

Mr. Raymondi asked to get back to the subject of Attorney Quinn's presentation. He stated that he felt no rush to reach a determination.

The Chair recognized Mr. White, who said that Mr. Raymondi's questions spoke to the volume of information before the Board tonight, were appropriate and that the Board needed to take a step back and arrive at an organized approach.

Motion by Mr. Grindlay that a five minute time limit be set on each Board member to ask questions. The motion was seconded by Mr. Riggins. On the motion, Mr. White stated that such a limit was impractical. Ms. Condon-Walsh said that a review of the documents would not take much time because, if the Board looked at the documents starting with page 1, most of what is there is material the Board already has seen. The following members of the Board of Governors voted in favor of the motion: Ms. Condon-Walsh; Mr. Dennis; Mr. Grindlay; Dr. Nicastro; Mr. Nici; Mr. O'Neill; Mr. Riggins; Ms. Lord-Piatelli. The following members voted in opposition to the motion: Mr. Raymondi; Mr. White. No vote was cast by Mr. Chan. The motion passed.

Mr. Grindlay asked to present a question to Attorney Donovan, then said that the fault for any delay in preparation of the case was hers. He asked when she first knew that President Barry was or would be disabled. She replied that after the meeting of May 25, 2005, President Barry told her that he would be having surgery around July 4th. Mr. Grindlay asked if Attorney Donovan had contacted the Chair to seek a delay. Attorney Donovan replied that she could not contact the Chair directly because the Board was represented, but that she had sought a delay through Attorney Quinn. She further stated that she received the four page letter, unaccompanied by the documents, on Wednesday, spoke with President Barry on Thursday, and on Thursday afternoon spoke with Attorney Quinn regarding a postponement. She stated that at 4:55 PM on that Thursday, Attorney Quinn faxed to her the demand for the affidavit and medical certificate.

Mr. Riggins asked Attorney Donovan what information she had received in preparation for the June 6th and June 19th hearings. She responded that she had not received anything except President Barry's contract, the enabling legislation for Quincy College and Foundation. Mr. Riggins asked Attorney Donovan if she would be fully prepared to respond if the matter were postponed until August 16th and asked that she answer "yes or no". Attorney Cunningham spoke and said that he would not be cross examined. The Chair said that copies of the checks were provided by June 9th. The Chair further said that there has been an exchange of information between Mr. Raymondi and Attorney Donovan and, as such, President Barry has been informed. The Chair then asked if there was anything to have prevented President Barry from writing the Board after May 25th to explain what was done regarding the Foundation. Attorney Cunningham stated that to have done so would have interfered with the independent investigation. The Chair then said that prior to May 25th, she had some questions resulting from the Melanson and Heath audit, that she tried to speak about those questions with President Barry, and he had responded that she needed to put those questions in writing. The Chair also stated that the former in-house counsel would not provide requested information.

Dr. Nicastro said that there were a number of problems, that the Surgical Technology Program was a mess, and it was not properly addressed. He said that the image of the presidency has been tarnished, and that President Barry should have addressed matters eight weeks ago.

Motion by Mr. Dennis that just cause has been found to discipline President Barry based on the letter of July 26, 2005. The motion was seconded by Ms. Condon-Walsh. On the motion, Mr. White stated that there was insufficient information and too many questions left unanswered, and that it would be a gross miscarriage of justice to find just cause. Mr. Raymondi asked various people if they had received the College's reimbursement form. Mr. Higgins identified it as the standard travel reimbursement form and described its contents and the approval process. He stated that if one did not complete the form, one would not be reimbursed. Mr. Raymondi asked Mr. Higgins if President Barry's travel was in conformity. Mr. Higgins replied that President Barry reimbursed himself directly and did not follow the process. Mr. Raymondi attempted to offer a motion but was not recognized by the Chair. A vote was then taken on Mr. Dennis' motion that just cause be found. The following members of the Board of Governors voted in favor of the motion: Ms. Condon-Walsh; Mr. Dennis; Mr. Grindlay; Dr. Nicastro; Mr. O'Neill; Mr. Riggins; Ms. Lord-Piatelli. The following members of the Board of Governors voted in opposition to the motion: Mr. Nici; Mr. Raymondi; Mr. White. No vote was cast by Mr. Chan. The motion passed.

Mr. White raised a question on why Mr. Chan's name was not called when the Clerk called the roll on the motion. The Chair replied that she had instructed the Clerk not to call Mr. Chan's name in observance of the process advocated by Attorney Cunningham, that any Board member who had not filed the required financial statement not be allowed to participate. Mr. Raymondi asked that if that standard applied now, why did it not apply on May 25th. Ms. Condon-Walsh asked if there was any reason why Mr. Chan did not file. Mr. Chan replied that he had a number of questions regarding the financial statement and needed advice on them. Ms. Condon-Walsh moved reconsideration of the last two (2) motions to allow Mr. Chan to participate. The Chair agreed with Ms. Condon-Walsh's request but asked Attorney Cunningham for his views. Attorney Cunningham replied that there was no discretion for an exception to be made. Ms. Condon-Walsh then withdrew her motion for reconsideration.

Motion by Ms. Condon-Walsh that, after just cause having been found, the Board of Governors terminate President Barry forthwith, with no compensation. The motion was seconded by Mr. Dennis. There was no discussion on the motion. The following members of the Board of Governors voted in favor of the motion: Ms. Condon-Walsh; Mr. Dennis; Mr. Grindlay; Dr. Nicastro; Mr. Nici; Mr. O'Neill; Mr. Riggins; Ms. Lord-Piatelli. The following members of the Board of Governors voted in opposition to the motion: Mr. Raymondi; Mr. White. No vote was cast by Mr. Chan. The motion passed.

Motion by Ms. Condon-Walsh to adjourn. The motion was seconded by Mr. Grindlay. There was no discussion on the motion. The following members of the Board of Governors voted in favor of the motion: Ms. Condon-Walsh; Mr. Dennis; Mr. Grindlay; Dr. Nicastro; Mr. Nici; Mr. O'Neill; Mr. Riggins; Ms. Lord-Piatelli. The following members of the Board of Governors voted in opposition to the motion: Mr. Raymond; Mr. White. No vote was cast by Mr. Chan. The motion passed.

The meeting of the Board of Governors was adjourned at 9:25 PM.