

Misunderstandings Multiply: *La Sierra* Employees File Suit; WASC Issues Formal Notice of Concern | BY BONNIE DWYER

Perhaps it was inevitable that employees of *La Sierra* University and the Seventh-day Adventist church would end up in court. During the two years of wrangling over how biology is taught at the university, there have been numerous misunderstandings with each one exploding like a bombshell and leading to further misunderstanding.

The most recent explosion took place on July 28, 2011, when three LSU employees who previously were cornered into resigning filed suit in California State Court, alleging not only violation of California privacy laws, but violation by the church of university due processes. Jeff Kaatz, James Beach, and Gary Bradley say that it was against the law for church officials to bypass the university president and use a recording made of their private conversation in James Beach's home as the basis for suggesting that they resign from their positions—Kaatz as vice-president for advancement, Beach as dean of the College of Arts and Sciences, and Bradley as (semi-retired) professor of biology.

Their case partially hinges on how the privacy law is interpreted, since one of the parties involved in the conversation (Board of Trustees member Lenny Darnell) was the one that (unknowingly) made and shared the recording with other people. Once the recording was given to a media outlet (*Spectrum*), the church attorneys maintain the recording became public and therefore appropriate basis for the action that was pursued by Ricardo Graham, the chairman of the *La Sierra* University Board of Trustees, prompting their resignations.

However, the employees are not alone in their accusation of inappropriate action being taken by the board chair. The Western Association of Schools and Colleges (WASC) also found fault with Graham's action. In a strongly worded letter to LSU President Randal Wisbey, the regional accrediting agency's president Ralph A. Wolff said,

"It appears that he (Graham) did not have independent authority as *La Sierra's* board chair to take these actions and was not acting at the instruction of the board."

WASC issued a formal Notice of Concern, stipulating that LSU resolve governance issues including "changes to the bylaws and other operational documents necessary to create an independent governing board."

The letter also called for steps to be taken "to ensure the autonomy of *La Sierra* as an educational institution separate from and supported by the Church."

It will be the responsibility of the LSU Bylaws Committee to figure out how to reshape the board in such a way that the institution is separate from but supported by the church. While it sounds impossible, there is precedent in the relationships that the church has with its hospitals and also with independent ministries like Adventist-laymen's Services & Industries (ASI).

WASC's request is due to be noted by other Adventist universities that WASC accredits—Loma Linda University and Pacific Union College—as well as the rest of the colleges and universities, because the "separate from, but supported by" may set precedent for major changes at other Adventist institutions of higher education.

Perhaps that is one reason why there is some discomfort in Silver Spring over the WASC letter. Apparently no one from either WASC or LSU contacted the Adventist Accrediting Association personnel to inform them or discuss WASC's expectations before the letter was publicly released, and that created a misunderstanding—similar to the misunderstanding over the last-minute motion that was passed by AAA Board foreshortening LSU's AAA accreditation.

It was the independent actions of two Board of Trustee members that set in motion this most recent turn of events. Lenny Darnell's recording and distribution of the private conversation occurred because he wanted to bring to light

the words and actions of church officials regarding the shortened term of accreditation for LSU that was voted by the Adventist Accrediting Association (AAA) April 4. Another Board member sent the recording to Larry Blackmer.

The vice president for education of the NAD, Larry Blackmer, played a key role in several recent AAA events concerning La Sierra. He participated in the AAA site team visit to the campus in November 2010. During that visit he was one of three who requested a special interview session with the biology faculty. What the three heard in that interview prompted them to craft an unusual “consulting letter” to the university’s administration in addition to the normal visiting team’s report. Members of the biology department faculty maintain that statements from that interview were misinterpreted. Rather than refusing to present the church’s teaching of the literal six-day creation week as the origin of the universe in general biology courses, the professors maintain they said they could not present scientific evidence of creation.

Not only did this misunderstanding lead to the unprecedented “consulting letter” that was sent to the university, the biology faculty felt that it led Blackmer and three others to draft an alternative motion to be presented when La Sierra’s accreditation was reviewed by the AAA Board in April. The new motion trumped the five-year recommendation of the visiting team and specified that AAA would

return to the La Sierra campus in a mere 18 months to check on progress being made by the university regarding the teaching of creation. It also stated that “LSU had deviated from the philosophy and objectives of Seventh-day Adventist education,” an assertion that had not been made by the visiting team, but one that could possibly serve as reason to withdraw LSU’s accreditation. The word “deviated” created a major misunderstanding when the campus learned of the AAA vote.

Two weeks after that vote, Blackmer and the president of the North American Division, Dan Jackson, traveled to Southern California and met with the LSU faculty for a candid discussion of the accreditation process. It was that meeting on April 20 that Darnell recorded. What he did not realize was that he left the recording device on and thereby unwittingly recorded the conversation that he had with Kaatz, Beach, and Bradley after the meeting when the four friends went to Beach’s home to watch a basketball playoff game. Naturally, they also kibitzed about the meeting they had just attended, using some colorful language to describe faculty colleagues and church officials. As he left, Darnell thanked his host for the booze, too.

When Darnell got home he proceeded to e-mail a copy of the recording to a faculty member and to *Spectrum*. However, the spring issue of *Spectrum* had already gone to press and the recording was not of a quality that it could be used

The Creation Crusade at La Sierra: A Timeline

2009

- Feb. 20** Redding, California, physician Sean Pitman makes presentation about Creation science on La Sierra University campus.
- Apr. 30** David Asscherick, evangelist from the Central California Conference, writes an open letter to LSU Board Chair and church leaders.
- May 18** LSU President Wisbey sends letter responding to Asscherick letter, to Board of Trustees, LSU faculty and staff, and LSU Church leadership team.
- May 23** Lasierauniversity.net launched as a website critical of LSU. University begins conversations with legal counsel.
- Jun. 1** Attorney for *Adventist Review* initiates contact with lasierauniversity.net regarding copyright infringement of *Review* article.
- Jun. 2** Wisbey sends letter to GC President Jan Paulsen and NAD President Don Schneider requesting help with the developing issue.

- Jun. 8** EducateTruth.com website established to replace the LaSierraUniversity.net web site. EducateTruth.com seeks 10,000 signatures for a petition to be presented at the November meeting of the LSU Board to Trustees.
- Sept. 1** Gary Bradley interview published by *Inside Higher Ed*. LSU issues press release regarding Bradley’s interview, noting that Bradley’s comments do not represent the university’s position.
- Nov. 2** Shane and Mary Hilde deliver petition to LSU President Wisbey.
- Nov. 11** LSU Board of Trustees vote statement in response.

2010

- Mar. 1–3** WASC makes site visit to campus
- Mar. 31** *Adventist Review* publishes “Evolution Controversy Stirs La Sierra Campus.”
- May 12** LSU biennial constituency meeting. Vigorous discussion by delegates regarding creation-evolution. GC VP Ella Simmons and

for a podcast on the website, so the recording languished at *Spectrum* and was not publicized. (At one point, an anonymous person posted a link to the recording in a comment on the site. It was removed when news of the private recording came to light.)

Then early in May, another member of the LSU Board contacted Blackmer about the April 20 session. She was aware of the misunderstanding between Blackmer and the biology faculty and was trying to quietly broker a peace agreement behind the scenes. The faculty member had shared the recording with her, so when she wrote to Blackmer trying to explain to him how his words were misunderstood, she attached the recording of the session to make her point.

Blackmer listened to the recording—in fact he listened to the very end one morning while shaving and getting ready for the day—and when he heard the comments being made about him during the private conversation, he really took notice. He decided to have the private conversation portion of the recording transcribed to verify exactly what it was that he had heard. Then he shared the transcription with his boss, the president of the North American Division.

On June 1, Jackson handed the transcription to Ricardo Graham, the chairman of the LSU Board. After Graham read the transcription, he consulted with his executive committee, as well as with Jackson, Blackmer, Karnak Doukmetzian (General Counsel for the General Confer-

ence), and Kent Hansen (LSU counsel), Graham decided that the men needed to be confronted about their conversation. He contacted LSU President Randal Wisbey on Thursday, June 9, with instructions to have the four men at his office the next day, but did not tell him why. It was not until an hour or so before the meetings on June 10 that Wisbey learned what was to take place. Each man was called individually into the president's office at LSU where Graham, Wisbey, and Hansen presented them with the evidence of their recorded conversation and asked them if they would like to resign or have the transcription shared with the entire Board of Trustees. All four resigned.

The resignations were like a bombshell exploding the week before graduation. Suddenly, the hottest topic in Adventism was employee privacy issues. What had happened in the AAA Board meeting seemed to be overshadowed.

However, the conversation that Blackmer and Jackson held with the faculty was too important to be lost in the confusion of the resignation furor. There were significant exchanges about key issues. Blackmer was questioned about the AAA interview of the biology department, and he responded that what he heard them say was “that it would be unethical for (me) to teach one class period of creation, that’s exactly the quote we have written down from that . . . and I think you misunderstood what I said about faith and science, because the whole rule among Adventist edu-

NAD Office of Education representatives Garlan Dulan and Larry Blackmer participate.

May 25 Michigan Conference Executive Committee votes withdrawal of education subsidy benefit to employees sending their children to LSU.

May 27 “La Sierra Loved Me (Testify)” Facebook page launched by several LSU alumni.

Jun. 16 LSU Board establishes ad hoc Creation-Evolution Study Group.

Jun. 23 Central California Conference Executive Committee votes to ask for report from LSU regarding efforts being made towards a “satisfactory outcome.”

Jun. 25 Ted N.C. Wilson elected president of the General Conference.

Jun. 29 Western Association of Schools and Colleges (WASC) reaffirms LSU accreditation for eight years. Also, tells President Wisbey a special visit will occur in Spring 2011 to review issues of institutional autonomy, academic freedom, and faculty control of curriculum as related to the biology department.

Jun. 30 A vote is taken at the GC Session to reaffirm belief in creation and review the wording of the church’s fundamental belief about creation.

Jul. 1 Board Chair Ricardo Graham publishes “Why I Support La Sierra University” as editorial in *Pacific Union Recorder*.

Aug. 10 LSU Creation-Evolution Study Group develops student survey to provide some objective information regarding what is occurring in biology courses.

Aug. 26 At the request of LSU Board Chair Graham, President Wisbey, Provost Steve Pawluk travel to Maryland to meet with newly-elected GC President Ted Wilson, NAD President Dan Jackson, and other church leaders

Aug. 30–Sept. 17 Biology survey administered via Zoomerang.com.

Sept. 7 Biology survey is posted on EducateTruth.com.

Nov. 11 LSU Board, in executive session, considers results of Creation-Evolution Study Group’s research. “Provost is informed that he may not advise biology faculty of the action taken in executive session, but that the board wishes to receive the AAA site visit report prior to making a final and public statement.

cators is to integrate faith into learning.” As the exchange continued, it became clear that there had been a significant misunderstanding of what had been said in November. Plus, there was another illuminating exchange concerning the accreditation vote.

Religion faculty member Kendra Haloviak Valentine asked for clarification about the term of accreditation and language that was voted by the AAA Board, instead of the recommendation from the visiting team.

“I will tell you that I am being very vulnerable in doing this,” Blackmer replied. “A group of individuals surmised, that is the only word that I can use, that there would be difficulty with the five-year term on the Triple A Board. And they got together and talked about how do we manage that and not let it spiral out of control? So we said maybe what we ought to do is to decide what should come up at the end of this process. And so we began to talk, and there were really about four of us in this process. We began to talk about the language that should come up. And we asked what is the best thing for the church and for La Sierra?”

“Do we have to balance both of those?”

“We do. What could that mean for us to bring out of this meeting?”

Blackmer maintained that the word “deviated” had not been in the drafts of the motion the four had shared prior to the board meeting and that he only saw the term the

day of the meeting. He considered it to be too late, at that point to change it, so he said nothing about it, and the motion passed.

Who changed the wording, he was asked? Blackmer would not say, but he made it perfectly clear that it was not General Conference President Ted Wilson.

Haloviak Valentine began her inquiry with the simple question, “Do you believe that La Sierra has deviated from the mission of the church?”

NAD President Jackson was clear and unequivocal in his answer, “I do not believe that La Sierra University has deviated from the mission of the Seventh-day Adventist Church. I believe that this is God’s school.”

Blackmer said, “I believe, as I have said over and over again, that La Sierra University as a whole is faithful.” He also repeatedly apologized for not speaking up during the board meeting when he first saw the word “deviated” had been added to the motion.

But given the recorded vote, there were others in Silver Spring who apparently thought LSU had deviated. After all, hadn’t the president and board chair publicly apologized for shortcomings in an open letter regarding the teaching of creation?

Issued March 9, the open letter reported on a survey commissioned by the Board that La Sierra had conducted of all students who had studied General Biology or

Nov. 15–19 AAA site visit of LSU.

Nov. 19 NAD Director of Education Larry Blackmer gives Wisbey a “consulting letter” addressed to university administration and the board, written on behalf of the site visit team by Blackmer, Lisa Beardsley, and David Steen.

2011

Feb. 1 LSU receives “final draft” of AAA visiting team’s report. Recommendation is for five years accreditation to match that granted by WASC.

Feb. 10 LSU Board meets

Mar. 9 Open letter on the teaching of creation sent out by LSU President and Board Chair.

Late Mar. Group of four at GC meet to draft alternative motion regarding LSU for upcoming AAA Board session.

Apr. 4 AAA Board votes in Silver Spring. Alternative motion passed with shorter timeline on LSU accreditation.

Apr. 20 Jackson and Blackmer meet with LSU faculty. Board member Lenny Darnell records the session plus (unknowingly) the conversation that he had afterwards with Jeff Kaatz, James Beech, and Gary Bradley.

Early May Board member writes to Larry Blackmer hoping to act as peacemaker between him and the Biology Department faculty. Board member feels like Blackmer misunderstood comments by biology faculty during the AAA accreditation visit. She notes that the April 20 session did not help the situation, and she attaches the recording of the April 20 public meeting to verify her statement.

While shaving, Blackmer turns on the recording and lets it run as he gets ready for the day. All of a sudden he hears someone calling him names and realizes that it is no longer a tape of the public meeting.

Blackmer asks for a transcription of the private meeting recording from the General Conference Office of General Counsel.

Jun. 1 Dan Jackson gives transcript to Board Chair Ricardo Graham.

Jun. 5 Jackson and Graham confer about the transcript.

graduated with a biology major for the past four years, plus the year 2000.

Interpreting the results of the survey had been controversial in the board's discussion of the data. How were the neutral or no-response answers to be handled?

It was argued that if an answer was not positive, then it was negative by default. Some statisticians would later argue that that skewed the results. The letter itself was also a matter of contention on the board. Drafted by a small group, there were others on the board who felt the open letter went far beyond what had been voted by the board. Specifically, they felt there was nothing to apologize for.

Since the survey and the open letter were both prepared to respond to the concerns of the AAA, there were questions at the April 20 meeting with Blackmer and Jackson about whether or not these actions had been helpful.

Blackmer responded positively. The AAA Board vote would have been very different without the open letter, he stated.

However, in the WASC report of April 18-19, the student survey was seen differently. The survey had been the topic of much discussion during their team visit. "The clear message from these meetings was that while the intent of the survey was commendable—to get internal evidence regarding allegations rather than relying on outside and anecdotal evidence—the methodology of construction,

implementation and interpretation was problematic on a number of fronts." The recommendation from WASC was, "If teaching creationism is core to the mission of LSU there is a need to create clear student learning outcomes for the course(s) that can be measured and will demonstrate successful achievement of this core commitment."

With site visits from both WASC and AAA teams, the accreditation processes have dominated administrative life at La Sierra for the past two years. Self-study reports have been prepared, response to the consulting letter developed and delivered. And while both accrediting bodies recognize the importance and significance of what the other agency does, sometimes it has seemed as though the university was caught between the requirements of the two.

WASC's latest concern over the structure of the Board of Trustees is sure to create a different set of concerns with the church administration.

And while La Sierra attends to these concerns, the issue that prompted the soap opera atmosphere of the past two years continues to challenge the entire denomination, as well as other conservative Christians. Solving the creation-evolution debate is not a La Sierra issue, but until the denomination finds some level of peace with that discussion, misunderstandings are bound to continue. ■

Bonnie Dwyer is editor of *Spectrum* magazine.

Jun. 8 Graham talks with LSU Attorney Kent Hansen. Hansen has not yet seen the transcript.

Jun. 9 Karnik Doukmetzian, general counsel for the GC, confers with Jackson, Blackmer, Graham, and Hansen about the case. Graham calls LSU President Wisbey and asks for meetings the next day in the President's office with the four who were recorded—Jeff Kaatz, James Beech, Gary Bradley, and Lenny Darnell, but does not tell Wisbey what the meetings are about.

Jun. 10 At the president's office, Wisbey, Graham, and Hansen hold sessions with each of the individuals and offer them the choice of resigning or having the recording played to the entire board. They all choose to resign.

Jun. 13 Resignations are announced to the faculty and the public.

Jun. 14 Blackmer meets again with legal counsel about the incident.

Jun. 17 Faculty Senate votes action in support of the four. Action sent to the board.

Jun. 19 Graduation Day at LSU.

LSU Board meets and receives information about the recording and the resignations, as well as a letter from the

attorney representing the three employees. The resignations stand.

Jun. 21 Provost Steve Pawluk meets with faculty of the College of Arts and Sciences. Announces board action and begins process for the selection of a new Dean.

Jun. 23 Graham, Wisbey, Pawluk, Biology Chair James Wilson, and WASC faculty coordinator Cindy Parkhurst travel to Oakland to meet with WASC.

Jun. 28 NAD College Presidents meet in Denver with NAD President & VP Blackmer

Jul. 5 WASC President writes to LSU President issuing a formal Notice of Concern on behalf of the accrediting agency. He calls for changes to the bylaws that will create an independent governing board.

Jul. 18 Board meeting convened to receive the WASC letter.

Jul. 28 Lawsuit filed in California State Court on behalf of the three employees. ■

The Legal and Ethical High Road at LSU

From the July 5 *Spectrum* Blog

I read the *Spectrum* articles and some of the blog comments on the resignations of the LSU-four. I have also read California Penal Code § 632, the criminal statute that was analyzed by Jan Long in her article. I would add the following comments to this discussion.

The CA criminal statute does make it a crime for “[e]very person who, intentionally and without the consent of all parties to a confidential communication, by means of any...recording device,...records the confidential communication”...§ 632(a). “Confidential communication” is a defined term. It “includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto...” but does not include communications made under any “circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.” § 632(c).

The existence of this criminal statute is significant in that it codifies California’s public policy that recognizes that communications that occur under “circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto” are to be treated as such by the state and by its citizens. The fact that the recording of the conversation at the home was not intentional, and therefore not criminal, does not undermine the state’s public policy.

Here, the circumstances evidence that the parties to the communication desired their conversation to be confidential and confined to those present. The strongest evidences of that are the very comments made by the four friends that the church leaders found offensive. Those comments indicate a level of mutual trust between the four friends that such comments could be made in confidence with one another and with the unspoken belief that the com-

ments would not be recorded and shared with others. This would appear to be beyond dispute.

The Office of General Counsel for the General Conference (GC) should have been consulted by those at the GC who received and transcribed the recording. I would have expected that the GC’s General Counsel would have researched applicable California statutes and would have advised against using the taped recording to force the resignations of the four men involved since neither the church nor LSU would want to act contrary to the stated public policy of California, even if the offensive statements were contrary to the church’s policy and beliefs. I could understand church/university leaders meeting with and counseling the four men about what the church considered to be inappropriate language and conduct, but the four men should also have been advised that no disciplinary action would be taken because the church and university recognized and respected the privacy rights of its employees and members.

An apt analogy would be when an attorney discloses to opposing counsel during discovery a document that is obviously a confidential communication between the disclosing attorney and his client and, therefore, is privileged and not subject to discovery. Any ethical attorney who receives such a document would forthrightly notify opposing counsel, informing him/her about the inadvertent disclosure. The privileged confidential communication would be either returned or destroyed, together with whatever copies had been made, and would never be used in the litigation. Those are the ethics of trial lawyers. It would seem appropriate to expect nothing less of legal counsel for the church and the university.

It is unfortunate that the men did not have the presence of mind to say that they wanted to consult with an attorney before they signed the letters of resignation as the letters of resig-

nation had been prepared to appear to others as though the letters were signed voluntarily when, in fact, the letters were signed under duress and the implied threat that the transcribed recording would be used as a basis for terminating their employment if the letters were not signed. Of course, there would be the implicit, if not stated, possibility that the letters would become public.

This is an unfortunate occurrence for the four men, the university and the church. Hopefully, the university and the church will have the internal integrity to examine carefully how this matter was handled, to assess whether their conduct was ethically appropriate and defensible, to determine if there should be reconsideration of actions taken, and to carefully consider how their past and future actions should be explained to the university community and to church members. As we were all taught by the church, it is never too late to make amends. This may be an occasion when the church and its institutions need to abide by that wisdom which we all were taught exemplified Adventism and Christianity. This may be an occasion for the church and the university to take the high road especially when their actions and conduct affected not only the four men involved, but has the potential to affect all church members, including those who support and defend the actions of the church and the university. A balance must exist between what actions are taken by the church and its institutions to protect church and institutional policies and beliefs and the ethics of those actions.

I will leave it to others to decide if legal recourses could or should be explored, but I would hope that respectful conversations among those involved might resolve this matter and render legal recourses unnecessary. ■

Glenn E. Coe, Esq.

Senior Litigation Principal, Rome McGuigan, P.C.
Hartford, CT