

Prepared statement of Brad Choate, former vice chancellor for the Division of University Advancement at the University of Arkansas at Fayetteville to the Legislature's Joint Performance Review Committee on Jan. 7, 2014

Thank you Chairman Rice and Chairperson English and my thanks to the entire committee for presenting an opportunity for me to speak today and for providing the people of Arkansas an opportunity to hopefully, finally, hear the truth about the budget deficit and the administration's handling of the situation. Given the actions the University orchestrated at the Joint Audit Committee I also appreciate you providing me with a subpoena today. As you know, I came here today and was here last month of my own free will. I am here today of my own free will but understand the subpoena will provide extra protection should the University decide to attempt further efforts to stifle me as a result of the agreement we signed.

Thanks to Senator Bryan King, the statement I had originally planned to make was made public in spite of the efforts of the University and a few elected officials. That ploy was simply the latest to try to keep the truth from being shared and to control what information is made public. I understand you have a copy of the statement I had planned to make in your packets today. Therefore, I intend to only address a few very key points today and then take any questions you may have for me.

I suspect that some may try to frame my comments as defensive, self-serving or even untrue. There will be some who will say this is all simply bureaucratic finger pointing and not put the time and effort, or thought, into looking into the true facts. There are some who just want this to end because it continues to tarnish the University; they accept at face value what the University has told them and are more concerned with moving on than with truth and justice. At least one in the media says the purpose of this legislative meeting is "less fact-finding than posterior-protecting".

Those attitudes cannot be helped, I suppose. So I intend to simply tell the truth about what I know. Ladies and gentlemen, I do not lie, I do not cheat, and I do not steal. Nobody, even my biggest critics here today, have accused me of any of that. Also, I have never mismanaged or ignored the responsibilities entrusted to me by my employers over my 32 year career in higher education. Prior to this situation, the teams I have led have never, not once, gone over budget and we have always successfully completed the mission we were given. And, I would argue that even in this case we didn't go over what we believed was our budget...we worked with the numbers we were given and did not exceed that budget. As it turns out, and as the audit has shown, we were given bad numbers as a result of poor financial staffing at the top of the organization and the university's own highly questionable accounting practices. Folks, I didn't wake up stupid or lazy one day. We built a top-notch program for the University of Arkansas that produced outstanding results. Unfortunately, the financial affairs staff and procedures we relied upon let us all down.

There are in my view three key issues and I plan to address them today. They are:

1. How did this budget deficit occur?
2. The actions of Dave Gearhart, Don Pederson and Jean Schook once the deficit was discovered, and,
3. The destruction of, and withholding of information that could help inform the situation.

In the last few weeks there seems to be more focus on Dave Gearhart's denial he said to get rid of documents than on how the deficit occurred and how the Chancellor and his team have handled the situation from the beginning. I understand why that is the case, it a critically important issue and helps one understand the hostile work environment at the University and the culture of cover-up that exists.

#### THE FALSE NARRATIVE

So, let me begin by trying to correct the way this issue has been branded. By controlling information

released to the media the University has been successful, so far, in branding this situation a failure of University Advancement. This is not a University Advancement failure... This is a failure of the university's Finance and Administration division. University Advancement had great success—pound-for-pound arguably as good as any of our peer institutions across the United States. We had three straight years of raising more than \$100 million dollars, something the University of Arkansas had never done before. We launched the university's first integrated marketing campaign, which contributed significantly to enrollment increases and raised the university's national reputation and ranking in US News and World Report, Forbes, and other publications. We grew our membership in our alumni association and launched some great alumni engagement programs. We organized a number of prestigious events that showcased the university, our alumni, and the state of Arkansas in positive ways. And we were good stewards of the philanthropic gifts bestowed upon the university by generous and supportive donors. The men and women who make up University Advancement are hard working professionals and it is a disservice to them and the many generous benefactors to inaccurately call this fiasco a failure of University Advancement.

When a pilot takes off in his or her plane that pilot trusts that the plane's maintainers have the engine in proper working condition. If that engine blows up and the plane goes down do we call that pilot error? Of course not! We don't blame the pilot or crew for mechanical failures that others were charged with monitoring and correcting. We do not have a case of pilot error here, we have a case of financial systems and financial people we counted on failing us, and our plane went down. Instead of saying we have a major problem, getting to the bottom of the problem, fixing it and moving forward; Dave Gearhart and Don Pederson, with the help of Jean Schook, decided to cry "pilot error". That simply is not accurate. As the audit showed, the actions of a few people at the top of the Financial Affairs organization and highly questionable accounting practices along with errors by Joy Sharp led to the budget deficit.

JOY

I want to say a few words about Joy. Joy made mistakes and played a central role in creating the deficit but Joy is not a bad person. She loves the University; she was very loyal to Dave Gearhart before and after I joined the university and I think she was loyal to me. She did not want to hurt anyone or anything. This situation is a tragedy for many people and Joy is certainly one of them. Before I arrived, when Dave Gearhart was vice chancellor for advancement, he and Joy, his top budget officer, were in separate buildings. Just before I arrived at the University in July of 2008 I made arrangements for Joy's office to be moved from University House to my office in the Administration Building because I wanted immediate access to my budget person. When Joy's office door was open and my door was open we could literally see each other. One day during my first week on the job Don Pederson stopped me in the hall and told me the best move I could have made upon my arrival was to bring Joy from University House to our building. Don, Dave Gearhart and everyone else I talked with told me Joy was very talented, experienced and maybe the most valuable person on the team. Unfortunately, Joy was in a position where she ultimately would fail. However, no one knew that was the case until July 2012.

When the interviews conducted by the Washington County prosecutor's office were made public I noticed that Dave Gearhart told them when he was vice chancellor Joy did not have budget responsibilities. According to what Dave told the prosecutor, Joy's job for him was to simply write checks. That description of her role is another falsehood. Joy and I talked about that when we were in this room last month. She can confirm for you today that her job did not change when I took over for Dave. She was Dave's budget director.

From my first days on the job, Joy and I maintained monthly budget meetings. In fact, in June of 2012, just a few days prior to the discovery of the budget shortfall, she had asked me to approve a new position in her area of responsibility to assist her. When I asked her if we had sufficient funds to add the position, she assured me that we did. I wasn't accepting budget information blindly; for years, every Monday afternoon, Joy gave me, and the rest of Advancement's leadership team, weekly budget status reports. She had shown me, and the associate vice chancellors, financial reports that indicated our finances were in sound shape. To accuse me of not providing proper management oversight is simply ludicrous and untrue.

#### HERE COMES THE BUS

In July and August of 2012, as the magnitude of the problem began to emerge, Dave became very concerned that there might have to be an audit. I said to Dave on at least three occasions "if we need an audit let's have an audit". Dave's response to me was to say "Brad, an audit will make you look very bad". I did not argue with him but frankly thought an audit would be helpful to understanding and resolving the overall problem. And I was willing to live with the consequences of an audit if it showed that I was indeed at fault. After one of these exchanges I went back to the office and asked Denise Reynolds, who had taken over as our budget person, "why do these guys not want an audit"? I knew Dave did not want to have to tell Don Bobbitt and the Board of Trustees about what we had discovered...because it would then become public. But there seemed to be more to the issue. Denise, who reported to Don Pederson then and now, told me the reason why Don and Jean did not want an audit: She said it was because an audit would show serious issues with financial practices throughout the University, and the last thing Don Pederson and Jean Schook wanted was to have auditors looking into this situation. That conversation took place in Denise's office.

Dave, Don and Jean kept saying an audit would not tell us anything we did not already know. I suppose that was actually true for them. The audit probably did not tell them anything they did not already know. However, the rest of us were unaware of their questionable accounting practices that directly led to the deficit.

It is important to know that when an audit was finally requested *seven months later*, the auditors were asked to look at a four-year period beginning July 1, 2008 and ending June 30, 2012. My first day on the job was July 1, 2008...the first day of Fiscal Year 2009. The FY09 budget was already in place when I arrived, created by Dave and supported by Don Pederson. As the recent audit showed, a deficit in Advancement already existed when I first arrived; the first budget I worked on was the FY2010 budget. These are important facts that seem to have been lost in this exercise.

I want to address the so-called Schook memo, which University Treasurer Jean Schook submitted to CFO Don Pederson and Dave Gearhart on October 19, 2012. The original version of that memo was drafted by Jean Schook, Denise Reynolds, and me in my office, on my computer, on October 4. It was the result of the initial work the three of us had conducted to determine how and what led to the Division's deficit and the Foundation's action. In Jean's words, Joy had been "masking" the real condition of the Division's finances. She and Denise both said—on that day and on multiple other occasions—that there was no way I would have been able to realize what she was doing. They also said that her misrepresentation of finances appeared to go back to the time when Dave Gearhart was in charge of Advancement, and that he would not have been able to spot what was going on, either.

Let me quote three important elements of what Jean Schook's October 4 memo reported:

Quote:

1. I feel the problem is with unfunded personnel, not operational spending.
2. This issue has been building for many years and is not a one-year problem.
3. It is clear the information provided to Dave Gearhart when he was [vice chancellor] and subsequently Brad Choate was inaccurate.

End of quote.

There's some irony here. When Jean told me there was no way Dave nor I could have known the true condition of the Division's finances, I thought Dave would be happy because it showed he and I both were misled. But instead Dave panicked when his own financial people told him the problem began when he was the Division's vice chancellor. I now feel pretty confident that that was when a bus began heading my way.

I waited more than two weeks to get a response to the memo we drafted on October 4. I did not know that it was being reworked with input from Don Pederson. I found that out on October 19, when Don Pederson showed me a memo Jean Schook sent him—a much-different variation from what Jean, Denise, and I had prepared 15 days earlier. This revised memo made unsubstantiated and inaccurate accusations about me, accusations that had never been raised with me. It was an Attack Memo.

In that memo, Jean says she interviewed, quote, “key personnel” in Advancement and said, quote: “Advancement staff were unable to explain the circumstances that led to the deficit balances, were not aware of the magnitude of the deficits in both the University and Foundation accounts, and could not propose curative steps to achieve a sound financial position.” End of quote.

In fact, Jean Schook did not interview ANY of the associate vice chancellors on my staff. They don't get any more “key” than the people who worked with Joy and me on budget and operational matters. Since Jean did not interview any of Advancement's associate vice chancellors I remain unclear about who the “key” personnel would be that she referenced.

In addition, the memo failed to present the cost-cutting actions and remedies I had been discussing. I was stunned by the memo, and contacted Dave Gearhart to discuss it. He didn't want to discuss the accuracy of the Schook memo. Instead he said he had spoken with my direct reports and they had confirmed elements of what the Schook memo said. In fact, that was another false statement; he did not have those conversations. You can ask the associate vice chancellors yourselves. I view Dave's response as the first indication that a false narrative was being created to rationalize placing the blame on me, rather than the University's own lack of checks and balances to ensure proper financial management and support of its various units. This was the beginning of presenting what went wrong as an “Advancement” problem, when in reality it was a Finance and Administration problem.

The Schook memo, as it's now called, illustrates an objective of placing blame on me rather than identifying the real cause and duration of the problem, and then remedying it. Jean Schook's name may be listed as the sender, but I am very confident Dave Gearhart and Don Pederson helped craft the content. One e-mail in particular reveals Don Pederson's involvement.

But why would they do this? Because by pointing the finger at me—by accusing me of being inattentive and neglectful in my duties—they hoped to deflect attention away from serious, systemic problems that would raise questions about the university's inadequate financial management controls and, as the audit revealed, its questionable accounting practices. It also deflected attention away from what the audits later identified: that the overspending began when Dave Gearhart was vice chancellor even though he was unaware just as I was unaware. If Dave Gearhart had remained vice chancellor for

Advancement, I am confident he would be sitting here today trying to set the record straight. However, that presumes his Chancellor would also have panicked and thrown Dave under the bus.

Another very clear example of the University trying to place blame rather than look for the truth occurred on October 22, 2012. Don Pederson sent an email to me with several emails from 2009 attached. The 2009 emails described a situation the University faced with a lack of liquidity. Don's 2009 email asked Athletics and Advancement to essentially transfer funds from Foundation accounts to University accounts. Don's October 22, 2012 email asserts that Athletics "resolved their part of the problem completely to my satisfaction during subsequent years. Advancement never did"...end quote.

However, Don neglected to include in his attachments something that was very important, something that invalidated the charge he was making. Those were the email responses that he and I both received in response to his request. Those emails, which Don had copies of, documented and proved I had instructed Joy Sharp to make the requested transfers. In that email exchange she notified Don and me that she will, quote, "start the process for transferring funds to cover the balance". Don responded to Joy via email stating, quote, "Thank you for your quick and positive response. I appreciate your cooperation".

So when I received Don's October 22, 2012 email with those key exchanges edited out, I confronted him about it....I wanted to look him in the eye when he realized he had been caught trying to manipulate the facts. When I pointed out to Don that he did not include the email from Joy or his response to her, he said he did not do so because Joy never made the transfer. I asked why he didn't let me know she had not made the transfer. He said it was because he didn't follow up to see if she actually made the transfer. I pointed out to him that was the exact situation I was in with Joy.

The fact that Don chose not to include Joy's email and his response is indicative of his desire to place blame rather than find facts. I also think it substantiates a conspiratorial atmosphere on the part of Dave Gearhart, Don Pederson and Jean Schook...to redirect attention from their own culpability in failing to catch and remedy the systemic flaws in the university's method of checks and balances.

What other conclusion can one draw? If this were simply a matter of Joy Sharp misrepresenting and overspending Advancement resources, the logical and prudent response would have been to remove her from budget responsibly, investigate the matter, and remedy the matter in a transparent and accountable manner. But that didn't happen. Instead, we got months of convoluted attempts to blame two individuals and conceal information that auditors and the public could have used to draw their own conclusions. That's what happens when people have something to hide. That's what happens when leaders panic.

We were making personnel and budget decisions based on the information Joy provided at our Monday afternoon leadership meetings and other meetings. We did not know that the spreadsheets and financial information that we reviewed were inaccurate. That was compounded by the fact that the university itself did not have a system of checks and balances at the CFO level that would have detected the budget problems. There were other things I wasn't told but should have been: I did not know that the university's chief financial officer and the university's treasurer were quietly booking millions in a non-existent "receivable" at the close of the fiscal year, and then removed them just as quietly. For whatever reason, they concealed that action from me. And they made that questionable booking two years in a row, as the auditors discovered. It would be good to know who else besides the university's CFO and Treasurer knew about the appearance and disappearance of those mysterious accounts receivable.

Let me now turn to the specifics of the audit. I was very happy to hear that an audit was going to occur and even happier to hear the Division of Legislative Audit would be involved. I was concerned that if

only the University Internal Audit office was involved, they would be influenced or be too afraid of their employer to report what they found. After all, they do report to the Board of Trustees and I was confident the Board believed everything Dave and Don told them. Dave and Don provided the only information the Board of Trustees had on the subject. The Board never asked to speak to me to get my side of things, which I found quite telling.

When the audits came out in September, I was relieved to see that the auditors didn't blink when it came to reporting the following findings:

1. Actions by the Treasurers office that obscured the deficits;
2. Inaccuracies in Advancement financial statements prepared by the Treasurer;
3. Difficulty in obtaining financial records; and
4. The role Joy played in providing inaccurate information to all of us.

Those findings pointed to part of the reasons I could not have known the true status of our division's budget.

However, I was terribly upset that the audit seemed to take Jean Schook's memo at face value and simply adopt her claims as fact. As I think I've made clear, Jean's work was at best sloppy and incomplete and at its worst an effort to cover what was really going on. I believe it was the latter. I don't know if the auditors simply trusted Jean's work since she had been one of them before becoming Treasurer for the University or what. I suppose that's understandable. They would have assumed that she really did interview my associate vice chancellors and key staff as part of her review. But as you've been told, she did not. Hers was hardly a thorough investigation of a multi-million dollar problem. I think it is very telling that on October 19, 2012, her own report makes charges of possible fraud, and yet just six days later she and Don somehow decided that fraud was not possible and choose to hide their memo and its findings from the Legislative Audit staff. This is another clear example of making claims that suit them for varying purposes at varying times...in this case only six days apart. Frankly, this is another example of a pattern of shameful behaviors designed to protect themselves rather than be honest and accountable. Ladies and gentlemen, something is rotten in Fayetteville.

I was interviewed by the university's auditors last spring and shared what I knew with them at that point in time. I wanted that interview recorded but the University auditors refused. We had a 30-minute debate and even involved the University's General Counsel in the discussion. Ultimately, the interview was not recorded. Unfortunately, I was never interviewed by Legislative Audit, as I think the audit report might have been different had I spoken to legislative auditors rather than auditors employed by the University. I think the University snookered the Legislative Auditors. And to compound that mistake, the Joint Legislative Audit Committee was convinced by the University to accept a very flawed report without hearing all the facts. I don't know if the Legislative Audit Committee wants to correct the errors in the report or if they like many others simply want this all to go away.

The last point I want to share in my remarks deals with the disturbing way this whole episode was—and continues to be—handled. As I mentioned earlier, it became evident to me in October of 2012 that I was being designated as the fall guy for problems that pre-dated my arrival and which occurred because of the University's flawed financial system of checks and balances. Look at who had the most at stake: The Chancellor and the Vice Chancellor for Finance and Administration, at the least. Others likely as well. I used the word "panic" earlier to describe Dave's response. Let's look at his comments and actions to see why that description is suitable.

On November 6, 2012, Dave told me he was removing me from my administrative and leadership duties as head of Advancement. I would continue on as a generic vice chancellor but only for the remainder of the fiscal year. He told me the Board Of Trustees met in executive session, discussed the Advancement budget, and that the Board wanted me fired. That meeting by the way is likely a violation of the Open Meetings laws but that is another issue. He said, and I quote, “I couldn’t save you.” He said the Board had seen the revised Jean Schook memo—the Attack Memo of October 19—and my response to it. He said that despite my removal as the leader of Advancement, I would receive full pay and benefits through June 30, 2013. He said my job now was to find a new job. He said I could keep my office and conduct my search from that office.

Did I like that? No. Did I think Dave was looking out for me in his conversations with the Board? At the time, yes. But two weeks later, on November 20, Dave sent me an email saying he had been told I was blaming Don Pederson for what Dave referred to as my, quote, “demise.” He then wrote, and I quote, “If I continue to hear these reports I will be forced to remove you from this building and assign you space elsewhere. The other alternative is to dismiss you immediately for cause”. As you can see, he was giving me serious career and financial reasons—threats, actually—not to share what I had learned about what had occurred and why it happened.

Tellingly, his e-mail also included the following. Quote: “I have also been told that you are telling folks that you inherited this problem and the budget deficit existed before you arrived. Neither are accurate and in your heart you know that. All of the evidence supports otherwise”. End of quote.

Well, as the audit reports have shown, the deficit did indeed exist before I arrived. Dave apparently didn’t know it existed for the same reasons already mentioned. And, the factors that caused the deficit in the first place continued to worsen after I took over for Dave for those very same reasons. From that point on, Dave began directing the narrative of the University’s financial problems that was being given to university community and the public with documented input from Don Pederson.

Every dean, division head, and even the chancellor counts on the information they received from their budget directors to be accurate and honest. The University’s systems and my budget director let us all down. The budget director let us down by providing inaccurate information and the University’s financial monitoring systems let us down by not being able to catch the problem until it was too late. And, as the audit revealed, the university’s treasurer helped hide the fact that deficits were occurring by booking non-existent accounts receivable to balance the books. Several deans and other university leaders have commented on this systemic failure, saying to me that “there but for the grace of God go I”. It is a very accurate sentiment.

#### THE LEGISLATIVE AUDIT COMMITTEE HEARINGS

Finally, I want to say a few words about what the Legislative Audit Committee was told at its meeting in September. At great risk to his future employment possibilities John Diamond told you the truth. He did so to help this University, this State and to try to protect his co-workers—at great risk to himself. Mr. Diamond lost his job for those same reasons; he tried to keep the University in line with Freedom of Information Act Laws and tried to be honest with the public and Dave shot the messenger.

Representative Kim Hammer asked John about the January 14, 2013 meeting that included my former staff reports and the Chancellor. I was in my office that day and within 60 seconds of that meeting ending two of the attendees at that meeting, Laura Villines and Denise Reynolds, came back to the office with a shocked look on their faces. Obviously something significant had occurred. They told me, and Stephanie McGuire, who was a secretary in our office at the time, that Dave had just pitched a major fit. That he had used very foul language with reference to me; that he had pushed a stack of

budget sheets Denise had prepared back at her and told her to, quote, “get rid of these and stop putting budget information on paper”. Later that night another witness, Bruce Pontious, told me the same story; the next day yet another witness, Graham Stewart, told me the same story; a few days later John Diamond confirmed the story when I asked him about it, and a few days after that another witness, Kris Macechko, told me the same story. All of them were in that meeting. None of them said anything about John or anyone else somehow provoking Dave’s behavior. Some of the witnesses at that meeting also shared what those accounts with other colleagues on campus. There is no doubt whatsoever what occurred. And then Dave cancelled the weekly meetings of that leadership group altogether, even though he was the acting leader of the division and the division had major financial issues that needed to be resolved.

Today, I’m sure some attendees in that meeting would feel awkward about reliving that meeting. Prior to these witnesses being interviewed by the prosecutor, university lawyers along with Dave Gearhart’s own personal lawyer brought witnesses in one by one on September 24 to find out what they knew about the January 14 meeting. Some of them may have develop what I would call “convenient amnesia.” That’s understandable. They need to protect their jobs because they either still work there or they just don’t have an appetite for such confrontation. When Denise Reynolds and Laura Villines told Stephanie and me about Dave’s outburst—just minutes after it had occurred—I remember Denise Reynolds asking me “how am I supposed to deal with budgets if I can’t create spreadsheets”. It was a rhetorical question obviously but a legitimate one.

There’s a matter of perjury here. I certainly hope the Pulaski County Prosecutor doesn’t “punt” on this issue. What really happened at that meeting is pretty well known because so many people were in the room and those people told lots of others. The University has tried to dismiss this by splitting hairs and playing semantic games but the truth is pretty obvious. It will be interesting to see if power politics trumps the truth in this case.

## CONCLUSION

Thank you for your efforts to find the truth. After the Joint Audit Committee shenanigans of December 13 I thought the University just might have succeeded in covering this up and convincing people to just move on. I worried throughout this experience that no one would stand up to the political pressures that exist or take on the Board of Trustees, which doesn’t want to have to find a new Chancellor; or to take on a Chancellor who for the most part has done a good job for the University but who under pressure panicked and made some bad decisions, including throwing a long-time friend and colleague under the bus, in his words; or to take on a university CFO who somehow got the position—and has kept it—with no formal training in running one of the state’s largest and most complex institutions; or to take on a university treasurer who undoubtedly was under pressure from her boss and his boss to give them a simple, but not necessary truthful, justification for the deficit problems that were uncovered over the past year.

In a September 25, 2013 Arkansas Democrat Gazette story, Dave Gearhart was quoted as saying “I’m not going to totally throw Mr. Choate under the bus” as he laid blame for the university’s financial mismanagement on me. Well, I am here to tell you there is no partially throwing someone under the bus. I was sacrificed. I strongly urge you to use whatever authority you have to make sure the truth gets revisited. The Washington County prosecutor’s report sidestepped addressing some of the key parts of this sad story. A more thorough and expansive investigation must take place. I know everyone wants to put this behind us, as do I, but there are a lot of us counting on you to bring out the truth. The report as it is currently written has significant inaccuracies and oversights and should not be treated as a full and

thorough examination. I don't know how this will all play out, but thank you for at least asking the question and for listening to all sides.

If the members of this committee, the other members of the Legislature, the Board of Trustees, and the media will not step up and deal with the truth of this situation who will? Who will protect hard working employees at the University who dare stand up to their superiors who do not want to follow the law? I don't know if it is possible to right the wrongs that have been done.

This all started with a budget deficit. Frankly, the deficit expenditures were for legitimate and useful purposes...everyone agrees on that point. As surprising as the deficit was, the truly disturbing result of all of this has been the creation of an atmosphere of hostility, secrecy, and cover-up. If this body and the Board of Trustees do not want to address those issues and the people responsible; then that is their and your choice. After today, I feel like I have done my duty to report the truth. Ladies and gentlemen facts are not something to be accepted or rejected. Facts are truths.

I will be happy to try to answer any questions you may have for me