



OFFICE OF THE PROSECUTING ATTORNEY

JOHN THREET
District Prosecutor

FOURTH JUDICIAL DISTRICT
WASHINGTON AND MADISON COUNTIES

DEPUTY PROSECUTORS:

Matthew Durrett · Mieka Hatcher · Charles M. Duell · Chreea Stanimirovic · David G. Bercaw · Terra Stephenson · Brian Lamb
Heather Campbell · Denis Dean · Angela Hyde · Amy Driver · Mark Booher · Kevin Metcalf · Leta Darling · Shane Kerr · Billy Allred

December 12, 2013

Mr. John Threet
Prosecuting Attorney
Fourth Judicial District
280 North College Avenue
Fayetteville, Arkansas 72701

Dear Mr. Threet:

On September 9, 2013, Mr. Roger Norman, Legislative Auditor for the Legislative Joint Auditing Committee, referred three issues to us pursuant to Ark. Code Ann. §10-4-419 as a result of the publication of the investigative report of the University of Arkansas, Fayetteville - Review of Selected Policies, Procedures, and Transactions for the period of July 1, 2008, through June 30, 2012. Specifically, these three issues were referred to us to determine if any criminal charges were warranted. His letter referenced Tampering with a Public Record under Ark. Code Ann. §5-54-121(a), although I did not consider us limited to that specific charge if our examination revealed other potential charges. The three issues referred to us are specifically:

- 1) "The Vice Chancellor for Advancement Division (VCAD), Brad Choate, was reimbursed \$2,052 in September 2011 for an Advancement staff event expense that was paid directly to the vendor in August 2011. The University's Treasurer discovered this duplicate payment and reported it to the VCAD in June 2012. Subsequently, the VCAD reimbursed Advancement \$2,052 in October 2012." We will refer to this issue as the "Choate Reimbursement".
- 2) "The Budget Director, Joy Sharp, processed transactions in the University's BASIS accounting system that included a deposit of restricted funds of \$1.35 million on May 12, 2012, that the Budget Director incorrectly coded to the unrestricted account. According to the University Treasurer's internal report, the Budget Director appeared to intentionally "disguise a prior year account receivable balance that has not been cleared" by depositing a restricted donation into the unrestricted account with the "delinquent accounts receivable". However, the Budget Director indicated to Division of Legislative Audit (DLA) staff during an interview that she inadvertently deposited restricted funds in an unrestricted account." We will refer to this issue as the "Tyson Deposit".

- 3) "The University Treasurer's Office posted the following Advancement account receivables, which partially obscured the deficits in the financial statements:

June 30, 2011	\$2,091,705
June 30, 2012	\$2,451,360

Both of these receivables were reversed in July, without verification that funds had been received. Subsequently, during fieldwork for the University's financial audit for fiscal year ended June 30, 2013, DLA staff ascertained that the Treasurer's Office posted an Advancement account receivable of \$3.2 million. However, the Foundation confirmed that it did not record a corresponding account payable to Advancement for this amount as of June 30, 2013." We will refer to this issue as the "Account Receivable Issue".

On September 16, 2013, Mr. Norman referred a fourth issue to us stating:

"On September 13, 2013, the Legislative Joint Auditing Committee heard testimony concerning the investigative report from a number of witnesses. Contradicting testimony, given by witnesses under oath, concerned the alleged destruction of budget-related documents in the Division of University Advancement".

Although it was not stated in his letter, the clear implication is that the Legislative Joint Auditing Committee felt that someone committed perjury before the Committee. Complicating the issue is whether any destruction of documents constituted tampering with records and whether there were any Freedom of Information Act ("FOIA") violations as some of these documents had been subject to FOIA requests by the Arkansas Democrat-Gazette. We will refer to this issue as the "FOIA Issue".

In conducting our examination, I requested the assistance of Mieka Hatcher, Deputy Prosecuting Attorney, as there were numerous individuals which we would be interviewing and many documents to examine. Through the United States Attorney for the Western District of Arkansas, we requested the assistance of any local federal agent who might have some expertise in the areas which we would be examining. Special Agent Robert F. Cessario of the Federal Bureau of Investigation graciously agreed to assist us. The Federal Bureau of Investigation did not open a case on this and Agent Cessario was assisting us in addition to his regular duties.

We subpoenaed the workpapers of Legislative Audit on September 17, 2013, and of the University of Arkansas Internal Audit on September 18, 2013. It was necessary to obtain both since Chancellor G. David Gearhart of the University of Arkansas Fayetteville campus had requested an audit from both entities on February 5, 2013. The entities had cooperated with each other and divided the audit steps between them for more efficiency in conducting the audit. We issued an additional subpoena to the University of Arkansas on December 4, 2013, for the contents of Joy Sharp's laptop

computer, which we discovered had been backed up to a drive in the custody of the University's Information Technology Department.

Mr. John Diamond, the former Associate Vice Chancellor for University Relations, brought to us his University issued laptop, iPad, and two cell phones. Detective Andy Higdon of the Fayetteville Police Department took possession of these items and obtained a search warrant for the contents of the items. Detective Higdon subsequently conducted a search and copied the contents of the items using the Encase software that the Fayetteville Police Department uses to analyze the contents of electronic devices.

In the course of our examination, we interviewed the following individuals:

John Elser, auditor for Legislative Audit,
Jacob Flournoy, Internal Audit Director for the University of Arkansas,
John Diamond, former Associate Vice Chancellor for University Relations,
Joy Sharp, former Chief Financial Officer and Budget Director for the Advancement Division,
Brad Choate, former Vice Chancellor for Advancement,
Kris Macencko, former Constituent Services Manager,
Bruce Pontius, former Associate Vice Chancellor for Development,
Brenda Brugger, Assistant Vice Chancellor for Administration and Development Services,
Laura Cate, Associate Director of Development Services,
Renea Dillard, Guest Services Coordinator,
Jean Schook, Associate Vice Chancellor for Financial Affairs and Treasurer,
Donald Pederson, Vice Chancellor for Finance and Administration,
Denise Reynolds, Chief Financial Officer and Budget Director for the Advancement Division,
Heather Stowers, Technology Services Manager,
Diana Lee, Chief Financial Officer for the University of Arkansas Foundation, Inc.,
Graham Stewart, Associate Vice Chancellor for Alumni and Executive Director of the Alumni Association,
David Gearhart, Chancellor for the University of Arkansas, Fayetteville.

We were in contact with Kim Williams, Assistant Legislative Auditor for the Arkansas Division of Legislative Audit. We also had frequent contact with Scott Varady and Bill Kincaide, Associate General Counsels for the University of Arkansas.

We did not find it necessary to issue prosecutor's subpoenas for any witnesses. Everyone that we contacted and requested to come speak to us was willing to do so, if not eager. Some of the interviews were conducted over the telephone, as the individuals

were out of state, specifically Mr. Choate and Mr. Pontius. We also interviewed Ms. Stowers and Ms. Lee over the telephone.

Looking to the individual issues, what follows is what we found and concluded:

Choate Reimbursement

This transaction involved the payment for an expense of the Advancement Division at the Fayetteville Country Club. A request for payment from the University of Arkansas Foundation, Inc. ("University Foundation") to the Fayetteville Country Club in the amount of \$2,051.87 was made on a University of Arkansas Foundation Payment Authorization Form ("Foundation Payment Authorization Form") dated August 12, 2011. The purpose of the expenditure was given on the form as "year end fund raising celebration for Division of Advancement staff, Fayetteville Country Club, 8/3/11, 5 P.M. to 6:30 P.M.". The Foundation Payment Authorization Form was signed by Joy Sharp and counter-signed by Don Pederson, the Vice Chancellor for Finance and Administration. Check Number 37164 was issued on August 22, 2011, by the University Foundation to the Fayetteville Country Club and subsequently deposited by the Fayetteville Country Club in payment of the expense.

A month later, on September 12, 2011, a University Payment Authorization Form was issued for a request for payment to Brad Choate in the amount of \$2,051.87. The purpose of the expenditure was given as "Advancement year-end celebration and thank you for a good fund raising year". The University Payment Authorization Form was signed by Joy Sharp and counter-signed by Don Pederson. There is a notation on the form for the check to be returned to Joy Sharp. On September 21, 2011, the University Foundation issued check number 38326 in the amount of \$2,051.87, payable to Brad Choate C/O Joy Sharp. The check was endorsed by Brad Choate and Julie Choate, Mr. Choate's wife.

The subsequent events as described in a memorandum from Jean Schook, the Associate Vice Chancellor for Financial Affairs and Treasurer to Don Pederson dated October 19, 2012 ("Schook Report") indicated that Dr. Pederson discovered the double payment sometime in June 2012 and asked Ms. Sharp to obtain reimbursement of the payment to Mr. Choate. Ms. Sharp failed to obtain the reimbursement and the matter was not resolved until Mr. Choate was provided documentation of the overpayment. Our interviews with University personnel indicated that this was an accurate statement of the chain of events.

On October 12, 2012, Julie Choate issued a personal check to the University Foundation in the amount of \$2,051.87, which was subsequently transmitted to the University Foundation by Denise Reynolds, Ms. Sharp's replacement as Budget Director. The date on the transmittal form is given as "1/2/12", which cannot be correct. No one has questioned that the payment did eventually find its way to the University Foundation for deposit.

Another interesting item to note is that the expense code for the original payment to the Fayetteville Country Club on the Foundation Payment Authorization Form was originally "51000", which was scratched out and replaced with "58000". The expense code on the Foundation Payment Authorization Form for the transaction paid to Mr. Choate was "51000". These codes are internal accounting codes and are meaningful only to the University personnel and University Foundation personnel tracking the payments. However, it does seem to indicate some internal confusion in using their accounting system.

The University's Response to the Division of Legislative Audit Investigative Report stated that Mr. Choate was also unaware of over \$7,700.00 in reimbursable expenses that were due him from the University for the period of September 2010 through October 2012. The University reimbursed Mr. Choate for those expenses on November 7, 2012.

It does not appear that the duplicate payment was anything more than an error given that one payment went to the vendor, one payment went to Mr. Choate, Mr. Choate reimbursed the University for the duplicate payment, and that it was found that the University owed Mr. Choate substantially more in unreimbursed expenses.

Tyson Deposit

This transaction was initiated on April 26, 2012 by an email from Janice Harrison in the University's Property Accounting Department to Ms. Sharp requesting a payment of \$1,355,055.64 for the Child Development Research Center, indicating that there was a cash deficit in the cost center. Ms. Sharp issued a University Payment Authorization Form to the University Foundation in the amount of \$1,355,055.64 on April 26, 2012. The purpose of the expenditure was given as "cover expenses for the construction of the Jean Tyson Child Development Center". The form instructed the University Foundation to make the check payable to "University of Arkansas 0392-02040-71-0000" and to return the check to Joy Sharp. The form was signed by Ms. Sharp and counter-signed by Dr. Pederson.

On May 7, 2012, the University Foundation issued check number 48402 in the amount of \$1,355,055.64 payable to "U of A #0392-02040-71-000 C/O Joy Sharp". On May 8, 2012, Ms. Sharp forwarded the check to the University Cashier's Office showing a cost center code of "0392-01070-62-0000". The funds were deposited by the University Cashier on May 9, 2012.

These funds were part of a non-endowed gift from the Tyson Family made on May 2, 2011, in the total amount of \$1,578,674.00. The purpose of the gift was for the construction of the Jean Tyson Child Development Study Center.

The problem with the transaction of May 8, 2012, was that the cost center coding on the Foundation Payment Authorization Form and on the University Foundation check was "0392-02040-71-0000". This was the correct cost center code and indicated that

these were funds restricted for the use of the Jean Tyson Child Development Study Center. When Ms. Sharp completed the transmittal form to the University Cashier, the cost center code of "0392-01070-62-0000" was for unrestricted funds.

The incorrect coding was subsequently discovered by Dr. Pederson and a correcting entry was made on August 7, 2012, to be effective as of July 1, 2012.

The Schook Report characterized this transaction stating:

"In what appeared to be an intentional effort to disguise a prior year accounts receivable balance that had not been cleared, the Director deposited restricted funds (a gift for capital purposes" totaling \$1.3 million dollars, in May 2012, into the same unrestricted general operating account with the delinquent accounts receivable balance. . . The misdirection of the funds occurred in spite of the purpose of the funds being clearly described on the face of the check".

In an email dated August 5, 2013, John Elser of Legislative Audit raised the issue that this miscoding of the funds from a restricted account to an unrestricted account was not mentioned during the final exit conference for the University audit which took place on October 25, 2012. Dr. Pederson's response on August 6, 2013, was that there was no intentional decision to omit discussion of the transaction. The error was discovered after the general ledger had been closed and that the correction was dated July 1, 2012, in order to highlight that it was a correction of a prior period error. Dr. Pederson's position was that the error was not material to the financial statements taken as a whole.

When we asked Ms. Sharp why she put the incorrect code on the transmittal form, she stated that it was a mistake.

We are not persuaded that this transaction was an intentional effort to cover the deficit in the Advancement Division or any type of fraud. The amount of the of the transaction was insufficient to hide the deficit. There would still have been a deficit in the Advancement Division, just a smaller one. Second, there was no personal benefit to Ms. Sharp from the transaction. Third, the transaction passed through the Treasurer's Office with no one questioning why the payee on the check was at variance with the information on the transmittal form. Ms. Sharp told us that normally, the Treasurer's Office would call if they saw something wrong on the deposit form. Ms. Sharp's formal training was a bachelors degree and a masters degree in Education. She was also handling human resource duties for the Advancement Division. Ms. Sharp had no training in finance or budgeting and had only received in-house training on the use of the BASIS accounting system. Ms. Sharp had been placed in the budget director position in 2006 during the period when Mr. Bud Edwards was the Vice Chancellor of the Advancement Division. Chancellor Gearhart characterized Ms. Sharp as one responsible to pay bills while he held the position of Vice Chancellor of the Advancement Division. She did not have authority to make spending or budgeting decisions while Chancellor Gearhart was Vice Chancellor. However, she was delegated that authority while Mr.

Choate was Vice Chancellor of Advancement, which was not Ms. Sharp's area of expertise.

It should also be noted that the funds remained in the University's bank account and were never out of the custody of the Treasurer's Office. The effect of the error was a classification of restricted funds as unrestricted funds. The funds were not spent while classified as unrestricted funds.

Account Receivable Issue

As our examination of this issue progressed, it seemed to us that the real issue was whether the deficit in the Advancement Division was a violation of state law and in what manner it would be a violation. This directed us to Ark. Code Ann. § 19-2-104, which prohibits expenditures in excess of appropriations.

The model for the journal entries at issue pertaining to the deficit within the Advancement Division was, effective June 30 of the fiscal year, a debit to Accounts Receivable - other and a credit to Fund Balance - cash, together with a second entry with a debit to Fund Balance - cash and a credit to Revenue - UA foundation. This had the effect of increasing the Accounts Receivable balance and increasing the Revenue balance at the end of the fiscal year. In other words, revenue from the University Foundation was recognized in the amount of the deficit, but since no cash had changed hands, it was reflected as an amount due the Advancement Division from the University Foundation. There was no net effect on Fund Balance since the debit and credit to Fund Balance washed.

This was followed by a second set of journal entries effective July 1 of the next fiscal year (effectively, one day later), wherein there was a debit to Fund Balance - cash and a credit to Accounts Receivable - other, followed by a debit to Revenue - UA foundation and a credit to Fund Balance - cash. These journal entries had the effect of reducing Accounts Receivable, eliminating the amount due from University Foundation, and reducing the Revenue balance by the amount of the deficit. Again, there was no net effect on Fund Balance. It is important to note that the debit to Revenue starts the fiscal year with a negative balance in the Revenue account.

These journal entries were made by the Finance and Administration Division in the BASIS accounting system. For the fiscal year ended June 30, 2011, entries were posted on July 29, 2011, for the first set of journal entries, and on August 3, 2011 and August 5, 2011, for the second set of journal entries. The first set of journal entries were effective June 30, 2011, and would effect the financial statements for the year ended June 30, 2011. The second set of journal entries were effective July 1, 2011, and effected the financial statements for the year ended June 30, 2012. There were multiple cost centers effected by these sets of journal entries. Cost center 0392-01070-62-0000 was effected in the amount of \$1,630,042.92 (note that this was the same cost center effected in the Tyson Deposit discussed above, and was an amount greater than the amount of the Tyson Deposit), cost center 0392-01071-62-0000 was effected in the amount of \$425,992.90,

and cost center 0392-01020-62-0000 was effected in the amount of \$35,669.48, for a total amount of \$2,091,705.30. These were the Office of University Development, the Arkansas World Trade Center, and University Relations, respectively.

For the fiscal year ended June 30, 2012, only a single cost center 0392-01069-62-0000 titled VCAD FY12 Balance was effected in the amount of \$2,451,360.26. This was a deviation from the prior years' methodology in that this is a combined balance of twenty costs centers within the Advancement Division. Both sets of journal entries were made on July 31, 2012, with the first set of journal entries effective June 30, 2012, and the second set of journal entries effective July 1, 2012.

While it is outside of the scope of the audit, Legislative Audit did make the comment that during its fieldwork, auditors discovered that the above series of transactions were repeated effective June 30, 2013, in an amount of approximately \$3.2 million.

The University's position on the entry of the accounts receivable is that they are justified in doing so under GASB N50.117 and 118 for recognition of a non-exchange transaction. The applicable portion of GASB N50.118 which is problematic states the "provider should recognize liabilities (or a decrease in assets) and expenses from government-mandated or voluntary nonexchange transactions, and recipients should recognize receivables (or a decrease in liabilities) and revenues (net of uncollectible amounts), when all applicable eligibility requirements, including time requirements, are met". In addition, the University has taken the position that the deficits were not material for the University's financial statements taken as a whole. These entries were not raised by the University or discussed in any exit conferences with auditors.

Ms. Schook told us that the University deviates from the payment model used at most universities, in that at most universities with a foundation, payments are requested from the foundation and are made as direct payments from the foundation. The University of Arkansas attempts to capture all spending through its accounting system by requesting reimbursements for expenditures from the University Foundation. Only payments that are non-allowable expenses under state law are made as direct payments from the University Foundation.

The Controller's Office is charged with periodically monitoring cost center balances. If there is a deficit balance in a cost center, or if funds were due from the University Foundation, the Controller would advise Ms. Sharp of this fact so she could request reimbursement. Staff were instructed that cost centers could not close the fiscal year with a deficit balance. Apparently, this was formal advice for the entire campus.

A critical weakness that we saw was that the BASIS accounting system in use by the University is a cash basis system which was developed within the University community a few years ago. Since the financial statements must be reported on an accrual basis, closing entries must recognize any outstanding receivables or payables. In its Response to Division of Legislative Audit Investigative Report, the University states

that "there is no automated mechanism in BASIS to eliminate revenue or expenses accrued in a prior period. Accrual entries are always reversed in the next reporting period so that revenue or expenses are not recognized twice."

We also need to note that the University Foundation reimbursed expenses one quarter behind, such that the funds received from the University Foundation in the first quarter of a fiscal year were reimbursements for expenditures in the fourth quarter of the prior fiscal year. We agree that it is appropriate to recognize a receivable and recognize revenue for those funds expended by the Advancement Division and payable by the University Foundation in the next quarter. In this situation, we would go further and state that it would not be necessary for the University Foundation to recognize a payable for two reasons. First, until the University Foundation receives a Foundation Payment Authorization Form, they are not aware of the expenditure, nor is there any reason for them to be aware of the expenditure. Second, the University Foundation functions as a holder of funds for the University, with those funds only to be disbursed upon proper authorization from the University. They disburse to the Advancement Division five percent of a moving three year average of earnings on the funds which they hold. In the most recent years, that has been between \$4 million and \$5 million.

Ms. Schook stated that the accounts receivable entries were made solely for reporting purposes and if not reversed, there is no method in the BASIS system to identify what period in which the revenue is received. Negative revenue is posted in July and then revenue received in the following fiscal year offsets the negative revenue balance.

The problem we have with this is that one of primary purposes of closing entries to is close the revenue account to fund balance so that the revenue account starts the new fiscal year with a zero balance. The effect of the reversing entry is to create a negative balance in the revenue account at the beginning of the fiscal year which effectively understates the revenue for the year. We kept asking about the understatement of revenues and we are not sure anyone grasped exactly what we were asking. The only reply which was responsive came from Ms. Schook, who stated that the accounts receivable entry at the end of the following year offset the negative revenue and was proper because there was always an expectation of the receipt of the revenue. Our understanding of this practice is that it was system-wide and was for the purpose of bringing any cost center deficits to a zero balance. It is also our understanding that this was the practice as a method for posting the year-end accruals to convert the accounting data from a cash basis to an accrual basis within the limitations of the BASIS accounting system.

Since the deficit grew by approximately \$300,000 in the fiscal year ended June 30, 2012, and then by approximately \$800,000 in the fiscal year ended June 30, 2013, the amount of the accounts receivable entries kept getting larger, but did not highlight that a deficit existed. If not stopped, sooner, rather than later, the amount of the accounts receivable entries (and the deficit) would have been larger than the amount expected to be received from the University Foundation for a full year.

What did stop this was related to us by Dr. Pederson. The practice had been for the University Foundation to allow units to spend past the amount due to the unit for the next quarter. There had been an audit recommendation for that practice to stop and that the University Foundation impose a limit that no unit could spend beyond the next quarter's expected amount of revenue. Since the Advancement Division had been operating at a deficit and had exceeded the amount due from the University Foundation for the first quarter 2012, the Advancement Division account was frozen by the University Foundation and notice was given that there would be no further payments. Specifically, the University Foundation was treating Advancement Funds and Chancellor's Funds as one pot of money. When payment of the Chancellor's deferred compensation payment was requested, notice was given that the payment would not be made and the matter was brought to a head.

We do not believe that there was any criminal intent to commit fraud by any one person or group of persons. At the root were three problems. First, was the breakdown of internal control and the budgeting process within the Advancement Division leading to overspending. Legislative Audit and the University Internal Audit Division have done an excellent and thorough job in documenting the breakdown of internal control. All expenditures which constitute the deficit were valid expenditures and there were no missing funds.

The initial reaction to this breakdown by Legislative Audit, University Internal Audit, Agent Cessario, and myself was one of alarm because most, if not all, of the red flags for the commission of fraud were present due to the breakdown of internal control. However, neither Legislative Audit, the University Internal Audit, Agent Cessario, nor ourselves found any evidence that Ms. Sharp committed fraud. Instead, everyone we spoke to about Ms. Sharp believes her to be an honest person who was overwhelmed by her job duties. We conclude that Ms. Sharp had the opportunity to commit fraud but did not do so.

In addition, there is no evidence that funds were expended for inappropriate or fraudulent purposes. All expenditures were valid and there were no missing funds.

The vice chancellors in the Advancement Division were not receiving the budget information that they needed to be receiving, and had no option but to track the expenditures and budget for their unit as best they could. The auditors indicated that most of the deficit came from unfunded hiring.

When Chancellor Gearhart was Vice Chancellor of Advancement, budgetary information was kept on Excel spreadsheets. Denise Reynolds, the current budget director in the Advancement Division stated that she started over with the budgets and is developing a budget activity worksheet. This is apparently a work in progress. Keeping budgets on spreadsheets would seem to be a difficult method for budgeting considering the size of the operation.

The directive that no cost center can show a deficit balance at year end is counter-productive. We can think of no reason that a cost center could not show a deficit balance at year end, if in fact, that cost center was running at a deficit. This is one of the things that you want your accounting system to tell you. Since the accounting system was being defeated by the use of the accounts receivable transactions at year end, this issue was never brought to light until the Advancement account was frozen by the University Foundation.

We had thought that a reason for this might be an attempt to hide expenditures in excess of appropriations. However, in examining the appropriations bills for the University, the Fayetteville campus is given a lump sum appropriation for the campus, so that is not an issue, as the deficit did not cause total expenditures for the University to exceed the amount appropriated.

Finally, we do not have any way to determine whether the BASIS accounting system in use by the University is able to properly handle accrual entries at year end or if it is simply being mishandled by University personnel. That is a matter for Legislative Audit, University Internal Audit, and the University to work out. While we appreciate the fact that these systems are expensive, a well run accounting system can make the difference between success and failure for any organization.

FOIA Issue

This issue was brought forward due to the testimony at the Legislative Joint Auditing Committee on September 13, 2013, concerning possible destruction of budget-related documents within the Advancement Division. If anyone did perjure themselves at the hearing, jurisdiction would properly lie in Pulaski County as the hearing took place in Little Rock. However, this appears to be the product of a rather acrimonious dispute within the University community over the meaning and the reach of the Freedom of Information Act.

Within this context, the University has been the subject of numerous Freedom of Information Act requests since the Advancement Division deficits came to light. Two schools of thought emerged from our interviews. First, what we would characterize as the University's position, is that the University's obligation is to turn over any documents requested without explanation, provided that the documents are not excluded under an exemption within the Freedom of Information Act, such as personnel records for the protection of the privacy of the individual employee. The second position is represented by Mr. John Diamond, the former Vice Chancellor for University Relations, which seems to be that the University is operating in a culture of secrecy and is unresponsive to FOIA requests from the Arkansas Democrat-Gazette.

Mr. Diamond handled FOIA requests for the Advancement Division. Mr. Diamond raised an issue concerning FOIA response in regard to a January 14, 2013, meeting of the Advancement Division department heads. Mr. Diamond made the

accusation at the meeting of the Legislative Joint Auditing Committee on September 13, 2013.

An issue was raised concerning the clean-out of six storage units used by the Advancement Division. Four units were behind Meeks Lumber on Gregg Street, one was on Martin Luther King Boulevard, and one was behind the University House. Beginning in November 2012, University employees were instructed by Denise Reynolds, at her initiative, to inventory the contents and destroy any records outside of the record retention guidelines for the University for the purpose of cutting costs within the Advancement Division. This was part of a wider effort within the Advancement Division to reduce costs because of the division's deficit. The storage units were costing approximately \$3,600 per year. This effort was undertaken while Mr. Choate was Vice Chancellor and without Chancellor Gearhart's knowledge. Some of the records dated to 1990 and were in poor condition. The University archivists were invited to review the records for salvage and ultimately hauled off about ten boxes of material. At some point in the process, the review was temporarily halted by Bruce Pontius, Associate Vice Chancellor for Development, and Brenda Brugger, the Assistant Vice Chancellor for Administration and Development Services, on the basis that they should not be having the shredder service trucks parked at the storage buildings while an audit was taking place and the University was subject to FOIA requests. With the possible exception of Foundation Payment Authorization Forms, which we will address below, there is no evidence that any records relevant to our examination, needed for the audit, or subject to an FOIA request were disposed of. The University was ultimately able to reduce the number of storage building from six to two units.

Most of the focus of the FOIA Issue was on a meeting of the department heads of the Advancement Division on January 14, 2013. Chancellor Gearhart was acting head of the Advancement Division at that time since Mr. Choate had been relieved of his duties over that Division. The statements of those present at the meeting conflicted as to what exactly transpired, but it appears that at the meeting there was a disagreement between Chancellor Gearhart and Mr. Diamond. During the meeting, Chancellor Gearhart was holding a document which was provided to him by Mrs. Reynolds. We were able to identify that the document he was holding as a budget activity report for December 2012. This was confirmed by Mrs. Reynolds, Chancellor Gearhart, and Mr. Diamond. We were also provided a copy of the document.

The Arkansas Democrat-Gazette had made an FOIA request on January 10, 2013, requesting ten categories of documents. In one of those categories, the Arkansas Democrat-Gazette stated:

"We request budget activity reports the senior-level Advancement officers relied on, should have relied on, and/or now continue to rely on (with the help of Don Pederson's office on the latter) between Jan. 1, 2012 and June 30, 2012, to monitor the budget on an ongoing basis, be this weekly, monthly, quarterly, or other. Not sure if "budget activity reports" is the name for them, but whatever

documents are used to monitor how expenses are handled out of E&G, the Foundation, and the other revenue sources”.

Mr. Diamond claimed that the budget document which Mrs. Reynolds handed out at the January 14, 2013, meeting was responsive to the FOIA request of January 10, 2013. However, the document was clearly a monthly update of the Advancement Division's budget and should be characterized as a budget activity report. The documents requested were for the period between January 1, 2012, and June 30, 2012. The report handed out at the meeting was for December 2012, outside the time frame of the request.

The University provided us with a notebook containing all of the relevant FOIA requests for the month of January 2013, and the University's responses to those requests. After reviewing these documents, it appeared to us that the University was making a serious effort to be responsive and timely within the letter of the Freedom of Information Act.

There were conflicting statements given by witnesses as to the disposition of Foundation Payment Authorization Forms held within the Advancement Division. Witnesses stated that Ms. Sharp kept the Foundation Payment Authorization Forms in her office and then boxed the forms for storage. Mrs. Reynolds stated that when she moved into Ms. Sharp's office, the office had been cleaned out. At the time the storage units were cleaned out, Mrs. Reynolds instructed staff to retain the Foundation Payment Authorization Forms for the current year plus the prior year. Any Foundation Payment Authorization Forms dated earlier than the prior fiscal year would have been destroyed. The auditors did recover 20 Foundation Payment Authorization Forms for fiscal year 2011 and 765 for fiscal year 2012 within the records of the Advancement Division. The forms are not pre-numbered. It is unknown what happened to any remaining Foundation Payment Authorization Forms.

Auditors found that the University Foundation does have a complete set of Foundation Payment Authorization Forms in electronic form after fiscal year 2009, which the University Foundation made available to the auditors. Since there were a large number of these forms, the University Foundation provided the audit team with a listing from which the audit team selected a statistical sample for review.

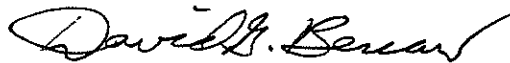
The University's position on the Foundation Payment Authorization Forms is that these forms are owned by the University Foundation. There is some support for that position in that the forms are used to support disbursements from the University Foundation to various University divisions. In addition, we examined the University's record retention policy. The Foundation Payment Authorization Forms are not listed in the record retention policy, so there is no internal guidance within the University on the length of time to retain the forms. We believe that is poor practice not to retain the forms for a period of time since they are in support of reimbursement requests. We would recommend a retention period of the current year plus three prior years. We further recommend that the forms be pre-numbered as a control on the forms. We did not find

evidence that the Foundation Payment Authorization Forms were disposed of with the intent to frustrate the audit or to frustrate any FOIA requests.

Another issue that we examined from the audit findings was that Mr. Choate gave his computer log-on password to Ms. Sharp for approval of Advancement expenditures. From January 2010, Ms. Sharp approved all transactions through the BASIS system. In addition, Ms. Sharp assigned her sister as her proxy for the approval of transactions. This arrangement was approved by the Finance and Administration Division at Ms. Sharp's request, apparently because the Treasurer's Office did not realize that they were sisters, although they do have the same last name. The audit did not find that any inappropriate transactions were approved. There is no violation of any criminal statutes in this, but it is a clear violation of University policy for computer security and nepotism, and is a very serious violation of internal control. We recommend that the Finance and Administration Division review its procedures for approval of proxies for transaction approval to prevent this from happening again.

We did not find evidence of criminal activity in this matter. This is a very unfortunate situation of a breakdown of internal control within the Advancement Division. We strongly recommend that the University implement all of the recommendations of Legislative Audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David G. Bercaw". The signature is fluid and cursive, with a prominent initial "D".

David G. Bercaw
Deputy Prosecuting Attorney