

UTAH PROSECUTION COUNCIL
Wednesday, April 26, 2017
Salt Lake District Attorney County's Office
111 E. Broadway Ste., 400
Salt Lake City, Utah

APPROVED MINUTES

COUNCIL MEMBERS (DESIGNEE) PRESENT:

Steven Garside, Chair, Layton City Attorney
Haley Christensen, UPAAC Chair, Utah County Attorney's Office
Robert Cosson, St. George City Chief Prosecuting Attorney
Jann Farris, Morgan County Attorney
Greg Ferbrache, Deputy Utah Attorney General (*attending for Spencer Austin, designee of General Reyes*)
Sim Gill, Salt Lake District Attorney
Barry Huntington, Chair-elect Garfield County Attorney
Scott Sweat, Wasatch County Attorney

COUNCIL MEMBERS EXCUSED:

Stephen Foote, Duchesne County Attorney
Scott Stephenson, Deputy Director of P.O.S.T (*designee of Commissioner Keith Squires*)

UPC STAFF: Bob Church, Director
Marilyn Jaspersen, Training Coordinator
Tyson Skeen, Staff Attorney
Ronald Weight, IT Director

GUESTS: Edward Berkovich, Assistant West Jordan City Attorney
Jeff Buhman, Utah County Attorney
Paul Boyden, Executive Director, SWAP
Will Carlson, Deputy Salt Lake County District Attorney
Russell Smith, Deputy Utah Attorney General
Robert Van Dyke, Kane County Attorney

I. WELCOME & TENT CARDS

- A. The Council members were welcomed and the meeting convened.
- B. Steve Garside explained that tent cards will now be set up at council meetings so it's clear who are council members and have UPC voting rights.

II. APPROVAL OF THE JANUARY 20, 2017 MINUTES

- A. Barry Huntington made the motion to approve the minutes from January 20, 2017. Scott Sweat seconded the motion and it passed unanimously.

III. APPEARANCE BY ED BERKOVICH

NOTE: At the last Council meeting the Council voted to invite Ed Berkovich to appear at the April 2017 meeting. Steve Garside sent the invitation to Mr. Berkovich. The following summary, while not verbatim is as close to what was said as possible.

Mr. Berkovich to Steve Garside - He asked if he had received the memo he sent out last night? (April 25, 2017). Mr. Berkovich indicated that he felt there was evidence to suggest that he was working in an environment (at UPC) where, his supervisor, Bob Church & Marilyn Jaspersen would possibly collude in an act of dishonesty. Mr. Berkovich stated that he had outlined a set of facts and said, “you have no idea how that affects somebody’s work environment and difficult it is to deal with. If anybody looks at the set of facts like the Chicago SWAG thing and the emails, it is a very difficult thing to be involved in.”

Mr. Berkovich cited “basic psychology” that if someone is dishonest with another person that person is going to resent them because that person is going to reflect back on the dishonest act that person was engaged in.

Mr. Berkovich - So that was the tone and tenor of things at least after July 2015. Then we get to the missing information with the CLE evaluations and that was very suspicious. The very feedback that I provided was mirrored in one of Sim’s deputies and his CLE evaluation went missing.

(Referring to events in Moab). Mr. Berkovich - People who were there know I was out of line. I will have to live with that. But I’m not going to be ashamed of it either for the rest of my life. So when I called attention to that, Marilyn attributed that to Ron which was not true. I only learned of that later when I asked Ron and Ron said he didn’t prepare the evaluation summaries. There were specific comments on there that reflected Marilyn’s work product. So I was suspicious about that. Then I asked the law clerk and the law clerk said that he prepared the summary but didn’t get that one and so those comments were left off the comment sheet. In the United States, we are free to be suspicious and free to ask questions. I didn’t feel I could ask questions of UPC and didn’t feel like I could do that because of what happened at Chicago. So that was the work environment.

(Mr. Berkovich referred to a memo he sent to the Council the night of April 25, 2017.)

Mr. Berkovich - When it comes to the events in Moab, Bob clearly misled me to think I would have a say, to have the opportunity to defend myself [before the Council when they met to discuss his employment status in October, 2015]. That’s in the chronology of the memo. I still can’t believe that a body would meet and not, at least, hear what I had to say about the work environment. Especially, representing what Steve Schreiner texted to me, that part of the whole decision that the Council made with the vote to sever or a vote to make a change which indicates to me that there was more to the vote to sever than simply what happened in Moab. I should have had a say in it, that’s my perspective. It’s not just my perspective. As

I mentioned, people are really astonished to learn that a whole process would be conducted to terminate someone without ever asking that person their side of it. For that it's more for you to live with than mine.

Mr. Berkovich asked the Council if there were any questions at this point.

Steve Garside - The Council anticipated a presentation from you and that is why the invitation was extended.

Mr. Berkovich - I have no idea what went on in the closed door session. I really don't know if Marilyn was consulted. I didn't receive any input. I really think I called into question those minutes the irregularities and nonfactual statements by Bob about the minutes that he admitted at the State Records Lab committee. For me it is hard to believe there are a lot of mistakes and a lot of statements that made me think I would have a chance to defend myself. I didn't have the chance to defend myself at the open session on Oct. 21st special Council meeting. I think the process was flawed. If it is true that where there were times that I would be colluded toward with dishonesty by my supervisor and support, I think Bob was compromised. He was the one that controlled the information flow to all of you. I have a sense that I'm leaving things out. I'm not referring to my notes. But it's sort of like it is in the memo. You know, you have no idea...

(Sim Gill offered to give Mr. Berkovich a copy of the memo.)

Let me get to this situation where I'm having to get approval for presentations, however many states away like Kansas City which was a completely an unworkable thing. When I asked Bob about it, if I had to keep doing stuff like that he said something about that's his alpha male dominance which is unhealthy. So, those are some of the issues. So there definitely probably not a healthy work environment. I will give Bob credit for getting out of the way. He, at least, let me do stuff.

Mr. Berkovich - Then we get to the summer appointment by UMMA of my designation. Before I even suggested that Bob made a unilateral decision or two people, I GRAMA requested the UPC minutes and votes to see if you all voted on the UMMA designation for me to be on this board. It was silent, State Records says that nobody voted. There were no responsive records. There were no waivers which indicates to me that Bob might of picked up the phone and consulted with one of you and said that he (Mr. Berkovich) can't be on it. You can't do that unilaterally, it's an unauthorized act. You couldn't do that. Even if you had voted on it, it would not of been statutorily valid. Because once a designation has been made, it is made. It is not voted on by the Council. I have the proof in the statute that you don't have the power to accept or reject it. UMMA was caught flat footed and some of them are not thrilled about what happened. They did not know that they had the statutory authority to say this is our designation and we're keeping him. I don't think a director should go around making acts by an unauthorized vote. That is not supported by an unauthorized vote. So, these are some of the highlights. I give you credit for reading my memorandum and I

will take any questions on memorandum and there only things in there based on record fact. I come out of rooms and they stop talking. That's fine, maybe they were talking about something personal. I don't think you're fully informed. Some of the statements are flat false and not open to interpretation. I'm just keeping it to the scope of what you invited me here to talk about. You may or may not have realization of the open violations or recently the Open Meeting Act violation but you didn't invite me here to talk about that.

Steve Garside - As you know you were free to present those. I don't if anyone on the Council has any questions for you. I'm not sure if anybody on the council has had the opportunity to read the memo. Or whether there's any action on that would be for another meeting because they haven't had a chance to digest that. Does anybody on the council have any questions for Ed?

Sim Gill to Mr. Berkovich - I have just a general question. As far as your relationship with UPC originally that was the nature of a relationship to a grant, right?

Bob Church to Sim Gill - It was funded by grant, yes.

Sim Gill to Mr. Berkovich - The terms of the employment, the grant that was not a merit position was it?

Bob Church to Sim Gill - No. It was an at-will employee.

Mr. Berkovich - It's my understanding there's no grant distinction, if your at-will, you're at will.

Sim Gill to Mr. Berkovich - I did get this last memo, email and I did scan through it late last night. Does this cover from your perspective things you wanted to cover and what you wanted the council to be aware of? Do you feel this memo covers the things you wanted to communicate to the Council?

Mr. Berkovich to Sim Gill - Yes, regarding what Steve invited me here to talk about. I was very careful to... there were other obvious things, but I'm not going to talk about them in terms of drama.

Sim Gill to Steve Garside - You just wanted him to have the opportunity to come and communicate his concerns from the termination from that action?

Steve Garside to Sim Gill - And the UMMA issue.

Sim Gill to Mr. Berkovich - Within the context of those two issues, do you feel comfortable that you've had your say? Does this memo cover the issue with the severance of employment and the UMMA issues for you?

Mr. Berkovich to Sim Gill - Yea, but there is one thing I'd like to ask.

Mr. Berkovich to Greg Ferbrache - Do you remember, did you ever tell Bob I was out in the state working too much?

Greg Ferbrache to Mr. Berkovch - At this point, I'm not going to answer any questions. The forum for this was for you to present not to be doing a deposition or anything.

Mr. Berkovich - I know. You guys, I'm not suing anybody. The only reason I bring that up is because this is something I felt like I was being torpedoed. Bob would say the office feels you're gone a lot and Greg may take that away from us. This is what resource prosecutors you know they're only in the office only a few days a week. I actually can leave it at the memo.

Sim Gill to Mr. Berkovich - I want to make sure that you write a memo and then you send it, you may think about it - I just want to make sure for the purpose of this meeting and that everything you feel you need to share and if there is need for discussion people may not have fully read it and if there is a discussion I wanted to know if there is anything that needs to be added to be brought out now.

Mr. Berkovich to Sim Gill - I can't think of anything comprehensive or specific. If there's anything else, I will let you know. Regarding any and it hasn't happened here yet, you know this sort of how dare you - hands on hips, how dare you suggest this, you know what was said about me. I have no idea what was said about me. I have given you reason to believe that maybe, at least, one for sure inaccurate statements and other written untrue statements there is reason to doubt the quality of the information you have in the emergency council meeting, specifically, because Bob controlled the flow of the information to the council meeting. I can just point to something pretty darn easily and that this is just not true with this thing about the scheduled trainings. It's hard to believe that that's an unconscious mistake given how the Denver thing was. Do I need to elaborate on that?

Mr. Berkovich to Steve Garside - Do you know and established now that there were subsequent trainings scheduled? Are you satisfied, based on a separate email, that I had trainings scheduled subsequent to my terminating?

Steve Garside to Mr. Berkovich - Oh yes.

Mr. Berkovich - It's just hard for me to believe, that's just a mistake. Especially as important as somebody's job and life it seems like some things were fine tooth combed everything.

Steve Garside to Mr. Berkovich - I pursued that. I received a satisfactory response. To me things could be, not that there was nothing scheduled, but there wasn't anything scheduled that couldn't be rescheduled or taken care of in another way.

Mr. Berkovich to Steve Garside - That is the information you got?

Steve Garside to Mr. Berkovich - Yes.

Mr. Berkovich to Steve Garside - It's clear those trainings were canceled. That's not disputable or debatable.

Steve Garside to Mr. Berkovich - I understand. Does any other member of the Council have any questions or followup of Mr. Berkovich? If not, my proposal to the council, for those who haven't had the opportunity to go through that and if someone at that time feels it needs to be brought up again on our next agenda or again at an earlier meeting whether it be open or an executive session, obviously, we will be entertained to do that and be willing to do that.

Mr. Berkovich to Steve Garside - Do you have my UMMA memorandum, my UMMA email? Are you aware of it? The whole thing about the 83 minutes, are you aware of that?

Steve Garside to Mr. Berkovich - I don't have it with me and I know I have read it.

Mr. Berkovich to Steve Garside - So you understand about the 83 minute reference. I am designated (inaudible).

Mr. Berkovich - I can tell you this, I don't bear any ill will toward anybody including Bob or Marilyn at this point now that I have had my say. You can do what you want including nothing, I have a feeling that's the way it will go and that's perfectly fine with me. Just to have my say which I appreciate the invitation, I can't, but I'm not going to pretend that I wasn't suspicious and that I didn't think there weren't nonfactual statements made to me in collusion and those kind of things. The underlining subject of these things nobody cares about the transportation of sweaters to Chicago nobody cares about really in the long-run agendas, memorandum or the CLE comments but it's the culture if that was a completely candid work environment and who was really responsible for that and who took some heat for calling some attention to that. If you understand what I'm saying. I can say that. I appreciate my say. God bless all right? But I really think it needed to be said and if there's nothing to hide then nobody has a problem.

Steve Garside to Mr. Berkovich - Thank you.

Mr. Berkovich to Steve Garside - Thank you.

IV. BERKOVICH GRAMA REQUESTS

A. Bob indicated Mr. Berkovich's GRAMA requests, UPC's responses, all e-mail traffic regarding the requests and the AG's response were included in the packet.

V. UPC CONFERENCES

A. Completed Conferences

Bob gave an in depth report on the following completed conferences. Please refer to

the Director's Summary for details.

1. 2017 Conference Schedule:
 - a. Spring Conference:
 - (1) Spring Conference will be held the same time as the judicial conference on April 27, 28, 2017 at the Riverwoods Conference Center, Logan, UT. Bob reviewed the agenda. Remote broadcasting is being made available to SLDA's office, Utah County Attorney's office and the Attorney General's office at the College Drive location.
 - (2) Bob commented that this will be Paul Boyden's last legislative update as he will be retiring this year. Bob expressed a heartfelt appreciation to Paul for all his many years of service to UPC. He will be sorely missed.
 - (3) Bob, also, expressed thanks to all those who help with summarizing and compiling the summaries.
 - b. Regional Legislative Updates:

Will be held from May to June. The schedule will be forthcoming.
 - c. UPAA Conference:

The UPAA Conference will be held at the Uintah Conference Center, in Vernal, Utah on June 21-23, 2017. Haley and Marilyn reviewed the agenda.
 - d. UMPA Summer Conference:

This conference will be held on August 3-4, 2017 at the St. George Courtyard by Marriott. The planning committee has met and developed a draft agenda. The committee is in the process of confirming presenters.
 - e. Basic Prosecutor Course:

The course will be at USU - University Inn in Logan, Utah on August 14-18, 2017. The planning committee has met and have set this year's agenda.
 - f. Fall Prosecutors Training Conference:

This conference has been scheduled around the judicial conference as well.
It will be held October 4-6, 2017 at the St. George Hilton Garden Inn.
 - g. Government Civil Practice Conference:

This conference has been scheduled to be held October 18-20, 2017 at the St. George Hilton Garden Inn. The planning committee has yet to meet.
 - h. County Attorney's Executive Seminar:

The seminar will be held at the Dixie Center in St. George, Utah on November 16-17, 2017.
2. CLE Fee
 - A. Bob stated that the Bar is *not* increasing the cost of processing CLE fees from \$15 to \$20 as he reported at last Council meeting. He apologized for the error. The rate is as required by State of Utah Supreme Court - Board of Continuing

Legal Education. Rule 14-417 Miscellaneous Fees and Expenses requires that all Utah CLE sponsors who offer any course for a fee shall pay to the Board, within 60 days of presenting the course, a fee of \$1.50 per credit hour per attendee. The \$1.50 per credit hour fee with a cap at \$15.00 per attendee.

VI. FINANCIAL REPORT

Bob made the following financial report. Additional information is included in the Director's Summary.

- A. Surcharge FY16/17 Report:
 - 1. Surcharge receipts ended at \$47,396.61 as of March 2017. In comparison to the 2016 March surcharge receipts that end at \$53,788.07. Bob noted there is a drop of \$6,391.46 but was not overly concerned. He will continue to watch the receipts and keep the council apprised.
- B. FY17 Budget/Comparison Report:
 - 1. Bob stated that SWAP reimbursed UPC for the net cost of the 2016 Government Civil Conference in the amount of \$12,545.31.

VII. TRAINING COMMITTEE REPORT

Steve Garside, UPC Training Committee Chair gave the following report.

- A. Steve confirmed what was reported under A.1.a-h.
- B. In addition to the training events mentioned above, the Council discussed a training on Expert Witness (DV cases) to be held at the Veridian Center on September 6-7, 2017. This is a joint venture between UPC and the SLDA's office. Also, a Title 3 Conference to be held November 8th was mentioned.
- C. Nominations were open to select a location for the 2018 Fall Prosecutor Training Conference. The Training Committee recommended the Provo Convention Center, Moab Valley Inn and a new Marriott property in Moab. Greg Ferbrache made the motion to narrow the location to Moab and leave it to UPC staff to determine either option 2 or 3 depending costs. Sim Gill seconded the motion and the motion carried unanimously.
- D. Next Training Committee meeting will be in Torrey, Utah on Oct. 16-17, 2017.

VIII. UPAA - Haley Christensen, UPAA Chair and Marilyn Jaspersen gave the following report.

- A. The UPAA conference will be held June 21-23, 2017 at the Uintah Conference Center in Vernal, Utah. The agenda has been finalized.

IX. RESOURCE PROSECUTORS REPORTS

- A. Tyson Skeen referred the Council to the TSRP report outlined in the handouts.
 - 1. Tyson indicated his goal is to train on drunk driver and lethal weapon courses.
 - 2. Replacing the domestic violence/sexual assault resource prosecutor (DVS/SARP)
 - a. HB0200 passed giving UPC dedicated funding of \$186,000 for a prosecutor to work with DPS to develop trauma informed training. The officers must be initially trained by July 2018 and detectives must

- receive advance training by 2019.
- b. These funds will cover a Grade 5 attorney, a seasoned attorney, and would provide ongoing training for the trauma prosecutor including 3-4 conferences per year, some administrative expenses (i.e., phone, supplies) and some in-state travel.
- c. Also, this person would do domestic violence training.
- d. Funding will begin July 1, 2017. Currently, UPC office and staff have moved to College Drive in temporary offices on the second floor. There is no office available for the DVSARP. This position cannot be filled until permanent office space is secured. It's the understanding that permanent offices will be on the third floor and will be available sometime this fall. The position announcement will be sent out approximately 30 days prior to moving into permanent offices. Donna will be invited to participate in the interviews.

X. IT ISSUES

- A. In addition to the in depth report in the Director's Summary, Ronald Weight and Bob Church gave the following PIMS report.
 - 1. PIMS users continue to dwindle in number.
 - 2. Few offices will continue to use it.
- B. Case Management RFP
 - 1. Because of state purchasing statute, Bob was prohibited from giving out specific details at this point. However, the following items he was able mention.
 - a. RFP issued and vendors submitted proposals.
 - b. The evaluation committee met and reviewed the initial proposals.
 - (1) Voting Committee Members - after the contract is awarded, committee member names will be added to these minutes
 - (a) Two county attorneys
 - (b) Two city prosecutors
 - (c) Two admin personnel
 - (d) 1 IT person
 - (2) Non-Voting Members
 - (a) Bob Church - UPC
 - (b) Marilyn Jaspersen - UPC
 - (c) Christopher Jennings - Contract Analyst
 - c. Those companies that achieved a minimum score of 700 have been invited to give a live presentation.
 - d. Live Presentation
 - (1) Tuesday, April 25, 2017
 - e. Cost Evaluation Meeting and Announcement of Award
 - (1) Tuesday, May 2, 2017. If all goes as hoped, Bob hopes to have a contract in place by the end of May.

XI. REPORTS FROM UPC REPS ON VARIOUS COMMITTEES

In addition to the report in the Director's Summary, Bob Church made the following report.

- A. State Advisory Board on Children's Justice - Craig Johnson, Utah County
 - 1. The State Advisory Board on Children's Justice continues its support to CJs and victim's rights legislative efforts. This support has resulted in a significant \$120,000 donation from the LDS Church to fund new medical equipment at eight different CJs statewide.
 - 2. Additionally, the Rules of Evidence Committee has taken Rule 1102 proposed change seriously and has tasked one of their committee members with researching and obtaining additional data to present at their May meeting.
- C. Criminal Law Section, State Bar - Janise Macanas, AG's Office
 - 1. The Criminal Law Section are finalizing two CLE's, one the end May and another the end of June, 2017 for the section members. The topics, speakers, etc. were being finalized.
- D. Indigent Defense Trust Funds Board - Brody Keisel, Sanpete County
- E. Justice Court Subcommittee - Ed Montgomery, South Jordan City
- F. Sentencing Commission - Scott Garrett, Iron County

XII. OTHER BUSINESS

In addition to the report in the Director's Summary, Bob Church made the following report.

- A. As Bob mentioned, UPC has temporarily relocated to the second floor of the AG's College Drive Campus. We've been told that we'll move to the third floor once the State Fire Marshall moves out.
 - 1. New address:
 - a. 5272 College Dr., Suite 201, Murray, UT 84123
 - 2. New phone numbers and email addresses
 - a. Bob: (801) 281-1212 / rjchurch@agutah.gov
 - b. Marilyn: (801) 281-1208 / mjasperson@agutah.gov
 - c. Tyson: (801) 281-1209 / tskeen@agutah.gov
 - d. Ron: (801) 281-1234 / rweight@agutah.gov
- B. Election of UPC Region I Council Member
 - 1. Bob indicated that Jann Farris's term expires June 14, 2017. He sent a letter to all voting members of Region I and asked them to be prepared to nominate and vote on who their representative will be at UCDAAs meeting on Thursday, April 27th. Region I include the following:
 - a. Box Elder County - Steven Hadfield
 - b. Cache County - James Swink
 - c. Davis County - Troy Rawlings
 - d. Morgan County - Jann Farris
 - e. Rich County - Gary Heward
 - f. Weber County - Chris Allred
 - 2. Open Meetings Act Review as it Pertains to the Council
In addition to the report in the Director's Summary, Bob Church made the following report.

- a. In accordance to the Open Meetings Act Bob reviewed procedures UPC will be taking when posting for UPC meetings. Please refer to the Director's Summary for details.
3. Civility Discussion

In addition to the report in the Director's Summary, Bob Church made the following report.

 - a. Russell Smith, General Reyes designee, was placed in a difficult position at the last Council meeting as he had no knowledge about how the AG's office was using funds earmarked for training municipal and county prosecutors in the prosecution of domestic violence. There were an in depth and vehement discussion. Bob apologized for the misunderstandings and lack of civility. Going forward Bob proposed the following solution.
 - (1) Not discuss volatile issues that may affect a Council Member(s) unless the actual Council Member(s) is/are present.
 - (2) Table the issue for the next meeting if need be:
 - (a) When Council Members sends a designee, it is incumbent upon the Council Member to fully brief the designee on the issue so they can speak on behalf of the Council Member.
 - (b) Ask designee if they are familiar with the issue. Are they prepared to discuss this issue? Does he/she have authority to make a decision on this issue?
 - (3) If any of the answers are "no" Bob will suggest the issue be tabled.
 - b. Specifically put Council Member on notice of any issue that may arise.
 - (1) Bob will try to make the Proposed Agenda and Director Summary clearer if there is an issue to be addressed.
 - (4) However, this could present a challenge if the issue arises during Council Meeting
4. Donation to the Utah Journal of Criminal Law

In addition to the report in the Director's Summary, Bob Church made the following report. Bob clarified that not every prosecutor, counsel and judge in the state receives a copy as mailing list was outdated. The mailing lists are now being updated. Bob also noted that Journal has never charged subscription fees have never been charged for the Journal and the preference is not to have to charge a fee. Currently, the online version is available but it receives very little traffic. There is no one who actively monitors the webpage or who can send out notices that an online edition is available. Bob has drafted a letter to the large criminal defense firms in the state seeking donations from them. For their donation, they will receive free advertising space in the Journal.

e. Discussion on the issue of making a donation but for now, no donation will be made.

5. Survey Monkey

Bob indicated he has sent out the survey monkey and has received many responses. He is in the process of creating new mailing lists, but will have to work on it in small steps.

XVI. NEXT MEETING

Wednesday, June 28, 2017, 1:00 p.m.

Wasatch County Attorney's Office Hosting

LOCATION TBD

XVI. ADJOURN