

*These minutes of the Council Executive Retreat were by the
Utah Prosecution Council on January 10, 2020.*

UTAH PROSECUTION COUNCIL EXECUTIVE MEETING

September 9 - 10, 2019

Monday, 8 a.m. - 5 p.m.

Tuesday, 8 a.m. - 5 p.m.

5272 College Drive
Murray, UT 84057
1st Floor Training Room

NOTE: These minutes are a compilation of the original written agenda and hand notes taken. Because of the length of the recording, it was only referred to when memory on a particular topic failed. Because of the length of the recording, UPC staff is recommending it be adopted and incorporated by reference.

1. Introductions, Welcome and Setting the Stage
 - a. Council Members:
 - i. Craig Barlow: AG Office. Designee of Sean Reyes
 - ii. Sim Gil: SLCDA
 - (1) Will Carlson: SLCDA Office: proxy for Sim after he had to leave
 - iii. Yvette Rodier: WVC Attorney Office
 - iv. Ed Montgomery: South Jordan City Attorney Office
 - v. Jan Farris: Morgan County Attorney
 - vi. Stephen Foote: Duchesene County Attorney
 - vii. Ryan Peters: Juab County Attorney
 - viii. Robert Cosson: St. George City
 - ix. Steve Garside: Layton City
 - x. Haley Christensen: Utah County Attorney's Office
 - xi. Robert VanDyke: Kane County Attorney
 - b. Excused: Scott Stephens: Commissioner Anderson's designee
 - c. Guests:
 - i. Janise Mcanas: AG Office
 - ii. Jeff Buhman: Executive Director, SWAP. Only stayed for first morning.
 - iii. Susan May: AG HR Director. Gave special presentation.
 - d. Bob welcomed everyone and discussed the purpose of holding this meeting. It will be an opportunity for an open discussion about UPC, its mission and future. It will also be a training session for the new Council members and reminder for those who have been serving, about their duties and responsibilities.

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2. Approval of minutes from last meeting.
 - a. Couple of typos:
 - i. Steve Garside points out that on pg 4, 3rd paragraph, Rep Anderegg, Stuart Adams names need to be spelled correctly.
 - b. Steve Garside moves to approve. Ryan Peters seconds. Unanimous vote to approve the minutes as amended.

3. What is the Utah Prosecution Council?
 - a. UPC History Lesson.
 - i. Steve Garside provided a brief history of UPC and how it came to be. Originally, SWAP conducted the CLE training for prosecutors statewide but SWAP recognized the need and importance of having a separate training entity.
 - ii. UPC was created. SWAP retained the lobbying responsibilities for prosecutors. This was intentionally done so that UPC would never run afoul of the legislature and possibly risk losing critical funding through lobbying.
 - iii. Because UPC's source of funding was the surcharge, it required that UPC appear as a line item on some agency's budget. The AG's office was a natural choice since the AG is a *de facto* Council Member and is a state agency that receives state funding; unlike a county or city attorney's office.
 - iv. It was never intended that UPC attorney personnel be considered employees of the AG's office even though they were housed in the AG offices. The Director, and now the resource prosecutors as well, are employed by the Council but are considered non-merit employees of the AG's office. The support staff; training coordinator and IT director, are merit employees of the AG's office but subject to the direction of the Council. It creates a "weird" and unique situation, but one that has generally been managed well.
 - v. Susan May, HR Director for the AG's office will come and present a more detailed overview of the status of all UPC personnel.
 - vi. Over the years, UPC has provided outstanding training for state and local prosecutors and its essential role, has not change very much.
 - b. What is the role of the Council as a whole
 - i. Statutory responsibilities per UCA 67-5a-1
 - (1) Provide training and continuing legal education for state and local prosecutors; and
 - (a) Training Committee
 - (i) Report. Steve Garside informed the Council that the training committee would be meeting in October at College Drive to plan the 2020 training calendar.

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- He invited Council Members to provide any suggestions on needed training.
- (ii) SWAP. Bob mentioned that Jeff Buhman was going to discuss the need for UPC and prosecutors statewide to address the perceived need that we be trained on bias and inherent bias as it relates to charging decisions.
- (b) Other training needs. This topic was thoroughly discussed. A major area of discussion focused on what skills do prosecutors need to be trained on and how to conduct that training.
- (i) Basic skills such as direct and cross examination, handling and introducing evidence/exhibits, use of experts, rules of evidence, rules from criminal procedure, voir dire, negotiation and others are critical to prosecutors but are skills, that if not regularly used, can become rusty.
 - (ii) A suggestion was that UPC develop skills-based training and provide the training regionally, on a schedule similar to that of the regional legislative update. The courses would be offered regionally and only last a couple hours. The reason being, UPC staff and trainers would only be able to go down for short periods to save the cost of lodging, per diem, etc.
 - (iii) In order to fund such training, it was discussed that one option would be to fundamentally change the way Spring and Fall Conference is held. Rather than spend money on large conference space, the conferences could be held at smaller, free locations and then broadcast across the state.
 - (iv) A limited number of prosecutors would still be able to attend the free location. This would provide a live audience for the presenters.
 - (v) The pros and cons of this approach were discussed.
 - (vi) Tyson expressed concern that we would lose a vital element of these conferences, that of networking and just being together. These two big conferences are the only real time prosecutors get together.
 - (vii) Another real concern is if prosecutors would actually attend regional skills based training.

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Because there is no real commitment to attend, like a regularly scheduled conference, would people actually attend.

- 1) Completion of skills based courses could be connected to pay increases, promotions.
- 2) This would require buy-in from all the bosses.
- (viii) UPC staff were tasked to think about it, discuss the idea with the training committee and determine if this is a viable or worthwhile option.
- (2) Provide assistance to local prosecutors;
- (3) As funds are available and as are budgeted, provide reimbursement for unusual prosecution related expenses
 - (a) Due to the state of the surcharge, providing financial assistance to local prosecutors will not be happening in the immediate future.
- (4) Provide training and assistance to law enforcement officers.
 - (a) Marlesse: Discussion of Trauma Training for Prosecutors
 - (i) there is a need to combine trauma training for LEO's and prosecutors. Prosecutors need to understand the effects of trauma as much as officers.
 - (ii) Offer 2 hours of CLE to prosecutors if they attend one of Marlesse's regional trauma courses she teaches to LEO's
 - (iii) One thought: have a trauma breakout at every UPC conference
 - 1) Follow-up thought: have a general session on trauma, followed by the breakout
 - (iv) Like other specialized certifications LEO's can get, what about certification for LEO's in trauma, even prosecutors?
- ii. Perceived role of the Council among prosecutors; right or wrong.
 - (1) The perception among many prosecutors is that UPC is the governing voice among prosecutors. This belief is supported by e-mails UPC staff receive asking what is UPC's position on an issue, what is UPC going to do, etc. It's mostly a matter of education, letting prosecutors know what we do, what SWAP does, etc.
 - (2) UPC does not speak for all prosecutors. UPC is just the most visible prosecutor-focused agency.
 - (3) One way to better educate our clientele on our role is to give

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SWAP leadership 15 minutes or so at every conference to update people on what they are doing, etc. This should help differentiate the roles between UPC and SWAP.

- c. What are individual Council member roles? Should there be a “role?”
 - i. Council Members:
 - (1) “AG or designee;
 - (a) Craig Barlow
 - (2) Commissioner of Public Safety or designee; Scott Stephenson
 - (a) The Council discussed Public Safety’s role on the Council and the value public safety has brought from law enforcement’s perspective. It was recognized that Council meetings tend to focus on issues not directly related to law enforcement and that we can do a better job of making sure Council Meetings are relevant to everyone.
 - (b) The Council needs input from law enforcement, especially as we have specifically mandated training requirements. Scott can bring input from officers and agencies about their needs and what more they need or want.
 - (c) Bob will reach out to Scott to discuss how to better incorporate his role into the Council.
 - (d) There was discussion about whether UPC’s statute should be changed and eliminate this seat. For now, the Council will work on emphasizing the importance of law enforcement presence on the Council.
 - (3) Four serving county or district attorneys designated by UAC;
 - (a) Jann Farris
 - (b) Ryan Peters
 - (c) Rob Van Dyke
 - (d) Stephen Foote
 - (4) Four city prosecutors;
 - (a) 2 designated by UMAA
 - (i) Steve Garside
 - (ii) Robert Cosson
 - (b) 2 designated by UMPA
 - (i) Ed Montgomery
 - (ii) Yvette Rodier
 - (5) Chair of the Board of Directors of SWAP
 - (a) Sim Gill
 - (6) Chair of UPAA: Haley Christensen
 - (a) UPAA’s role and discussion
 - (i) What do bosses want their staff trained on?

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- (ii) Training topic for attorneys:
 - 1) train attorneys on written product needed to smoothly run the office,
 - 2) how to best interact with support personnel
 - (iii) Support staff could train prosecutors on how to put together a trial notebook
 - 1) NOTE: This may be a topic we want to add to Basic or other trainings.
 - ii. A discussion took place where each member of the Council described their role and what they bring to the Council. Each member was able to validate their role and purpose. Good group discussion.
 - iii. It was suggested that Council members could be more active on UPC's forum, share and express opinions, work product, etc.
 - d. Council Chair, Chair Elect
 - i. Duties of the Chair were discussed
 - (1) Run Council meetings
 - (2) Train newly elected members
 - (3) Be liaison between UPC and AG's office on personnel and HR related issues.
 - (4) Coordinate any issues, resolve conflicts, etc. between UPC staff and the AG's office.
 - (5) Appear before the legislature on issue dealing with UPC
 - (a) After consulting with Council and AG's office
 - (b)
 - ii. Chair Elect
 - (1) With Barry Huntington's departure from the Council after his term of service expired, Robert Cosson was nominated and voted to be the Chair-elect behind Stephen Foote.
 - (2) Bob will reach out to Robert to explain his responsibilities.
- 4. SWAP and UCDAAs Overview
 - a. SWAP - Jeff Buhman
 - i. Jeff explained the current leadership of SWAP and its goals.
 - ii. He sees a need for UPC to train on inherent and implicit bias in light of legislators who are concerned about charging decisions of prosecutors. He feels that if UPC can get out in front of the issue, that this will help alleviate any concerns legislators have.
 - iii. Issues relating to bias were discussed:
 - (1) the authority/power of prosecutors
 - (2) prosecutor error v. prosecutor misconduct
 - (3) don't let headlines drive/define issues

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- (4) role of the prosecutor
 - (5) under/over prosecution of sexual assault cases
 - (6) incarcerated witnesses
 - iv. This issue will be taken to the training committee for their consideration at their planning meeting in October.
 - v. Rep. Judkins legislation about gathering data about prosecution decisions regarding charging, dismissing, etc. was discussed. SWAP leadership will continue to meet with her. She is invited to attend SWAP's board meeting in conjunction with the County Executive's conference in November.
 - b. UCDAAs - Rob VanDyke
 - i. Rob briefly explain what UCDAAs are, how they function and their goals.
 - ii. Their by-laws state that their board meetings will be held in conjunction with UPC's Spring and Fall Conferences.
 - c. How do we work together?
 - i. The answer to this question is to continue what we have been doing; open communication, cooperation in scheduling joint meetings, sharing ideas, etc.
 - ii. As mentioned above, UPC will give SWAP, and UCDAAs as they desire, time at every conference to let their membership know what is happening.
5. Perceived role of UPC among legislature
- a. Legislators have referenced UPC as the agency to oversee prosecutors. We are overcoming this perception through SWAP's leadership, continued SWAP interaction with legislators and UPC's involvement in the legislative process.
 - b. Any time there is a misconception, immediate clarification needs to be provided.
6. Best Practices
- a. SWAP is spear-heading this effort. It will pick up where UPC's best practices left off. Jeff and Bob are co-chairing the effort.
 - i. NOTE: All committee members had not been identified. As of December 9, 2019, these are the committee members:
 - (1) Bob Church
 - (2) Jeff Buhman
 - (3) Craig Barlow
 - (4) Chris Allred
 - (5) Dan Burton
 - (6) James Swink
 - (7) David Leavitt
 - (8) Jami Brackin
 - (9) Jeremy Humes
 - (10) Mike Olsen

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- (11) Nic Mills
 - (12) Robert Cosson
 - (13) Robert Van Dyke
 - (14) Ryan Robinson
 - (15) Scott Sweat
 - (16) Sim Gill
 - (17) Stephen Foote
 - (18) Steve Garside
 - (19) Trish Cassell
 - (20) Troy Rawlings
 - (21) Will Hains
- b. Jeff wants to create a state-wide policy that the committee can recommend that prosecutor offices can follow. Of course it will not be binding on anyone but will serve as a starting point for offices.
 - i. Topics to address include:
 - (1) Bias
 - (2) Training
 - (3) Prosecutor responsibilities when screening, charging cases
 - (4) Discovery
 - (5) *Brady/Giglio*
 - c. It is believed that by showing the legislature that prosecutors take these issues seriously, we can again, allay any concerns individual legislators have about prosecutors going rogue, not following ethical guidelines, etc.
7. Mission Statement
- a. The committee worked and created UPC's new mission statement.
 - i. "The mission of Utah Prosecution Council is to provide quality training for state and local prosecutors as well as law enforcement officers through an exchange of information and experience to ensure the administration of justice reflecting the highest ethical and professional standards."
8. By-laws
- a. Do we need any? No. UPC's statute sufficiently covers what potential bylaws would cover.
 - b. There was discussion that if UPC were ever to accept money from outside agencies, we would need to be sure to follow AG policies. But that doesn't need a separate bylaw to require that.
9. AG Personnel Policies, Susan May
- a. UPC staff employee status.
 - i. Susan reported that UPC attorneys are appointed. In order to hire new

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- attorneys, UPC would not have to go through the traditional open application process. If UPC identified a qualified individual, UPC could go out and hire them off the street.
- ii. Of course it would be more transparent if UPC were to go through the traditional hiring process, but it is not a requirement. By not going through a traditional recruitment, UPC could be subject to criticism for not casting a wide net to try and find the most qualified person. Appointment means there are no documents subject to GRAMA to explain the Council's decision on who to hire or why the person was hired.
 - iii. Appointing someone that UPC identifies as most qualified, someone that UPC knows already has the skill set needed, would be authorized.
 - iv. UPC could do their own independent recruitment; request resumes and select from that pool and not have to go through state recruiting.
 - v. If someone we have an interest in doesn't apply via the state recruiting process and we invite them to apply after the fact, that could be a problem. If UPC does its own recruiting, we would be able to invite someone we're interested in to apply.
- b. AG policy regarding salary increases.
- i. Susan suggests when setting salary to look at the AG/state salary scale. Compare what regular AG's are being paid, then go from there. AG salaries are determined based on bar admission date.
 - ii. UPC statute originally written to follow state salary scale, AG scale, but it was not intended that UPC attorneys be traditional AG employees, but use their pay scale as a guide.
 - iii. Because UPC attorneys are "at will" employees, this justifies being able to pay UPC attorneys a little bit more.
 - iv. Career service employees, such as Ron or Marilyn, are subject to AG pay scale. When AG office receives additional funding from legislature for state employees, a similar increase should be applied. However, any increase for career service employees comes from UPC budget/surcharge, not any additional funds received by the AG's office. This is one negative effect of decreased surcharge is UPC not able to necessarily increase the salary of career service employees.
 - v. There is no merit increase. Instead, there are loyalty increases; 1.5% increase for every 5-years of service there is an increase in pay.
 - vi. At will employees have no similar loyalty increase, unlike the AG pay grade structure.
 - vii. AG office has 5 pay grades. Attorney bar admission date determines what pay grade. Every grade increase is a 2-step or 5.5% increase up to grade 5. Then there is a management bump which technically would not apply to Bob based on UPC pay structure. However, he is the equivalent of a

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- section director which is a 5.5% pay increase. Council could look at something similar as a reward for at-will status employees and still stay within AG guidelines.
- viii. The question was asked, who is responsible for looking for and suggesting those pay raises. At the direction of the Council, the Director will look at building pay raises into the budget. However in recent years there has not been additional funds for pay raises so the topic has been bumped from the Council Agenda.
 - ix. Traditionally this issue is raised in June's meeting where the budget is discussed.
- c. AG personnel disciplinary and/or grievance process was discussed.
- i. This issue is on the agenda for clarification what the grievance process is and how it applies to career service and at will employees.
 - (1) When a prior at will employee left the office, he filed a complaint against a career service employee. The career service employee filed grievances against the at-will employee. The AG's office conducted an investigation into both grievances.
 - (2) A comment was made to the Director about why the Council was not investigating its own employee.
 - (3) Susan was new at the time and can't speak to the specifics of that prior incident so her comments were in general, and not case specific.
 - (4) UPC attorneys are brought on as state employees. Therefore, the state is still liable, as is the Council, for unlawful discrimination or termination. For that reason, the Council would want someone from the AG's office to conduct the investigation to determine that termination was lawful. It helps to protect the Council and the state if the AG's office does the investigation. The same principle applies when an investigation is done against a career service employee.
 - (5) Career service employees due process rights includes an extra layer of appeal. Normal appeal goes to the AG. If any loss of pay, demotion, suspension, termination, etc, go through Career Service Review Office.
 - ii. Question asked if the Council is ensured by Risk Management. Bob did not know the answer to that good question but because we UPC are state employees, within the AG's office, most likely we are. Warrants a confirmed answer.
- d. Further discussion was held about offering an employee who is being terminated a name-clearing hearing. Provide opportunity to be heard in case the employee feels his/her name being besmirched. This is a practice not widely followed in other states but worth taking into consideration.

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10. Crossing the River Exercise
 - a. Focused on group interaction, developing course of action, following through, problem solving, etc.

11. Council Meeting Agendas
 - a. Currently
 - i. Budget review
 - ii. Review of past and future conferences
 - b. Not being covered
 - i. SWAP issues
 - ii. UCDAAs or UMPAs issues
 - iii. Reports from any UPC designated representatives on various committees, working groups, etc.
 - (1) Children's Justice Advisory Board - Craig Johnson
 - (2) Criminal Code Evaluation Task Force - Will Carlson
 - (3) Indigent Trust Fund Board - Kevin Daniels
 - (4) Criminal Law Section of the Bar CLE - Janise Macanas
 - (5) Pawnshop and Secondhand Merchandise - Jen Bailey
 - (6) Utah Youth Court Advisory Council - Steve Garside
 - (a) Steve has been on this council for a very long time. He attends their meetings quarterly.
 - (7) Need to do a search to see what councils, commissions, etc. have UPC appointed representatives.

12. Community Outreach Programs
 - a. Is anyone doing this? And should we be doing this?
 - i. Media attention is focused on law enforcement and prosecutor misconduct. We need to do better and be better about getting a positive message out about what we do, how we do things.
 - ii. Legislative attention is also focused on law enforcement and prosecutors. We are seeing trends where legislators want to impose more restrictions on what we do, how we do things. i.e. Rep Judkins bill to require prosecutors to track charging decisions, etc.
 - b. Social media presence was discussed. Weekly legal topics could be posted/discussed, upcoming training, etc. The problem is personnel, who would be able to do this. UPC staff are already spread very thin.
 - c. Talk to Richard Piatt, former KSL reporter, AG public relations.
 - d. Examples from other states:
 - i. Expungement Day
 - ii. Traffic Safety

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- iii. Human Trafficking
- iv. What is a Prosecutor?
- v. Elder Financial Law
- vi. Elder Abuse
- vii. Safe at Home: Prosecuting DV
- viii. Constitutional Law Day
- ix. Victim's Rights/What to do if you're a victim of crime?
- x. Reaching out to Minority Communities
- xi. Crimes Against Children
- xii. What my Office is Doing for Our Community

13. FY19 Final Surcharge Report

- i. Monthly
 - (1) Apr 19: \$39,158.09 Apr 18: \$47,177.21
 - (2) May 19: \$53,308.30 May 18: \$40,392.86
 - (3) June 19: \$47,009.34 June 18: \$48,471.43
 - (4) July 19: \$39,620.27 July 18: \$40,609.48
- ii. Year to Date:
 - (1) 2019: \$492,045.50 2018: \$511,483.77

14. FY20 Budget Discussion

- a. Non-lapsing carryover
 - i. The carryover was only \$32,231.00, not the \$50,000 I budgeted for.
- b. Adjustments to the proposed FY20 budget. *Tab A*
 - i. No handouts, materials, SWAG or Travel Council Calendars.
 - (1) If we come under budget for Basic, Fall, Civil and UMPA, I will put the calendars back in.
 - (2) At our last meeting it was discussed that these are nice thank-you's to speakers, AG support staff and others.
 - ii. NAPC Summer Conference
 - (1) No UPC staff will attend.
 - iii. Council Retreat
 - (1) Should not spend the \$1750 we budgeted
 - iv. Training Committee
 - (1) Should be able to host for \$1000
- c. With these adjustments, we should be in the black. *Tab B*

15. Surcharge

- a. Research
 - i. I submitted requests for information from the State Office of Debt Collection and the AOC.

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- (1) I received ODC's information. *Tab C*
 - (a) I still have to look at it more closely to try and figure out what it means. All they supplied me with were data charts.
 - (b) I welcome anyone smarter than me to help me figure out the information.
 - (c) It will be important to try and discover how much money is being returned to the courts from SODC.
 - (2) AOC had questions I answered a month ago. They e-mailed last week asking for more time as they had a change in staff. They're hoping to get information to me next week.
 - (a) Key questions to answer include which courts are not imposing fines and how many cases there are where the court is not imposing any fines. Bob will reach out to the individual prosecutor offices and ask.
- b. What, if any, solutions can we take to the Legislature?
- i. POST is seeking to be funded solely by dedicated funds. This would free up 18.5% of the surcharge that could/should be redistributed among other agencies.
 - (1) Do we support them, seek our own dedicated funding? Support this effort.
 - (2) We should also look at how much training we do for POST at no cost to them. Whether we seek some "compensation" through a percentage of the surcharge or some other way, UPC staff should look at just how much training we do for them.
 - ii. Get the .5% DV surcharge funds back.
 - iii. Increase the amount of time fines stay with the court.
- c. If the "clients" of the criminal justice system do not have to pay, who does?
- d. What is the impact on UPC with the loss of surcharge funds that would sway the legislature?
- i. No law clerk, so no case updates
 - ii. No ability to hold skills specific training
 - iii. No ability to hold topic specific training
 - iv. No ability to bring in national speakers
 - v. With the high turnover rate of prosecutors, there is a constant need to train and keep training current.
 - vi. Not enough resources to really train on ethics. Right now, with one credit per course, we're doing the bare minimum. With an increased focus on bias, prosecutor misconduct, etc., UPC could be doing more if it had the resources. Only training to a minimum standard results in less professionalism.
 - vii. Use data collected from eProsecutor to improve areas of training; i.e. lots

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- of dismissals in certain cases, where losing motions, etc.
 - viii. Users having to pay a user fee for Ron's services for eProsecutor.
 - ix. UPC's training used to be free. We are having to move conferences to free locations.
 - (1) While some may argue that going off the Wasatch Front is a boondoggle, the reality is, conference attendees and students do better, learn more and enjoy the conference more when they're away from their offices.
 - x. Future plan to not pay for WIFI at Spring Conference.
 - (1) While most people have hotspots or can use their data, conference attendees expect there to be free WIFI at a conference.
 - (2) This will be an adjustment to our members.
 - e. AOC is training/instructing courts to not impose fines on indigent defendants.
 - i. No thought to the ripple effect this will have.
 - ii. Who is going to listen or care?
 - f. How soon can we begin meeting with Rep Hutchings, Senator Stephens, Rep Stuart Adams and others?
 - i. Who should schedule those meetings? A combined effort of SWAP, Dan Burton from the AG's office and others will be key as they have the relationships.
 - ii. Who should attend?
 - (1) Dan Burton/AG, very supportive of us, willing to help. Director of SWAP, other Council Members.
16. Indigent Defense Commission
- a. Full-time staff
 - i. Joanna Landau - Director
 - ii. Jojo Liu - Assistant Director
 - iii. Greg Bates - Grants Manager
 - iv. Katriina Adair - Training Coordinator
 - (1) Marilyn and I met with her last week. She reports they have dedicated funds for training 300+ contract indigent defense attorneys.
 - (2) She didn't have a plan on how their training would be deployed yet. One suggestion was to invite defense attorneys to our bigger conferences. This would not be anyone's first choice. There is benefit to being able to freely discuss the issues unique to prosecutors. Having defense counsel there would stifle some of that open communication. The same is true if prosecutors attend defense conferences.
 - v. Darien Hickey - Data Analyst
17. Next Meeting
- a. Friday, January 10
18. Adjourn