

Attorneys make their case

October 5, 2008

San Diego City Attorney Mike Aguirre is seeking a second four-year term. He is being challenged by Superior Court Judge Jan Goldsmith. Each man sat down separately recently to speak with the Union-Tribune editorial board. Below are edited transcripts of those interviews.

AGUIRRE

Why should the voters choose you to be the city attorney?

Answer, please, in light of the June primary, in which you, as the incumbent, got less than a third of the vote in a five-way race.

The voters that know the most about the city are my supporters. They are the people that get to know the system in depth, the planning group people. And that's because we've built a completely bipartisan City Attorney's Office that is focused on simply applying the law and carrying out the public interest in a way that's protective of our city. And I think the more people learn about what really is going on in our office, they're really impressed by the fact that we've taken all the politics out. And, in the planning area, you have people that are more progressive who are enforcing the land-use laws in a way that is agreeable to the community planning groups but without throwing a monkey wrench in the various developments.



LAURA EMBRY
City Attorney Mike Aguirre

You announced recently that you were going to withhold payment to a police officer of a settlement he had won in a lawsuit against the city. The officer had not been charged at that time, but later pleaded guilty to a misdemeanor related to his police dog's death. After he pleaded, you decided to drop all of that. That seemed to be a very political thing for the city attorney to do.

The decisions about the police officer case were made by Don McGrath [executive assistant for major litigation]. There's not a political bone in Don McGrath's body. He woke up the night before he knew he was going to give that officer \$50,000 and he said he couldn't do it. And he came to me and I told him to do what he thought was right. And we went forward with our case. There was no certainty that the DA was going to prosecute him. Don made a judgment call to offset the amount of the loss of the dog. The DA then did go forward. The police officer pled guilty. He did a mea culpa. Don made a judgment call that he felt that was sincere and so we went along with it.

This was a \$50,000 payment awarded to him in court in an unrelated lawsuit. He had not yet been charged over the dog. Was it really the city attorney's responsibility to decide this guy's guilty before he's been charged by the DA and unilaterally impose punishment by withholding an award from a court?

We were talking about whether it was political or not, and I think I've made the case that it wasn't political. Now the question is, is it appropriate and I would say, yes, it's very much appropriate because I'm a trustee of the city and we were paying someone based upon the fact that he was supposed to be taking care of that dog, and he didn't. We weren't charging him with the crime. We were just saying that he did something to destroy a piece of city property. As the city attorney, I'm stepping in saying there's an offset here, \$50,000. And we do that all the time. It was not political one iota.

Let me ask about something clearly political, your effort to create a foreclosure sanctuary.

First of all, again, there's nothing political about it. The office under Casey Gwinn, and previously under John Witt, took a very narrow view of their responsibility to enforce the Unfair, Unlawful and Fraudulent Practices Act, which the state Legislature has directed city attorneys of the larger cities, cities that have over 750,000 population, meaning San Francisco,

Los Angeles and San Diego, to actively enforce. Massachusetts had developed an unfair practices case with regard to certain subprime loans. They had gotten a court to issue a preliminary injunction. So I took the Massachusetts case, I did an analysis of all the foreclosure cases, all the foreclosure law reviews. I looked at the history, like in the '30s, when we had foreclosure moratoriums for as long as eight years in some states. And we put a case together and we brought that case.

Experts have said if you created a foreclosure sanctuary in San Diego, lending would dry up here very rapidly for the obvious reasons that lenders have to have the collateral.

Well, I think it has just the opposite effect, because first of all this is just a subset. The advantage for the lenders is that they can do workouts with their loans and they can actually shift their non-performing loans into performing loans and cash out with the FHA. So actually we're trying to work with them to make it work.

What is your view of the role of the city attorney?

My view is of course you serve the mayor, you serve the City Council, and we do every day. And we serve all the departments. We serve all the advisory boards.

That's not what the mayor says.

Well, what the mayor is saying is false and untrue.

He says your office is late in giving him opinions he asks for.

False and untrue. He doesn't like what our opinions are, but our office has been timely.

The State Bar has begun an investigation around this principal of abandonment of client, that you haven't represented the City Council.

I don't believe that. First of all, I don't believe it's fair for you to bring up the State Bar because you don't know what the State Bar is doing and the proceedings are supposed to be confidential. And you're certainly not supposed to gain a political advantage because then anyone could go to the State Bar and say whatever they want. Donna Frye doesn't feel that I've abandoned her. Tony Young doesn't feel that I've abandoned him. Kevin Faulconer doesn't feel that I've abandoned him. You know, much of the council is dominated by the municipal unions and they tend to object to the things I've done. There's been a systematic effort to try to discredit everything I've done since I got into office by people because they don't get to cash in on what I consider the illegal pension. There is no abandonment of client.

Do you ever think about the vantage of City Council members who wonder if you are not their attorney, who is?

There are many times where someone will come to me and they'll ask me a question and it becomes a judgment call because once you cross over the line, once you start receiving confidential information from that person, then you are their voice. You can't jump back. My first duty is always to the public. It's always to the people. So you either have to tell them you can't talk to them because they will give you confidential information. Or you can talk and get confidential information, but then you're precluded from going back and doing something else.

Do you still stand by your letter to the editor where you said the mayor was corrupt?

Of course I still stand by it.

How was the mayor corrupt?

Well, the word "corrupt" is an unfortunate term but the point that I was trying to make is this, Mayor Sanders used the word "corrupt" to describe earlier activity that had taken place in the city. He actually used the word in his State of the City address. And I had been saying to the mayor in the Sunroad case that the FAA has said it's illegal to have the building above 160 feet. There is going to be an accident. There's an aeronautical study. It's not something we can negotiate. I told him that. We brought a lawsuit. I didn't have a clue that he was meeting with the person on the other side of the case and working out a deal to allow him to put up a building that was going to subject the city to potential problems from people that might have an accident. And over and over again he assured

me that he was working with us. Then what do I find out? He had gotten a guy that in my opinion lobbied the FAA to do the very thing that I thought we had all agreed was wrong.

But is that corrupt?

My letter tied it back to his use of the word in his State of the City address.

Why did you get only 28 percent of the vote? For an incumbent city attorney, that's remarkable.

Well, I can flip it around and say for an incumbent city attorney that had more than \$1.5 million spent against him, the kind of attacks that you guys have subjected me to, who spent only \$80,000, and with only a fraction of the electorate that is going to turn out in November, I could argue it the other way.

Have you made mistakes.

I have, there's no question about it.

What are they?

Not using the right word when I used "corrupt," getting angry and upset, not being more focused. A quote that keeps running through my mind is where Theodore Roosevelt said that courtesy and courage are the mark of a gentleman. That bothers me because I don't want to be discourteous to people, and I truly apologize to everyone I've been discourteous to. But I will say that the other side of the coin is that when I do good things, like when I stand up to the municipal unions and I do fight for our city and a judge rules in a way that I believe is clear legal error, I would have hoped that you guys would have backed me up because I'm trying to fight the good fight.

Would you like to sum up?

As irritating as I may have been, you always have someone you can count on to give it to you straight and who is willing to fight the good fight. If you want issues that distinguish my opponent from myself, No. 1, I do not believe in the Minutemen, vigilantism, using the Latinos to gain political advantage. I don't believe that we should train police officers to be junior INS agents. The mayor doesn't believe that nor does the chief of police. My opponent does, and he does accept the support of the Minutemen. That's there on the Web site. It's been brought to his attention. He's accepting that.

He said that he's never met with the Minutemen.

He doesn't have to. He knows the name of the game. It's been on their Web site. He has not asked them to take his name off. No. 2, on the pension we have a case in front of the appellate court. We have a chance. The duty of the city attorney is to advocate on behalf of the city to win that case and save taxpayers \$800 million. My opponent has gone to the unions and said, "I'm not going to pursue the case, can I have your endorsement?" That, in my opinion, shows he lacks the fundamental integrity to be the city attorney. You can never go to the opposite side of litigation and ask them for their support. You talk about abandonment of a client, that is abandonment.

GOLDSMITH**Why should the voters choose you over Mike Aguirre for the city attorney's job?**

The city needs a city attorney. That is a multibillion-dollar municipal corporation. Currently, the City Attorney's Office is more focused on political activity and not so much on law practice. The city needs a City Attorney's Office that is focused on law, enforcement of the law, not politics, not partisanship, not media opportunities and publicity. The city hasn't been getting unbiased, timely legal advice. As a result, the city tends to get into trouble that precipitates litigation, which is costly.

How do you convince voters that you're not going to be a part of the downtown establishment some believe is corrupt?

I've mentioned my 10 years on the bench. Independence is in my character.

I recognized the importance of independence when I first ran for office. Capitol Weekly, published in Sacramento, July 28, 1997: "Assemblyman Jan Goldsmith is fiercely independent." You don't get that reputation by being a go-along, get-along-type person.



LAURA EMBRY
Superior Court Judge Jan Goldsmith

Most experts believe that for the city of San Diego to really get back on track financially, it needs to rein in the costs of the pension plan. Most, if not all, municipal unions have endorsed you. Doesn't that put you in a bind in terms of your independence, for you to be part of an effort to rein in the costs?

Not at all. I say the same thing to them as I do to the Republican Party, to the chamber of commerce, which endorsed me, or to the mayor and the City Council members. It's the same thing that's in this brochure. The same commitments that my actions will be based upon the law, not politics or partisanship. In that sense, it will be a clean evaluation.

Do you feel like you would be the kind of city attorney that a City Council person could confide in, if they'd done something wrong?

The City Council members and city staff can and should provide us information...that doesn't mean that they are not held accountable. If I see criminal activity, I have an obligation, as a public attorney, to report that to other law enforcement agencies. I have that obligation. I cannot look the other way on crimes.

What about gross negligence?

Gross negligence is something where I have to take action to defend the city. It's different than a criminal action. A criminal action, I have to report to another agency.

Give us your view of the role of the city attorney with the mayor, the council, city government, the people. Mike Aguirre's definition of his role is that he's not the lawyer for the City Council and the mayor or the city. He's the people's lawyer.

The role of city attorney is to be the attorney for the city of San Diego, accountable to the people. That means that the quality of the work, the responsiveness of our work and our expenditure of taxpayer dollars, we are accountable to the people. I do not represent the members of the City Council or the mayor as individuals.

What should the city attorney do if he knew, over his advice, the City Council decided in closed session to continue, for example, an illegal water rate structure?

In a clear violation of the law, the city attorney has to stop it, one way or the other, because you are harming the city. There are going to be times where the City Council and the mayor decide they want to challenge a law that's not clear. But if it's a clear violation of the law, the city attorney has to step in and stop it. And if that means you have to go to the regulatory agencies, then you have to go to the regulatory agencies to stop it before the city is harmed.

Do you have to let the public know that?

I would consider that as one of the options.

Would you have a press conference, like Mike Aguirre does?

No.

There's really been almost no slackening in the amount of work that is done, behind closed doors, outside of public view. What is your view? Does the City Council today operate in closed

session more than it should?

I don't know, because I don't know what they do in closed session, from the standpoint of [the state open meeting law]. I'd have to review that.

If you give council members advice on a matter, and they choose not to follow it, and it ends up in court, do you represent them, even though they ignored your advice, or do you go to an outside council?

You do represent the city. Now, you're going to have some times where the law isn't all that clear. You can give an opinion that there are two options. So if they decide they want to go on a different tack, it's my job to represent the city and defend the city's decision to go along those lines, and I certainly would do that vigorously.

Would you agree that sometimes there's a person in an office, in this case Mike Aguirre, who is such a big persona for better or for worse, that when somebody follows him, there's a tendency to do everything the opposite of what that person did? Where you are so intent on getting rid of the bad that you don't acknowledge any of the good.

I'm going to give Mike Aguirre some credit for some things. He stood up when he got elected and the city wasn't facing up to some of these pension problems. I think that Mike Aguirre improved the transparency of the city. We have to earn the idea that we're independent, and that we're giving opinions and doing work independently without politics. That's not going to just be instant when a new city attorney is elected. It's got to be earned. We have to be thoughtful, we have to give reasons. People are going to see us win a few things. And we're going to keep things out of the courts. Not every problem can be solved in court. Mike, as soon as there's a problem, Mike's out there filing a lawsuit. That costs money. It also creates more risk, and it diverts our resources away from prosecuting criminal cases in the City Attorney's Office.

Aguirre says we can no longer go along with the charade that pretends we have unlimited water supplies. It is a matter of fact that state law says you can't build unless you can guarantee water supplies. So what would you do when you deal with a state law that seems so ironclad, yet has been ignored by the entire establishment, not just San Diego, but the entire establishment of California for at least 20 years?

State law requires that there be guaranteed a plan that water can be delivered. And the plan needs to be specific enough so that it is a reasonable basis for believing you can get that water, and I think that's what the city needs to do. The city needs to have a more specific plan, whether that's a combination of water reclamation, or toilet-to-tap, and other options. They have to have a specific plan to show that they can meet the water needs. And that's where the city is lacking.

I'd like to go back to the old Sunroad controversy for a moment. In that case, one of your colleagues on the bench issued a warrant at the request of the city attorney. And the chief of police, after consulting with a few people, elected not to serve the warrant. Did the judge make a mistake in issuing that warrant? And, if not, if it was a proper warrant, shouldn't the chief of police have served it?

No, the judge did not make a mistake in issuing a warrant. I have issued thousands, maybe tens of thousands, of warrants. You base it upon the declarations in front of you. But if there is something inaccurate in those declarations, or insufficient basis, the remedy is to go back to that judge, not to ignore it, but to go back to the judge.

There were two items that you dealt with very passionately when you were in the Legislature that give me some pause. One of them is affirmative action, the other is illegal immigration. I'd like to know, if you became city attorney, how you would approach either of those, if at all.

Well, if the law's not being followed, I'm going to enforce the law. I'm not going to be an activist city attorney to change or expand the law. I haven't done that as a judge. I've enforced laws that I voted against in the Legislature.

On immigration, at one point you made an issue out of the fact that there may have been kids along the border who were coming from Mexico, going to U.S. schools. You went so far as

to go down with a video camera to videotape some of them. You're endorsed by the Minutemen.

I've never spoken with the Minutemen, and I don't know who they are.

They send e-mails on your behalf and it's on their Web site, that they've endorsed you for city attorney.

Let me respond to your question. First of all, on the students at the border, at the Mountain Empire School District, which was in 1993. That was, and always has been, a residency issue. The law in California is that you can attend a California school, even if you're a non-resident, but you have to pay tuition. That school district was part of my district, and we had constituents who were complaining that their students, their children, had to attend classes outside because they were overflowing, and that the school district was sending buses down to the border to pick up students from Mexico, so the school could get money for it. And we contacted the school district, and they said no. We went back to the parents and they said, in fact, they knew where the buses are going. So I sent somebody down there to take a look, before I said anything. I then went back to the school district, and they still said no. So we said, well, we have proof of it. It turned out there were about 300 students, and about \$1 million that the school district was getting from the state. It turned out other school districts along the border were doing the same thing. This would have been illegal not only if they were from Mexico, but if they were residents of Arizona, Nevada or Oregon and attending out schools without paying tuition.

My guess is the large majority of staffers in the City Attorney's Office are Mike Aguirre hires. Do you anticipate a house-cleaning?

I will tell you what I've told them. I'm not going to fire people just because they were hired by Mike Aguirre. That's wrong. Everybody will be assessed for their own merits. However, what we want are lawyers; we don't want politicians. There's going to be some turnover, because he has hired some politicians.

Do you keep a policy adviser? He has an energy policy adviser.

No, no, no. He's also got, what, \$215,000 in salaries for two press people? That's ridiculous. I will be responsive to the press, but we'll cut down the press conferences by a lot.