



Editor's Note

How the Sunroad case fits into the whole Aguirre thing

by David Rolland

Leaving the building after one of San Diego City Attorney Mike Aguirre's trademark whirlwind news conferences last Thursday, one reporter sang a familiar song: The man must be crazy, the reporter suggested.

Conversations about Aguirre and his latest exploits—among reporters, with other elected officials or with citizens who pay close attention to City Hall—inevitably touch on whether or not his eggs are scrambled. The basis for such speculation is usually Aguirre's narcissistic tendencies, the troubling ease with which he labels public officials "corrupt," his behind-the-scenes temper and his often-frenetic presentations at press gatherings.

Surely, Aguirre has heard this talk more than a few times since being elected in 2004. So when he called me up the other day, his grip on reality was the subject of my first question.

After the briefest pause, he said, "What's crazy is the way this place operates."

I acknowledge that my own occasional frustration with Aguirre has prompted me several times to conclude that he's bananas. But, inevitably, a lucid conversation with him will dispel such notions. You see, his harshest critics, who typically aren't on speaking terms with him, don't have the benefit of those chats. I feel like I see a side they don't see.

Sometimes I entertain the thought that perhaps Aguirre sees the world more clearly than the rest of us. His grasp of details is impressive, to say the least. He has an answer to every question (although some are more sensible than others). Maybe his brand of craziness is that he's some mild sort of savant who has no problem discerning intricacies and complexities but who also has a hard time acting rationally when things don't go so well.

In a commentary published in last Friday's Union-Tribune, Police Chief William Lansdowne stopped well short of calling Aguirre insane; instead, he went down another path frequently traveled. Aguirre, he wrote, has made "a series of baseless charges and allegations" and, in furtherance of a "political" agenda, unfairly impugned the integrity of yet another public servant who's just trying to do the best he can.

"Joseph McCarthy would be proud," Lansdowne wrote—a remark that probably stung Aguirre, who has shown an almost unhealthy interest in the press he receives and whose hero is Bobby Kennedy, the polar opposite of Joe McCarthy.

Indeed, the most recent controversy has Aguirre squared off against the police chief, the mayor, the district attorney, the state attorney general and the daily newspaper's head editorial writer. His news conference last week included the requisite number of head-scratchers and eye-rollers—such as a wholly unnecessary attack on U-T reporter Alex Roth, whom Aguirre believes shouldn't have been assigned to the current story, given a past "hit piece" Roth did on Aguirre.

But for all the black-and-white bluster of Lansdowne and U-T editorial-page editor Bob Kittle, once all the usual circus-tent distractions that accompany Aguirre are stripped away, the



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city attorney's latest anti-corruption campaign is a compelling one. Maybe even more compelling is the mystery of how word of a secret search warrant secured by Aguirre reached a U-T reporter the day after it was issued by a judge. No one will cop to leaking the news. Someone is lying.

But first, the back-story: A company known as Sunroad Enterprises, whose portfolio includes real-estate development among other business, got city permission to erect a 12-story office building in Kearny Mesa close to Montgomery Field airport. Once the Federal Aviation Administration found out about the building, it determined that it was two stories too tall for pilots attempting to land in bad weather, which, reportedly, account for 15 percent of all approaches to the airfield.

The city issued a stop-work order but allowed Sunroad to top the project with a roof to protect it from winter rains. Aguirre sued Sunroad in order to force compliance with FAA wishes; Sunroad countersued for \$40 million, claiming the city's at fault for issuing permits without mentioning anything about height restrictions.

In November 2005, Sunroad hired Tom Story to be its new vice president for development. Story had been the city's deputy planning director before becoming a senior policy advisor and then chief-of-staff to former Mayor Dick Murphy. Story left the city's employ in July 2005 when Murphy resigned. It's become common practice for private companies to hire former government officials to capitalize on their access to their old colleagues when these companies require favorable policy decisions. So pervasive is the practice that governments at all levels have passed laws establishing a cooling-off period between the time when someone leaves public service and the time when he or she is permitted to begin lobbying his old employer professionally. In San Diego, that time is one year. It should be longer. After Aguirre inspected City Hall communications with Sunroad officials and concluded that Story had directly and indirectly lobbied city bureaucrats regarding the Kearny Mesa building before a year had elapsed, he compiled a case of probable cause to search Story's office and submitted it to Superior Court Judge George "Woody" Clarke for a signature, which he got. Illegal lobbying is a misdemeanor, and you can get a search warrant only with allegations of a felony. So Aguirre also attempted to make a case for felony conspiracy.

Clarke's search warrant says the city attorney adequately proved probable cause, and so "any sheriff, police officer, or peace officer in the county of San Diego" is "therefore commanded to search" Story's office.

But Lansdowne, into whose lap the warrant fell, balked; he says the police department wasn't sufficiently convinced of the likelihood that a crime had been committed—at least not enough to invade Story's privacy without more information.

Somehow, Union-Tribune reporter David Hasemyer learned about the warrant and called both Aguirre and Sunroad for comment. An official from Sunroad in turn contacted Aguirre and agreed to turn over the documents the city attorney desired. Aguirre told the police he was withdrawing the warrant. But then came a string of articles in the U-T: the initial Hasemyer story, an editorial that was extremely critical of Aguirre's search warrant and a follow-up story by Roth.

Aguirre became livid with Lansdowne and the U-T's Kittle for what he essentially considers a conspiracy against him for the benefit of Story, Sunroad and the city bureaucrats who issued the permit for the building. Mayor Jerry Sanders has publicly supported Lansdowne, a decision Aguirre calls a disappointing lapse in judgment.

Aguirre told CityBeat that Sanders called him on the evening of Wednesday, March 21, just hours after Judge Clarke signed the warrant, to tell him that the police had informed him of the document. Aguirre is sure of this because that was when he was dining on halibut, mashed potatoes and broccoli at de'Medici.

At about 11 a.m. the next morning, Aguirre got a call from Hasemyer seeking comment on the warrant. Throughout the day and into the evening, there were calls back and forth among the city attorney, the police department, the mayor's office, the FBI and Sunroad. That day, Lansdowne says, he and his executive assistant chief, Bill Maheu, determined that they weren't satisfied with the search-warrant affidavit, so they sought guidance from District Attorney Bonnie Dumanis and officials in the state Attorney General's office. The advice, he said, was to hold off on searching Story's office.

Lansdowne told me he didn't call Sanders until Thursday evening, and only to launch a preemptive strike. He said Aguirre had angrily told Maheu he planned to call the mayor to complain about Lansdowne after Maheu told Aguirre that the warrant would not be served on Friday, as Aguirre had hoped. The chief wanted Sanders to hear the story from him first. But Aguirre contends Sanders already knew—because he called Aguirre the night before.

Asked when Sanders first learned about the warrant, his spokesperson, Fred Sainz, couldn't put his finger on an exact date.

Who told what to whom matters to Aguirre because the leak effectively alerted Story and Sunroad to the probe, and the U-T knew about it the morning after he said he got Sanders' call. Aguirre wanted the element of surprise. Sainz insists that neither he nor Sanders leaked the story, but he said he couldn't vouch for the mayor's other 11,500 employees.

What infuriated Aguirre even more was that Lansdowne told Kittle that he had no intention of serving the warrant, which sent the message to Sunroad that the company maybe didn't have to be as cooperative with Aguirre as it might have thought. Lansdowne's conversation

with Kittle would have occurred the same day Aguirre and the FBI were searching Sunroad. Aguirre says he has only "4 percent" of the documents he wants.

I asked Lansdowne whether he contacted the U-T or merely responded to a request for comment. His answer was indirect:

"We didn't talk to anyone that wasn't authorized [to have] the information. That's our statement. I understand what you said. That's my statement."

"I wonder why you're not answering the question more directly," I said.
"Because that's the statement I want to make," he said.

Aguirre's interpretation of the cryptic response is that Lansdowne didn't leak the story to Hasemyer, but maybe he did contact Kittle to urge an opinion piece once the U-T had already broken the news. In any case, there's no doubt someone told Kittle that the police had no intention to serve the warrant, which is information Aguirre believes the media had no right to.

Gary Gibson, an adjunct professor at California Western School of Law and a deputy public defender, who's been closely following the case, assumed that Lansdowne had leaked the story. That's where the chief went wrong, Gibson said.

Gibson said if Lansdowne had a problem with the affidavit, instead of turning to Sanders, Kittle and Dumanis, he should have turned to Judge Clarke who signed the warrant, effectively endorsing probable cause to invade Story's privacy. From Gibson's view, proper procedure "was trumped by [a] desire to publicly screw Mike Aguirre."

Although he said his plan was to go with Aguirre to the judge to "clarify" the crimes alleged, Lansdowne believes the warrant is not a mandate from the court, but rather, an authorization. He said the police can't be ordered by the court to serve a warrant because an officer who serves it is legally liable if the warrant is defective.

California Penal Code Section 1523 says: "A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate." Lansdowne said the word "command," which is also used in the warrant itself, "is just the way they always do it." He said an officer must believe in the warrant "in good faith" or he has no business invading one's privacy. Gibson acknowledges that officers who were not intimately involved in an investigation are put in a delicate position, but he said there's no ambiguity in the statute. "From a pure statutory interpretation, [the chief] didn't have an option after the judge signed a search warrant on the basis of a sworn affidavit."

Had Aguirre not withdrawn his search warrant, this case might have created interesting legal precedent. Gibson believes Lansdowne would have to appeal the warrant to a higher court had he not found satisfaction with Judge Clarke.

But it's moot now, just an interesting theoretical debate.

As for Aguirre, Gibson said the city attorney doesn't emerge from the muck smelling sweetly, either. The city attorney should have sought investigative assistance from the police department.

"Aguirre, in this instance, helped [his critics] by dropping his own pants, because he should have involved the cops at the beginning so that the cops were involved in the formation of the affidavit," Gibson said. "It was his penchant for secrecy that caused his problems."

Aguirre said he didn't go to the cops because, primarily, he doesn't think they have the necessary expertise in fighting public corruption. But he acknowledged that he also didn't trust Lansdowne. He has come to believe that the chief is protector of the status quo, defender of business-as-usual.

The city attorney has plenty reason to be concerned about corruption. It happens in San Diego. It happens everywhere. That's why there are laws against it—because people attempt it, all the time. Power and money corrupts. That's not a revolutionary concept.

In this case, Aguirre has interesting questions about whether or not Tom Story improperly influenced people in City Hall with whom he used to work in order to grease a very tall building—where there are few other very tall buildings, adjacent to an airport—through the permit process, without review by the city Planning Commission or City Council.

One might say the essence of Aguirre's investigation is much ado about very little. But Aguirre is at his most eloquent when talking about affronts to honest government service. Allowing those with privileged access to public officials to grease the wheels of government in their favor violates the right of ordinary citizens to trust their representatives.

It's just that Aguirre's zeal sometimes clouds his judgment, which opens the door for his critics, which in turn provokes him to say things that cause some people to whisper, "Dude's crazy."

He's not crazy. I think he's just frustrated that not everybody sees the world the way he sees it.

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