San Diego City Attorney
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NEWS RELEASE

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STATEMENT BY CITY ATTORNEY MICHAEL AGUIRRE
City Attorney Details Inaccuracies in U-T Article

The Union-Tribune article, *Aguirre lashes out at U-T, lawyer, court clerk,* written by Michael Stetz and published July 14, 2006 was inaccurate on several points that I would like to clarify for the public record. A letter to the editor by one of our deputy city attorneys, delivered July 14, 2006 to refute the allegations that I "yelled" and "screamed" has not been published to date. I find my best recourse is to correct the record point by point.

- On June 30, 2006, the attorney for the Union-Tribune newspaper, Guylyn Cummins, with the firm Shepherd Mullin Richter and Hampton filed a motion for an accelerated hearing to unseal divorce settlement papers from 1991 pertaining to me and my ex-wife Kathleen Jones-Raya. They were sealed in May of 1991 "based upon a desire to foster good will with the family and to protect the feelings and interest of the two children," according to the judge's ruling at the time.

- On June 30, 2006, Cummins' office mailed a notice of her request to hold an accelerated hearing to the City Attorney's office. According to Family Court Local Rule 5.3.2, **it is required that notice be given of such an intention by fax, phone, or in person to both parties and acknowledged by said parties no later than 10:00 a.m. on the day preceding the hearing.** Due to the 4th of July holiday proper noticing should have occurred by 10:00 a.m. on Monday, July 3. A second hearing is then scheduled on whether to allow the accelerated hearing. Finally, the hearing to unseal records is held. Without the accelerated court date, a 16-day notice to all parties is required prior to the request for a hearing to unseal personal documents.

- The hearing to unseal the records was, instead, scheduled for July 5 at 9 a.m. in Judge William Howatt's courtroom. **I did not receive personal notification or written notification in a timely manner and my ex-wife received no notification of any kind.** The Code of Civil Procedure states that if a notification is sent by mail, an extra five days is required before action can be taken. The notification was mailed Friday, June 30, 2005 and not received by me until Wednesday, July 5, 2006, after the hearing had taken place.

- Instead of being properly noticed and ruled upon, the hearing to unseal my documents went forward on July 5 without any legal representation for me and my ex-wife. U-T attorney Guylyn Cummins stated in the court record, "With your permission, your honor, I will get the proof of service to your clerk," and

the proceeding went forward with no verification that I or my ex-wife had been notified. Do I consider this improper and unethical? Yes, I do.

- The article said that the newspaper "successfully sought to unseal" the records. In fact, the attorney I was forced to retain argued successfully on July 6 for the judge to rescind his earlier ruling. New hearings are underway to determine if the records should, in fact, be unsealed.

- The U-T article characterizes the unsealing of these documents as "standard news-gathering practices" to "illuminate the workings of government," and then compares it to the unsealing of former Congressman Randy "Duke" Cunningham's divorce records. This is not, in fact, standard news-gathering and **begs the question of how personal, sealed records that have been dormant for 15 years can illuminate the "workings of government" today.** The comparison of the elected City Attorney to a felon convicted of the worst bribery in the history of the U.S. Congress is an example of disgraceful journalism.

- The U-T article accurately states that the judge handed the documents to U-T Attorney Guylyn Cummins to redact, and adds that "attorneys commonly perform this function for the courts." Not true. **Common practice is for the defending party to be allowed to redact his or her own records before they are made public.** Putting my ex-wife's and my bank account records, social security numbers, and financial information into the hands of the Union-Tribune attorney without redaction is an absolute violation of our rights.

- In quoting U-T Editor Karin Winner, the article states, "We might never have written about this had not Mr. Aguirre sent out yet another press release." Another inaccurate statement. There was a U-T reporter at the July 6 hearing who interviewed my attorney and ex-wife, telling them that the story would be published the next day.

- Cummins states that she did not know the name or whereabouts of my ex-wife when she filed the motion to unseal the records. Simple research could have procured this information, if not office water-cooler inquiries. In fact, my ex-wife has remarried an attorney who plays softball with the husband of one of Cummins' partners. The real question is, what was the big hurry after 15 years that was more important than following the mandatory noticing requirements?

- Finally, let me address the accusations of "screaming" and "yelling" that are reiterated again and again in Michael Stetz's article. I was in the middle of a meeting of pension attorneys when I received the news of the motion, the hearing and the ruling. First, I called the judge's clerk to ask who had set the hearing date and time. I was told that there had been two hearings, as required by law – one to specifically set the date for a hearing on the merits of accelerating the ruling to unseal, and another to decide the matter of an accelerated hearing to unseal.

  I then called the court reporter to order transcripts of both hearings and was told that there was, in fact, only one hearing. So, I called the judge's clerk again and she told me the hearing date was set by the business office for Family Court. A call to the Family Court clerk confirmed, however, that Judge Howatt's clerk had called them to set the time and date. A final, third call to Judge Howatt's clerk

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confirmed that, indeed, she had misrepresented to me that there had been two hearings scheduled. There had only been one hearing and it was set at the direction of Judge Howatt.

There were several deputy city attorneys present who can attest that at no time did I raise my voice. Judge Howatt's clerk apparently told the judge that I had "yelled" at her. Of course I didn't. The article quoted the judge regarding a conversation that he was not privy to – again poor journalistic practice.

- I did call U-T attorney Guylyn Cummins to ask why she did not give me notice of her intentions to unseal my divorce records. She claimed none was required. At that point I let her know that I intended to report her actions to the California State Bar Association. Again, I did not raise my voice, as can be attested by those in the room with me at the time.

  In the letter to the editor, sent to the U-T on July 14, that was not published, Deputy City Attorney Christine Fitzgerald wrote:

  "Although the discussion involved sensitive subject matter, my observation was that Mr. Aguirre's manner was direct and professional. At no time did he yell at anyone. There were several other attorneys in the room that can corroborate this truth.

  "Your article's characterization of Mr. Aguirre as having "yelled," or "screamed" during these telephone conversations appears to be biased and is simply not true."

I was not the party acting improperly in this matter. Attorney Guylyn Cummins and the Union-Tribune newspaper disregarded proper, mandatory noticing of their court actions. The judge disregarded the improper filing of the proof of service, violating my due process rights. He ruled to unseal personal papers without legal representation for me or my ex-wife. He handed my un-redacted personal documents to the U-T attorney. His clerk misrepresented the setting of the hearing date. The U-T fabricated my reaction to this matter and its reporter wrote about it with emotionally charged, biased language. This is not the high standard of journalism that one would expect from a Pulitzer Prize-winning publication.

This entire episode has not been common practice, proper, or "business as usual," or, if it is common practice, reveals a deep disregard for the rights of all citizens. If it happened to me, it could happen to anyone.

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