

**INTERIM REPORT NO. 10**

**REPORT TO AUDITOR RELATED TO**

**IMPROPER BILLING PRACTICES BY**

**THE CITY ATTORNEY'S OFFICE FOR SERVICE**

**LEVEL AGREEMENTS WITH CITY OF SAN DIEGO**

**WATER AND WASTEWATER DEPARTMENTS**

**REPORT OF THE**

**SAN DIEGO CITY ATTORNEY**

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# **INVESTIGATION REPORT**

## **SUMMARY**

### **How the MOU/SLA System Works:**

In general, the City Attorney's Office would provide City Departments with a base line of attorney services out of their general budget approved each fiscal year by the City Council. Departments that wanted specialized services, quick turn around time, and dedicated attorneys and staff would enter into Memoranda of Understanding (MOUs) or Service Level Agreements (SLAs) {collectively, SLAs} with the City Attorney. Most of the SLAs are with enterprise funded Departments and Divisions within these Departments. In accordance with the SLAs, the enterprise fund Departments or "client Departments" agree to include moneys in their budgets to fund a certain number of attorneys and support staff positions within the City Attorney's Office, as well as non-personnel and overhead expenses believed to be necessary for the upcoming legal work of the Department.

The SLAs that have been entered into between the City Attorney's Office and the Water Department and the Metropolitan Waste Water Department (MWWD) are similar in nature to a retainer agreement (Exhibits 2 & 3). The enterprise Department pays a certain amount of money to the City Attorney's Office to secure a certain number of City Attorney staff over the fiscal year.

In hiring staff to accommodate the SLAs the City Attorneys Office would attempt to try and capture the costs associated with these attorneys and staff. The City Auditor's office provided a method of transferring funds between Departments, commonly referred to as the job order billing method. Attorneys and staff would bill the job order number of accounts for the enterprise funded Department for work conducted for the Department.

### **The Philosophy of Former City Attorney Casey Gwinn (1996-2004):**

Former City Attorney Casey Gwinn felt that it was of utmost importance to capture all labor costs associated with SLAs. Failure to capture these costs would cause an unacceptable drain on the Attorney's Office budget and would take away from providing services to non-SLA Departments and the public. Gwinn implemented his philosophy though his leadership team which consisted of Assistant City Attorneys Leslie Devaney, Anita Noone, Les Girard, Sue Heath, Gael Strack, Rick Duvernay (from 2003-2004), Office Administrators, Dannell Scarborough (from 1997 – 2001), and Richel Thaler (from 2001 – 2004), Press Secretary Maria Velasquez (from 2001 to present), and Executive Secretary Jean Emmons. The leadership team attended weekly management meetings where issues associated with billing to SLAs were discussed. The leadership team was or should have been aware that enterprise-funded Departments were being billed by persons not conducting work for these Departments, that time cards were being changed at times without the knowledge of employees, and that there were arguably abuses of this system.

### **The Mechanics of Gwinn's Philosophy:**

The SLA system was expanded by Gwinn in order to improve legal services, and to increase staff. Assistant City Attorney Anita Noone, Administrative Services Manager Dannell Scarborough and her staff were initially tasked by Gwinn with managing the SLAs. Billable hours are in direct conflict with the culture of public law firms. Because of this, no effort was ever made to institute billable hours to capture all costs. The City Attorney used a quasi "retainer system." At the beginning of each fiscal year, service levels and the costs associated with them were agreed upon between the client Departments and the City Attorney. The revenue from the client Departments to pay for these service levels was captured through the job order time card billing system, by billing average hours spread amongst employees at the City Attorney's Office. These accounts were continually monitored with an attempt to ensure that the billing met the agreed upon costs. Job orders would be billed up to the amount specified in the SLAs for the fiscal year. At times, billing did not reach the specified amount in the SLA. At other times, billing met the specified amounts. When this occurred, billing to the job order would discontinue, but the work for the Department continued as agreed. As time progressed attempts were made to capture more and more of the costs and as a result hours billed were increased. This method was passed by Anita Noone, to Scarborough's successor, Richel Thaler and the process was typically managed by Analysts working under these persons.

Very few SLA's existed in the City Attorney's Office prior to Casey Gwinn. Gwinn ran unopposed for City Attorney in 1996 and 2000. Prior to assuming office in 1996, Gwinn was allowed to put his leadership team in place and begin making policy. It is around this time that billing to SLAs was modified (Exhibit 5), and as time went on the program was expanded to increase staff and services.

### **Non-Enterprise Work Being Billed to Enterprise Departments:**

The City Attorney's Office would try and capture costs associated with the demands from enterprise Departments. It was soon realized that without creative billing methods, the City Attorney would end up absorbing a large amount of costs associated with the employees working for the enterprise funded Departments. Sick and vacation leave billing codes would cost the Attorney's Office out of their City Council allocated annual budget. Ebbs and flows of work loads for enterprise funded Departments would cause staffing issues. If a Department wanted, for example, five attorneys to cover their busy months, these attorneys and staff could not be laid off during the slow months. Therefore, during slow periods, attorneys and staff would be given non-enterprise Department tasks but would continue to bill enterprise Departments.

Formulas and averages were used to determine billing amounts and costs. Because of this imprecision, City Attorney staff was required to bill a certain amount of hours for their time, whether they worked more or less hours for this Department. In some cases, staff that did not work for the enterprise funded Departments billed the enterprise funds. Staff was provided formal training classes on how to bill their time (See Exhibit 8).

### **Alteration of Time Cards:**

It was determined that since 1997, it was Office policy that SLAs would be billed in a manner to try and capture all forecasted costs in the SLA. Because of this time cards were changed to cover for vacation, furlough, and sick leave of enterprise funded attorneys and staff. Because the changes occurred so frequently, staff was often not aware that their time cards were being changed by analysts and supervisors. Policy required staff to submit their time cards to their supervisors prior to the ending of the billing work week. Staff was directed to fill their timecards out in pencil (Exhibit 6). Staff was directed to estimate hours for the final three days on their time card. This provided time for time cards to be altered by supervisors and analysts. Billing codes that had been entered by the employee to bill from general funds were altered to bill from enterprise funds. Sometimes overtime hours that were worked for general fund matters were billed to enterprise funds.

### **Abuses:**

The City Attorney's office received an allocation from the City Managers office for 9 – 10 attorneys plus staff for the Civil Enforcement Unit. When Analyst Alyssa Ross discovered that there were only two attorneys allocated to this Unit and reported it to management, nothing was done.

When attorneys and staff assigned to SLAs quit, went on vacation, or called in sick, their billing codes were transferred to City Attorney staff who was not conducting enterprise funded work.

During the mandatory furlough imposed in fiscal year 2003, billing codes for SLAs were shifted from enterprise funded Department attorneys and staff on furlough to attorneys and staff who did not work enterprise funded Departments. This was done to maximize revenue from the SLAs. Therefore the mandatory furlough ultimately did not result in any savings to enterprise-funded Departments.

### **Current Practices:**

When City Attorney Aguirre took office on December 6, 2004, he was informed by budget staff in a general sense of SLA billing practices. He directed billing staff to discuss the method with Steve DeVetter of KPMG. Budget staff recalls a meeting with DeVetter prior to January 10, 2005, during which he was informed of the billing practices and the use of the SLAs as a retainer agreement. DeVetter advised that the billing practices were sound but better auditing practices were needed to strengthen the justification of the staff positions allocated to the enterprise Departments. In early January 2005, Aguirre halted this policy and mandated that only hours worked for SLAs could be charged. Supervisors communicated this to staff verbally and via e-mail (Exhibit 27).

On 7-25-06, it was discovered that the Civil Enforcement Unit SLA was continuing to bill using a formula and not actual hours. The Civil Enforcement Unit SLA is divided between five Departments. This practice was stopped upon discovery by Aguirre. Aguirre directed budget staff to create a journal voucher to reconcile the time charged. On 7-25-06 an e-mail was sent

from Assistant City Attorney Karen Heumann to all City Attorney staff. The e-mail reiterated the previous verbal direction to halt average billing and that billing for hours worked was the policy. In addition, on 7-20-06, per written direction from Heumann to all staff, timecards must now all be submitted in ink and are not to be submitted until the Monday following the date on the timecard (Exhibit 29).

Currently SLAs are billed for actual time worked.

## NOTIFICATION

### Julie Dubick

On 7-21-06 personal contact was made with Mayor Jerry Sanders' staff member **Julie Dubick** during a meeting held at the Mayor's Office with City Attorney staff, Mayor Jerry Sanders, and the Mayor's staff. The following is a summary from information provided by Dubick:

Three weeks ago, Dubick received a call from Troy Dahlberg of Kroll, Inc. He advised that he had just interviewed Diann Shipione, a former San Diego Employees' Retirement System Trustee. She had informed Dahlberg of irregular billing practices by the City Attorney's Office to the Water Department. Dahlberg wanted to know what Mayor Sanders knew about these practices. Shipione had sent Dahlberg various letters and memos that had been drafted by ex-Deputy City Attorney William Newsome, who had made allegations that City Attorney staff had been directed to bill enterprise funds for their work when they were not working for the enterprise Departments (Exhibit 25).

Following the discussion with Dahlberg, KPMG requested a complete investigation into these allegations. Jay Goldstone, Chief Financial Officer of the City of San Diego, requested that auditors Mayer Hoffman look into the matter and provide materials to Kroll. Kroll provided Mayer Hoffman questions to ask various City staff that was to be interviewed and occasionally sat in on meetings that Mayer Hoffman had with staff to ensure compliance.

Mayer Hoffman advised that the issue was mostly resolved but they still wanted to interview Deputy City Attorney Anita Noone. After this was accomplished they could complete the investigation for Kroll who would make additional recommendations to KPMG for further investigation.

Dubick assumed during these initial conversations that they were rehashing "the old SLA controversy." This was until she read a memo authored by Principal City Attorney Investigator Robert Abel to City Attorney Aguirre (Exhibit 26). The memo dated 12-20-04 advises that Aguirre ordered a complete investigation of former Deputy City Attorney Bill Newsome's allegations. Abel requested additional guidance from Aguirre due to the fact that in the past Casey Gwinn's management team had ordered staff to fill out time cards in accordance with an accounting system and not in accordance with time worked. Staff signed time cards under penalty of perjury and likely would be concerned about talking about these matters. In addition, Dubick learned that Abel alleged that after he submitted his memo to Aguirre he never received a response so an investigation was not undertaken.

## PROCESSES

### Ed Ryan

On 7-21-06 phone contact was made with Ed Ryan's legal counsel John Wertz, phone # [REDACTED]. A request was made to meet with Mr. Ryan to discuss the Attorney's Office SLAs and the job order billing system. Wertz never got back with an answer to this request.

### Casey Gwinn

On 7-20-06 an attempt was made to personally contact **Casey Gwinn** at the San Diego County District Attorney's Office. Gwinn was not available at this time. A message was left for Gwinn to contact this investigator. Gwinn did not respond.

### Leslie Devaney

On 7-27-06 phone contact was made with **Leslie Devaney** at Stutz Artiano Shinoff & Holtz attorney's at law, phone # [REDACTED]. Devaney advised that she did not feel comfortable discussing the SLA billing issue with representatives from the City Attorneys Office. She noted that she currently has a protective order out against Aguirre.

### Anita Noone

On 7-24-06 phone contact was made with **Anita Noone**, at her cell phone # [REDACTED]. The following is a summary from a statement taken from Noone:

Noone was hired by the City Attorney's Office in 1984. She was promoted to Assistant City Attorney in May of 1996, just prior to Casey Gwinn's tenure. She advised that City Attorney John Witt allowed Gwinn's leadership team to be moved into place early.

Since May of 1996 Noone has been involved in the SLA process. In May of 1996 there were far fewer SLAs than are now currently in place. The structure of the SLAs was generally the same as they are now, a short letter agreement between Departments. Initially when new SLAs were structured, Noone sought advice from Deputy City Attorney Stu Swett, who handled all SLAs under John Witt. Swett had a boiler plate example of an SLA, and new information was entered into the boiler plate to create new SLAs. She does not recall if the SLAs under John Witt strictly included costs for attorneys or if they also included staff costs.

The beginning of Gwinn's tenure was a difficult time for the Leadership Team. There were people in the office one could go to for advice but in a general sense they were on their own. Gwinn hired Dannell Scarborough to handle the budget. Scarborough had no previous budget experience. Noone believes Scarborough did the best job she could, but really did not have the training or experience necessary to be effective with the budget. The person who previously had substantial experience with the budget, Chris McKee, had recently died. Scarborough worked with Stu Swett to try and reconcile the budget. That first year was "brutal" as the budget was a

disaster. Following this Scarborough worked hard to get staff hired to assist her. Judy Von Kalinowski and Jim Baross were hired as Analysts to work under Scarborough and assist her with the budget, including SLAs.

Noone was tasked with supervising the Chief Deputies in the Civil Division. She would constantly hear complaints from them about being short staffed. As time went on, Noone and the leadership team began looking for tools to improve and increase the City Attorney Office's legal services. They found the SLA system was an effective way to do this. Noone would identify the areas where shortfalls in legal services existed and would try to have an SLA put in place to compensate for the shortfalls. Unit heads would have discussions with Noone about a strategy for negotiating with client Departments for the SLAs. With Noone's blessing, the Unit Heads would come to an agreement with the client Departments and return with an SLA to improve legal services for the client Department. Noone always tried to make sure that the SLAs would cover overhead and support staff.

Initially, Noone and Scarborough had difficulties with the SLAs and the budget kept coming up in the red. As the system progressed, they became better at capturing actual costs. The system was most effective under Richel Thaler, who was hired after Scarborough left the office in 2001. Thaler worked with budget Analyst Alyssa Ross who was charged with capturing the costs of the SLAs. Ross was a "pit bull" and was extremely effective. The idea was to make sure that "no money was left on the table."

Noone was questioned about overhead costs. She stated that overhead was handled in a variety of ways throughout Gwinn's administration. Noone was not involved in overhead calculations. Eventually Analyst Jim Baross was tasked with capturing overhead.

When SLAs were created, support staff was factored into them. They used a formula for all SLAs to determine how many support staff would be needed. The costs of these staff were built into the SLAs. When staff was hired to work under the attorneys billing client Departments, staff was instructed to bill the client Departments as well. Initially, staff was told to only bill for work they were doing for the client Departments. Meetings were held with Noone, Robert Abel, paralegal Karen DeCrescenzo, and Thaler about the ineffectiveness of having staff bill in this manner. Work for the Departments was not being captured. Often staff didn't realize that the work they were doing was for the client Departments. Someone, she could not recall who, came up with an idea to bill an average and to spread it amongst staff. They decided on this method for "ease of administration." Lists were made, Noone could not recall by whom, for staff billing (Exhibits 9-13). Hours were spread amongst staff. Noone was aware that some staff were billing for work not performed. She noted that as a whole it was a fair system, and that the old way of billing just didn't work.

This method of billing did cause a problem with one staff member. Secretary Pat Vaughn told her supervisor that she wasn't going to bill the average hours. She refused to bill anything but actual time. The issue came up in a management meeting with Casey Gwinn present. Gwinn stated that Vaughn needed to be told that she had to bill the average hours and she had to sign her timecard. Vaughn continued to refuse even after the mandate made by Gwinn. Noone felt that Vaughn needed to be disciplined as she was being insubordinate. Eventually Vaughn was re-

assigned and was never disciplined by her supervisor. Noone was extremely upset that Vaughn was never disciplined. She felt that Vaughn's supervisor was "rewarding bad behavior."

The method of billing also came up during an open forum meeting that Casey Gwinn held in 2001. She does not recall who brought the subject up. Someone asked the question about the average billing of hours. Gwinn advised that he had made an agreement with Auditor Ed Ryan that this was how the office was going to bill these client Departments. He stated that the "timecard was a fiction" as attorneys worked far more hours than were on their cards. He discussed in detail the issues with the difficulty of capturing costs and the constraints of the job order billing system.

Noone does not recall any e-mail or memo sent out by Gwinn regarding the average billing system. She stated that the billing system was "not a big enough deal" to warrant a written explanation from Gwinn.

Noone advised that occasionally issues would come up in regards to how attorneys were billing their time. She had discussions with client Departments who had been made aware that attorneys assigned to non-client Department related projects but continued to bill their time to the client Department. Noone would explain to the client Departments that the work for the client Departments was still being done often by other attorneys who were not billing them. She advised that the billing person may not be correct but the hours billed was correct.

Noone stated that she was unaware of an instance of when an attorney working for a client Department quit and the office continued to bill. She stated that when work flow slowed, attorneys would just provide a better work product, but they continued to be busy and be assigned to the client Department.

Noone stated that she recalls in 2003 when Casey Gwinn instituted a mandatory furlough for attorneys. She does not recall ever being concerned that the furlough system would actually cost the office money, due to the lack of revenue from the client Departments. Noone denied knowing anything about hours from enterprise fund attorneys being shifted to non-enterprise fund attorneys during the furlough period.

Noone does not recall any time where the office billed client departments for budgeted positions that were not filled by an attorney or staff member. She was questioned about the allegation that the City Manager's office had negotiated an allotment of 9 – 10 positions in the Civil Enforcement Unit but that the Unit was actually only staffed with two persons. Noone denied any knowledge of this. She stated that this allotment was negotiated by Casey Gwinn himself and she did not know the details of the arrangement.

Noone was questioned about the allegation that time cards were changed without the knowledge of employees. Noone denied knowing anything about this practice. It was Noone's understanding that if employees made errors on their time cards and they needed to be changed, the employee would be notified, and the employee would make the changes.



Noone was questioned about the letter that Casey Gwinn sent Channel 10 news regarding the savings the City Attorneys Office had provided to enterprise fund Departments. Noone does recall that at one time Channel 10 was “investigating” the office. She does not recall the subject letter, but stated that these types of letters were not uncommon. Some of the enterprise funded City Attorney Units were extremely high performers, the Construction Litigation Unit in particular. This Unit alone had generated a lot of money for the City and had saved the client Department large amounts of money. Noone felt that the cost of this type of high performing in-house Unit was extremely low when compared to what this would have cost by hiring attorneys in the private sector.

2004 was a tight budget year. Client Departments began grumbling about the costs of the SLAs. In response Assistant City Attorney Leslie Devaney gave a talk at a managers meeting about this issue. Then-Deputy City Attorney Keri Katz, who was head of the City Attorney’s Water Department Unit, briefed Devaney about the SLAs. Katz was very knowledgeable about the system as her entire Unit worked for a client Department. Noone attended this meeting. No exhibits or power point presentation was used. Devaney worked off of notes. She explained to the client Departments that without the existing SLAs they would not receive the same service.

Overall, the SLA / job order billing system was extremely ineffective. Noone recalls numerous leadership meetings where the system was brought up. The general consensus was that it was an awkward system. In addition, Noone felt that it seemed unfair that enterprise-funded Departments were able to get the best services and non-enterprise funded Departments got the leftovers. Noone recalls meetings with City Manager Mike Uberuaga, where he complained about the City Attorney hiring staff mid year, as it was throwing off the budget. Eventually, Uberuaga put a stop to this practice.

Noone does not recall there being any formalized procedures for processing the SLAs through job order billing, or for “capturing costs.” She does believe that there were e-mails from Alyssa Ross to staff telling them how to charge their time (Exhibit 18).

When Michael Aguirre took office, Noone was demoted to a Deputy City Attorney and no longer worked on the SLAs. She recalls hearing from colleagues that Aguirre was doing away with the average billing process. She recalls thinking right away that the budget was going to come out short. She does not recall receiving any formal notice of changes to billing from Aguirre’s management team. She noted that she never billed a client Department so she likely would not have received such notification.

Noone was questioned about a memo written by Principal Investigator Robert Abel to Aguirre in December of 2004. The memo explained Abel’s concerns about direction Aguirre gave him to investigate the SLA billing system. Noone stated that she did not know about this memo. She did become aware at some point that Abel was tasked with this, but does not know how she obtained this information. She does not recall consulting with Abel about this assignment.

On 7-24-06 Noone gave a statement to Steve Johnson from Mayer Hoffman. She recorded this conversation, per instructions given by Aguirre. The conversation was very short. Johnson

mainly asked if there was any written protocol for SLA billing. Noone did not believe any written protocol existed.

### **Maria Velasquez**

On 7-28-06 personal contact was made with City Attorney Director of Communications **Maria Velasquez** at the Offices of the City Attorney. The following is a summary from a statement taken from Velasquez:

Velasquez was hired by the City Attorney's Office as Casey Gwinn's Press Secretary in May of 2001. She was assigned to handle community and media relations for the Office. Her daily responsibility was to handle all calls from community members and press regarding the Civil and Criminal Divisions. She was responsible for coordinating and responding to community events. In 2004 she worked almost exclusively on developing the Family Justice Center by educating the public, attending community functions, and media events. She billed all her time to the City Attorney's general fund.

Velasquez was part of Gwinn's leadership team which consisted of all the Assistant City Attorneys, Richel Thaler, and Gwinn's secretary Jean Emmons. During these meetings discussions were held about the status of office matters, media issues, and community issues. Velasquez does not recall any discussions regarding Secretary Pat Vaughn refusing to sign her time card or to bill for work not performed. She never recalls discussions about attorneys being displeased about billing average time. She did not know timecards were being changed. She was unaware until very recently of what Gwinn's billing policy for SLAs was.

Velasquez noted that there was a sub-meeting to the leadership team that dealt in detail about office operations. This meeting was attended by Anita Noone, Richel Thaler, Gail Strack, and Sue Heath. She did not attend these meetings.

Velasquez recalls that in May of 2004 she received a request from Tom Jensen of Channel 10 to interview Gwinn regarding the City Attorney Office's billing practices to the Water Department. Velasquez set up the meeting and sat in on the discussion. She recalls that Gwinn advised that SLAs were a common practice state wide. She does not recall any specific discussion about the mechanics of the billing process.

Following this meeting, Councilperson Donna Frye requested additional information from Gwinn regarding SLAs. Gwinn tasked Public Works Unit Head Kari Katz to prepare a presentation for Council. Katz did a power point presentation and presented it to Council. Following this presentation Council appeared satisfied with the explanation. Velasquez does not recall specifically if the mechanics of the billing process was discussed.

Velasquez recalls that soon after Aguirre was elected, he received a letter or e-mail from Deputy City Attorney Bill Newsome. The letter alleged that two Deputies in the Criminal Division were billing their time to enterprise Departments without doing any work for their Department. She recalls Aguirre being really upset about this allegation. She recalls that he stated that he had heard about this practice during his campaign and that he had planned to change this policy. She

recalls that policy was changed, however she cannot recall exactly how staff was informed of the change.

### **Dannell Scarborough**

On 7-21-06 personal contact was made with **Dannell Scarborough** at the Offices of the City Attorney. The following is a summary from a statement taken from Scarborough:

Scarborough was hired in 1997 when Casey Gwinn was elected City Attorney. She was a Deputy Director level Administrative Services Manager. As part of her job duties, she handled Personnel, Budget, and Information Technology. In 2001 Scarborough left the City Attorney's Office to work for the City's Business and Support Services Department where she has worked ever since.

When Scarborough began working for the City Attorney, she found several SLAs for enterprise Departments already in place including the MWW and Water SLAs. She explained that the City Attorneys Office would provide general legal services to City Departments. If a City Department required specialized legal services or dedicated legal staff they would enter into an SLA with the City Attorney. This was a very informal process that allowed for these Departments to receive the legal services they needed to operate.

At the end of the fiscal year, Scarborough would personally handle SLAs that only required renewal. New SLAs or SLAs that required re-negotiation would be handled by Anita Noone and/or Unit Heads for the client Departments.

When the SLA was negotiated between the City Attorney's Office management and Departments, the two would agree upon a yearly cost associated with the legal services requested. This cost initially only included labor costs for attorneys. Typically the cost was exactly what the government rate would be for the requested attorney. The SLA, typically a one page letter, would set out the annual expenditure. City Attorney staff would use the Auditor's job order billing system to bill time to their time cards to reimburse the City Attorney's Office for legal work associated with the SLA. If by the end of the year, the job order had not billed up to the annual expenditure set out in the SLA, it was believed that the City Attorney's general fund budget had been used to underwrite staff for this SLA. Because of this, the goal was to bill to the annual expenditure set out in the SLA.

Billable hours are in direct conflict with the culture of public law firms. Attorneys in the office were dead set against doing billable hours. As a result, averages were used and staff was instructed to bill set hours each pay period to the SLAs that they worked on. The same hours would be used if staff worked more or less actual hours for the SLAs.

As Scarborough's tenure continued at the City Attorney's Office, methods were found to incorporate overhead, support staff, and salary increases into the SLAs. As these costs were incorporated into the SLAs, obtaining compensation for these costs became more complicated. Both the City Attorney's Office and client Departments would use a "current year monitoring system" to keep track of how much was being billed to the client Department. Towards the end

of the year, Scarborough and management would encourage attorneys and staff to bill more hours to the client Department in an effort to make the annual expenditure set out in the SLA.

There was an ongoing debate among Deputies about the legitimacy of this billing process. Scarborough and other management would explain to staff the SLA system, and why the billing process was the way it was. Usually, after explanations, and the explanation that billable hours was the only alternative, line attorneys would agree to abide by the system. The disagreement over this policy often came up during weekly management meetings.

Currently SLAs are much more formal than what Scarborough experienced during her tenure at the City Attorney's Office. The SLAs are very extensive. There are quarterly meetings to discuss the progress of the SLAs. Scarborough noted that the City Attorney was not the only Department to have issues with how they billed SLAs. Numerous other Departments that charge for services to enterprise funded Departments have had similar problems.

### **Richel Thaler**

On 7-25-06 phone contact was made with **Richel Thaler** at her work phone # [REDACTED]. The following is a summary from a partial statement provided by Thaler:

Thaler advised that approximately one month ago she provided a statement to Ken Al-Imam from Mayer Hoffman. She was questioned regarding billing to the Water Department and MWWD SLAs from the City Attorney's Office.

Thaler was employed by the City Attorney's Office from October 2001 – May 2005. As part of her job duties she managed the SLAs for the City Attorney's Office. This included identifying levels of staffing and service. She changed a previous practice of using a formula to identify staff for requested attorneys, and provided "needs specific" numbers of staff instead.

Thaler was questioned about how staff was told to bill the client Departments. At this point in the conversation, Thaler stated that she was no longer going to continue this conversation. She demanded to know the reason for this inquiry. She stated that she had been reading the papers and was concerned that Aguirre was looking for someone to point a finger at. She stated that she worked for Aguirre so she knows how he "operates." She stated that this interview over the phone was too informal of a process and made her uncomfortable. She requested a written request for an interview be faxed to [REDACTED]. She demanded that the request include the purpose of the interview, what would be the scope of the inquiry, what the information would be used for, and who would be present at the interview.

Thaler noted that when Aguirre was elected, she personally sat down and spoke with him on several occasions and explained the SLA billing process in great detail. In addition she personally met with KPMG representatives on the 9<sup>th</sup> floor of the City Administration Building and explained the same. She feels that Aguirre was being disingenuous about his knowledge of the system. At this point, Thaler ended the conversation.

## **Keri Katz**

On 7-28-06 phone contact was made with **Keri Katz**, cell phone # [REDACTED]. The following is a summary from a statement taken from Katz:

Katz worked for the City Attorney's Office for 20 years, 19 years in the Civil Division. Under City Attorney Aguirre, Katz was employed as an Assistant City Attorney. She ended her employment with the office in July of 2006.

Katz recalls that a few months after Aguirre took office, he directed her and other managers to discuss the City Attorney's billing practices for SLAs with representatives of KPMG. Katz recalls participating in a conference call with Richel Thaler, and a representative of KPMG (name unknown). The SLA billing process was explained to KPMG in detail. They were advised that the City Attorney was using SLAs like retainer agreements and were billing average hours to capture costs. KPMG stated that this practice was acceptable.

A few days following this meeting, Katz was instructed by Aguirre to halt all average billing to SLAs. He instructed her to inform staff that only actual hours should be billed. She does not recall why Aguirre decided on this policy. Katz took Aguirre's directive and she and Thaler directed all supervisors to put the new policy in place. She believed that all average billing to SLAs stopped at this time.

## **Jim Baross**

On 7-24-06 personal contact was made with **Jim Baross** at the Offices of the City Attorney. The following is a summary from a statement taken from Baross:

Baross is currently retired. He is working on a provisional basis for the Water Department. From 1999 to early 2005 Baross was employed at the City Attorney's Office as a Supervising Management Analyst. He was tasked to work for Dannell Scarborough on budgetary issues. Prior to Baross' employment, from the 1970's through the 1990's, the City Attorney's budget was handled by Deputy City Attorney Stu Swett. Baross was tasked with developing the budget. This included salary plan development, creating new SLAs, obtaining grants, dealing with expiring SLAs, and adding services to the City Attorney's Office. He developed reports showing needs and the costs associated with these needs. This would allow the management team to prioritize the needs and their costs.

Previously when City Departments wanted increased attorney services, the City Attorney's Office would endeavor to get staffing. Adding staffing from the general fund was extremely difficult unless the City Attorney could identify a corresponding revenue stream. SLAs were a method that would allow for this revenue stream. Unit Heads were tasked with going to the enterprise funded Departments and requesting information on staffing requirements for attorneys. They would return with this information, and a formula was used to include required support staff and overhead. A yearly total was determined and an SLA was entered into with the enterprise funded Department to provide for their needs. The SLA operated like a retainer agreement as staff would not have been hired otherwise. Each year, Unit Heads would go to the

client Departments. Baross would provide them costs from the previous years to work with. Unit Heads would return with changes, and Baross would make them in the SLA, and a new SLA would be created for the new fiscal year.

Dannell Scarborough felt that it was a high priority to make sure that staff working for client Departments became “budgeted position” attorneys. Council would get upset at Departments who had employees in un-budgeted positions. Council wanted a measure of control over employee staffing. In addition, if an SLA ended, unbudgeted positions would have to be terminated and people would lose their jobs. There were times when SLAs were executed mid year, if laws changed for example. During these time periods, staff would be working in unbudgeted positions. Scarborough would work to make sure that the following year, the staff was budgeted. Once positions were budgeted, the City Attorney would receive a budget from the City Council based on these positions. The City Attorney was “on the hook” for all SLA-budgeted positions. Because of this, it was of utmost importance to capture the costs of these employees through the client Departments. If attorneys and staff failed to bill up to the SLA it would cost the City Attorney out of his general fund budget.

Immediately there were problems in capturing costs due to the antiquated time card / job order billing system. Attorneys were only allowed to put “8 hours” on their time cards. The job order billing system could not track attorney hours properly. In addition, staff would often not know that they were doing work for client Departments, therefore client Departments were not being billed to their actual costs. Sometimes, job order billing numbers would change but unaware staff would continue to bill to a non-existent billing number. At times, several months would go by before the error was discovered. At some point it was decided that the SLAs needed to be treated like retainer agreements, and that hours billed would be averaged and spread among employees. This was the only way to capture the actual costs of the agreements effectively. SLAs appropriated positions, not specific people, thus they should be charged for positions. Casey Gwinn was fully aware of this method. Gwinn agreed with and understood the reasons for it. Gwinn felt that it was unfortunate that it was tied to the signed labor cards. Baross recalls e-mails sent to staff from Gwinn instructing them to bill how they were told to bill.

Sometimes a client Department would call and inquire about a person who was billing their Department whom they had never heard of. During these occasions the client Department was explained the process of capturing costs that the City Attorney’s Office was forced to use due to the incompatible job order billing system. Baross believes that all of the client Departments were aware of these billing practices and understood why the City Attorney was doing this.

Alyssa Ross was tasked with providing all staff with job order numbers and amount of hours to bill to the job orders. When staff made errors, time cards were corrected by Ross. If client Department staff went on vacation, it was Ross’ job to have the person’s backup bill the client Department. If staff had not notified Ross of vacation or sick leave, she would seek out someone to charge the job order numbers. Baross stated that it was rare when he personally changed time cards. Whenever he had to do this he would initial the changes.

Baross could not recall specifically what was done during the mandatory furlough imposed in 2003. He suspects that billing was shifted, as the City Attorney's Office was "on the hook" for a full years worth of work.

Baross is aware that when attorneys or staff for a client Department quit mid year, they would continue to charge the client Department for time by using a non-client Department employee. Baross explained that, again, the City Attorney's Office was "on the hook" for the time.

Dannell Scarborough had more of a budget background and understood the SLA process better than Richel Thaler. Baross recalls that Anita Noone was heavily involved in the SLA process. Noone and Sue Heath were always in competition for resources. Because of this, Noone wanted budget staff to work for her. At one point they all worked for Noone and Thaler had no staff beneath her.

After City Attorney Aguirre took office, he directed staff to go over the SLA billing process with a representative of KPMG, Baross did not recall who. Baross and Thaler conducted a conference call with KPMG and explained the process in detail. KPMG advised that the process made sense. KPMG explained that the weakness in the system was the establishment of the SLA. He explained that the SLA needed justification. He suggested that detailed billing be done on all SLAs for a period of time to justify staffing levels. Then they would be able to return to the average billing method.

Baross recalls that when Aguirre took office initially he stopped all average billing practices. When it became apparent that the City Attorney would not make budget, the practice was re-instated. Around this time Baross left the City Attorney's Office, so he does not know the ultimate policy that was put into place.

### **Alyssa Ross**

On 7-21-06 personal contact was made with **Alyssa Ross** at the Offices of the City Attorney. Follow up phone contact was also made with Ross on 7-24-06. The following is a summary from a statement taken from Ross:

Ross is currently employed as a Sr. Management Analyst for the City of San Diego Business Offices. In October of 2001 Ross was hired by the City Attorney's Office to work as an Analyst and to handle reporting on budgetary issues for the office. During the time she worked at the City Attorney's Office she was responsible for all of the SLAs between the Attorney's Office and other City Departments. From October 2001 to mid 2003 her direct supervisor was Anita Noone. In 2003 she began reporting to Richel Thaler (who was hired approximately three weeks prior to Ross).

When Ross arrived at the Office there were over 20 different SLAs with enterprise-funded Departments, Divisions of enterprise-funded Departments, as well as funding arrangements with the City Manager's Office to provide attorney services. These SLAs remained constant throughout Ross' employment with very few being added or removed. The method for billing SLAs was already in place and Ross was assigned to facilitate the billing. The billing

philosophy was channeled down from Casey Gwinn to Leslie Devaney to Anita Noone, to Richel Thaler to the Unit Heads.

The way the SLAs worked was that there was a contractual “retainer type” agreement between the City Attorney and other Departments that required dedicated attorney services. Client Departments would meet with Unit Heads in the Attorney’s Office and would agree on the amount and type of attorneys that the Department needed. In exchange client Departments would provide revenue to the Attorney’s Office to support these attorneys and required support staff. Actual salaries of attorneys and staff used by the Departments were not used due to turnover issues. Instead an average salary was used based on average wages throughout the Civil Division. For every attorney requested, the Attorney’s Office would use a formula to cover the costs of investigators, paralegals, secretaries, and word processing operators (WPOs). For instance, each attorney may require .25 investigators, .3 paralegals, .3 secretaries, and .25 wpos; depending on the type of work being done by the attorney.

The only way to obtain compensation from client Departments was with the job order system used by the City Auditor. It was not an option to obtain a lump sum for yearly services as a typical retainer agreement in the private sector may do. Ross would have a general idea at the beginning of the fiscal year what each client Department should provide in revenue to cover the costs of staff. To receive compensation for these costs, Ross would recommend billing hours to the various supervisors to charge the client Department for services throughout the year. Spread sheets were created for attorneys, investigators, paralegals, secretaries, and WPOs spelling out what job order each person would need to bill to (Exhibits 9-13). The supervisors would determine how to split up the hours amongst their staff.

Because the Attorneys office needed to capture costs for sick leave and vacation leave throughout the year, when staff assigned to a client Department went on vacation or was sick, the billing codes were temporarily shifted to another person who wouldn’t necessarily be working for the client Department. Supervisors would change staff time cards after submission to cover leave issues (Exhibits 19 & 20). Some staff was notified of the changes but often times, staff was unaware that their time cards were being changed. Ross noted that coverage issues varied across client Departments. There were not a lot of coverage issues for small SLAs. Large SLAs required more “care.”

In addition, during slow periods (due to budget constraints or difficulty in bonding), attorneys requested by the client Departments were temporarily assigned to non-enterprise funded Departments, but would continue to bill the enterprise funded Department. Ross noted that this was necessary to pay for the attorneys requested by the client Department that otherwise would not have been hired by the City Attorney. It wasn’t feasible to hire and fire staff to compensate for the ebb and flow of work. She advised that if the Departments were not continually billed, the Attorneys Office would come in over budget every year due to the costs associated with these attorneys requested by the client Departments. Ross continually monitored the SLAs throughout the year and would request to supervisors that they increase/decrease billing to try and make the target costs (Exhibit 18). Because of staffing irregularities, ebbs and flow of work, varying salaries and hours, it would be really hard to capture actual costs. It was an imprecise method, but it was the only method that made sense due to the constraints of the job order billing system.



Overhead was built into the job order system. A rate of around 8% would be added automatically to all billing for overhead. The Attorney's office did not try and capture additional overhead costs and absorbed these into their annual budget. Ross believes that overhead costs for the attorneys far exceeded the 8% charged by the Auditor.

The SLA billing system was transparent and nothing was hidden from client Departments. In fact, Ross is aware that in early 2005, Leslie Devaney gave a presentation at the Manager's Meeting in Balboa Park to all the Department Heads. They were all made aware of the constraints of the job order billing system and how the Attorney's Office had tried to manage this in the fairest way possible.

There were continually complaints from client Departments about the SLAs. Ross recalls an issue the Attorney's Office had with the Redevelopment Agency. The SLA with the Agency consisted of a couple of advisory attorneys and one attorney for eminent domain. The attorney for eminent domain was hired, worked for a while and quit. The Agency wasn't requiring a lot of eminent domain so the position wasn't replaced. The hours for the position however, continued to be billed to the Redevelopment Agency. The Attorney's office had shifted the hours to attorney Ken So, who was actually working for Police Legal Advisory. The Agency balked at this. The position of the Attorney's Office, was that the office was "on the hook for a million dollars" for Agency attorneys and staff. This was a million dollars that they were not getting from the general fund, and thus the position needed to be continually billed. The Attorney's Office assured the Agency that they would handle all eminent domain needs, and if they wanted to renegotiate the SLA the following year they could.

In some instances, Ross discovered SLAs with much higher attorney allocations than were actually on staff. She found that with the Civil Enforcement Unit, the SLA with the Manager's Office allocated 9 – 10 positions, when there were actually only 2 attorneys working for Civil Enforcement. Deputy City Attorney Grant Telfer who managed the Civil Enforcement Unit was surprised to find out that the office was receiving revenue for a much higher staff. Ross brought up the issue with Richel Thaler and Anita Noone. The ladies sheepishly stated that when allocation was first discussed it was thought that they may need this level of staffing; and, the Unit still might at some point require this staffing. Therefore, there was no need to change this SLA.

Ross explained the effect that the mandatory furlough had on the SLAs. Ross was sick for a couple of weeks. When she returned to the office she discovered that the office had instituted a mandatory furlough system for all attorneys. The idea was that it would save the office money. Ross went to Anita Noone and Richel Thaler and advised them that because the SLAs were not being billed the furlough system would actually cost the office money. She, Noone, and Thaler came up with a method to prevent this. They would simply shift attorney hours from an enterprise fund attorney to a non-enterprise fund attorneys when they left on furlough. The Unit Heads were told that this was going to occur. Ross believes that they verbally reported it to staff. Ross was aware that some staff understood why this was going to be done, some didn't care, and some didn't think it was right. It was communicated to staff that this was how it was going to be regardless.

Ross created a spread sheet on where the hours would be shifted (Exhibit 16). Ross personally gathered the time cards and methodically made changes after they were submitted by the attorneys. Furlough for staff was handled in a similar manner. Ross assigned Principal Investigator Robert Able and Principal Legal Assistant Karen DeCrescenzo hours that would need to be shifted. They made the required changes on their own. Ross did not know if staff was aware of the changes.

Ross became aware that not all staff had been communicated to in regards to this furlough hour shifting. In one instance, Ross had made an error in her calculations on a time card she had altered belonging to attorney John Mullen. Accounting called Mullen and advised that there were errors. Mullen looked at the time card and realized that it was not the same as the one he submitted. He was furious. Ross does not know how this was ultimately handled by Noone and Thaler.

Ultimately, Ross did not believe that staff needed to be advised when changes were made to their time cards. She believed that it was well known that when you submitted your time card, changes could be made. This was one of the reasons time cards were submitted in pencil. It had gone on for years.

Ross explained that the big problem was reconciling the retainer agreements with the job order billing system. The job order billing system was the only option and did not fit well with salaried staff, and other retainer issues. Thaler and Ross held meetings with representatives of the Auditor's office including Division Manager Rudy Graciano, and advised them of the problems they were having with the job order billing system. The Auditor's office advised that this was the City's process and the Attorney's Office could not be different from any other City Department. It would have been much easier to be able to receive a yearly lump sum from the client Department for these "retainer agreements."

Within a couple of weeks of Michael Aguirre being elected City Attorney he changed the SLA billing policy. He announced to various senior attorneys that he would not allow any billing to Departments for work not performed. This caused an immediate concern for the management team that had also worked under Casey Gwinn. They realized that without the current billing system, staff would have to be laid off. Aguirre was notified of the concerns. One day when Ross was walking by Aguirre's office, Aguirre handed her a "sticky note" with the name and phone number of Steve DeVetter from KPMG. He directed Ross to go through the system with DeVetter to see if there were any concerns. Ross, Thaler, and Leslie Devaney held a conference call meeting in Devaney's office with DeVetter. Ross laid out the billing system to DeVetter and explained all of the reasons for it. At the conclusion of the conversation, DeVetter stated that he did not see a problem with the system. He told them that it was acceptable to treat the enterprise fund SLAs as retainer agreements throughout the year. He cautioned them to make an honest yearly evaluation of staffing needs and to change the SLAs accordingly.

When Aguirre was elected City Attorney, Ross created six transition binders outlining how the office billed the SLAs. Everything discussed above was included in these binders. Ross gave the binders to Richel Thaler for distribution. Ross assumed that the binders were distributed.

Soon after this, on January 10<sup>th</sup>, 2005, Ross left the City Attorney's Office. She does not know how the changes required by Aguirre were implemented.

### **Karen DeCrescenzo**

On 7-20-06 and 7-21-06 phone contact was made with Principal Legal Assistant **Karen DeCrescenzo**. The following is a summary from a statement taken from DeCrescenzo:

DeCrescenzo is aware that the City Attorney's Office had entered into SLAs with client Departments and staff positions were funded by the SLAs. People who worked for the attorneys assigned to these client Departments would bill the client Department via the job order billing system on their time card regardless of if they did work for the Department during that pay period or not. Department Analysts Jim Baross and Alyssa Ross would decide which staff would charge the various client Departments and would determine how many hours would be charged. When her staff that was assigned to these client Departments went on vacation, their backups would charge the client Departments. This was done even if the backup never performed work for the client Department. She and her Senior Legal Assistants changed submitted time cards for the backups at the direction of Analysts Alyssa Ross and Jim Baross. Most of the time, she notified her staff that she was making changes to their time cards. On occasion, staff was not notified.

As the year progressed, Analysts would keep track of how much was being billed. From time to time Analysts would direct DeCrescenzo to inform staff to increase or decrease billing accordingly to meet the terms of the SLA.

DeCrescenzo advised that some of her staff were uncomfortable with this billing system. In 2001-2002 Casey Gwinn sent an e-mail to all staff outlining the SLAs and why the current billing system was in place. He advised that the SLAs were similar to retainer agreements and the client Departments were paying for staff to be available to them. He advised that client Departments were well aware of this system and agreed with it.

### **Robert Abel**

On 7-20-06 phone contact was made with ex-City Attorney Principal Investigator **Robert Abel**, at the Office of the County Counsel. Able refused to discuss billing practices at the City Attorney's Office while he was employed there. He advised that he had previously had a phone conference with representatives of Kroll, KPMG, and Mayer Hoffman and that these individuals advised him not to communicate with anyone else in regards to this issue. Abel stated that he was going to follow their suggestion. He noted that he referred these individuals to Alyssa Ross, Jim Baross, and Anita Noone.

On 7-26-06 a second attempt was made to contact Abel at the Office of the County Counsel. It was determined that Abel was on vacation until August 8<sup>th</sup>.

## **David Racela**

On 7-26-06 personal contact was made with City Attorney Analyst **David Racela** at the Offices of the City Attorney. The following is a summary from a statement taken from Racela:

Racela was hired by the City Attorney in February of 2005. He was assigned to take over for Alyssa Ross and handle the SLAs. He recalls that in April of 2005 he was told by Assistant City Attorney Kari Katz that the office policy had changed from average billing to SLAs to billing for actual work performed. He made sure that all staff was informed of this change.

On 7-25-06 Racela realized that the Civil Enforcement Unit SLA was continuing to be billed using a formula. He noted that this SLA is split among five Departments and had always been billed using a formula for ease. This SLA was entered into five years ago by Casey Gwinn and City Manager George Loveland. The SLA continues to be renewed yearly. When he realized that the SLA was continuing to be billed using a formula he informed City Attorney Aguirre. Aguirre advised that the policy must stop and that a journal voucher must be created to account for the prior discrepancies.

### **BILLING FOR WORK NOT SPECIFICALLY PERFORMED**

A spreadsheet was obtained from the San Diego City Auditor's Office for all billing from the City Attorney's Office to MWWD and the Water Department during the fiscal year 2003 – 2004 (Exhibit 14). In addition, employees of the City Attorney were asked to provide copies of time cards for 2003 – 2004 that they submitted to their supervisors. Very few employees had retained copies of time cards, however some were obtained. Sr. Legal Assistant Kay Certain had retained all copies of time cards she had changed of the Legal Assistants assigned to her supervision (Exhibit 19 & 20).

Auditor's records were reviewed for any anomalies. Selected attorneys and staff were interviewed in regards to billing received from the Auditor's Office.

## **Gene Gordon**

*Auditor's records show that they received billing from Gene Gordon for the following accounts in fiscal year 2003 – fiscal year 2004:*

*General Construction Litigation  
Job Order 099909  
60 hours*

*MWWD Construction Litigation  
Job Order 099910  
60 hours*

*A check of time cards provided by Gordon revealed that the time cards he submitted during the subject time period had been altered (Exhibit 21).*

On 7-26-06 personal contact was made with Assistant City Attorney **Gene Gordon** at the Offices of the City Attorney. The following is a summary from a statement taken from Gordon:

Gordon has been employed by the City Attorney since 1969. He has worked for the Civil Division since 1979. He has always worked for the Trial Unit and has always billed his time cards to the Trial Unit. He has never been asked to bill to an enterprise account, nor was he aware that his time card was changed after he submitted it. He was surprised that his time card had been changed. He noted that he should never have been listed as billing for the Construction Litigation Unit as he did not do this work.

### **Maria Severson**

*Auditor's records show that they received billing from Maria Severson for the following accounts in fiscal year 2003 – fiscal year 2004:*

*MWWD Advisory  
Job Order 051298  
120 hours*

On 7-26-06 personal contact was made with Chief Deputy City Attorney **Maria Severson** at the Offices of the City Attorney. The following is a summary from a statement taken from Severson:

Severson has been employed by the City Attorney's Office from 1998 to the present. She was assigned to the Civil Division in 1999. She has worked in the Trial Unit since her assignment to the Civil Division. She has always billed her time to the Trial Unit. She has never billed an enterprise Department. She has never worked as an Advisory attorney. She has never been told that her time card was being changed after she submitted it.

### **John Mullen**

*Auditor's records show that they received billing from John Mullen for the following accounts in fiscal year 2003 – fiscal year 2004:*

*General Construction Litigation  
Job Order 099909  
68 hours*

*MWWD Construction Litigation  
Job Order 099910  
68 hours*

On 7-26-06 personal contact was made with Oceanside City Attorney **John Mullen**, phone # [REDACTED]. The following is a summary from a statement taken from Mullen:

Mullen was employed by the City Attorneys Office from 1992 through June of 2004. He was assigned to the Civil Division in 1994. Since his assignment to the Civil Division he only worked for the Trial Unit, specializing in land use litigation. Mullen has never billed his time to any enterprise Department. He has never worked construction litigation assignments. He has never been told that his time cards were being changed. He does not recall the incident described by Alyssa Ross, where his time card was changed without his knowledge; but, stated that it could have happened.

### **William Donnell**

*Auditor's records show that they received billing from William Donnell for the following accounts in fiscal year 2003 – fiscal year 2004:*

*MWWD Advisory  
Job Order 051298  
120 hours*

On 7-26-06 phone contact was made with Sr. Deputy City Attorney **William Donnell**. The following is a summary from a statement taken from Donnell:

Donnell has been employed by the City Attorney's Office from 1984 to the present. He has been assigned to the Civil Division since 1986. Since his assignment to the Civil Division he has worked strictly for the Trial Unit. He has never worked an Advisory assignment nor has he ever been assigned to bill enterprise SLAs. All of his time is billed to the Trial Unit. Donnell was surprised that the Auditor's Office showed they received billing to MWWD Advisory. He noted that his time card must have been changed after it was submitted.

### **David Brodie**

*Auditor's records show that they received billing from David Brodie for the following accounts in fiscal year 2003 – fiscal year 2004:*

*MWWD Advisory  
Job Order 051298  
136 hours*

On 7-26-06 phone contact was made with Sr. Deputy County Counsel **David Brodie** at his work phone # [REDACTED]. The following is a summary from a statement taken from Brodie:

Brodie was employed by the San Diego City Attorney's Office from July 1991 to May of 2006. He was assigned to the Civil Division in 1999. Since being assigned to the Civil Division he worked strictly for the Trial Unit. He only billed his time to the Trial Unit. He has never worked an Advisory assignment. He never billed his time to an enterprise Department, nor was he ever asked to do so. He was never told his timecard was changed after he submitted it.

## **Andrew Jones**

*Auditor's records show that they received billing from Andrew Jones for the following accounts in fiscal year 2003 – fiscal year 2004:*

*Water Civil Enforcement  
Job Order 050032  
1393 hours*

*MWWD Civil Enforcement  
Job Order 050031  
1598 hours*

On 7-26-06 personal contact was made with Deputy City Attorney **Andrew Jones** at the Offices of the City Attorney. The following is a summary from a statement taken from Jones:

Jones has been employed by the San Diego City Attorney's Office since 1994. In August of 2000 he was assigned to the Civil Division, Tort Litigation Unit. He has worked in this unit ever since. He has never had any Civil Enforcement Unit assignments. He was instructed upon being hired by the Civil Division to bill several different accounts. He had no idea what these job order billing codes represented. He simply did what he was told to do.

Some time after Aguirre was elected City Attorney, Jones heard that policy had changed regarding billing of various job order numbers. He sent an e-mail to Analyst Jim Baross and asked him if he should still be billing the five codes. Baross told him that he should stop billing the codes and only bill the Trial Unit.

## **Renee Wharton**

*Auditor's records show that they received billing from Renee Wharton for the following accounts in fiscal year 2003 – fiscal year 2004:*

*Water CIP  
Job Order 051007  
236 hours*

*MWWD Construction Litigation  
Job Order 099910  
127 hours*

On 7-26-06 personal contact was made with Legal Assistant **Renee Wharton** at the Offices of the City Attorney. The following is a summary from a statement taken from Wharton:

Wharton has been employed by the City Attorney's Office since December of 1980. She was assigned to the Civil Division in February of 2001. Wharton recalls that from 2001 to 2003 she only billed general litigation. From 2003 to 2005 she only billed general litigation and

employment services. At no time did she bill an enterprise Department. She does not recall ever being asked to bill an alternate number. She is unaware of anyone changing her time card after she submitted it.

### **Debra Lundy**

*Auditor's records show that they received billing from Debra Lundy for the following accounts in fiscal year 2003 – fiscal year 2004:*

*General Construction Litigation*

*Job Order 099909*

*781 hours*

*MWWD Construction Litigation*

*Job Order 099910*

*747.8 hours*

*MWWD Civil Enforcement*

*Job Order 050031*

*8 hours*

On 7-20-06 personal contact was made with Property Agent **Debra Lundy** at the Real Estate Assets Department of the City of San Diego. The following is a summary from a statement taken from Lundy:

In 2001 – 2005 Lundy worked for the City Attorney's Office as a Legal Assistant. Lundy advised that in 2002 she was assigned to work for the construction litigation unit and she billed all of her time to MWWD and Water. In 2003 she was reassigned to work for Leslie Fitzgerald exclusively who handled Land Use Litigation. After her reassignment she asked her supervisor Carol Pollock if she should still continue to bill MWWD and Water. Pollock told her she would check. She later told Lundy to continue to charge MWWD and Water.

Lundy continued to charge these same codes until she left the City Attorney's office in February of 2005.

### **Michael "Travis" Phelps**

*Auditor's records show that they received billing from Travis Phelps for the following accounts in fiscal year 2003 – fiscal year 2004:*

*General Construction Litigation*

*Job Order 099909*

*49 hours*



*MWWD Construction Litigation*  
*Job Order 099910*  
*92 hours*

*MWWD Civil Enforcement*  
*Job Order 050031*  
*4 hours*

On 7-24-06 personal contact was made with Legal Assistant **Travis Phelps** at the Offices of the City Attorney. The following is a summary from a statement taken from Phelps:

Phelps was hired by the City Attorney's Office as a Legal Assistant in September of 2001. From his date of hire he was provided with information on how to bill his time. He was told to bill half of his time to the Water Department and half of his time to Real Property. He worked for the Real Property unit, but the vast majority of his time he spent working for the trial unit. He never worked for MWWD.

Phelps could not recall when his billing changed. He does recall that at some point he was sent an e-mail from his supervisor requesting that he change his billing codes, to the codes he uses now.

**Pete DeLara**

*Auditor's records show that they received billing from Pete DeLara for the following accounts in fiscal year 2003 – fiscal year 2004:*

*Water Civil Enforcement*  
*Job Order 050032*  
*24 hours*

*Water CIP*  
*Job Order 051007*  
*44 hours*

*MWWD Construction Litigation*  
*Job Order 099910*  
*235.5 hours*

*MWWD Advisory*  
*Job Order 051298*  
*1172 hours*

On 7-25-06 personal contact was made with Legal Assistant **Pete DeLara** at the Offices of the City Attorney. The following is a summary from a statement taken from DeLara:

DeLara was hired as a Legal Assistant in August of 1996. He recalls that in 2003 and 2004 he was assigned to work for Gene Gordon, Mia Severson, and Ed Cahill, all trial unit general fund attorneys. He was also assigned Ted Bromfield who worked for MWWD. He noted that he would work on small projects for Bromfield, but it was not uncommon to not work on anything for Bromfield during a month span of time.

DeLara billed all of his time to the trial unit job order billing code. He does recall that over the years for limited periods of time he would receive an e-mail from his supervisor requesting that he bill a different job order number for a short time period. He would do so as instructed. He does not recall whether or not this occurred in 2003-2004.

When DeLara was told that he had significant enterprise fund billing in 2003-2004, he was surprised. He did not believe that he filled out his timecard in this manner for such a significant amount of time. He certainly was not working this amount of time for enterprise fund Departments.

### **Steve Ross**

*Auditor's records show that they received billing from Steve Ross for the following accounts in fiscal year 2003 – fiscal year 2004:*

*Water Civil Enforcement  
Job Order 050032  
185 hours*

*Water CIP  
Job Order 051007  
24 hours*

*General Construction Litigation  
Job Order 099909  
143.5 hours*

*MWWD Construction Litigation  
Job Order 099910  
173 hours*

*MWWD Civil Enforcement  
Job Order 050031  
160 hours*

On 7-26-06 phone contact was made with City of San Diego Ethics Commission Program Manager **Steve Ross**. The following is a summary from a statement taken from Ross:

Ross was employed as a Legal Assistant with the City Attorney's Office from August of 1996 to August of 2005. He recalls that in 2003 – 2004 he was assigned to work for the Ethics

Commission full time. He never worked for any enterprise Department. He recalls that he was told by his supervisor Carol Pollock on several occasions over the years to change his time cards and put in alternate codes. He did as he was instructed, not knowing what the job order codes were billing. He never knowingly billed MWWD or the Water Department during his employment with the City Attorney. He advised that the random billing of job order numbers was office policy. No one really liked the concept but everyone was instructed to follow orders.

### **Kay Certain**

On 7-26-06 personal contact was made with Sr. Legal Assistant **Kay Certain** at the Offices of the City Attorney. The following is a summary from a statement taken from Certain:

Certain has been employed by the City Attorney's office since 1996. She recalls that when John Witt was City Attorney, he did not have a policy for staff billing of SLAs. Soon after Casey Gwinn took office, a policy was implemented to bill SLAs using averages and random staff. Job order numbers were assigned to various staff regardless if they worked for the SLA funded Department or not. Staff was directed to bill a certain number of hours to these job order numbers.

In 2002 she was promoted to Sr. Legal Assistant and was given a staff of Legal Assistants to supervise. She was given instruction by her supervisor Karen DeCrescenzo and Analyst Alyssa Ross that she must manage SLA hours by shifting them from Legal Assistants assigned to SLAs when they went on vacation, were sick, were out on disability, or were on furlough to Paralegals not assigned to SLA job billing numbers. During the Christmas holidays, due to low staffing, this was a very difficult effort and often hours had to be shifted across billing periods in order to make up the hours. She made numerous changes to employee time cards after they were submitted to follow this policy. On occasion, employees were provided copies of the changes, most of the time they were not. Employees were rarely told that their time cards were changed. It was a general understanding that the reason you submitted your timecard in pencil was that so changes could be made to it after submission.

Certain never felt comfortable changing people's time cards. Because of this she saved a copy of the original submitted time card and a copy of the changed time card for every card she changed (Exhibits 19 & 20).

Certain recalls that shortly after Aguirre took office the policy changed. She was notified (she could not recall if by e-mail or verbally) that time cards could no longer be modified and that SLAs must only be billed for work performed. Because of this change in policy, Certain no longer felt the need to keep copies of time cards.

### **Doug Sensabaugh**

*Auditor's records show that they received billing from Doug Sensabaugh for the following accounts in fiscal year 2003 – fiscal year 2004:*

*Water Advisory  
Job Order 051009  
3689.5 hours*

On 7-26-06 personal contact was made with Sr. Investigator **Doug Sensabaugh** at the Offices of the City Attorney. The following is summary from a statement taken from Sensabaugh:

Sensabaugh recalls that in 2003 – 2004 he was assigned to work for workers' compensation attorneys and two general litigation attorneys. He did not conduct any work for Advisory attorneys during this time period. He recalls that at some point during this time period, Investigator Brian Wazniewski went out on industrial leave. When this happened Sensabaugh was told by Principal Investigator Robert Abel to bill to Wazniewski's job order numbers. He did not know what the job order numbers were for, but he did as he was instructed. Sensabaugh has never worked for Water Department advisory attorneys.

### **Brendan McClory**

*Auditor's records show that they received billing from Brendan McClory for the following accounts in fiscal year 2003 – fiscal year 2004:*

*MWWD Advisory  
Job Order 051298  
2965.3 hours*

On 7-21-06 phone contact was made with Investigator **Brendan McClory** at the Family Justice Center. The following is a summary from a statement taken from McClory:

During 2002 - 2004 McClory worked for the City Attorney's Office Civil Division. He was assigned to bill 60 hours per pay period to MWWD due to the fact that he was assigned to Kelly Salt, Ted Bromfield, and Tom Zeleny. McClory noted that he was directed to bill 60 hours to the enterprise Department even though in actuality he only worked on average 10 hours per pay period for these individuals. The vast majority of his time was working for Trial Unit attorneys. He noted that he advised Robert Abel that this was the case, and Abel responded that he should bill the hours anyways per office policy.

In 2004, soon after Aguirre took office, this policy changed and McClory was directed to only bill for hours worked.

### **John Henze**

On 7-20-06 personal contact was made with Sr. Investigator **John Henze** at the Offices of the City Attorney. The following is a summary from a statement taken from Henze:

Henze advised that from 2002 – 2004 he was assigned to the construction litigation unit that billed to SLAs for Water and MWWD. He was also assigned to work for one Real Estate Attorney. Despite the fact that he worked for the Real Estate attorney part of the time he was

directed by his supervisor to bill his time 50/50 to MWWD and Water. He noted that this 50/50 billing was hardly accurate as he conducted the majority of his work for MWWD. When Henze would go on vacation, his backup would pick up the MWWD and Water charge codes and bill their time accordingly. This occurred even if the backup did not do any work for those Departments. Henze was aware that throughout the year, his numbers were shuffled back and forth and changes were being made by his supervisor to his submitted time card. He noted that this was why the time cards were in pencil.

In 2004, soon after Aguirre took office, this policy changed and Henze was directed to only bill for hours worked.

### **Shawn Brown**

On 7-20-06 personal contact was made with Investigator **Shawn Brown** at the Offices of the City Attorney. The following is a summary from a statement taken from Brown:

From 2002 – 2004 Brown worked for various attorneys assigned to the Trial Unit. He was also assigned to an advisory group, the Public Works Unit. Brown was required to bill all of his time to the MWWD charge code. He did this as instructed by Robert Abel even though he spent the vast amount of his time working for attorneys in the Trial Unit.

In 2004, soon after Aguirre took office, this policy changed and Brown was directed to only bill for hours worked.

### **Pat Vaughn**

On 7-26-06 personal contact was made with Legal Secretary **Pat Vaughn** at the Offices of the City Attorney. The following is a summary from a statement taken from Vaughn:

Vaughn has been employed with the City Attorney's Office since March of 1985. She was assigned to the Civil Division in February of 1998.

Prior to Casey Gwinn taking office, Vaughn billed all her time to the City Attorney's general fund. Vaughn recalls that soon after Casey Gwinn took office, everyone was instructed to bill to specific job order numbers, regardless if they were working for the Department attached to the job order number. Some people were billing to the City Attorney's general fund and others were billing to SLAs. The allotment of hours was distributed via a list by City Attorney Analyst Judy Von Kalinowski and Sr. Legal Secretary Judy Stone.

At some point Von Kalinowski and/or Stone instructed Vaughn to bill 40 hours to the Water Department per pay period regardless if she worked the hours. Vaughn refused and advised them that she did not work that many hours on Water Department assignments. They tried to explain to her why they were asking her to bill that way, but to Vaughn it didn't make sense. They stated that it was ok, as it would "all come out in the wash." They stated that the Departments were actually getting a good deal as they had senior attorneys working for them at the rate of a junior attorney. At some point, either Judy Stone or Richel Thaler told Vaughn that

they would give her a copy of the SLA and would provide her with a memo from Casey Gwinn authorizing the billing of the hours. Vaughn never received these copies as promised.

For a while Vaughn was allowed to bill hours worked. Later Thaler and her supervisors Judy Stone and Helene Kaughman came to her and asked her to bill more. She again told them no and advised them that they have never provided the documents they had promised.

Vaughn recalls that Thaler attended a support staff meeting and provided a chart showing what everyone should bill and changes that had been made. Vaughn again brought up her displeasure with this billing method. Other secretaries also expressed their displeasure at this system. Thaler again promised a memo from Casey Gwinn authorizing the charging of these job codes. They never received the memo.

Vaughn's husband is a payroll specialist. She talked about the issue with her husband. Her husband advised her to call Bob Lawrence at the Auditor's Office to see if the billing practice was acceptable. She spoke to Lawrence about it. Lawrence told her he wasn't sure if the billing practice was acceptable. He told her that if she didn't feel comfortable with it she shouldn't participate.

At some time later, Vaughn's supervisor Sr. Legal Secretary Helene Kaughman came to her and told her just to bill the general fund account. She has been billing this account ever since.

In mid July, Vaughn was contacted by Steve Johnson from Mayer Hoffman. Johnson inquired about the job order billing policy. He wanted copies of formal instructions (she did not have any). He asked about who authorized this policy.

### **Ken So**

On 7-25-06 personal contact was made with Deputy City Attorney **Ken So**. So provided the following information:

So is currently assigned to the Criminal Division. He was hired as a Deputy with the City Attorney in December of 1996. From August of 2000 to October of 2002, So worked for the Civil Division. During this time he was assigned to the Redevelopment Agency to work on land use and eminent domain issues. He never worked for Police Legal Advisory. He worked closely with Deputy City Attorney Lisa O'Neil. So billed his hours to the Redevelopment Agency job order number throughout his employment with the Civil Division. In April of 2002, O'Neil went out on sick leave and So took on all her cases. He denied the allegation of Alyssa Ross about being assigned a Redevelopment Agency billing code when an attorney quit. He stated that perhaps Ross was confusing him with Leslie Fitzgerald. So stated that when Lisa O'Neil went out sick, it is possible that her job order numbers were transferred to Leslie Fitzgerald or another Deputy.

## **ROBERT ABEL MEMO**

A check was made to locate the original copy of a memo submitted by Robert Abel to representatives of Mayor Hoffman in July of 2002 (Exhibit 26).

### **Carol Pollock**

On 7-28-06 phone contact was made with Sr. Paralegal **Carol Pollock**. The following is a summary from a statement taken from Pollock:

Pollock supervises staff at the City Attorney's SEC document repository. Upon resigning from the City, Principal Investigator Robert Abel left several boxes of files labeled working files in his office. These boxes were transported to the document repository. Pollock was given direction to try and locate the subject memo. Pollock personally conducted a search of all of Abel's documents, page by page, and was unable to locate the subject memo (Exhibit 30).

### **Al Ramirez**

On 7-28-06 personal contact was made with Information Systems Analyst III **Al Ramirez**. The following is a summary from a statement taken from Al Ramirez:

Ramirez supervises Information Technology Staff at the City Attorney's Office. He directed to search the "H hard drive" belonging to Robert Abel. The H drive is space saved in the City Attorney's computer network for employee personal use. He was also tasked to search the "J hard drive." The "J drive" contains documents saved by all supervisors employed by the City Attorney's Office. He was also tasked to search the "C hard drive" belonging to Robert Abel at the time of his employment. The C drive is the desktop computer storage space that each employee has personal access to.

Ramirez was able to locate a partial document, in part matching the one submitted by Abel to Mayer Hoffman. This document was found on Abel's "J hard drive." This document includes one sentence in regards to the subject matter in question (See Exhibit 31). Ramirez could not locate the completed document during his searches.

Investigated By,

Dan Andrews  
Principal Investigator