

# The Uncivil War at City Hall

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Lawsuits. Accusations of corruption. Power struggles. With subpoenas from the city attorney's office and potshots from the city council, has City Hall become a war zone?

WHEN BARRY BONDS smacked home run number 755 in August at Petco Park, tying the record held by Hank Aaron, about half the fans in the stadium cheered the accomplishment, and half booed.

The half who cheered knew that, despite some misgivings they might have had about how Bonds got to be so big and strong later in his career, they had to acknowledge what he did was significant. The half who booed were fixated on their sense that, while they could not deny Bonds accomplished something unusual, the way he went about it was so distracting, the achievement didn't matter.

So goes the work of City Attorney Mike Aguirre.

He steps off an elevator in the lobby of City Hall, and citizens who are there to protest a governmental action recognize him and break into cheers. He waves to the common people and tells them he is on their side. He is their Napoleon.

But mention his name to others—those depending on unfunded pensions, for instance, or those who have been on the receiving end of his accusations—and a sneer develops. Long silences spread like shadows creeping through darkening windows. He is their Brutus.

To many who love San Diego, he is the only one minding the store. To them, he has discovered a vacuum in who is running this city, and he has decided to fill it.

Others, who love the city just as much, think he is delusional. The city is making progress toward adapting to its new strong-mayor form of government, they believe, and Aguirre is a distraction. A sideshow. Dangerous.

The strong-mayor proposition, approved by voters in 2004 for a five-year trial starting in 2006, replaced a long-outdated system of a city manager working as the gofer for the city council. The old system was inefficient for a city this large and gave cover to back-room deals that average citizens didn't hear about until years later, when they backfired. The Chargers' guaranteed ticket sales comes to mind. Liberty Station, anyone?

By contrast, the strong-mayor approach puts the mayor in charge of the city—he or she becomes its CEO, no longer just another voter on the city council. The buck starts and stops in the mayor's office. The mayor is accountable to the public, not the council or special interests.

But with the transition now into its second year, and with the mayor politically wounded by a 180-foot monster called Sunroad, and the Securities & Exchange Commission accusing councilmembers and others of securities fraud, and the city attorney filing countless legal claims against city employees, squirrel killers and valet parkers, citizens are justified in asking: *Is this any way to run a city?*

"I don't think we have anyone running the city right now," says Aguirre. "We are being told that things are going well, but nothing could be further from the truth."

This kind of talk chafes city council president Scott Peters.

"Who is running this city? It's Jerry Sanders, but it's really a collaboration between the mayor and the council," says Peters, who has publicly sparred with Aguirre over many issues, especially over the role of the city attorney. Aguirre, according to Peters, is one of the reasons San Diego has trouble accomplishing anything.

"The city will never get anything done as long as Aguirre is here," Peters says. "He says he'll advise you one day and then sues you the next. We can't advance the ball if the running back is tackling the quarterback."

Aguirre has accused some councilmembers, including Peters, of committing a crime by voting to approve the city's pension while knowing there wasn't money to pay for it, putting the city more than \$1 billion in debt. And Aguirre points to city charter statements from 1931 that declare his independence from other government entities.

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**—Scott Peters**

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"The council wants to decide as a matter of policy whether they want to follow the law," Aguirre says. "My job is to make sure that *everyone* follows the law. The city council didn't elect me as city attorney. The citizens of San Diego did. We won't be able to get anywhere on our debt problems until this council is gone."

So far, the courts have denied Aguirre's claim of criminal conduct because the statute of limitations for filing the claim expired before he even took office in 2004. Aguirre is researching cases back to the 1850s in an attempt to get the courts to change their mind and allow him to proceed with his suit.

Aguirre's zeal has cost taxpayers plenty. Private law firms are used frequently to handle many of the suits and appeals he files, and the bill for using outside counsel has risen dramatically in the years since he took office. In

fiscal year 2003, before Aguirre took office, outside lawyers billed the city approximately \$131,000. In fiscal year 2006, the bill was more than \$3.5 million.

Critics of Aguirre's methods say he has cost the city closer to \$50 million, but much of that figure is for legal work related to the SEC's investigation.

And there isn't much to show for the money spent. He has made progress in reducing the settlement in the long-running De la Fuente Business Park suit and with the Police Officers Association's claims of labor violations, but most of his claims have been tossed, defeated or stalled.



Councilmember Donna Frye

ALL OF THIS, of course, takes time and money away from the city's other pressing issues. And despite the publicity Aguirre creates regarding the underfunded pension, it is not one of those pressing issues, according to Peters.

"There is no pension crisis," he says. "Labeling it as a crisis is destructive and outdated."

Both the pension and the expensive health benefits promised to city retirees are being paid off in a long-term plan, Peters says. According to an actuarial report provided to the council in April, there is "no material risk that

SDCERS [San Diego City Employees' Retirement System] will be unable to pay the benefits the city has agreed to pay."

Aguirre calls the actuarial report "hocus-pocus," done by an actuary who was "hired to make things look better than they really are. It's creative accounting done to create a misleading conclusion," he says.

The more accurate conclusion, Aguirre says, is far more dire. "There is a giant meteor headed for this city," he says. "That's the point of what the SEC told us. We've granted millions of dollars in benefits with no money to pay for them. The city council has been managing a Ponzi scheme."

So with the city council and the city attorney arguing over how to define their roles, and over whether they are allies or enemies, who is running the show around here?

"It's me, with help," says Jerry Sanders, who was elected mayor in 2005—and whose office took one month before deciding to grant an interview to *San Diego Magazine* for this story. "We've seen the transition with the mayor going from a ninth city councilmember to another branch of government where everyone reports to me," he says. "Before, the city manager was more interested in making the council happy, because they had the ability to hire and fire him. The new system gives the chief executive officer the ability to get things done. Citizens know who to hold responsible."

He points to two years of balanced budgets and a five-year financial plan, as well as a 20-year plan to pay off the pension liability, as evidence of progress. Also in the works are plans for sewer and water infrastructure improvements, plus a plan to get the city back into the bond market (Wall Street put San Diego on its blacklist after the pension fiasco was uncovered).

Carl DeMaio, head of The Performance Institute, a reform-minded think tank, says what Sanders has achieved in the political system, after what he inherited, is Herculean. "He was hired as CEO of a company that had \$2.5 billion in liabilities, a budget deficit, no ability to borrow, with predecessors who left under a cloud of corruption, employees who are being subpoenaed and investigated, and customers who are irate," he says. "The fact that he kept the lights on at all is remarkable."

Then, as if to tie a boxer's hand behind his back, he doesn't even have a supportive board of directors, DeMaio says. "The council repeatedly tries to thwart his efforts to streamline the process, labor unions make demands before there is even a discussion, and the company lawyer says 'Good luck—I won't help you, but I will hang you out to dry if you screw up.'"

But whether Sanders is running the show was debatable during the Sunroad debacle. When the Sunroad Corporation built an office tower last year near the Montgomery Field runway and exceeded FAA height limits for buildings in the area by 20 feet, the city's real estate office knew the building was in violation. Caltrans knew it. The FAA knew it. Sunroad knew it. And apparently, the mayor's office knew it. Not until Aguirre knew it, though, did anything happen.

Aguirre sued Sunroad in an effort to get the construction stopped. He tried to serve Sunroad with a subpoena, but the police chief had misgivings about it, and Bonnie Dumanis, the district attorney, said Aguirre didn't have jurisdiction to issue it. Eventually, Sanders issued a stop-work order. What was revealed later was that Sanders' office had entered into secret negotiations with Sunroad and the FAA to pursue an alternative to lowering the building by 20 feet.

"We pulled back the curtain and showed there was a party going on," Aguirre says.

Sunroad stopped work on the building, sued the city and is taking off the top two floors. But suing Sunroad was unnecessary, according to Ronne Froman, who was Sanders' chief of staff for 19 months and resigned earlier this year.

"We were working it out on a day-to-day basis," she says. "But the city attorney likes to create chaos and turmoil, and it got whipped into a frenzy."

That argument, Aguirre says, is one he hasn't heard since his childhood.

"My brother used to do that," he says, laughing. "He used to tell me, 'I was going to do such-and-such, but since you did what you did, now I can't do what I was going to do.' How can you respond to that? They were conducting secret meetings!"

IN JUNE, AGUIRRE was asked by VoiceofSanDiego.org whether the situation looked like developer Aaron Feldman, owner of Sunroad, was getting special treatment because he was a developer and a Sanders campaign contributor—in other words, did it look corrupt? Aguirre said it did. And since Mayor Sanders' office was involved, did that make the mayor look corrupt? Aguirre took the bait. Yes, he said.

Sanders exploded. He immediately called a news conference to defend his reputation and was flanked by more than a dozen law enforcement officers, judges, the FBI, the district Attorney, the county sheriff and the city police chief. *Union-Tribune* columnist Gerry Braun called Sanders, Dumanis and Sheriff Bill Kolender the "Axis of Virtue." Aguirre stood by his claim.

Months later, Sanders told *San Diego Magazine* most people were not shocked he and Aguirre had this blowup. "Most people were shocked that we got along with each other as long as we did," he says. "We haven't totally recovered from it yet. We will—we're just not dating right now."

Sanders says Sunroad exposed some systemic problems within city government, such as departments that don't talk to each other, and the tendency of some in the bureaucracy to sit on their hands when they have a decision to make, hoping the problem will simply go away.

“I’m out there making statements, and then I get new information that makes my statements wrong,” he says. “My credibility is at stake, and then I need to make different statements. It pisses me off beyond belief.”

To make the Sunroad matter even worse for Sanders, he accepted the resignation of city land-use chief Jim Waring in mid-August. Waring was still lobbying on behalf of Sunroad well after the mayor publicly announced the city would accept nothing less from the company than full FAA compliance.

Part of the fallout, Sanders says, is that he is much more careful in what he says, which can be interpreted as either a lack of candor or an unwillingness to take a strong position.

“I like the mayor, personally,” Aguirre says. “He’s interesting and funny. This is like a family, and Sunroad was our first major blowup. I hope he can look at it and see I had his best interests in mind. The lessons are that the rule of law applies to everyone, and when the strong-mayor powers are used, the system works.”

But which system?

“Sanders was active in helping people do what was illegal, then brought his virtue group in to stand behind him,” Aguirre says. “That was ‘Will the real system please stand up?’ It showed me the real system is based on relationships, not the law.”

Sanders agrees the Sunroad issue gave the appearance of the old ways of doing business in San Diego, where politicians were heavily influenced by the city’s business interests, namely real estate developers and builders.

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“I understand why people saw it that way,” he says. “In retrospect, I should have put a stop-work order when I first saw what was happening, rather than try to solve the problem. We muddled that up.”

But Sunroad also gave Sanders’ critics (besides Aguirre) the opportunity to voice their misgivings on how the city in general is being run, and how well those strong-mayor powers are being applied.

“This is a pay-to-play administration, and he got caught on Sunroad,” says Steve Erie, professor of political science at the University of California, San Diego, who is writing a book on local politics, called *Paradise Plundered: Fiscal Crisis and Political Turmoil in San Diego*. He sees many parallels between Sanders’ administration and Susan Golding’s, who was mayor for most of the 1990s.

“The story of San Diego is told in sweetheart deals with developers,” says Erie. “Sanders is guilty of moral corruption by doing one thing and then denying it. Just like Golding, he gives special access to the big contributors who represent the growth machine of San Diego. The developers have run this town for so long it will be a struggle to the death to break their hold. He’s Susan Golding in drag.”

Sanders is merely the spokesman for business-as-usual politics, Erie says. “When Sanders opened his mouth during his campaign, Tom Shepard’s voice came out,” Erie says. Shepard, a campaign consultant, worked on both the Sanders campaign and the strong-mayor proposition. “Now when Sanders speaks, all I hear are Kris and Fred.” Kris Michell, Sanders’ chief of staff, and Fred Sainz, his spokesman, both were part of Susan Golding’s inner circle.

In addition to Sunroad, Erie points to the deal made for developer Doug Manchester to turn the Broadway Pier area into a complex of hotels, condos and shops. That deal was reached before Sanders took office, but if Sanders really wanted to exert his power over developers, Erie says, he would have delayed approval of the complex so that the area's use could be reevaluated.

"But since Manchester was a big contributor to Sanders' campaign, there was a quid pro quo," says Erie. He also cites the selection of the firm Grubb & Ellis to handle the auction of city property as evidence of more sweetheart deals. "Sunroad is just a preview of coming attractions," he says.



Councilmember Scott Peters

But the mayor's supporters offer a strong rebuttal. First, they note, Manchester had been a strong supporter of Steve Francis, Sanders' opponent in the mayoral primary. As for being a "big contributor," they say, even if Manchester had given the maximum allowable contribution to Sanders, the legal cap was just \$300. And Shepard points to times when Sanders' decisions have run counter to developers' wishes as evidence the mayor is not their stooge, and he echoes DeMaio's contention that many of the problems Sanders has inherited are from previous administrations.

"The mayor has done much to annoy development groups," Shepard says. "He insisted on inclusionary housing and parks downtown and made developers pay their fair share. He also took action to insist that developers cooperate with land-use agreements around airports. That ran counter to their wishes."

As for Sunroad, Shepard says that the problem was with the inertia in the development services office that existed long before Sanders arrived. "Essentially, no one was accountable before," says Shepard.

In August, both Jim Waring, the city's top land-use official, and Marcela Escobar-Eck, director of the Development Services Department, left their posts. They were either fired or they resigned, depending on whom you believe.

"It's easy to criticize [Sanders] for problems he inherited, but these are real growing pains," Shepard says. "He's having to change the culture of an 11,000-person bureaucracy."

George Mitrovich, who runs the City Club of San Diego and hosts frequent public forums on city politics, says while he supported both Sanders and the strong-mayor proposition, he is "disappointed" with how the city is being run.

"Sanders is a great person and is popular, but he and his people play defense," Mitrovich says. "A leader *leads*. He needs to get out in front of the public with a plan and say 'Here's what we need to do.' What we don't need is a caretaker mayor."

CITY COUNCILMEMBER Donna Frye, who ran against Sanders in 2005, says Sunroad was an example of how the mayor's office operates in direct contradiction to Sanders' campaign promise of transparency in government.

"This administration has a strong tendency to control everything without explanation," she says. "You had the city attorney offering a legal opinion and the mayor not accepting that opinion, and instead doing an end run trying to work out a compromise, all outside of the view of the public and the city attorney. That's fairly instructive. It revealed a pattern of someone who is not clear on government as a public process."

Frye was also frustrated by the mayor's office when she tried to conduct a public hearing on a rigorous citywide recycling program she was proposing earlier this year.

“They told me they wouldn’t be showing up to our hearing,” she says. To force their appearance, she issued a summons, which she has the authority to do under the city’s charter. Some of the mayor’s staff reluctantly showed up, she says, but they were unprepared.

“You can’t just thumb your nose at the city charter,” Frye says. “It’s not the way to govern. A lot of time gets wasted on these power struggles. I should not have to work this hard just to get things before the public. It’s weird and depressing sometimes.”

In late August, Sanders reversed course and is now supporting a law that would require city residents to recycle and would provide recycling bins to apartment, condo and office buildings. The law is similar to the one proposed by Aguirre in April.

But the power struggle matters, Frye says, because it is exposing where the city’s power really is.

“The developers and real estate interests are struggling to hold on to the same old structure,” she says, “but we’re starting to see it crumble. The battle will get worse, but the framework has been laid to expose the deals and let the public see how they’re done.”

That’s not to say Aguirre is against the Building Industry Association, the powerful conglomeration of developers, land owners and builders, the city attorney says. “It’s expected that the economic drives the political—every city grew up that way,” he says. “But the economic has so overwhelmed our system that we have no plan for sustaining our city into the future. We have no fallback plan for energy or water. We don’t want to shut down the development industry. But they’re on automatic pilot, and we need to convince developers we need a greater social utility from them.”

WHILE MANY might disagree with whether the city is getting adequate leadership, all agree on one fundamental reality: There simply is not enough money to run the city. The city attorney wants to roll back benefits that are causing massive debt. The council and mayor say they have a 20-year plan to pay off the debt and care for the pressing issues of infrastructure such as aging sewer and water pipes, roads, emergency services, labor costs, water treatment and other environmental concerns.

“There was a moment in time, after the old administration left, where we could see some traction marks and pull out of neutral or reverse, but that didn’t happen,” says Pat Shea, a lawyer and businessman who ran for mayor in 2005 with the notion that declaring bankruptcy was an option. He later became a staunch Aguirre ally.

“Everyone is waiting for something to happen. First we had to wait for the Kroll Report, then for the KPMG Report, then for the internal controls, and now we’re waiting for a new computer system? We keep putting off until later to do what needs to be done now. We’re looking for a magic bullet.”

The mayor, Shea says, needs to make a compelling case to raise revenue. “These are math problems, not liberal-arts problems,” he says, “and we haven’t squared up to any of them. We need a plan that takes us from the red numbers to the black numbers, where all the components of the city are addressed across the board simultaneously. We need to embrace and articulate the plan. This is a problem that has to be solved. It won’t solve itself. No one sees how the road we’re on will get us anywhere.”

To use a different metaphor, Shea says the mayor’s budget plan is like a person having major organ failure that causes a finger to fall off. “We’re only addressing the finger, and no one wants to look at the organs,” he says. “We need to look at revenues, pension, labor, all of it at the same time.”

So does anyone have a plan? Still another metaphor: “The question is whether we have enough people with pads and jerseys on to play the game,” Shea says. “And the answer is no.”

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He does mention a person out there whose time may have come to lead the city—but it’s no one in office right now.

“Steve Francis has an uninhibited voice and can say this stuff,” Shea says. “He is one of the few people in the civic establishment who is willing to speak out on the issues.”

Francis, who built AMN Healthcare into a billion-dollar business and took home \$53 million in compensation last year, ran for mayor in 2004 but lost the Republican endorsement early in the campaign to Sanders. In a phone interview with *San Diego Magazine* from Moscow, Russia (it took only one day to reach him), where he was vacationing, he said he would decide this fall whether to run again. But the former Nevada legislator has been monitoring the city’s progress closely, and he sounds very much like a candidate.

“The biggest issue right now for San Diego is the lack of leadership,” he says. “Part of leadership is telling people what they don’t want to hear, and the Sanders administration has not been open with the public about how dire our financial situation really is. He’s papering over it and telling everyone we’re solving it. He’s not telling people that it’s not fixed—and it’s not.”

Francis agrees with Erie that it’s beginning to look like the Golding years all over again.

“My gut tells me we’re back in those ways of developers having too much influence like they did during [the] Golding [administration],” he says. “Sanders looks like he’s being led around by his aides with a ring in his nose. Fred Sainz has been so good at spinning that he has no credibility anymore. That works until something goes wrong, like Sunroad, and then it backfires.”

At least Aguirre is doing *something*, Francis says. “Aguirre is trying to fix it through a legal remedy, but it’s a financial problem,” says Francis. “Is Aguirre running the show in San Diego? I believe so. He’s filled the vacuum.”

Shea concurs that, in the absence of proper leadership from the mayor and the council, the city attorney is assuming it’s his problem to solve.

“Mike is perceived as out of step with how business gets done, and that criticism would be valid if there was a program he was getting in the way of,” Shea says. “But there *is* no program. He is smarter, works harder and cares more than most of them. He’s not interested in the government cheese ball.”

AGUIRRE HAS concentrated most of his efforts on the underfunded pension the city’s pension board awarded itself, and on retired city workers’ health benefits—which together carry a bill of close to \$2 billion.

The fear that he is going to be able to roll those benefits back has given rise to a cottage industry of Aguirre haters. John Kaheny, who worked for former city attorney John Witt, monitors all things Aguirre on his Wolverine Web site and blog.

“Aguirre’s purpose is to drive the city into bankruptcy and take control of the city’s investments,” Kaheny says.

Dan Coffey, who is running against Aguirre in the 2008 election, focuses more on Aguirre’s alleged character flaws. “He’s a ranting, bipolar, pathological, narcissistic abuser of women,” Coffey says. “He destroys whoever is against him.”

Aguirre’s self-righteous tone took a hit in August when it was revealed he was still collecting money to pay off his half-million-dollar campaign debt to himself from 2004. Some of the money came from attorneys who provide outside counsel to the city attorney’s office—attorneys who stand to profit from Aguirre. Some came from Aguirre’s own employees at the city attorney’s offices, who depend on him for their livelihood.

And stories of Aguirre’s emotional meltdowns have been well documented both before and after his election.

Don McGrath, an attorney who works in the city attorney’s office, was fired by Aguirre and then rehired the next day.

“I took the day off,” McGrath says, smiling. “Mike’s susceptible to pressure like anyone else. But look at what he’s done. If it wasn’t for Mike, Sunroad would have never cooperated. The people who have run this town for years are the people he’s up against—it’s the guys who want to build on your nose.”

Aguirre’s effect on the city is all positive, McGrath says of his boss. Aguirre tends to issue news releases and call news conferences more than Lindsey Lohan’s publicist; he threatens to sue more than he actually sues; he accuses people of wrongdoing and corruption without filing charges—all of which have a positive effect on the city, McGrath claims.

“It’s like when you see a cop giving a ticket, everyone slows down and abides by the law,” he says. “That’s his impact. We’re uncovering a lot of stuff. I don’t see how fighting with him is productive.”

Still, plenty of attorneys have quit or been fired since Aguirre arrived. His office is authorized to have approximately 140 attorney positions, but more than 100 have departed since his election.

“That’s a huge loss of institutional memory,” says Scott Peters.

But Aguirre shrugs it off. “We finally have our team in place,” he says. “Many of the people who left were excuse-makers for the wrongdoers. With the skillful people we have now, this is one of the best law firms anywhere in the country—I consider it a management miracle.”

Dan Bamberg, another attorney in Aguirre’s office, finds it amusing that Coffey would call Aguirre bipolar. “That would imply there is a down cycle in Mike’s behavior,” Bamberg says. “There’s only one cycle in Mike. I guess that means he’s monopolar.”

A smile appears on Aguirre’s face at the mention of Kaheny and Coffey. “There’s a lot of anger out there because the party’s over and Mom and Dad are back home,” Aguirre says. “Kaheny served dishonest people who are afraid I’m trying to take away their benefits. But they’re getting a pension they didn’t pay for, and there is no money for their health benefits.”

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And Coffey? "He's a cross between Forrest Gump and Lee Harvey Oswald," Aguirre says. "He videotapes me and follows my fiancée. He's the only guy who makes Scott Peters feel good."

This kind of talk contributes to the perception that nothing is being accomplished in San Diego other than juvenile name-calling.

"Is Aguirre a complicating factor in moving this city forward?" asks George Mitrovich. "Absolutely. He's a cancer in the government of this city. You don't know what doesn't get done because people are afraid he'll call a press conference and accuse them of criminal wrongdoing. He's a disruptive, dangerous person and the hero of conspiracy theorists."

Can all of this sniping be good for the city? Does it help in how the city is run and the problems are solved? Will it get us back in the bond market?

*Is this any way to run a city?*

All involved say yes.

"There's no law that says you have to like each other to govern," says Frye.

What the public is getting, insiders agree, is a front-row seat in democracy in action.

"This is part of the price we pay for transparency in government," Sanders says. "The more you see, the messier it gets. The public is not used to this kind of intense scrutiny. We're all just learning this together. Council is trying to find its equilibrium, and I'm trying to find mine in this new form of government. It's a different atmosphere—not necessarily bad. It's just uncomfortable for everyone at the moment, and the public gets to watch."

The problems and the mess aren't new, either.

"The conflicts were there before," says Shepard. "We just didn't see them. They're more visible now. In any big system, there are competing interests. Before 2006, they were concealed. The transition to strong mayor is not seamless."

Peters says in the old days, no one believed the city manager when he said there was no money. "The most important conversations happened in the stairwells of City Hall," he says. "Now there is nowhere to hide it."

And according to Mitrovich, the transition is working.

"You have to judge it against what preceded it," he says. "The way we got into this mess was the council/manager form of government. The system is working."

As the transition continues, both the mayor and city attorney are running for reelection next year, and four councilmembers will be replaced because of term limits. And this fall, the city charter is under full review.

“The charter review is going to be the real power grab,” Erie says. “The developers only got half the loaf with the strong mayor. Now they have the chance to rewrite the rules in their favor. Now more than ever we need a watchdog. This is a city that needs adult supervision.”