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A PUBLICATION OF THE GEAUGA COUNTY BAR ASSOCIATION

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SECRETARIES DAY 2006

The next General Meeting of the Geauga County Bar Association will be for Secretaries Day, Wednesday, June 28 at Noon at Big Creek Park. This year will be very enjoyable and relaxing as we will be spending an *Afternoon in Italy*. Catering will be provided by Arrabiata's of Mayfield Heights. For more information or directions, please call Susan at 440.279.2087.



The Buckeye on the front lawn of the courthouse



2ND ANNUAL PIE BAKING CONTEST

Last year we had over 20 entries in the Pie Baking Contest held in conjunction with Secretaries Day. We are hoping for even more delicious pies again. All bakers will receive a gift and the best fruit pie, best nut pie, best other pie and best presentation winners will receive additional prizes.



JULY CLE

Jonathan Blakely, Esq. will be discussing how Bankruptcy Law has changed since the enactment of the Bankruptcy Reform Act on July 7 at the Main Street Café from 8:30 a.m. to 10:30 a.m. The cost is \$40 for 2 hours of CLE instruction. This program has been approved by the Ohio Supreme Court Commission on CLE. Call 440.279.2087 for more information.



The result of water damage that occurred at the courthouse over Easter weekend.

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CHANGES TO THE GEAUGA COUNTY LOCAL RULES OF COURT, GENERAL DIVISION

Enclosed with this issue of *Ipsos Jure* is your new copy of the Local Rules of Court for the Court of Common Pleas General Division. Please fold the book (for mailing purposes, we left it unfolded) and keep it with your other legal research books. The new rules will be effective July 3, 2006. The website will be updated with the new rules sometime in July.





PRESIDENT'S COLUMN

STEPHEN G. MACEK, ESQ.

The Ohio State Bar Association's annual convention was held in early May in Akron, two blocks from my office. I went, picked up 11 CLEs and had a very enjoyable time. Our bar had a small, but amazing turnout. Three of the seven or eight GCBA members that attended are past presidents of the OSBA: **Joe Svete, John Robertson and Mary Jane Trapp**. Two were presenters: **Mary Jane Trapp and Mike Apicella**. A Geauga County resident, **Robert Ware**, was elected President-Elect of the OSBA. Rob is a partner at Thompson Hine and practices out of their Cleveland office. He isn't a GCBA member yet, but I am working on him. Many of our current members also live in Geauga County and practice law in downtown Cleveland. I have worked in downtown Cleveland too and remember the daily battle of "480 westbound to 77 northbound" quite well.

One thing has been constant in my legal career – travel. I used to handle consumer collection work for a local bank and filed cases in every common pleas, municipal and county court from Elyria to Conneaut. I did what I could to avoid trials and hearings, but often there was nothing to do but get in the car and go.

The last time I was in solo practice in Chardon, I performed legal services on a "per diem" basis for a bank subsidiary located in Tower City. I would go there a couple days a week. Additionally, I contracted with the Ohio Public Defender's Office to represent releasees at parole revocation hearings held throughout Northeast Ohio. I attended revocation hearings in Stark, Coshocton and Belmont counties on a regular basis. It was hectic, to say the least. My brother Emil called me one night after a particularly grueling day of driving around and asked how I was doing. (I think he knew I was getting a little frayed around the edges.) I told him: "Oh, I'm fine. I'm fine. Really, it's fine. Everything's fine. Really." When I hung up the phone, I

laughed and told June, "I'm a mess."

That Christmas, Emil came to my rescue with a gift of Books on Tape. You might not think a macho guy like me would have liked listening to Lucy Maud Montgomery's *Anne of Green Gables*, but I did. It is hard not to maintain an upbeat, positive attitude after listening to the hilarious antics of Ms. Anne Shirley. Those first cassettes got me hooked. My present commute to Akron takes about 50 minutes and audio books are an essential part of it. Among the titles I have listened to are the entire H. K. Rowling's *Harry Potter series* (can't wait for book seven!); John Knowles's *A Separate Peace*; David McCullough's *The Johnstown Flood*; Erik Larson's *Isaac's Storm*; Ken Burn's *Horatio's Drive*; Simon Winchester's *The Professor and The Madman*; and *The Diary of Anne Frank*. Even in the 21st century, there is nothing more relaxing than "reading" a good book. So head to your favorite library or bookstore and pick one out on CD or cassette. It won't shorten that

unpredictable drive on 77 Northbound for those who work downtown. But it might take your mind off that jerk in front of you with the cell phone growing out of his ear that just got passed by a school bus.

By the way, don't miss our lunch honoring Secretaries and Administrative Assistants on June 28th at Big Creek Park in Chardon. It's sure to be worth the trip.



The GCBA Secretaries are looking forward to the luncheon!

NEW IN THE LAW LIBRARY

BY SUSAN PROBOSKI, LIBRARIAN

The library now subscribes to the **ALI-ABA Direct 2 Library** service. This resource has books, CLE course materials, magazines, articles and forms from the American Law Institute and American Bar Association programs. Topics from Alternative Dispute Resolution to Torts are covered. If you see a book or program advertised by the American Bar Association or American Law Institute, call the Library at 440.279.2087 to see if it is available on Direct 2 Library. As with any research item, I will be happy to e-mail articles to you.





11TH DISTRICT COURT OF APPEALS

SUMMARIES BY LINDA IRELAND, COURT PARALEGAL

On March 10, 2006, in *State v. Williams*, 11th Dist. No. 2005-P-0009, 2006-Ohio-1169, the court of appeals affirmed the judgment of the trial court. The court determined that there was substantial evidence upon which the jury could reasonably conclude beyond a reasonable doubt that appellant was guilty of rape. The jury did not clearly lose its way in convicting appellant of rape. Also, the court held that appellant failed to demonstrate that his waiver was not made knowingly, voluntarily, or intelligently.

On March 17, 2006, in *State v. Mausling*, 11th Dist. No. 2005-G-2626, 2006-Ohio-1270, the court of appeals affirmed the judgment of the trial court. The court determined that exigent circumstances existed to justify a warrantless entry of appellee's residence. The officers entered appellee's house because they were concerned for his safety and welfare due to the fact that they believed that appellee had been the driver of the vehicle involved in the crash and that he was unresponsive with a lit cigarette on his lap. The court determined that appellant failed to carry its burden of proof on the Miranda issue as well as on the two-hour requirement pursuant to R.C. 4511.19(D)(1), which were clearly set forth in appellee's motion to suppress.

On March 31, 2006, in *Drazetic v. Coe Mfg. Co.*, 11th Dist. No. 2005-L-035, 2006-Ohio-1688, the court of appeals reversed the judgment of the trial court and remanded the matter for further proceedings. The court held that the trial court erred to the prejudice of appellants in granting appellee's motion for summary judgment. The court determined that appellants satisfied the three prongs of *Fyffe v. Jenco's, Inc.* (1991), 59 Ohio St.3d 115.



SATURDAY BY IAN MCEWAN

A BOOK REVIEW

BY THOMAS I. PEROTTI, ESQ.

Reminiscent of *Ulysses* by James Joyce, a book that I have started several times but never completed, Ian McEwan's latest book, *Saturday*, takes place during *one day* in the life of a prominent British Neurosurgeon, Dr. Henry Perowne.

Dr. Perowne awakens very early this particular Saturday feeling "inextricably elated". This mood dissolves as he peers out of his bedroom window and notices an airplane, with one of its wings on fire, in its final approach to Heathrow airport. As the day progresses, the novel cascades through the moods, insights, events, and consciousness of Perowne. The author's engaging writing style converts normally mundane events into profound insights into human existence. For example, as Dr. Perowne anticipates the pleasure of a hot shower, the author states:

When this civilization falls, when the Romans, whoever they are this time around, have finally left and the new dark ages begin, this will be one of the first luxuries to go. The old folk crouching by their peat fires will tell their disbelieving grandchildren of standing naked mid-winter under jet streams of hot clean water, of lozenges of scented soaps and of viscous amber and vermilion liquids they rubbed into their hair to make it glossy and more voluminous than it really was, and of thick white towels as big as togas, waiting on warming racks.

I have often wondered about the difference between "literature" and "fiction". This novel answers that question.

2006 GCBA GOLF OUTING

"I'm really looking forward to golfing in the GCBA golf outing. My last outing at the Kabul Golf Club was less than satisfying with sheep on the fairway, carpet circles to golf off of, and black sand for greens. PAN"



Judge Fuhry and Judge Grendell at Law Day 2006



BORROWER BEWARE: LESSON LEARNED

FROM GROOB V. KEYBANK

BY MARY JANE TRAPP, ESQ. APICELLA & TRAPP

Business owners who borrow money may be quite surprised to learn that their confidential information disclosed during the loan application process may not be as confidential as they think, and attorneys who represent business owners in these transactions should take a hard look at the Ohio Supreme Court's decision in *Groob v. KeyBank*, 2006-Ohio-1189, decided on March 29, 2006, before disclosing confidential information or trade secrets without the protection of a written agreement with the bank signed before any information is provided.

Jeffrey Groob and Lowell Bowie wanted to buy the Oldfield Equipment Company. In order to obtain financing, they met with two KeyBank employees, including a loan officer. These prospective buyers did have an agreement with the seller not to disclose confidential business information, but obviously in order to start the loan process they had to give to Key Bank a copy of the proposed purchase agreement that contained the exact dollar amount of their proposed bid for the business.

The loan officer called the prospective buyers and told them that KeyBank was not interested in offering them a loan, but unbeknownst to the prospective buyers, the loan officer was interested in buying the business. Within a week, the loan officer's husband and a partner, who was also a KeyBank customer, contacted the buyer and offered to purchase the business for the same amount as offered by Groob and Bowie. The offer was accepted and the loan officer resigned from KeyBank to help manage the business operation of Oldfield Equipment.

About a year later Groob and Bowie discovered the loan officer's role in the purchase of Oldfield after they read an obituary of the prior owner. They then filed suit against the loan officer and KeyBank for breach of fiduciary duty, tortious interference with a business

opportunity, and negligence by the bank in supervising the conduct of the loan officer.

The trial court granted a directed verdict dismissing Groob and Bowie's claims against the bank for breach of fiduciary duty and negligence, and a jury then found that KeyBank had no liability for tortious interference. The jury did find the loan officer liable and awarded Groob and Bowie damages totaling \$556,020.

The 1st District Court of Appeals held that KeyBank owed Groob and Bowie a duty of confidentiality. The court of appeals also held that the jury instruction on *respondeat superior* was defective as it did not advise the jury that KeyBank could be held liable if the loan officer had been aided in her tortious conduct by her status as a KeyBank loan officer.



Mike Apicella at Law Day 2006

The Supreme Court of Ohio in a 4 to 3 decision authored by Justice Lanzinger held that “[a] bank dealing at arm’s length with a prospective borrower does not have a fiduciary duty to that prospective borrower unless special circumstances exist.”¹ Justice Lanzinger pointed to R.C. 1109.15(D), which provides, “[u]nless otherwise expressly agreed in writing, the relationship between a bank and its obligor, with respect to any extension of credit, is that of a creditor and debtor, and creates no fiduciary duty or other relationship between the parties.”²

The court also reversed the court of appeals on the jury instruction issue holding that [f]or an employer to be liable for a tortious act of its employee, that employee must be acting within the scope of employment when the employee commits the act.”³ Justice Lanzinger reasoned that “[u]nder an apparent-authority analysis, the acts of the principal, rather than the agent, must be examined. ... There is no evidence that KeyBank represented to appellees that [the loan officer] was authorized to use their information for purposes other than reviewing their loan request...”⁴

The majority decision was joined by Chief Justice Thomas J. Moyer and Justices Maureen O'Connor and Terrence O'Donnell. Justice Paul E. Pfeifer wrote the dissent that was joined by Justice Evelyn Lundberg Stratton and Judge Sheila G. Farmer sitting for Justice Resnick.

In his dissenting opinion, Justice Pfeifer wrote that the court has not directly held that banks owe a duty of confidentiality because the court has not had to. “Most



Lynne Day & Steve Macek at Law Day 2006

customers would be surprised to learn that such a duty does not already exist, and most banks necessarily behave as if one does.”⁵

In *Stone v. Davis*, the court found a limited fiduciary relationship between a borrower and a mortgage lender, and Justice Pfeifer wrote that “[a] customer does not disclose all the information necessary for the bank to make the judgment on a loan application without being confident that the bank's employees will not peddle the information up and down Main Street. . . . The relative positions of the parties are at their most unequal at that point, with the bank in the superior position. The special trust reposed in the bank and the bank's resulting position of superiority should give rise to a limited fiduciary duty in the bank to keep the borrower's sensitive information confidential.”⁶

When giving advice to business owners the attorney must read carefully the section of the majority opinion in which Justice Lanzinger explains the difference between the duty of confidentiality and fiduciary duty, summarized in this statement, “A bank’s committing to keep a customer’s information confidential does not create an obligation to act only in its customer’s best interest, even to its own detriment, which is what a fiduciary relationship requires.”⁷

Let the borrower beware.

1. *Groob v. KeyBank*, 2006-Ohio-1189 at syllabus 1.
2. *Ibid.*, at ¶22.
3. *Ibid.*, at syllabus 2.
4. *Ibid.*, at ¶56.
5. *Ibid.*, at ¶60.
6. *Ibid.*, at ¶64.
7. *Ibid.*, at ¶25.



THE SUPREME COURT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN

BY PAUL A. NEWMAN, ESQ., NEWMAN & BRICE

I recently took a trip to Afghanistan to visit my nephew who teaches English in adult education courses. He spoke Farsi quite well and was able to be my interpreter for the ten days I spent in the country. I had indicated to him that I would like to visit the court system to discover how the law operated in this third world country. He was uncomfortable with

the idea; he is only 22 years old and not overly familiar with the judicial system. The servant/driver was also uncomfortable with the idea; Afghans do not want to associate with the judicial system. Notwithstanding, I prevailed, and, on the last day of my trip, on the way to the airport to leave, we stopped at the Supreme Court of Afghanistan.

I did not take any photographs of the exterior of the building for the reason that I had been temporarily arrested several days previously for taking photos of a government compound, albeit American. The building is of a 50's style Russian drab architecture, three stories high. Surrounding the building is a block/cement wall six feet high with razor wire coiled along the



Agnes Sojka and Millard Farmer at Law Day 2006.

top to prevent access by means other than through the gate. We drove in, stopped at the security gate twenty feet into the compound. Soldiers with AK-47's immediately surrounded us. That is a weapon I could identify easily because I had captured and used a number of them 37 years ago in another war. In our vehicle was my nephew in the back seat of the Toyota Land Cruiser, me in the front passenger seat, and the driver behind the wheel, who spoke very little English. The two soldiers at the driver's window wore green fatigues which bore a patch of the 82nd Airborne Division on the left shoulder. I knew they weren't in the 82nd Airborne since they weren't Americans (I had been in that division way back when, I can hardly remember now), so I told my nephew to inform them that that was the unit to which I belonged in another war. That tidbit of information ingratiated us to them instantly.

Notwithstanding, they wanted to know why we were there. My nephew told them we were there to visit one of the Justices. They gave a cursory inspection of the vehicle, smiled at us, at me, raised the flimsy gate, and waved us through. We drove past the gate, an immediate right turn brought us in front of the building where an elderly man in civilian clothes came down the steps of the building to inform us that he would be our interpreter to see the Justice. We exited the vehicle, the driver went to park and stay with the vehicle in the parking lot at the far side of the building. If we had a car bomb in place, the building would have been leveled—we did not have such an item, only a switchblade hidden in my carry-on luggage.

The interpreter took us into the building past a magnetic



Congratulations to the GCBA Law Enforcement Officer of the Year Detective Mitch Kelly from the Geauga County Sheriff's Office.

security arch without a pat down (it is more difficult to obtain entry to the Lake County Courthouse than the Supreme Court of Afghanistan), where several more soldiers had the 82nd Airborne patch on their shoulders. I learned that that the 82nd Airborne had assisted in training these soldiers and gave them the



Chardon Police Chief Tim McKenna and Sergeant Troy Duncan at Law Day 2006.

fatigue tops. We ascended a flight of stairs to a small narrow office where we were offered a seat on a couch while the interpreter inquired what we wanted. I told him I would like to meet with one of the Justices, if permissible, to learn knowledge of the legal system in that country. Another person came in and asked questions of the interpreter; he didn't

know that my nephew spoke the language. "What does he want here?" was the inquiry. "To speak to the Chief Justice," was the response.

After a little haggling, we were informed that the American Ambassador was arriving to meet with the Chief Justice at 2:00pm, so that he could not meet with us until about 2:30pm, was that okay? I responded that it wasn't okay because I had to be at the airport at 2:00pm, two hours prior to my flight to Dubai. I then asked if we could meet with someone else in the interim and to give the Chief Justice my regards and regrets. The idea that we could walk in and get an appointment with the Chief Justice was an accomplishment. (In 1987 while traveling in Ecuador, I met with one of the Supreme Court Justices merely by walking into the structure and into one of the offices with an interpreter—terrorism was not a factor at that time. Terrorism is an issue now, but I didn't see any American troops on the top of the building in anticipation of the Ambassador's visit; I imagine they were providing security out of view). We were then ushered into another smaller office where the person behind one of two desks with no artwork on the walls was quite preemptory; I think we were wasting his time, or at least it appeared that that is what he thought by his demeanor. After ten minutes, we were then ushered

into a large office one flight up, introduced to Dr. Abdul Malik Kamawi, General Chief Administrator of Judiciary of the Islamic Republic of Afghanistan and the interview commenced. Present were Dr. Kamawi, who spoke some English, the interpreter, my nephew, and two other persons who walked in and out several times, added to the conversation, inquired, put in two bits, and looked interested. Tea was served to me, my nephew and the interpreter along with a dish of assorted nuts—very nice touch. I don't know if the host not drinking tea was a statement that "I may be obligated to show my guests Afghan hospitality, but I don't partake in it myself because you are uninvited and I am not sure I want to be here in this interview with you." But, it somewhat seemed like it.

Dr. Kamawi wore a dark pinstriped suit that he kept buttoned while seated in a soft leather chair with wooden legs. My couch was too cushy, so I sat on the edge of it. The interview began and lasted for almost a half-hour. Here is what I garnered through direct statements, through the interpreter, and through bouncing the words around between my nephew, interpreter, and Dr. Kamawi with input from the walk-ins and restating some concepts several times. I never got a chance to drink tea or eat nuts.

There are three levels of courts; the Primary Court, the Appeals Court, and the Supreme Court. Primary Court is a single judge whose



Tracy Fronk and Judy Thrasher at Law Day 2006.

pay is \$40/month. The Appeals Court is a panel of five whose pay, individually, is \$100/month. There is an Appeals Court in each province, and two in two provinces. The Supreme Court is a panel of nine whose pay, individually, is \$200/month. (As an aside, this is low pay for Judges. For

comparison sake, when I golfed on the atrocious Kabul Golf Club course, it cost me \$4/caddie for nine holes—the caddie, if he gets a job every day for a month, which he doesn't given the caliber of the course, makes more than the Supreme Court Justice).

Join the Bocce Ball Tournament being held in conjunction with Secretaries Day. Put together a team of 4 or sign up and be assigned to a team. The members of the first place team will each get a bottle of Italian Wine.

In criminal cases, if an infraction is minimal or in a civil case if the controversy is less than \$1000, then there is no right of appeal—the case is over.

As best as I could make out, appeals were de novo on the transcripts and evidence. Defendants should have attorneys, but usually don't. Defendants in serious cases can get appointed attorneys, if requested, but it doesn't happen often.

Attorneys obtain a bachelor's degree, then intern for one year after which they undergo a two week written exam to obtain their license.

The country operates under Sharia Law. That is law handed down through the prophet, Muhammed, law told by friends of Muhammed that Muhammed said such and such during his life as law, interpretations of the Koran by Imams, Mullahs or other clerical personages. Although the country has changed from a Taliban controlled society, the body of law remains the same as it was. Hence, the recent case reported in the

press of the man who twelve years ago converted to Christianity who was sentenced to death under the current regime. Conversion in this Islamic State is a serious crime. Proselytizing is also a crime. My nephew better watch himself.

Well, it was time to catch my plane or I would have to remain in the country. I gave my thanks, kudos, and exited the building, the country, and Islam. Quite fascinating.



David Ondrey at the TD&D 75th Anniversary Party



The Flynn's and Slattery's at the TD&D 75th Anniversary party.



THRASHER, DINSMORE & DOLAN CELEBRATES 75TH ANNIVERSARY

By MATTHEW J. DOLAN, ESQ. AND KELLY A. SLATTERY, ESQ. THRASHER,
DINSMORE & DOLAN

Over 150 people, including local attorneys, judges, political figures, and community members gathered on Thursday, May, 18 to celebrate the 75th anniversary of the Chardon law firm of Thrasher, Dinsmore & Dolan, and to honor one of its dedicated past attorneys, **Lawrence Dolan**.

Lawrence Dolan practiced with the firm for over 40 years prior to his purchase of the Cleveland Indians in 2000. "We decided to do this because it's the law firm's 75th anniversary and, as it happens, also Larry's 75th birthday," said **David Lowe**, a partner with the firm.

The firm was started in 1931 by **Ray Thrasher**. As told by **Dale Markowitz**, another partner of the firm, Thrasher started the firm because he believed "being a lawyer was more lucrative than being a barber." During the Depression, Thrasher continued to work as a barber, as a way of attracting clients to his law practice.

Thrasher was joined by **Jim Dinsmore** in 1950, and the firm has since grown to ten attorneys. "... we've always had the kind of people who have always been your teachers, your mentors and your friends." Markowitz said of the firm. He told the crowd, "Geauga County has a rich tradition of very talented lawyers ... our bar association members get along with each other, which is rare, but is a very civil, decent way to practice law."

Dolan was presented with a picture of the three office buildings that have been the firm's home throughout its history – the building now known as the Courthouse Annex, the former Chardon Savings Building, and its current home, the Eltech Building. **Jim Patterson**, a client of the firm, said, describing Dolan, "To sum Larry up in one word, he defines the word 'gentleman.'"



David Ondrey presenting Larry Dolan with a picture of the three TD&D office buildings.





Larry & Eva Dolan at the TD&D 75th Anniversary Party

REFLECTION BY LARRY DOLAN

REPRINT FROM 1 IPso JURE 2, JULY 1978

It is difficult for a Bar Association officer in communicating to the Bar not to raise the subject of our profession's image to the public. I am unable to overcome this difficulty. This issue is indeed paradoxical. Never have we been the subject of so much bad public comment yet never have the law schools been so crowded and crowded with quality people. We are accused of courting our own "business" by complex legislation and multiple spurious lawsuits. However, legal clinics' lower fee schedules are sought by and large by the same group who are most vocal in their criticism of the profession.

When one takes the time to root among these conflicting currents, some rocks can be found. I suggest some of these rocks are: a very high percentage of lawyers do a very good job for their clients; there is a need for a mandatory internship for young lawyers after the Bar and before the consumer. The client population as never before is seeking out the services of a lawyer and are

obtaining results most satisfactory to them. We are a highly visible group who by its very nature creates the potential of a dissident in every matter. Criticism of us individually and of the profession is inevitable. We should recognize, however, from the very quality of the students in the crowded law schools and the demand for our collective services that we are indeed doing a good job.

If we have a collective deficiency, it is not in what we do as a group but in what we do not do. Apathy is our deadliest enemy in terms of our public image and here again the concept of paradox exists. Our profession is one necessarily steeped in private confidences and not one were we direct the public media's attention to us. We must, where the circumstances permit, bring our individual efforts to the attention of the general public. We can do this individually by bringing to the Bar's attention those activities of the members of the Bar who outside the profession have brought credit to themselves and therefore to our profession.

Editor's Note:

Please note the article by Larry Dolan printed in 1978, 28 years ago. The article is still current. The status of the image of attorneys has not changed. In fact, the jokes are more prevalent now than they were in 1978. We ask ourselves how can we change that image. Globally, we certainly cannot. Individually, our clients generally like us, but generally they despise all other attorneys. Put a Geaugan on a personal injury jury and he/she will be parsimonious with an award for pain and suffering. Put that same Geaugan in a Plaintiff's suit on a personal injury and they can't understand why they aren't entitled to millions. Sometimes things just don't make sense.

Lawyers help people through the system and lawyers help change a faulty system. Lawyers anger people, lawyers demand, lawyers argue, lawyers capitulate; well, it seems lawyers are as human as the rest of the world.

Ipso Jure

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