The Florida Decision

Jonathan Cooper
3L Managing Editor

The Constitution is a document that sets limits, and its very purpose is to restrain power. Through the 10th Amendment, the Constitution declares that powers, which are not granted to the federal government, are reserved to the states and people therein, so whereas the powers of the states are unlimited, the powers of the government are certainly constrained.

The premise of the Constitution is that it is a living, breathing document. However, the power which Congress utilizes to achieve its aims is granted from within the four corners of the document. As such, the question regarding Health Care and its reform was not whether the principle is right, or if the country had the power to achieve its aims, but whether the laws passed by Congress were constitutional.

Flexing your muscle when you are not at a negotiating table may seem arbitrary. However, the constant practice and reformation, which occurs as you adjust your posture, and position while looking in the mirror is precisely what occurred with the Florida decision. The government, through Congress, sought a novel way of enacting legislation and a mandatory health insurance minimum by forcing its people into a stream of commerce.

Florida Decision, Continued on pg. 2

Success on Different Scales with Different Measures

Deciphering what the Bar Results really mean

Jonathan Cooper
3L Managing Editor

Each semester I inform you, the students of Thomas Jefferson, of our bar results. I must sadly say that each time I report this information I have the glimmer of hope that things will change and that our fates will turn. Unfortunately, our results for July 2010 fell where they typically do, below the California ABA approved law school average, behind Cal Western, and behind every one of our personal expectations.

This past July was no exception to our dismal performance history on the California Bar Exam. The state average for all California ABA approved law schools, first time takers, was a stunning 75.2%. Thomas Jefferson School of Law, was 58%. This is 17.2% below the state average for all California ABA approved law schools, and 12% behind Cal Western (who had 70%). The following chart is the passage percentage for first-time takers of the Cal. bar:

<table>
<thead>
<tr>
<th></th>
<th>TJSL</th>
<th>All ABA</th>
<th>Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2010</td>
<td>58%</td>
<td>73.3%</td>
<td>-15.3%</td>
</tr>
<tr>
<td>Feb 2010</td>
<td>52%</td>
<td>56.8%</td>
<td>-4.8%</td>
</tr>
<tr>
<td>July 2009</td>
<td>46%</td>
<td>76.5%</td>
<td>-30.5%</td>
</tr>
<tr>
<td>Feb 2009</td>
<td>42%</td>
<td>50.5%</td>
<td>-8.5%</td>
</tr>
<tr>
<td>July 2008</td>
<td>56%</td>
<td>80.7%</td>
<td>-24.7%</td>
</tr>
<tr>
<td>Feb 2008</td>
<td>61%</td>
<td>60.1%</td>
<td>+9.9%</td>
</tr>
</tbody>
</table>

http://admissions.calbar.ca.gov/ExamResults.aspx

Now these results in and of themselves are

Bar Passage, Continued on pg. 2

The SOAR Program at Saint Vincent DePaul Village

My experience as a participant in the SOAR program in downtown San Diego.

Marty Stratte
2L Criminal Law Society President

It is likely that most, if not all, members of the TJSL community have come across an individual currently calling the streets of San Diego’s East Village their home. One cannot help but wonder how these folks ended up on there and how they survive day-to-day. Many assume that a drug or alcohol problem is a prerequisite for homelessness and would be surprised to hear some of the heart wrenching stories of our neighbors currently living on the streets of the East Village.

St. Vincent de Paul Village (SVdPV), also known as Father Joe’s Village, is a residential facility for the homeless located just blocks from Thomas Jefferson School of Law’s new campus. SVdPV began in 1950 as a small operation handing out peanut butter sandwiches. Since 1987, SVdPV has provided housing, counseling, medical care, and educational programs to the homeless and those who are at risk of becoming homeless in San Diego. Many TJSL students regularly volunteer at holiday meals where SVdPV opens its gates to non-residents and allows for guests to enjoy a proper holiday meal.

The United States Courthouse in Pensacola, Fla.

Wikipedia user Ebyabe

Male devices such as these are at the center of a dispute involving the 4th Amendment.

The recent decision that left Your Fourth Amendment Rights in Shambles

Lindsey-Shannon Lee
1L Staff Writer

On January 3, 2011 the California Supreme Court made a startling ruling that challenges Fourth Amendment rights. In a 5-2 decision, the justices established a scary federal precedent that cell phones on a suspect’s person are subject to a warrantless police search. This decision brazenly departs from a recent Ohio Supreme Court ruling that held police do not have that right.

On April 25, 2007, Gregory Diaz was arrested by Ventura County Senior Deputy Victor Fazio in connection with the sale of six tabs of Ecstasy, a Schedule 1 controlled substance. According to court documents, Diaz drove the Ecstasy’s seller to the location of the sale and remained in the driver’s seat as the sale took place in the backseat. Deputy Fazio heard the sale via a wireless transmitter and immediately arrested Diaz for being a co-conspirator in the sale of drugs. Fazio transported Diaz to the sheriff’s station where he seized Diaz’s cell phone.

CA Supreme Court OK’s Warrantless Search of Cell phones

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Florida Decision, Continued from pg. 1

To simplify, Congress may utilize its power over commerce according to Landmark Cases, where the activities have a substantial relationship to, or substantially affect, interstate commerce. The crux of the Plaintiff’s argument is that, through their “inactivity” or not purchasing insurance, they are not having a meaningful impact on commerce and they are not partaking therein. The Government’s contrary study based on a study, which states that $40 billion is lost annually to under- or uninsured individuals, thus partaking in an economic activity.

The applicable portion of the law reads in part, Section 1501 “if an individual fails to [buy health insurance], there is thereby imposed a penalty.” Herein is the area of contention for its very definition and contention the penalty is imposed on “inactivity.” Specifically the lack of an individual’s forced purchase of a government product or comparable product from the free market is “inaction,” for which a penalty is assessed starting in 2014. The Florida court does an incredible job at conveying just how the government is unable to force its citizens to purchase any commodity, and further extrapolates on the rigidity and absurdity of allowing such usage through the Constitution. It likens the housing market to this argument, asserting that we all partake at one time or another in the housing market and allowing the government to force us to buy homes, or levy a penalty is absurd.

Florida is a key decision on behalf of the Constitution and I urge each and every one of you to seek it out. This case is bound for the Supreme Court (eventually) and it is a compelling piece of living, breathing history coming to life. Senior Judge Judge Roger Vinson gives a compelling, reasoned, and logical discussion as to the law in his holding. His words are poetic, easy to read, and are delivered to the American public.

The SOAR process always begin with an initial interview that I conducted with the applicant. It was during these initial interviews that I learned the real stories of how and why these folks were now living on the streets of San Diego. While at the same time honing my interviewing skills. Some, as adolescents, were kicked out of their homes by drug-addicted parents. Some were rejected by their family due to their sexual orientation. Others watched both of their parents go to prison. Perhaps most surprising: some were deserted by their frustrated families who had grown tired of caring for their mentally ill family member.

These stories served as the basis for medical summary report applications that were filed with the Social Security Administration (SSA). Also contained within medical summary reports were diagnoses provided by the resident physicians at SVdPV. I was required to meet with the physicians and case managers in order to further understand the applicant’s background and develop the applicant’s overall claim detailing why he or she was a proper candidate for Social Security disability benefits.

I found that my experience within the SOAR program at SVdPV provided me with a unique opportunity to practice important aspects of being an attorney. For instance, I had to counsel homeless, mentally ill individuals and delicately extract sensitive information that was necessary for the SSA to consider when reviewing the application. This process is akin to the consultation of a prospective client in order to determine whether or not there is a strong case to be heard. Next, I had to effectively convey the trials and tribulations that the applicant had experienced throughout her life into a justified plea for benefits. This stage was like writing a persuasive argument for a client. Moreover, while writing the reports, I had to confer with physicians and obtain each specific applicant’s medical records. This process is similar to the incorporation of an expert witness’ testimony into a case for a client. Finally, I was given the opportunity to interview individuals who have no ability to stand up for themselves in order to try and effectuate change within their lives by synthesizing their tragic accounts into a final closing argument - just like an attorney does for their client.

At times, law school can be a daunting experience that can cause students to feel overwhelmed and stressed. Participating in the SOAR program provided great perspective on what is important in life. It also invites one to weigh his own problems against those of others that are living amongst us, on the streets. Helping individuals who are homeless and mentally ill strive for positive change in their lives is a great opportunity that can also serve as a valuable method for law students to sharpen specific abilities that are necessary for effectively advocating on behalf of a client.

Fourth Amendment, Continued from pg. 1

nothing short of obvious. In one case, heroin was discovered hidden inside of a cigarette box in the suspect’s pocket during an arrest. The differences between drugs discovered inside a cigarette pack and the information accessible in a cell phone or smart phone are too vast to be enumerated. As it stands now, this opinion allows police to access information that would normally require a warrant, such as personal emails, client communication, photographs or even financial records.

Justice Kathryn Wergedal’s dissent called the new rule “overly permissive” and echoed a warning that such a decision could even lead to similarly invasive searches during routine traffic stops. She further states that this opinion allows police “carse blanche, with no showing of exigency, to rummage at leisure” through an arrestee’s mobile phone or portable computer.

Her opinion artfully expressed the fears of legal experts, defense attorneys and citizens everywhere, “The majority thus sanctions a highly intrusive and unjustified type of search, one meeting neither the warrant requirement nor the reasonableness requirement of the Fourth Amendment to the United States Constitution.”

While the nation anxiously waits to see this issue addressed in the U.S. Supreme Court, it might be a good idea to put a numeric lock on your mobile phone.

Bar Passage, Continued from pg. 1

not indicative of our overall performance, but rather a glimpse as to our insufficiencies. However, since I began disseminating this public information through The Jeffersonian, the results have been consistently poor.

These results are not emphasized enough, or highlighted enough on campus. My presumption though, is all of this will eventually change. The focus for the past few years has been on a new building, new campus, new faculty and a transition to a better future. It is time that we begin to focus on our bar pass rate. I believe this change started with the implementation of a new 1L grade curve. This mandatory curve established that 20% of students in all required core 1L classes would not pass under any circumstances. A non-passing grade is any grade below 2.0. As such at least 20% of every 1L class must fail within this mandatory failure, and up to 28% could conceivably fail. Now those 1L courses can be countered with second semester grades to raise your cumulative course grade above the threshold of 2.2, however the grades are still reflected on your transcripts. For more information, http://www.tjsl.edu/sites/default/files/files/EXAMINATIONS-GRADING-HONORS-Academics.pdf

The new curve will predict, or filter out, those students who’s GPA puts them into a higher risk category for not passing the California Bar Exam. Now GPA’s in and of itself does not dictate bar passage, however the correlation between lower GPA’s and lower bar passage rates cannot be denied.

Apart from my concern with our typically low bar passage rate, from far and average first-time California ABA approved bar passage rate, is our repeater bar passage rates that are unfruitful.

http://admissions.calbar.ca.gov/

My personal recommendations would be:
1) With the new facility, host a TJSL repeater course be held on weekends. This course will provide a detailed analysis of past failing exams, along with facilitated workshops.
2) Offer a repeater option for the school sponsored Bar Secrets course.
3) Set measurable goals for both first-time taker bar passage rates, as well as repeater bar passage rates. 4) Celebrate the results!

Areas of opportunity need to be addressed, just as our successes need to be celebrated.

The Jeffersonian

February 2011

Bar Passage Rates: 23% - 12% - 4.7% - 5.1% - 42.3% - 35.7% - 41% - 29.8% - 18.2% - 24%

Thomas Jefferson School of Law

The Jeffersonian@tjsl.edu

February 2011

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Director of Outreach

Joshua Tallman

Objectives

Sterling Williams

Interested in the SOAR Program?

SVdPV and the TJSL externship office are currently looking for students who are interested in participating in the SOAR program. This is a great opportunity to prepare for internships that pair students with indigent clients on the area of San Diego Public Defender’s Office.

For information on how to participate in the SOAR program or to learn more, please email:

Professor Herrera: rherrera@tjsl.edu

Professor Tropp: rtropp1@tjsl.edu

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The 1L Guide to Getting a Job

Past Career Fair at Thomas Jefferson School of Law.

The Members of Phi Alpha Delta meet & greet

New Building, Our Future

B

The Franklin Chapter of Phi Alpha Delta has a great opportunity for you to get involved. We are the largest student organization on campus and we are always growing. We are constantly on the lookout for motivated and enthusiastic new members to help feed those less fortunate. We are looking forward to working with the Special Olympics and Habitat for Humanity, along with another food drive this semester.

Apart from the Student Bar Association, Phi Alpha Delta is the largest student organization on campus, with just shy of 200 total members, and we are always growing. We are constantly on the lookout for motivated and enthusiastic new members to help feed those less fortunate. We are looking forward to working with the Special Olympics and Habitat for Humanity, along with another food drive this semester.

The Franklin Chapter of Phi Alpha Delta was recently the recipient of Most Outstanding Chapter Award, given to the chapter that is the best example of the culture of Thomas Jefferson School of Law. This spring, the Franklin Chapter has a number of social events planned, including our annual Valentine’s Day social at the Westgate Hotel. PAD has also been active with a number of community service events in the last few months; such events include “Operation Thank a Vet” and our Christmas food drive to help feed those less fortunate. We are looking forward to working with the Special Olympics and Habitat for Humanity, along with another food drive this semester.

One of the Student Bar Association’s goals is to provide students with an active voice concerning school issues. Being a part of these committees are where decisions are made that affect students. Being a part of these committees is important primarily because these committees are where decisions are made that affect students. Being a part of these committees allows students to aid and influence the decision making process.

Before setting foot on the campus of Thomas Jefferson School of Law, I made a promise that by the time I graduated, I would have made a mark here and made it a better place to grow as a person, learn the law, and meet new people. I believe that this school offers something special to all potential students that is not quantified by the “ranking.” An interesting question to ponder is whether our increase in stature will decrease our accessibility?
Third, begin to work on your cover letter. Cover letters take some work and are supposed to always change based on where you are applying. This is usually your first impression. This will be the document that explains why you want the job, and also why you are the best fit for it. Don’t know where to begin? At your career-counseling meeting take the cover letter handout and begin dreaming up thoughts of why you deserve the “golden ticket.” Your counselor’s job is to help you market yourself in the best way possible, and the more you give them and yourself to work with (creativity people!), the more satisfied you will be with the results.

There are many avenues for discovering what jobs are out there throughout California. And for students who want to “go home” or even to another state where they eventually wish to practice, summer is a great opportunity to get experience in that state. If you find that Symplicity does not meet your needs, share this with your counselor because they have abundant resources and can help locate out of state summer jobs for you.

We all know that money is an issue in law school. But do not sacrifice legal experience just to pay the bills. If your only option for legal experience is unpaid, you have options!

Option 1. Work a paid job in the evenings and intern part-time gaining legal experience. Your counselor will tell you it is essential to focus on getting legal experience. This summer will build the foundation for your next, and hopefully more sophisticated, legal experience. If you end this summer with nothing to talk about as far as legal experience goes, you are at a disadvantage. You can do both! Pursue a part-time legal internship and obtain a part time job in retail or a restaurant or as an administrative assistant in another office setting. Your counselor will tell you that foregoing summer school for experience is almost always worth it.

Option 2. Externships. The externship office at TJSL can point you in the direction of a lot of opportunities. Professor Judybeth Tropp is the Director of Clinical Externships which is a great place to start. Not only do some of these positions pay, but you can also complete them for academic credit. If you’re completing units of academic credit through an externship you are eligible for financial aid during the summer.

If you were lucky enough to snag a job all on your own and they don’t necessarily want to pay you, contact the externship office and see about the possibility of receiving credit for the job. This again will allow you to become eligible for financial aid.

For those students who are especially technologically oriented a specialized technology oriented externship is available through adjunct Professor Randy Berholtz.

Option 3. Job Fairs. The next job fair on the horizon is for students especially interested in government. Look for information soon on Government Career Day at Chapman. Students will be able to apply in advance to obtain a scheduled interview spot. Keep an eye on the career services E-News publication and Symplicity for more information.

Option 4. Research Assistant. This option is definitely not for everyone. In order to be a research assistant you have to excel academically. If you do particularly well in a class you may be invited by that professor to help them in their research process. If you “click” well with a professor you can also always ask. On occasion a faculty assistant will send out an email with a request for a faculty assistant as well. Assistants are usually part of a federal work-study program and paid accordingly.

As always, remember to network. You may have a distant aunt or cousin with great legal connections you never knew existed. Make sure the people in your life know you need experience. Remind your family and friends that you’re in law school and looking for experience. And remember you’re not alone—utilize the school resources.

Last but not least, don’t freak out! There is time left to apply for summer jobs and plenty of opportunities to go around. The first step is making your way in to see your career counselor and setting yourself up to excel. As law students, we are learning fast that we have to plan ahead in a way we didn’t have to in undergrad. Part of this planning process involves a team of people that will guide you toward valuable experiences that will help you work toward your long-term goals. Start gathering this team of people for the long-term. Good luck!
Dear Scott,

I’m having some trouble balancing my internship with all of my classes this semester. I never get to go out with my friends and I’m not even getting very good grades. Do you have any advice for making it work?

Sincerely,
Busy Law Student

Dear Type A,

Many students are able to balance school and work and are able to put forth quality work in both. However, taking on too much may have detrimental effects on your social life. If this is a concern for you, consider internship possibilities. No, I don’t mean YOU working another internship; I’m talking about finding your very own intern to work for you, and do the things that you don’t want to do (i.e. going to class, taking notes, making outlines, getting coffee, etc). Look for an undergrad or even a high school student. I’m not saying this will work for everyone but so far it’s worked well for me. Consider running an ad on craigslist similar to this one:

“Looking for that internship to put on your resume?? Internships look great on College and Law School applications. Do you want real-world experience? Do you want to see exactly what it is a Law Student and Certified Legal Intern does? Sit in on real law school classes and learn valuable note-taking skills. Follow a Law Student to their internship and assist them with exciting things like photocopying, alphabetizing files, and stuffing envelopes. Must write legibly and follow directions. [Note from Scott's intern: First, I apologize for any grammatical errors in this month’s work. I didn’t have time to proofread the articles since I had a paper due in homeroom on The Catcher in the Rye. Scott has been super nice to me but he has me working very hard. Second, I’ve learned so much being an intern's intern this semester that I don’t even mind that I’m not getting paid.]”

You’re Welcome,
Scott

Dear Scott,

Is it OK to take the elevator up/down only one flight of stairs?

Sincerely,
A concerned student

Dear Concerned Student,

No.

Sincerely,
Scott Greenwood
Not Your Average Steakhouse

East Village's Cowboy Star Takes You Back to the Wild West
Sarah Stewart-Bussey

It was just like the old Western movies. I stepped in from the “California cold” into a fire-lit Compression cabin. The tantalizing scent of grilling steaks and freshly poured bourbon wafted through the air. I wondered if I had entered heaven prematurely. We were quickly greeted by the hostesses, and offered water while we waited. My date ushered me over toward a loaveseat that resembled something you’d find in the 1800’s. The seat was worn, soft leather, with the back made of a brown and white spotted cow hide. The coat hanger rested in the corner—a slightly mangled tree branch with horseshoes nailed to it.

Now, these few observations may come off as campy decor. Why in the world would a restaurant so intensely pursue a Western theme? Aren’t they afraid of coming off as cheesy? But no, Cowboy Star nailed it.

As soon as we were seated, we were surprised with a delicious treat: a bite size biroco lightly dusted with parmesan cheese. Just a simple, salty sauce to whet the appetite, and I thought, a very classy touch. And then the truly impressive service began. Our waiter hailed from Florence, and I have never had a waiter as attentive as this gentleman. He quickly brought us our menus, served our choice of roll (sourdough or wheat) and asked for our drink order. He was eager to explain any menu items we were curious about, and was truly enthusiastic about what the Cowboy Star had to offer.

As for the drinks, they are an experience in themselves. With names like ‘Orange Blossom Special’ and ‘Kentucky Coffe,’ you simply can’t go wrong. The dinner menu is quite concise compared to the drink menu. It included a few appetizers like sweetbreads (which I wrongly thought meant a bread item), braised pork belly, and salads. I opted for the Farmers’ Market Lettuce Mix, in hopes of offsetting the abundance of calories I was about to consume, I know, its twisted logic. Regardless, the salad was as light and fresh as I had hoped, sprinkled with goodies like shaved asparagus, toasted almonds and cheese made from sheep’s milk. But the true show stopper was on its way—the Orange Blossom Special. This was what I like to call a man’s drink, a truly well made cocktail. As my drink of choice is usually scotch, calling something a ‘man’s drink’ is definitely a compliment. It being served a girly martini style glass did not deter me. The first sip was deceiving. The smooth bourbon was quickly detected, followed by a note of orange, then a dash of ginger. I quickly realized I if had more than one of these, I’d be drunk.

For the main course, I went with a small 8 oz filet. You simply order the cut of steak you like, and how you like it cooked, but that as much as you get. The accompaniments are a surprise; you get what they are serving that day. And speaking of ‘they’, the kitchen itself was impressive. The dining area was bordered by the kitchen, but with no wall between the two. You could sit at your table, sipping on a delightfully strong bourbon cocktail, and watch the four chefs prepare your meal in an impeccably clean stainless steel kitchen. Our waiter continued to stop by at all the right times to refill water glasses, bring more bread rolls, clear silverware and plates without disturbing the delightful conversation we were having.

And then a beautiful thing happened; one of my favorite songs drifted through the air as if the original record was playing across the room. I had noticed the music before that point, even commenting on a few good songs here and there. They played mostly old country music (and old I mean non-mainstream...) from Loretta Lynn’s ‘Coal Miner’s Daughter’s’ and some great big band and swing classics. But once Kenny Wells and Red Foley’s dute ‘One by One’ started playing, I knew I had found an amazing place that I would certainly frequent in the future. The piece de resistance arrived shortly thereafter, a filet mignon served with a heap of fluffy, creamy mashed potatoes and crisp asparagus. The plate was quite simple, perfect. No unnecessary items on the plate; just meat, potatoes and a vegetable. And all cooked just right. My steak cut like butter, the asparagus was crisp but not underdone, and the potato perfectly whipped and didn’t need any extra toppings.

In a world full of restaurants that pervade with muzak, or simply over garnish the food itself, this beautiful plate was refreshing. Cowboy Star harkens back to the old America, the West when everything was greatly simplied—bringing you decadent cuts of meat, simple yet complementing side dishes and stiff, well made cocktails. What more could you ask for?
Objection to the high expense of printing – other universities are free. My tuition isn’t high enough!

Objection to the Barrister’s Ball.

Objection to students throwing recyclables in the black trash bin when the blue recycling bin is right next to it!

Objection to students who spend time playing on their computers during class instead of paying attention. And we wonder why our bar passage rate is so low!

Objection to the printers still not working.

Objection to students who spend time playing on their computers during class instead of paying attention. And we wonder why our bar passage rate is so low!

Objection to people who complain about their jobs. If you don’t like it, quit! In this economy someone else would be happy to take your place.

Objection to the new printing system that does not recognize the money I still had on my old card.

Objection to posting up at a study nook, studying for an hour or two, and then discovering the outlet is useless…

Objection to having my car locked in the Padre Lot. What happened to 24 hours??!

Editor’s Note: I believe it’s only for students who paid for the monthly pass.

Objection to my iPhone not connecting to our “super hi-tech” school Internet.

Objection to Clin Ed when you get an externship.

Objection to there being no formal announcement about Dean Mead’s resignation.

Objection to students throwing recyclables in the black trash bin when the blue recycling bin is right next to it!

Objection to the 10 pages of instructions needed to print a one page document.

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Objection to TJ not buying into the early BarBri course. Guess what others schools have in San Diego…Yea, I’m talking about the ones with the higher bar passage rates!

Objection to whatever is stealing my Netflicks from the outbox at my apartment. Mail fraud is kind of a big deal buddy!!!

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Objection to there being no formal announcement about Dean Mead’s resignation.

Objection to students who spend time playing on their computers during class instead of paying attention. And we wonder why our bar passage rate is so low!

Objection to people not doing their homework before applying to law school. Yes there’s a bell curve and yes some of you will fail out. Probably means you should study more…

Objection to that TJSL alum in New York who got interviewed for the New York Times article. You made us look bad and you clearly were not focused on the bigger picture while you were in law school.

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