

The Gottlieb-Tartaro Report

THE INSIDERS GUIDE FOR GUN OWNERS

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Dear Subscriber,

In a setback for gun rights advocates, the Supreme Court has denied them additional time to argue their cause when it hears arguments in the historic handgun ban case *District of Columbia v. Heller* this month.

Without explanation, the high court denied the motion of Texas Solicitor General R. TED CRUZ for 15 minutes of argument time on the side of ALAN GURA of Gura & Possessky, the pro-Second Amendment advocate who has guided the case from the beginning.

However, the Court did agree to give U.S. Solicitor General PAUL CLEMENT 15 minutes to argue, in addition to the 30 minutes for the lead attorney on each side in the case.

Commentator TONY MAURO wrote in *Legal Times* that, "The Court's action can be read as a small but not insignificant victory for supporters of D.C.'s handgun control ordinance at issue in the case."

It may be less of a setback than it appears. The Supreme Court commonly says yes to a request from the nation's solicitor general for argument time as amicus curiae no matter his position on the case.

States don't get the same consideration. States won argument time in only four cases last year, with less success this year.

Texas Solicitor General CRUZ argued to the Court that **he should be heard on behalf of 31 states favoring a broad view of the Second Amendment**, since the U.S. solicitor general was **generally contrary to the position of gun rights supporters.**

The Court may have denied CRUZ's request because **the states are not unanimous on the Second Amendment issue.** New York, joined by Hawaii, Maryland, Massachusetts, New Jersey, and Puerto Rico, filed a brief on the gun control side.

But the Court's rejection of CRUZ means **the gun control side will have more argument time than the gun rights aide**, even though CLEMENT will send a mixed message.

CLEMENT supports an "individual right" view of the Second Amendment rather than a collective right of the states to organize a militia, **but he advocates a position that will leave too many gun regulations on the books.**

Most importantly, CLEMENT also urges **vacating the lower court ruling**, which was the first to strike down a gun regulation on Second Amendment grounds. If the high court agrees to do that, **it would erase the pro-gun decision** of the U.S. Court of Appeals for the D.C. Circuit and send the case back for retrial at a lower court, presumably with new instructions from the Supreme Court.

So CLEMENT's 15 minutes of argument time will likely come out as 5 minutes for the "individual right" position and 10 minutes for the gun ban position.

It may be more lopsided than that, because **WALTER DELLINGER of O'Melveny & Myers, who will argue in defense of the D.C. handgun ban, supported CLEMENT's request for added argument time.**

Dellinger also opposed the Texas motion.

Bottom line: even though CLEMENT's brief supports both sides, the effect of the Court's action is that the justices will hear 45 minutes of advocacy from those who want the lower court ruling eliminated, and 30 minutes from those who want it upheld.

Also in this issue: ● SAF's library gun censorship case ● Private guns in national parks ● Colorado Democrats kill pro-gun bill ● Is BATFE's nominee for director a crook? ● Handguns in space ● Restraining orders or guns? in our Page Eight "Parting Shot"

**SUPREME
COURT
CASE**

JUDGE ASKED TO RULE IN LIBRARY GUN-CENSORSHIP CASE

Both sides in a lawsuit brought by the Second Amendment Foundation (SAF) against a Washington State library system have asked a federal judge to decide the case at a hearing in mid-April.

SAF and three Washington State residents brought the suit in late 2006 against a north-central Washington regional library system for denying them access to websites that include information on firearms and publications dealing with guns.

**IN THE
COURTS**

Attorneys for both sides in the case have submitted motions for a summary judgment, asking a judge in the U.S. District Court for the Eastern District of Washington in Spokane to make a ruling without a trial.

SAF is challenging the constitutionality of the library district's policy of using internet filters on publicly-available computer terminals to block access to constitutionally-protected First Amendment speech, including such publications as *Women & Guns* magazine, which is owned by SAF. The library refuses to unblock such access even at the request of the plaintiffs.

The American Civil Liberties Union is representing SAF and the residents in the case. ACLU argues that the U.S. Supreme Court ruled in 2003 that the Children's Internet Protection Act - the library's justification for blocking gun websites - is only constitutional if filters can be turned off for adults at their request.

If the judge agrees to rule on the case, the decisive hearing will be held in Richland, Washington on April 15.

PHILADELPHIA TRIES TO KILL PENNSYLVANIA'S STATE PREEMPTION LAW

The Philadelphia City Council last year passed four drastic anti-gun ordinances, but none of them can be enforced because Pennsylvania does not permit local governments to pass their own gun ordinances.

Two Philadelphia City Council members want that state preemption law overturned, and filed a lawsuit against the state legislature and the National Rifle Association.

The 1974 state law that says only the General Assembly can regulate guns was upheld in a similar challenge in 1996.

Gun rights advocates say that Philadelphia is resorting to this fight with the state because it can't control its huge population of violent criminals.

JUDGE TO RULE IN CONCEALED WEAPON CASE

Benjamin L. Booth, a Coast Guard petty officer, was stopped by Newburgh, New York police on a routine traffic offense last year, and officers found an unlicensed semi-automatic handgun in the car.

An Orange County grand jury indicted Booth on a felony charge of second-degree criminal possession of a weapon.

Booth's lawyers have asked County Court Judge Robert Freehill to dismiss the indictment. The Coast Guard will dismiss Booth if he is convicted of a felony.

Booth's lawyers assert that he falls under the Law Enforcement Officers Safety Act of 2004, which allows off-duty and retired cops to carry concealed weapons in any state without obtaining a state concealed-carry permit.

Since he was carrying his Coast Guard identification and has arrest powers as a federal law enforcement officer, Booth's lawyers contend that he qualifies as an off-duty police officer under the law and should be immune from prosecution.

This will be the first court test of just how effective Congress was in crafting this pro-gun law to defend the rights of gun owners.

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CONGRESS CONSIDERS PRIVATE FIREARMS IN NATIONAL PARKS

Senator Tom Coburn (R-OK) has sponsored S. 2483, a bill that would enable private citizens to carry defensive sidearms in national parks.

An amendment to a bill expanding federal lands, Coburn's proposal comes in part as a response to rising criminal activity in national parks and the need for personal self-defense.

Predictably, the Brady Campaign to Prevent Gun Violence and the rest of the gun control lobby has opposed the idea for the usual motive of disarming America's law-abiding majority.

ON THE FEDERAL LEVEL

Just as predictable, but less publicized, is the opposition campaign run by a group of left-wing activists who call themselves "Public Employees for Environmental Responsibility" (PEER).

PEER was founded in the early 1990s and funded by left-leaning donors, including PBS television icon Bill Moyers and his Schumann Foundation.

Over the years PEER has become experienced in anti-gun smear tactics like its current accusations that Coburn's proposal would contribute to poaching and open the door to sport hunting.

The Citizens Committee for the Right to Keep and Bear Arms (CCRKBA) countered PEER's alarmist press release, saying, "This has nothing to do with hunting or poaching, and officials at PEER know it."

In fact, poaching is already a problem in the national parks, where loaded private guns are not allowed (but many park rangers are armed).

What's more, the National Wildlife Refuge System has always allowed hunting, and it has not led to a push for hunting in national parks.

The heavy park visitor load alone would repulse hunters even if hunting were to be allowed, and the wildlife is so accustomed to people that there would be no trace of sportsmanship in hunting there.

PEER's whole argument against the Coburn Amendment is a fiction designed to keep national parks as "victim disarmament zones," said CCRKBA. "Parks are public lands that belong to us all, not just to anti-gun bureaucrats and pressure groups."

FLORIDA COMMISSIONER WANTS "ASSAULT WEAPON" BAN BACK

Miami City Commissioner Marc Sarnoff has called on Congress to bring back the notorious "assault weapons" ban that ended four years ago.

The words "assault weapon" are a propaganda term with no technical meaning, and may affect many kinds of legitimate hunting and sport-shooting rifles - which is part of the reason Congress let the ban expire four years ago.

Sarnoff has launched a petition drive that appears to be part of an organized "assault weapons ban" campaign including Miami-Dade County commissioners and "an international agency of police chiefs and sheriffs," according to the *Miami Herald*.

Sarnoff said he and the city attorney would try to draft legislation that would make the sale of "assault weapons" illegal in Miami.

"MICROSTAMPING" BILL INTRODUCED IN CONGRESS

A bill that would require gun microstamping in all fifty states has been introduced in the Senate by Sen. Ted Kennedy (D-MA) and in the House by Rep. Xavier Becerra (D-CA).

The so-called "National Crime Gun Identification Act" was praised by the Brady Campaign to Prevent Gun Violence as a tool to "track down armed criminals and solve gun murders" by stamping each cartridge fired with the gun's identification numbers.

The National Rifle Association called it "incremental gun control."

In theory, microstamped cartridges found at crime scenes might help police identify the gun used in the crime, but criminals can easily file off microstamping mechanisms or scatter decoy cartridges, making the technology a bad joke.

The bill would outlaw certain semi-automatic pistols that are not capable of microstamping ammunition.

DEMOCRAT MAJORITY CRUSHES PRO-GUN COLORADO LEGISLATION

Colorado's Senate State Affairs Committee - frequently called "the kill committee" - has defeated a bill by Sen. Greg Brophy (R-Wray) to give people the ability to sue if they or a family member are wounded or killed in a gun-free zone. It was a straight party line vote of 3-2.

However, a bill by Sen. Sue Windels (D-Arveda) to create a misdemeanor for any adult who leaves a firearm where it can be used by a 16- or 17-year-old child, passed the same committee.

The House Judiciary Committee killed a bill from Rep. Cory Gardner (R-Yuma) extending protection from liability to people who use deadly force against intruders in places of business. The party line vote was 5-4.

IN THE STATES

CHICAGO'S DALEY PUSHES ANNUAL ILLINOIS ANTI-GUN PACKAGE

Chicago Mayor Richard Daley has released his annual package of gun control legislation, even as a state senate sponsor admitted that none of the bills could have prevented the recent shooting deaths of five students at Northern Illinois University that Daley featured in his news conference.

Once again, Daley wants to ban semiautomatic "assault weapons" and .50-caliber rifles, have State Police license gun dealers, and impose one-handgun-a-month rules. He still wants private sales subject to background checks.

This year's "Daley Extra" want list includes mandating trigger locks and locked containers in homes with kids up to 18, instead of 14. He also wants to ban high-capacity magazines and require microstamping for some semiautomatic handguns.

TWO GUN BILLS IN MINNESOTA

Rep. Tony Cornish (R-Good Thunder) has introduced a self-defense bill that would authorize deadly force against an intruder entering a porch, garage or occupied car. On a street or in a bar, there would be no duty to retreat before shooting someone believed to be threatening "substantial" harm.

Rep. Joe Mullery (DFL-Minneapolis) confirmed that he will give the bill a hearing in the House Public Safety and Civil Justice Committee, which he chairs.

Mullery opposes the bill, but last year promised the hearing so Cornish would back off at the time. Executive Director Bill Gillespie of the Minnesota Police and Peace Officers Association also opposes it. "I never would have thought a Democratic-Farmer-Labor Party Legislature would give it a hearing."

A DFL-supported anti-gun bill would ban private sales of pistols unless the buyer or seller was a federally licensed dealer, or used a licensed dealer to transfer the weapon. It would apply to sales at garage and estate sales and over the Internet.

NEBRASKA LAWMAKERS TAKE AIM AT "ASSAULT WEAPONS"

Nebraska Legislative Bill 958 would create a seven-member law enforcement commission to develop a list of guns deemed "inherently dangerous," and then the Legislature would vote on whether to ban the weapons for sale or resale in Nebraska.

The commission would be required to *update the list every two years*. The Judiciary Committee sent the amended bill to the full Legislature on a 6-0 vote.

These original provisions were removed: that all guns be sold with a trigger lock, that gun loss or theft be reported to authorities within 48 hours and that people convicted of gun felonies go to prison for at least five years.

NEW YORK LAWMAKER DROPS LICENSING FROM ANTIQUE GUN REGULATION PLAN

Democratic Assemblyman Michael Gianaris of Queens is dropping a plan that would have required museums, historical societies and living history re-enactors to obtain licenses to own antique guns and muzzleloading weapons.

He decided to drop the licensing provision after hearing concerns from museums and re-enactment groups that they could have crippling economic consequences. The new plan still requires background checks for antique gun buyers.

SOUTH CAROLINA MAY KEEP CONCEALED CARRY PERMITS SECRET

A state Senate Judiciary subcommittee has agreed that the public shouldn't be able to see who has a concealed weapons permit.

The legislation would keep the State Law Enforcement Division from providing the information to the public under Freedom of Information Act requests.

Representative Mike Pitts told the panel the records needed to be kept secret after a Virginia newspaper obtained and published that state's list of permit holders.

The bill now goes to the full Senate Judiciary Committee.

IN THE STATES

TENNESSEE GUN BILLS ON OPPOSITE SIDES

State Representative Stacey Campbell (R-Knoxville) is preparing a bill for the Tennessee Senate that would allow college faculty and staff to carry firearms at all times on campuses. Those who wish to carry weapons would have to complete annual firearms training and be a full-time employee of the university.

Next, ammunition control. This is not microstamping, but Sen. Reginald Tate (D-Memphis) and Rep. Larry J. Miller (D-Memphis) have introduced legislation that would require handgun and so-called "assault weapon" ammunition sold in Tennessee after Jan. 1, 2009, to be coded.

If the bills become law, boxes of bullets would be registered with the TBI.

SOUTH DAKOTA SENATE PANEL SAYS NO TO GUNS ON CAMPUS

A bill by South Dakota Representative Tom Brunner (R-Nisland) to allow firearms for self-defense on college campuses in the state passed the House by 63-3, but was voted down 7-1 in the Senate State Affairs Committee.

The lopsided House vote makes the bill a good candidate for a "smokeout," a tactic in which proponents seek support from one-third of the Senate to demand that the committee deliver the defeated bill to the floor for possible debate.

The bill provoked loud protests from police in university towns who insisted they were capable of "neutralizing" any shooter on short notice.

UTAH SENATE ALLOWS GUNS IN MORE PLACES

Senate Bill 67, sponsored by Sen. Mark Madsen (R-Eagle Mountain), would require business owners to allow employees or customers to store guns in their vehicles as long as the weapon is hidden and properly stored.

Opponents said Madsen's bill erodes the rights of private property owners, another unfortunate clash between two constitutionally protected civil rights.

The Senate passed the bill 23-4. It will now be heard in the House.

VIRGINIA LAWMAKERS PASS CONCEALED CARRY BILL, PRIVACY BILL PULLED

Virginia's House of Delegates has passed a bill sponsored by Sen. Emmett W. Hanger (R-Mount Solon) that would allow people with a concealed weapons permit to bring a hidden handgun into a restaurant if they do not drink.

The Senate had passed the bill by 24-15 before the House gave it a 62-36 victory. It now goes to Gov. Timothy M. Kaine, who is expected to veto it.

Neither chamber gave the bill a veto-proof two-thirds margin.

Sen Edd Houck (D-17th District) has requested the Senate to send back to committee his bill closing the state's concealed-carry permittee database from public view, but leaving individual permits, kept in courthouses, open. Gun rights advocates demanded the permits be protected, too, but Houck refused.

SOUTH CAROLINA MAY GET SCHOOL GUN SAFETY CLASSES

SB9, a bill sponsored by Sen. Billy Wayne Bailey (D-Wyoming) to mandate hunter safety classes in public schools has passed the Senate Education Committee.

Bailey, a candidate for secretary of state, said his proposed hunter safety program would entail more than just firearm safety. The 10-day course would also cover wilderness survival, first aid, boating safety, ATV safety, conservation and "ethical hunting," he said. The bill now goes to the Senate Finance Committee.

IS THE NOMINEE FOR BATFE CHIEF CORRUPT?

Current U.S. Attorney in Boston, Michael Sullivan - President Bush's nominee for director of the Bureau of Alcohol, Tobacco, Firearms and Explosives - has "a moral code more suited to the alleys of Baghdad than the streets of Boston." Sullivan, currently acting director of BATFE "reveals such callous indifference to innocent human life as would gag any fair-minded observer."

Who says? Federal Judge William Young, according to *Boston Magazine*.

Three Republican Senators have placed a "hold" on Sullivan's confirmation: Mike Crapo and Larry Craig of Idaho and David Vitter of Louisiana.

Their objections to Sullivan's nomination are based on his refusal to promise needed reforms in BATFE policies that unfairly strip licenses from law-abiding gun dealers for trivial paperwork errors, and for his willingness to give city mayors access to federal gun trace records so they can file harassing lawsuits against out-of-state gun dealers whose legal sales have later resulted in criminals using the guns in urban crimes.

But that's just the tip of the What's-Wrong-With-Sullivan iceberg.

The *Boston Magazine* story recounted Sullivan's malicious prosecution of retired FBI Special Agent John Connolly, 67, using perjured evidence to get him convicted of obstruction of justice and racketeering.

A key defense witness in the case, former assistant U.S. Attorney Jeremiah O'Sullivan, mysteriously disappeared after Sullivan wrote a letter making a formal request to postpone O'Sullivan's testimony, "to limit adverse publicity."

Sullivan's office claimed O'Sullivan had "heart trouble" and was too sick to testify. When O'Sullivan finally did testify half a year too late, his testimony would have convinced a jury to give Connolly a "not guilty" verdict.

Here's how it worked: Connolly was charged with tipping off mobster James "Whitey" Bulger of an impending indictment on multiple felony counts in 1994, enough to put Bulger away for the rest of his life.

Bulger fled and hasn't been seen since. Connolly maintained throughout the trial that his relationship with Bulger was strictly on FBI orders - Bulger had been a secret Top Echelon Informant (TEI) since the late 1970s, and Jeremiah O'Sullivan, who had been head of the Organized Crime Task Force assigned only to TEI cases, would have exonerated Connolly.

Instead, Connolly was convicted by the testimony of two mobsters doing time for murder - coached by Sullivan's own assistants.

One of the mobsters, John Martorano, a hit man serving time for 20 murders, found his ticket to freedom doing what Sullivan told him.

Today Martorano walks the streets a free man, while Connolly was sentenced to 10 years for doing his FBI job 20 years earlier.

The other mobster was Frankie Salemme, boss of the New England Mafia. Sullivan cut a deal with Salemme and released him - but Salemme was later re-arrested for lying and is now in prison awaiting trial on perjury.

Sullivan's prosecutors had portrayed Connolly as a "rogue agent" giving his informants permission to commit more crime without authority from higher up.

O'Sullivan now admits that he and everyone up the ladder at the FBI and the Department of Justice in Washington knew that this was not true.

But Sullivan made sure O'Sullivan didn't testify when it would have cleared Connolly. O'Sullivan's "heart trouble" has since miraculously vanished.

Adding further stench to an already rotten air surrounding Michael Sullivan's "alleys of Baghdad," his biggest boosters for the top BATFE job are extreme gun control congressmen, Massachusetts Democrat Senators Ted Kennedy and John Kerry, and Illinois Democrat Senator Richard Durbin.

Senator Kerry says Sullivan is "the farthest thing from an ideologue that you could imagine."

Okay, but how far from a crook?

BATFE SPECIAL REPORT

GUN NEWS TICKER - QUICK TAKES ON THE NEWS

● **Low Earth Orbit:** Although Russian and NASA officials won't talk publicly about it, the International Space Station is equipped with a handgun. The gun has been there for as long as the space station has been in orbit. Every spacecraft carries survival gear for crash landings, and the Russian Soyuz space capsule, which is attached to the space station, is equipped with a gun. The gun is located in a survival kit between some seats aboard the Soyuz spacecraft. All the crewmembers know about it, and U.S. astronauts who fly aboard the Soyuz are trained to use it. In all the years the space station has been in orbit, with all its psychological pressures, no one has brandished or used the gun, not even Lisa Nowak, the U.S. astronaut who was arrested in 2007 - on Earth - for hunting down another woman while armed (and insane, said her lawyer).

● **Washington, D.C.:** The anti-gun organization, Violence Policy Center (VPC), has a Federal Firearms License. In March 2007, Legislative Director Kristen Rand testified before Congress that such licenses should be restricted to those actually in the business, barring frequent traders. Her theory is that businesses are more controlled - they have to comply both with federal rules and the District of Columbia's zoning regulations. Ryan Horsley of Red's Trading Post in Idaho looked into it and says VPC appears to be in violation of D.C.'s zoning requirements, and their FFL is probably illegal.

● **Baltimore, Maryland:** The mayors of several East Coast cities, including Michael Bloomberg of New York, plan to launch a database that will allow them to share information "on known gun offenders." That database will pool information from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives with local agency information, including ballistics and intelligence gathered from debriefings of gun offenders. The idea is to prosecute gun dealers who sell legal guns that later end up in criminal hands and accuse the dealers of "gun trafficking."

● **Oakland, California:** In a city with educators so corrupt and incompetent that the state has had to run their schools for several years, Police Chief Wayne Tucker announced a gun buy-back scheme with Democrat State Senator Don Perata, who raised \$80,000 to buy about 320 guns at \$250 apiece. More than 1,000 guns were turned in, some of them coming from people as far away as Reno. Then two bad things happened: the money ran out and seven people were shot to death in one weekend during the buy-back. Senator Perata and Chief Tucker must be products of Oakland's schools: When Perata's cash ran out, he began issuing IOU's for guns and Oakland's police chief whined about the murders, "This number of killings is absolutely unacceptable." Perata didn't issue IOU's for murder victim survivors and Tucker didn't say what number of killings would be acceptable. Oakland might be good to avoid.

● **Berlin, Germany:** The German parliament has approved tighter gun-control laws in a move supposedly designed to stop the spread of violent crime. The new legislation bans replica firearms and airsoft guns as well as certain types of knives. Reinhard Grindel, a domestic affairs spokesman for Chancellor Angela Merkel's Christian Democrats, said with a straight face, "The change to the gun control laws will ensure greater security and counter threatening situations in public places." No death statistics from imitation guns accompanied the new law. There are around 3 million imitation and airsoft guns in circulation in Germany. People caught violating the new law will be subject to a fine of 10,000 euros (14,800 dollars).

● **Ithaca, New York:** Cornell College Republicans have joined about 12,000 students nationwide who are part of a grassroots effort that is advocating for concealed weapons license holders to be able to carry their weapons on campuses. The College Republicans at Cornell University distributed handouts on the Arts Quad saying a concealed carry policy would give those with permits the same rights to protect themselves and others on college campuses as they would have in most public areas such as parks, malls, and elsewhere. "Concealed carry is an appropriate way to make our campus safer," said Ahmed Salem (Class of '08), president of the Cornell University College Republicans.

Parting Shot

WHICH WORKS BEST, YOUR RESTRAINING ORDER OR YOUR GUN?

Fifth-grade teacher Christi Layne got a domestic violence restraining order from a Portsmouth, Ohio judge against her husband William Michael "Mike" Layne. She moved out of their home, got a security system for her new apartment, and filed for divorce.

Seven weeks later, Mike Layne entered the Catholic school where she teaches, went up to the third floor, and - in front of Christi's horrified students - shot at her several times but missed, then stabbed her 14 times, leaving her in critical condition.

Police responded to Mike Layne's home, had a standoff with him, then he killed himself with a shotgun blast to the head.

Christi Layne went through complex surgery, but will eventually recover.

In Philadelphia, Juan Rosario runs Antonia's Grocery with friend Angel Dia. On a recent Sunday night, 19-year-old Donte Turner entered Antonia's with a gun and told Dia, "Give me all your money."

Rosario was behind a bulletproof glass partition, saw Turner point the gun, took out his own gun and shot Turner in the chest. Turner dropped his gun and ran.

Police followed a trail of blood to Turner's home and charged him with attempted robbery, aggravated assault and gun counts.

In southeast Houston, Texas, at the corner of Reveille and Bradford, an office supply business owner heard someone trying to get into his store at midnight. He went outside with a gun and caught a man trying to steal a trailer parked behind his business.

The would-be thief tried to run over the business owner with his truck and the business owner fired back through the truck's rear window, hitting the driver.

Despite being shot, the suspect kept driving his truck for three blocks until he fell out and died on the road.

A 26-year-old condominium resident in upscale Long Beach, California, found a suspect entering his residence through a window. Fearing for his life, he armed himself and fired at the suspect.

The suspect was pronounced dead at the scene. Police said the incident was justifiable homicide.

In Yell County, Arkansas, a homeowner found two men breaking into his home. He got a shotgun and shot 44-year-old Mike Jensen of Dardanelle, who was carrying a semiautomatic rifle. Jensen died at the scene and the other man fled. No charges will be filed against the homeowner.

Alan M. Gottlieb

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