

Almanac

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SAS Dean's Search

The search committee to advise on a Dean of the School of Arts and Sciences has been named, and its target date for filling the post vacated by Dr. Joel Conarroe's return to teaching and research is "to have a new dean in place by the start of the fall term 1985," Provost Thomas Ehrlich said.

Dr. Ward Goodenough of anthropology will chair the search. He is a Senate nominee to the committee, along with Dr. Michele Richman of Romance languages, Dr. Benjamin Shen of astronomy and Dr. William Telfer of biology. The administration also named Dr. Edward Stemmler, dean of Medicine; and Dr. Samuel Preston of sociology, Dr. Janice Radway of American civilization and Dr. Dan McGill of insurance (Wharton).

Dr. Gloria Twine Chisum, alumna and former Trustee of the University, is the alumni representative to the search. Graduate and undergraduate student representatives are to be nominated shortly by GAPSA and the UA, Provost Ehrlich said.

IN BRIEF

Indian Ambassador: India's Ambassador to the U.S., Kayatani Shankar Bajpai, will discuss "India Today and Tomorrow" on Wednesday, December 5, at 3:30 p.m. in 351 Steinberg Hall-Dietrich Hall. Penn's South Asia Regional Studies department sponsors the appearance of the new Ambassador, named in March 1984. He served earlier as Ambassador to the Hague, 1974-76; Pakistan after restoration of relations in 1976; and China 1980-82.

Nursing Graduation: The graduating classes of the School of Nursing announce the December graduation ceremony, Friday at 1 p.m., December 21, in the Harrison Auditorium, University Museum.

Thesis Awards in Science: Sigma Xi Ph.D. Thesis Awards are made for theses of outstanding quality and contribution to science. An award of \$400 is made to each of two Ph.D. candidates. An award of \$100 is made to each of the thesis advisers for outstanding direction. Ph.D. candidates are nominated by their thesis advisers. The awards will be presented at the Award Dinner to be held on May 7, 1985. An announcement appearing in early March will describe the nominating procedure. If further information is desired earlier, contact Ms. K. Sestak, Dept. of Math./E1, Ext. 8627.

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Senate: Unanimous on Salary "Catch-up" Plan

The Faculty Senate unanimously passed all three of the action items put before the November 28 Stated Meeting:

- The three-part recommendation of the Committee on Economic Status of the Faculty (*Almanac* November 20), which calls for July 1, 1985, increases to be 4.4% above the average in the Ivy League in order to offset declines against peer faculties' median salaries since 1981-82. The recommendation is a step in EconStat's five-year plan to restore faculty salaries to their 1972 purchasing power by 1989.
- The Law School's proposal to establish two Practice Professorships (*Almanac* November 13) for renewable appointments not leading to tenure. Dean Robert Mundheim's address emphasized the need for quality long-term leadership of clinical practice programs.
- Housekeeping change in the Faculty Grievance Procedure so that the text of a panel's findings is sent to the Chair of Senate.

In discussion, Provost Thomas Ehrlich responded to EconStat's chair, Dr. Janice Madden, that the University is committed to real growth in compensation but at this juncture, "We cannot tell what the figure is going to be any more than we can tell what any other figure [in the FY 1986 budget] is going to be." Dr. Madden challenged the Administration's preference for MIT Survey data over the AAUP figures being used by the Senate's committee.

Discussion of the "Second Interim Report of the Task Force on Conduct and Misconduct" (*Almanac* September 25) centered on two issues: the role of the Ombudsman and the use of student evaluation systems to ask questions about faculty attitudes and behaviors with respect to harassment. As former Ombudsman, Professor John Keene objected particularly to the delineation of an adjudicator's role as distinct from the traditional mediator's role. Professor Michael Cohen objected to the recommendation involving course evaluations, and Professor Seymour Mandelbaum echoed his concern. Professor Larry Gross argued that problems with specific recommendations should not override the need to deal with issues raised by the report. President Hackney said he saw a range of strengths and weaknesses, and counted the section on course evaluation as one of the weaker ones; but, he added, he will be treating Council recommendations as advisory as he comes to decisions on policy and procedures.

Separately, Senate Chair Jacob Abel announced in his Chair's Report that SEC will shortly establish an Ad Hoc Committee on Behavioral Standards which will look at the Task Force report and at the concerns it addresses. SEC will also have an Ad Hoc Committee on Trustee Liaisons.

OF RECORD

Rules Governing Final Examinations

- 1) No student may be required to take more than two final examinations on any one day during the period in which final examinations are scheduled.
- 2) No instructor may hold a final examination except during the period in which final examinations are scheduled and, when necessary, during the period of postponed examinations. No final examinations may be scheduled during the last week of classes or on reading days.
- 3) Postponed examinations may be held only during the official periods; the first week of the spring and fall semesters. Students must obtain permission from their dean's office to take a postponed exam. Instructors in all courses must be ready to offer a make-up examination to all students who were excused from the final examination.
- 4) No instructor may change the time or date of a final exam without permission from the appropriate dean or the Vice Provost for University Life.
- 5) No instructor may increase the time allowed for a final exam beyond the scheduled two hours without permission from the appropriate dean or the Vice Provost for University life.
- 6) No classes (covering new material) may be held during the reading period. Review sessions may be held.
- 7) All students must be allowed to see their final examinations. Access to graded finals should be ensured for a period of one semester after the exam has been given.

We encourage professors to be as flexible as possible in accommodating students with conflicting exam schedules.

—Provost Thomas Ehrlich

Documents in The Schmidgall Case

In accordance with provisions in the Handbook for Faculty and Academic Administrators, the Senate Committee on Academic Freedom and Responsibility releases below its report of November 7 concerning the status of Dr. Gary Schmidgall. It is followed (past Supplement) by the November 6 report by the School of Arts and Sciences Committee on Academic Freedom and its letter of transmittal in draft to the Dean of SAS on October 26. A response from the Deputy Provost, and further comment from the chair of SCAFR, follow the SAS Committee documents.

SCAFR to President, November 7

The Senate Committee on Academic Freedom and Responsibility met on October 2 and 25, 1984, to consider the issues raised in a September 13, 1984, letter from Dr. Gary Schmidgall. The core of his complaint was that the administration had failed to resolve his status for 1984-85 in the manner suggested by the Faculty Grievance Commission. He asked the Senate Committee to act under Section VIII of the grievance procedures. In addition, Dr. Schmidgall expressed concern (both for himself and others) about the initial failure to include materials from the grievance process in his personnel file.

The first part of this letter deals with Dr. Schmidgall's status; the second with the grievance materials.

1. Dr. Schmidgall's Status

The Faculty Grievance Commission letter of June 11, 1984, proposed that "Dr. Schmidgall be permitted to retain his status for a year." We agree with that recommendation defining his "status" as that of a fully-salaried member of the standing faculty of the English department.

The chronology of the case is established in the March 30, 1984, report of the Faculty Grievance Commission hearing panel and the public exchange of letters between Dr. Schmidgall and Deputy Provost Richard C. Clelland in the *Almanac* of September 11, 1984. Our decision to support the Grievance Commission recommendation of June 11 rests on our interpretation of the chronology and its context. We treat Dr. Schmidgall as a successful grievant. The failure of the SAS Personnel Committee to act promptly on his file when it was presented to it last spring, prevented his case from being concluded during the 1983-84 academic year. The delay put Dr. Schmidgall out of step with the ordinary rhythm of academic employment. Both Dr. Schmidgall and any potential university employer have good reason to be uncertain about his future at Penn until his tenure is decided. Since the extension of the period of uncertainty beyond the end of the 1983-84 academic year was not Dr. Schmidgall's fault, he should be protected for a full employment cycle. Dr. Schmidgall's standing as a successful grievant entitles him to protection in status rather than in any improvised alternative. His status would, however, not be diminished if the English Department chose to pay him without allowing him to teach or agreed to have other units (with his consent) buy all or a portion of his time.

We have given considerable thought to the possibility that this resolution might support a claim that Dr. Schmidgall had earned tenure by default. We are now entirely persuaded that if he retains his status during 1984-85, Dr. Schmidgall will not obtain tenure under University rules or customs without a positive decision emerging from the ordinary review process. Neither the rules nor precedents surrounding tenure by default apply to him.

2. The Grievance Materials

When Dr. Schmidgall's file was presented to the SAS Personnel Committee in April, it did not include the report of the hearing panel or any other materials stemming from the grievance process. Dr. Schmidgall protested and the Grievance Commission, supporting his claim,

asked the provost to implement Section VI(a) of the Faculty Grievance Procedure: "The provost shall ensure that the recommendation of the panel and its supporting documentation, if any are included in the reevaluation."

The materials have now been forwarded and the issue resolved. On September 18, 1984, however, I asked Joel Conarroe, the Dean of SAS, whether he saw the failure to convey the materials as a mistake and whether he was committed to avoiding its repetition.

I quote the dean's reply of September 26, 1984, at considerable length because we are so alarmed by it:

2. I wish I could assure you that the decision made by (associate dean) Walter (Wales) will not be repeated in the future but there is no way I can do so. His was hardly an arbitrary action. He consulted with a number of people, including legal counsel, before making the decision. Had he asked the Grievance Commission for advice, he probably would have been cited for delaying the process; had he simply sent on the dossier as we had received it, it would most certainly have caused even more trouble.

The Schmidgall case presents a problem that would seem unsolvable. We depend on the department to put together dossiers for review by the Personnel Committee, even in cases in which the department has made a negative recommendation. I believe that we should not make changes in these dossiers. (It is in fact the practice in the school that if I receive additional information about a candidate, I cannot include it in the candidate's file unless I first inform the department I am doing so—and what that information is. This restriction does not apply to the Personnel Committee, however; it may seek and include additional information without having to inform the department.) Grievants will almost inevitably feel that the dossiers that accompany negative recommendations may not be objective. Yet we cannot let candidates for tenure sift out items they feel may jeopardize a positive decision. I can suggest no solution unless it is to charge the Personnel Committee with this role.

The answer attempts, in our view, to justify a violation of both the formal rules and the spirit of the grievance procedure. After the report of the hearing panel had been accepted by the administration, Dr. Schmidgall was no longer one among many suspicious grievants. He was, rather, a colleague with a rightful claim to remedy. Without the grievance materials, how could the Personnel Committee assess the possible biases in the process which generated the file it received?

Both our resolution on Dr. Schmidgall's status and this expression of distress at the failure to appreciate and respect the grievance process represent the unanimous view of the members of the Senate Committee on Academic Freedom and Responsibility.

Seymour J. Mandelbaum, Chair,
Senate Committee on Academic Freedom and Responsibility

Committee Members:

Regina Austin (law)
Gary H. Cohen
(microbiology/ Dent.)
Frank Goodman (law)
Martin Pring (physiology)
Wendy L. Steiner (English)
Anthony Tomazinis (city & regional planning)
Arthur F. Whereat (medicine)
Michael W. Zuckerman (history)

Transmittal to Dean, October 26

To: *Dean Joel Conarroe*
From: *SAS Committee on Academic Freedom and Responsibility*
Subject: *The Gary Schmidgall Case*

A communication that we are sending to the Provost is attached.

We do not intend to chew all this cabbage thrice. We find that Schmidgall has been denied due process by actions of the Department of English, your office, and the office of the Provost. There is no need to detail these, as all of you are fully aware of them.

We recommend that the Personnel Committee reconsider this case after *materially* expanding the relevant dossier. We further recommend that this committee proceed with all deliberate speed.

Meanwhile, Schmidgall should be immediately reinstated, as of 1 July 1984, without automatically obtaining tenure. How this can be accomplished is up to you, not to us. Any further delay of his reinstatement would constitute harassment of a successful grievant, and further denial of due process.

Your early response will be much appreciated.

*Jerry Donohue, chairman, Chemistry
Mark Adams, History and Sociology of Science
Maria Brooks, Slavics
Herbert Callen, Physics
Lynn Lees, History
Charles Minott, History of Art*

SASCAFR To Provost, November 6

To: *Provost Thomas Ehrlich*
From: *SAS Committee on Academic Freedom and Responsibility*
Subject: *The Gary Schmidgall Case*

We believe that this case has dragged on far too long. We note (see addendum [above right]) the 11-month lapse between Schmidgall's request to the Faculty Grievance Commission and rendering of that commission's decision. We note that the Personnel Committee in May 1984 declined to act until fall.

It is not the function of this committee to review for you the deliberations of the Grievance Commission, with whose conclusions we heartily concur (see 11 June 1984 in the addendum), of the Personnel Committee or of the Department of English.

We are unanimous that Schmidgall should be immediately resalaried as of July 1, 1984, for one year, without, however, automatically obtaining tenure. Any further delay would constitute harassment and denial of due process.

We are recommending to the dean that the Personnel Committee reconsider this case after materially expanding the dossier. This should not take another 11 months.

We find that the dossier was compiled by the Department of English in a way prejudicial to the grievant and at variance with University regulations, and that the removal of documents by the dean's office from the dossier (see 16 May 1984 in the addendum) was also prejudicial and contrary to University regulations. It seems to us that the grievant was denied due process. We have not seen any documents relating to why Schmidgall, a *successful grievant*, was notified by the Deputy Provost on 9 May 1984 that he was terminated on 30 June 1984. The Grievance Commission should not be overruled by the office of the Provost without explanation.

To sum up, Schmidgall should be resalaried as of 1 July 1984, without automatically obtaining tenure. This committee is in no position to suggest the procedures for accomplishing this.

Response to the foregoing as early as possible will be much appreciated.

Jerry Donohue, chairman, Chemistry

*Mark Adams, History and Sociology of Science
Maria Brooks, Slavics
Herbert Callen, Physics
Lynn Lees, History
Charles Minott, History of Art*

Addendum: A Brief Chronology

29 April 1983: Schmidgall formally requests initiation of a grievance from the Faculty Grievance Committee.

30 March 1984: Commission's panel renders its decision, which consists of nine points. Favorable to Schmidgall are Dunn (history) and Ramsden (physical therapy); the third member of the panel, Sabini (psychology) accepts points 1 to 7, and 9, but disagrees on point 8, finding that the English Department's procedures were not at variance with their own or University policy, and that thus there is no grievance. The other two members of the commission found that there was a grievance.

13 April 1984: Provost accepts the majority report of the panel. Schmidgall's dossier is sent to the Personnel Committee.

27 April 1984: Schmidgall verbally requests from the Dean's office that a census of the contents of the dossier, which was sent to the Personnel Committee, be sent to him.

9 May 1984: Deputy Provost informs Schmidgall that the Personnel Committee declines to act until the fall. He also informs Schmidgall that his appointment terminates on 30 June 1984.

16 May 1984: Schmidgall receives the census, dated 14 May, and is (surprised, astonished, saddened—choose one) that all documents relating to the grievance procedure had been removed by Wales of the dean's office, on the advice of University counsel.

11 June 1984: Grievance Commission recommends that Schmidgall be permitted to retain his status as a fully-salaried member of the English department.

27 September 1984: Schmidgall requests the SAS Committee on Academic Freedom to consider his case, and submits supporting and informative documents.

4 October 1984: The dossier, now including documents relating to the grievance procedure, sent to the Personnel Committee. (University counsel apparently has changed its mind.)

9 October 1984: Mandelbaum (chairman of the Senate Committee of Academic Freedom and Responsibility) sends a copy of draft of a resolution to Clelland and Conarroe. This draft supports the recommendation of 11 June 1984 of the Grievance Commission, see above. It treats Schmidgall as a grievant. It also deplores the removal by the Dean's office of Grievance Commission materials from the dossier sent to the Personnel Committee.

10 October 1984: In a letter to Wales, Schmidgall objects strongly to inclusion in the dossier of a letter from Lucid to the Provost.

Response from Deputy Provost

At the present time, the University's rules are silent as to any connection between progress of grievance cases or implementation of Grievance Panel recommendations and duration of faculty appointments. The reports from the two committees on Academic Freedom and Responsibility imply that new rules should be formulated that extend a grievant's appointment under certain circumstances. I should mention that the position taken by these committees is exactly that recommended by the Associate Secretary of the national AAUP in a letter to me dated September 10, 1984.

In the exchange of correspondence that ensued, we find the following statement from the Associate Secretary. "We appreciate that the issues presented in Professor Schmidgall's case are complex, and that a resolution of his case may have ramifications for the handling of similar cases." This is certainly true. Efforts are now underway to create appropriate rules for the handling of cases such as Dr. Schmidgall's. Some of the issues are the time period within which a grievance may be filed and appropriately heard, the conditions under which a grievant may be deemed "successful," the need to discourage the filing of frivolous grievances, and the necessity for increasing the protection presently given the Faculty against claims of tenure by default.

Incidentally, with regard to one point in the SAS Committee's report, Dr. Schmidgall was officially notified by letter dated January 12, 1983, that his appointment as an assistant professor would terminate at the end of the 1983-84 academic year.

—Richard C. Clelland, Deputy Provost

Response to Deputy Provost

The Senate Committee on Academic Freedom and Responsibility agrees with a good deal of what is in Dr. Clelland's letter. We concede that there is no formal rule in the *Handbook* covering the Gary Schmidgall case and believe that such a rule should be written. We also agree that some cases similar to Dr. Schmidgall's would present us with difficult choices. We are, therefore, uncertain now about the form of a potential rule.

Dr. Schmidgall's particular case does not, however, present us any such difficult choices. We are confident that any new rule would support his claim to retention of status during this year. Jonathan Knight, the Associate Secretary of the AAUP, shares our view. The letter of October 19, which Dr. Clelland quotes to bolster his conception of the complexity of the case and its broad ramifications, advises that in the "specific circumstances" we confront, Dr. Schmidgall's appointment should be extended without any bearing "with respect to the attainment of tenure."

There is no reason to rely in implementing that advice while we engage in a necessarily lengthy process of writing and ratifying a new rule.

—Seymour Mandelbaum

Speaking Out

Senate Role in Sensitive Issues

The President and Provost are to be commended for adding faculty members named by the Senate chair to the group to review and discuss the ethical issues surrounding animal research at the University (*Almanac* 11/6). Broad representation of faculty concerns by persons without strong preconceptions can be a balancing and stabilizing force on University bodies dealing with deeply controversial matters. With all due respect for the high quality and dedication of the members of the Task Force on Conduct and Misconduct, I would like to suggest to the President and Provost that progress toward the important goals of that body would have been faster and smoother if a similar model had been followed in the selection process.

The Senate has an essential role to play in matters that generate sharp divisions of opinion within the faculty. The Senate leadership is responsible for ensuring that all significant faculty constituencies are heard and for resolving or mediating their differences to the extent feasible. One useful mechanism for implementing this role is the inclusion of members named by the Faculty chair in bodies studying and making policy recommendations about controversial issues, as in the animal research case. An alternative mechanism is an ad hoc Senate committee appointed to review and make recommendations to the Senate on policy proposals that deeply concern the faculty, as the Senate Executive Committee has moved to do in the conduct and misconduct case. The ultimate mechanism is, of course, debate and action by the full Senate.

—Jean A. Crockett, Professor of Finance

More on Salaries

In *Almanac* October 16, Professor Anthony Tomazinis, Chair-elect of the Faculty Senate, published a statement headed "Restore Lost Salary." We, as members of the faculty of the Department of Oriental Studies, would like to express our strong support for this statement, and urge that the deans and central administration give it their immediate attention.

Professor Tomazinis accurately delineates a problem that is of major concern to many faculty members and has had corrosive effects upon faculty morale. This fact is that many faculty are "grossly underpaid." He also proposes a clear and achievable solution for this problem. In his words, "ten years of sacrifice is enough from any group." In addition, we also think that an important additional point was made about junior faculty salaries by Dr. Wiita in *Almanac* October 30.

—Jeffrey H. Tigay, Ellis Associate Professor of Hebrew & Semitic Languages & Literatures; Graduate Group Chairman

—W. Allyn Rickett, Professor of Chinese Studies; Acting Chairman

—E. Dale Saunders, Professor of Japanese Studies

—David C. Jacobson, Assistant Professor of Hebrew

—William L. Hanaway, Jr., Associate Professor of Persian; Chairman

—Thomas Naff, Associate Professor, Middle East

—Victor H. Mair, Associate Professor of Chinese Studies

—William J. Tyler, Assistant Professor, Japanese Studies Director, Japanese Language Program

—David O'Connor, Associate Professor of Egyptology

—David Stern, Assistant Professor, Bible

—Ernest Bender, Professor of Oriental Studies

—Peter Gaeffke, Professor of Modern Indian Literature

—Roger M. A. Allen, Associate Professor of Arabic

—James D. Muhly, Professor of Ancient Near Eastern History

—Wilhelm Halbfass, Professor of Indian Philosophy

—Erle Leichty, Professor of Assyriology

—David Silverman, Associate Professor of Egyptology

Fourth Amendment Protections

Should evidence obtained through burglary (e.g. Watergate) or criminal entry be used against one accused of wrongdoing? The answer is a clear "YES" according to the Law School Thirteen ("Speaking Out," November 6).

The purpose of the 4th Amendment is to protect all of us from unlawful search. At the opposite extreme, the Law School Thirteen would encourage and even reward it!

—Charles S. Goodman, Professor of Marketing

Response

The exclusionary rule of the Fourth Amendment protects against the use in criminal proceedings of evidence seized illegally by the State. The University dialogue concerning the Head Injury Clinical Research Laboratory is not a criminal proceeding, and the original videotapes were not removed by the State. The primary purposes of the exclusionary rule are to deter law enforcement officials from engaging in impermissible intrusions upon privacy, and to prevent courts of law from using "tainted" evidence in adjudicating criminal liability. Neither purpose is implicated here.

In the October 30 letter sent by members of the Law School to President Hackney and Provost Ehrlich, we stated: "We do not condone what we understand to be illegality in the original removal of the tapes." The issue of the allegedly wrongful taking of the tapes and the issue of the University's response to the possible improprieties that the tapes show are separate issues and should be kept that way.

—Gary L. Francione, Assistant Professor of Law

Update

DECEMBER ON CAMPUS

FITNESS/LEARNING

Now Class of 1923 Ice Rink Skating Lessons: for 7 week session, next session begins January 20. Thursday afternoon lessons: 3:30-5 p.m., 1/2 hour plus 1 hour practice; \$40 (U. of P. \$35). Sunday lessons: 11:30 a.m.-12:45 p.m., 1/2 hour plus 1/2 hour practice, free admission to public skating. \$45 (U. of P. \$40). Information: Ext. 1823.

MUSIC

7 Penn Balalaika Orchestra's Annual Vecherinka (Russian Party): Russian and Eastern European folk and gypsy music played on authentic instruments. Russian food and drink and folk dancing afterward are included in ticket price: \$5, \$4 for students and senior citizens; 7:30 p.m., Bodek Lounge, Houston Hall. Reservations recommended. Information: Ext. 5928 or 985-4678.

SPECIAL EVENTS

5 First Annual Christmas Bazaar: participants include the Penn Book Store and University Museum Gift Shop, HUP Gift Shop, International House Bazaar Shop, CHOP Gift Shop, Emporium of the Hilton; 10 a.m.-6 p.m., Hilton of Philadelphia, Civic Center Boulevard

and 34th Street. Information: 386-4540.

13 University of Pennsylvania Press Christmas Book Sale for Faculty Club members and their guests; 11:30 a.m.-6:30 p.m., Faculty Club.

TALKS

4 Why Don't Patients Receive Appropriate Treatment? Towards a Definition of and Delivery of Mental Health Services; Dr. Ira Glick, professor of psychiatry, New York University School of Medicine; 10:30 a.m.-noon, Surgical Conference Room, first floor, White Building, HUP (Department of Psychiatry).

Dynamics of the British National Health Service in the 1980's—Are There Lessons for America?; Nick Bosanquet, senior fellow, Center for Health Economics, University of York, England; 4 p.m., Dunlop Auditorium B, Medical Education Building (Elizabeth & Duane G. Sonneborn Lecture).

5 Differentiation of Respiratory Epithelium in Fetal Mouse Lung; Dr. S. Robert Hilfer, professor of biology, Temple University; noon, Room 213, Medical Education Building (Analysis of Development Seminar Series).

11 Texts and Lumps; Richard Rorty, University of Virginia; 4 p.m., → change in location: Room 17, Logan Hall (Departments of English, Philosophy and Romance Languages).

Deadline

The weekly update deadline for calendar entries is at noon on Tuesday, a week before the date of publication. The address is 3601 Locust Walk/C8 (second floor of the CA).

Correction: In Dr. Peter Gaeffke's "A Word on the Presidency" (*Almanac* November 20) "Senate" came out "State" in his recommendation to change from Chair to "Rector of the Senate." We regret the proofreading.—K.C.G.

Almanac

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