

*Fifty-eight thousand brothers and friends and fathers died in Vietnam. I don't want my son sent to some far-off war 15 years from now against his will.*

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## **Duty, Honor, Country — But No Draft**

**L**ike the weeds in my garden each summer, calls to resume conscription are perennial and pervasive. Cultivated by long-time draft supporters and by new proponents of national service, support for some form of compelled service can be found across much of the political landscape. The sentiment seems at home in the mid-1980s, a part of the repudiation of the post-Vietnam syndrome. But it's a wrong-headed sentiment, the product of narrow, alien thinking.

While policymakers must fashion adequate military forces, they must not ignore personal, individual freedom. How, I wonder, can people with a professed interest in preserving the Constitution, people who care about American liberty, so disregard the freedom of the individual? How can they feel empowered to claim the lives of our

sons in service to the state?

For many of us, the issue of conscription in 1986 cannot be considered in isolation from its practice during the Vietnam war. For those of us who came of age in the Vietnam era and were threatened by the draft, or those who had brothers, fathers, or sons "selected" and sent to war, the issues of the draft and Vietnam are inextricable. Indeed, reconsideration of the latter may be driving reconsideration of the former. The war is thought of these days by some as a noble cause. Columnist Richard Cohen does well to warn us, however, "More dangerous by far than the post-Vietnam syndrome is the pre-Vietnam syndrome, in which dash and valor and Green Berets

were supposed to solve problems politicians could not."

Most of the men of my generation avoided or evaded the draft during the Vietnam war, as I did. My case was not dramatic. A student deferment shielded me until I graduated from college, at which time the draft call in my locality stopped two numbers short of my own. I only got as far as the physical examination, and by then a regimen of beer, popcorn, and exercise had ensured that my skinny body wasn't what the Selective Service coveted.

Some of my contemporaries who ducked the draft now argue in favor of reintroducing it. In the current era of more-monochromatic patriotism, they've changed their minds; in today's light they see a draft as somehow egalitarian and ennobling. As if to prove their repatriation, they swear now that conscription is a good thing; now that they have

**by Greg Todd**



passed their 35th birthday and wouldn't be liable themselves, they think all young men should be drafted.

That's probably a low blow. Catharsis is a personal thing, and opinions do change. People do grow, sometimes wiser. For me, 12 years working for the Army has been assuaging. But to support the draft is carrying things too far.

Any man who evaded the draft during the Vietnam war probably felt some guilt. It wasn't the patriot's thing to do. In the

vernacular of a later era, real men don't dodge the draft. Our fathers had answered the call during World War II, and now it was our turn.

But things were different in 1970. Vietnam *wasn't* World War II. Our government was prosecuting a war that we believed was unjustified. Did we have the right to make that judgment? Did we owe our country the benefit of any doubt? Did we owe our country obedience? The questions of the day were not easily answered, and some

important distinctions have been lost in time's passage.

Hindsight is not 20/20; it can provide a clear but incomplete, and therefore misleading, picture. The story of US involvement in Vietnam wasn't simply one of black hats and white hats; it wasn't simply a story of a noble cause. And in the telling today, a real tragedy is too often obscured. Fifty-eight thousand American soldiers were killed. Fifty-eight thousand vital young men. Fifty-eight thousand brothers and friends and fathers.

Fifty-eight thousand sons. And still no one gives a good reason why.

Add to that 2,400 American POWs and MIAs still unaccounted for and 300,000 US soldiers wounded, and add, too, countless draftees whose lives were altered by the government's claim of two years. The entire toll can't even be known.

**T**hose years tore at our commonality. Some who opposed American involvement in the war treated American soldiers with disdain and disrespect. The soldiers deserved better; they had made a courageous choice in answering their government's call. But most of the people I knew who opposed the war never intended disrespect for any American military man. Opposition to the war was too readily construed as opposition to our military, and support for the military too readily became support for the war. We loved our sons and brothers, our soldiers; we hated seeing them die. We hated the war, a policy that seemed shamefully senseless, then and now, not noble. The distinction between soldier and policy was there, and clear, though too often unseen.

My respect for the military, kept even in that divisive time, comes mostly from my family. My dad served in World War II, my father-in-law in the Korean War. One brother was in the Air Force for more than 20 years; he volunteered for Vietnam but was sent to Korea instead—now he feels that he missed “his war.” My other brother was drafted and sent to Vietnam early on, in 1964-65. He was a better man for having been a soldier. He may have been better off had he chosen to make soldiering his life's work. He came home whole, at least outwardly, but his life had been interrupted, irreparably changed.

I wonder now about his time in Vietnam. I wonder what it did to him to come back to a “so what?” attitude. He eventually found a job in a wire plant, and a wife. He never talked to me much about Vietnam. He took his own life in 1971, and I've never learned to deal fully and peaceably with that. I blamed the Vietnam intrusion in his life, the draft, in large part. I still do.

A kid I had gone to high school with bummed a cigarette from me at the swimming pool one perfect August day; he was killed in action in Vietnam a few weeks later. I went to the funeral home and looked at his body in the coffin. I looked at the medals on his chest and wondered how much of the flesh beneath had been blown away. I shook his mother's hand and mumbled condolences. I remember the tears in her younger son's eyes.

I had a friend who went to Vietnam when I was a sophomore in college, before I joined the protest against the war. He sent me letters from the war zone and laughed about swimming in bomb craters. I wrote back about things that seemed inconsequential. We were close friends. After I graduated he was a local recruiting sergeant. He probably didn't know that I had written against the war and the draft. He came to see me. He came to my house and offered to sign me up. That visit ended awkwardly. That was 13 years ago. That was the last

*“Look into my son's eyes; see how clear they are, how unbelligerent, how vulnerable. His life is worth more to me than all your logic.”*

time I saw him. I think of him from time to time. I wonder if he knows I respected him then and now. I wonder if we're still friends.

Just about every young man could tell such stories, from one side of the war or the other. The soldiers, of course, tell grimmer ones. The point is, the war touched all our lives, and in turn the welling of public sentiment eventually stopped US involvement in the war.

Critics of that course point to the denouement in Vietnam after the United States pulled out, to Ho Chi Minh City, to carnage in Cambodia. Few of us would defend the North Vietnamese, nor did we then. But of those critics I would ask, How many more American lives were you willing to sacrifice for the government of South Vietnam? Those who argue for a draft today should answer that.

**P**ublic sentiment had a role in ending the draft as well. The popular opposition to the war spread to include the draft. It was a policy both arbitrary and tragic. People tired of their sons being taken. People equated the supply of conscripts with the prolonging of American involvement in the war.

Proponents of a new draft say that this time the inequities of the old draft will be avoided, that a new draft will unite us, not

divide us class by class. Proponents say that their new draft will be equitable. It will not. Any draft will be inequitable to those forced to serve. The luck of the draw is a poor reason to send an American kid to die in the jungle, or even to disrupt his life for two years against his will.

Some draft proponents counter that we can avoid the problems of a selective draft by compelling *all* youth to serve in a universal service program. Such a system, they say, would provide benefits greater than its costs. But even if that were so, it is utterly inconsistent with the tenets of our society. It's true that the courts don't necessarily agree with that—they've routinely decreed hands-off when it comes to regulating Congress's responsibility to raise an army. But it's equally true that compulsory service is involuntary servitude every bit as much as slavery. Indeed, it is perhaps more odious *because* it emanates from the state.

As Nobel laureate Milton Friedman has argued, “We need a strong military....But strength depends on spirit and not merely numbers. Our military will be far stronger if we recruit it by methods consistent with the basic values of a free society than if we resort to the methods of a totalitarian society.”

And we should not forget Daniel Webster's eloquent words to the House of Representatives in 1814, words no less wise today: “Where is it written in the Constitution, in what article or section is it contained, that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of Government may engage it?”

**I**t seems an odd time to even discuss the draft. It's peacetime—“morning in America”—and our populace has generally opposed a peacetime draft, though some opinion polls have shown support for the idea of universal national service. Shortly after the 1984 election, Midge Decter, a neoconservative who heads the Committee for the Free World and who supports conscription, told the editors of the *Washington Times*, “I think that, without the slightest bit of real turmoil, there could be a draft in this country right now.” But as the newspaper asked in editorial response, “Why is it that some champions of the free society entertain wistful notions of a peacetime draft?” The editorial pointed out that “any serious diagnosis of the turmoil of the late 1960s would fault conscription, which leveled enormous economic, social, and spiritual costs on a generation.” The all-volunteer force, the *Times* noted, has been a success—given

legislative support in providing better pay and educational benefits, the services have been able to attract quality volunteers.

Indeed, our uniformed and civilian military chiefs justifiably point with pride to recent recruiting successes scored even as the economy was shaking its recession doldrums. Employment is up, unemployment down, and our armed services are still filling their recruiting goals completely, and with a higher proportion of high-school graduates than even the draft of the 1960s provided. Enlistment targets are being exceeded, retention is up, and quality indicators are the highest they've ever been.

General John Wickham, the Army chief of staff, and Lawrence Korb, formerly the assistant secretary of defense for force management and personnel, are among those who publicly support the volunteer military. They see the costs and inefficiencies a draft would entail, and perhaps more to the point, they see the success of the volunteer system.

So does military correspondent Drew Middleton, who wrote this appraisal in the *New York Times*: "Armies are no better than the people who serve in them. The first thing that strikes anyone who remembers the discontented, disheartened Army of the early '70s is the cheerfulness, the enterprise and the vigor of today's soldiers and officers. The volunteer Army lacks the overall manpower of the draft army. But the country has gained in the caliber and enthusiasm of the men and women who now serve....[A] professional Army has developed that is probably the finest the country has ever had."

Some critics contend that the increasing number of women in the ranks is diminishing our military strength and argue for a draft of young men on that basis. In fact, women constitute only about 9.5 percent of our forces. Moreover, women are still excluded from primary combatant roles; and in any case, to allege that they are incompetent, as some draft proponents claim, is simply absurd.

We have standing military forces of over 2 million men and women (about 2,148,000), plus reserves numbering more than 1.5 million and another 1.1 million civilian employees in support roles. We have 209,500 Army troops stationed in Germany, which is slightly smaller in area than the state of Oregon. In all of NATO Europe, counting Air Force, Navy, and Marine Corps personnel, the total exceeds 344,000. There are, by comparison, about 198,600 men and women in the US Marine Corps. We have about 29,500 Army troops stationed in South Korea—more than 30 years after the end of the Korean War.

Instead of talking about the draft, we should be discussing what our strategic needs are and to what extent our populace is

prepared to defend certain interests. Instead of reinstituting conscription, we should be taking a sober, realistic look at how our military and foreign-policy commitments may exceed our willingness as a people to commit our nation to war—or our ability to do so short of forced service. One need not be an isolationist to think that our foreign policy relies too heavily on the blood and breath of our young men, that we hold a distorted view of what soldiers can and cannot do in the nuclear era. The ability to seize and hold terrain may no longer mean what it once

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did. Such a reassessment is probably not in the cards, however, in a time when the portrayal of Rambo merits an invitation to state dinners at the White House.

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**I**f our armed forces are indeed strong, the finest we've ever had, then why do draft proponents claim that we need a draft? One common answer centers on the idea of class representation throughout the military and the divisive effect of any racial or social imbalance in the ranks. In his book *National Defense*, published in 1981, *Atlantic* magazine editor James Fallows quoted a lieutenant colonel who wondered "about the morality of a nation that lets the disadvantaged do the fighting....I feel like the country is dividing up into the haves and the have-nots, and the have-nots are doing all the fighting."

That point may merit some concern, but making the military more representative by force of conscription is at least equally undesirable, if one wonders too about the morality of a nation that treats its young as chattel. That's a trait we Americans decry

when our adversaries practice it.

Is it better for the state to select a man by lot and take him from his family against his will? Is it fairer to the man so chosen? to his family? And who will be the better soldier—the man who chooses to enlist or the man ordered under threat of incarceration to leave wife and child behind and do as he's told?

In his book, Fallows bemoaned the microscopic number of college graduates in the Army's enlisted ranks. As he himself pointed out, however, you're not going to get a lot of college graduates when you set out to recruit 18- and 19-year-olds. One of the things that "the haves" have is a college degree, and college graduates with a desire to join the military are overwhelmingly interested in being officers, not privates. Anyway, why do we need college graduates in the enlisted ranks?

In fact, the military may offer minority kids without college degrees a better opportunity than America's civil society. We shouldn't fault the military for being on the angels' side in this regard. Nor should we draft white kids with degrees to force better representation or limit the number of minority kids who can choose to enlist.

Regarding the education levels of enlistees, the situation has changed dramatically in the years since Fallows wrote *National Defense*. The percentage of high-school graduates among first-term enlistees was only 68 percent in 1980, 54 percent in the Army; by 1985 those figures had climbed to 93 and 91 percent, a significant improvement. Those figures refute the suggestion that our soldiers don't measure up.

In any case, conscription has never produced fighting forces representative of our society at large. Marine Corps Lieutenant Colonel David Evans, writing in the US Naval Institute's journal *Proceedings*, has pointed out that from the practice of buying substitutes, common in the Civil War and even in our Revolution, to the testing procedures that channeled soldiers from lower-class backgrounds into combat in both world wars, Korea, and Vietnam, the draft has never been fair in deciding who should die.

Evans also dispatched two other arguments raised by draft proponents: the claim that the volunteer force costs too much, and the claim, based on demographic projections, that we will be unable to recruit enough volunteers after the passage of the baby-boomers.

With regard to cost, Evans pointed out that contrary to any public perception of excessive GI pay rates, "the high-quality recruits and robust reenlistment rates of recent years cannot be explained by pay alone. Military compensation, after adjusting for inflation, is now less than at the start of the AVF [all-volunteer force] in 1973....The

real value of enlisted pay fell about 15% from 1973 to 1983 in constant dollars."

Even more to the point, Evans stressed that conscription would entail *increased* costs. He cited a Defense Department report which "estimates that a 53% increase in two-year enlistees, which would put the draft input at about the 1964 level, would result in skyrocketing costs owing to higher training loads, personnel turbulence, and reduced retention. The first-year cost could exceed \$1 billion."

Refuting the demographic warnings popular among draft proponents, Evans pointed out, "Strength levels have been retained by tapping a relatively small slice of the population: approximately 13% of 18-year-old males in fiscal year 1983....From now through 1994, the pure volunteer system will be called upon to support an active force about 15% smaller than the 1954-1964 average with a 19-year-old cohort almost 50% higher than the 1954-1964 average."

Some draft proponents are simply discomforted by the emphasis on pay and benefits as motivation for enlistees, or see conscription as a way to instill and draw upon a widespread sense of obligation. For example, John Kester, formerly deputy assistant secretary of the Army for manpower, believes that "the AVF has purchased for the enlisted force the economically marginal man." So he argues for the reinstitution of a highly selective draft. Such draft proponents believe that we should not "buy" our soldiers—though that's precisely how we procure our officers, to no one's apparent chagrin.

Of course, pay is not the sole motivation for volunteers, officer or enlisted. Even if it were, where is the logic in the argument that if soldiers won't come cheap, then the government can justly resort to kidnapping? Some draft proponents urge a return to conscription as a means to inculcate what they consider a proper measure of patriotic obligation; but isn't it ludicrous to ask that we forfeit liberty in the name of patriotism?

**T**he case against conscription rests on more than sentiment, but the sentiment involved is important. Individual liberty is among our national treasures, and individual liberty and compulsory service are mutually exclusive. In a time of genuine peril, if the United States or its vital interests were truly at risk, then we would stand together to defend our nation. I have no doubt of that. But to return to the draft in peacetime or to prosecute an unjustifiable war is to tarnish our national treasures and to demean what our countrymen have died for.

When we recall the Vietnam war, let's honor the men and women who served our country in Vietnam, but let's also remember why so many of us chose to oppose the war and the draft. They were tough, conscious choices.

Now, a decade and a half later, I hope we won't conform too much. I hope we can dissent without having our patriotism called into question again. That's a hard feeling that fell on a lot of us. Much of it was self-imposed. We questioned our own patriotism, our own manhood. We felt some guilt, and some anger. We felt that we hadn't done our duty, that we hadn't earned the right to discuss the war and the draft as validly as the men who went to war.

So we've tried to make amends, some of us have, more or less consciously. Some of us argue for a draft these days. Some of us work for the Army. Some have waved lots of flags, maybe, or got religion. Some still haven't bridged the gap, or tried, or cared to.

My college friends generally find it incongruous that I could oppose the war and the draft and then spend 12 years working for the Army, most of those years at the Army War College. But just as I believed that it was right to oppose the war and the draft, so am I proud of my subsequent civilian work for the country and the Army. Some of those old friends retain a rigid and erroneous view of the military. Some of the finest, most honorable, most decent men I've ever known have been Army colonels, and most of the servicemen I've met have been high-caliber, thoughtful people, not zealots or martinets.

Two books I've come across foster an understanding of those who served in Vietnam and those who didn't: *The Wounded Generation*, edited by A. D. Horne, and *Touched with Fire: The Future of the Vietnam Generation*, by John Wheeler. They tell eloquently of the valor of the soldier, and his heart. They are about understanding ourselves and our generation. They are about reconciliation. They are about healing wounds and bridging old divisions, bringing brothers and sisters together again after too many years apart.

As we face the issue of the draft today, we must realize that reviving conscription could encourage the sort of adventuresome governmental policy that got us involved in Vietnam, and got 58,000 young Americans killed. It's not hard to visualize the same lame justifications being applied to the Middle East or to Central America.

Yet that's not the main reason I oppose the draft these days. Intellectually, perhaps. But truly, in my heart, it isn't. Now I have a son, three years old. If he chooses to become a soldier when he comes of age, fine. I'll be like the proud papa in the TV commercial

and tell him to be a good one. But I do not want the government to select him, claim him, and send him to some far-off war 15 years from now against his will.

I keep a clipping of an article by Robert Wilson, printed in the *Washington Post* on April 6, 1980, years before my son was born. It means even more to me now. The title is "My Son's Life Must Not Be Wasted." In it, Wilson tells of the birth of his son, 11 years to the day after they buried Wilson's brother, killed in Vietnam. Now he remembers together the best and most tragic events of his life.

Wilson quotes another father, writer Mark Harris, who cleanly strikes "the primary issue and the primary outrage of our time or any other: the phenomenon of mothers and fathers who, having raised their sons with such devotion, then permit their government to carry them to war."

Wilson speaks of those meaningful stares between father and son; of a son's trust and a father's devotion; of the profanity of sending your child to war. For my own son, I must quote Robert Wilson's words at length; I could not improve upon them: "It will not be for me to permit or to forbid him from fighting whatever war we have found to fight in 1998, but he will be taught, from this day until then, that his life is not a tool of American foreign policy, to be squandered or not as the politics of the day dictates.

"If the war of 1998 is not a Vietnam, and not a war for oil—can you imagine, spilling rich, red blood for thick, black oil—if it is a war of present danger to our liberty, then we will all fight, I at 46 as well as he at 18—old men, young men, and women, too. I don't believe there will ever be another war such as that; if it does come to that, he and I and all of us will die in a flash.

"Both my son's grandfathers are retired career military officers. It will be kids' play for them to point out the naivete of my views. Against their logic—and the logic of politicians, negotiators and generals, for as long as man has lived in society—I can offer only the logic of the heart: Look into my son's eyes; see how clear they are, how unbelligerent, how vulnerable. His life is worth more to me than all your logic."

For me, too, a precious son's life is worth more, and an American boy's liberty is not something to be cast aside. I would give my life for my son, but I emphatically will not give my son's life for a Nicaraguan hill, a Middle East oil field, or a politician's pride. The lives of our children are not ours to give, nor our government's to claim. □

*Greg Todd is assistant editor of Parameters, journal of the US Army War College. The views expressed in this article are his own and do not necessarily represent the position of the Department of the Army.*

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Robert W. Poole, Jr.

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By Warren M. Salomon

## Don't Take the Fifth On the 15th

**D**iscussing this topic in a one-page column means a brief treatment. But the subject is important, so I want to touch on it. Be warned, however: This is not legal advice. Proceed at your own risk...

The Fifth Amendment to the US Constitution covers a lot of territory, but the part that concerns us here is the privilege against self-incrimination: "No person...shall be compelled in any criminal case to be a witness against himself..." So that means: (a) we don't have to file income-tax returns; (b) the whole federal funny farm collapses; and (c) we live happily ever after—right? *Wrong!* Forget the folklore. Here's the real story.

In 1927, when the income tax was young, the US Supreme Court decided that the Fifth Amendment does not justify an outright refusal to file an income tax return (*United States v. Sullivan*). The case has stood for nearly 60 years; it's not going away.

Then, in 1976, the Supreme Court decided the case of *Garner v. U.S.* Roy Garner was a gambling man, and he came right out and said so on his income tax returns. Occupation: "professional gambler." Source of income: "wagering."

Armed with that and other evidence, the feds convicted him of a nontax offense (something about fixing horse races). Garner appealed, claiming he'd been "forced" to provide the evidence on his tax returns. The feds argued that he had submitted the evidence "voluntarily." Garner wasn't compelled to disclose his occupation or the source of his income, they said. He could have claimed the Fifth. Right on his returns!

Wait, argued Garner. The law regards a partial return as no return at all. If I refused to reveal my occupation, claiming the Fifth, I could be prosecuted under Internal Revenue Code section 7203 for failure to file. *Sullivan* says the Fifth is no excuse for not filing. I know a rigged game when I see one. I was "compelled" to reveal my occupation. Therefore you can't use it as evidence against me.

Not so, said the Supreme Court. If you really feared prosecution because of your occupation, you could have refused to disclose it. Any crime, even failure to file, requires proof of intent. You didn't intend not to file; you intended to protect yourself from gambling charges. So you could have taken the Fifth on your income tax return—



legally. But you didn't, so your disclosure was "voluntary." Good evidence; good conviction. Good-bye, Roy Garner. Hello, blank tax returns? Not exactly.

This limited use of the Fifth should not be confused (said the Supreme Court) with saying *nothing* on a tax return. *Sullivan* still stands. Most people don't have criminal activity to disclose on their tax returns, so the Fifth doesn't apply to them. In those few cases where disclosure creates a criminal problem, folks *can* claim the Fifth—but *only* as to their occupations, or whatever else might somehow incriminate them.

The concept works something like this: "Name: Al Capone. Occupation: I respectfully refuse to answer. Income: \$1 billion. Tax: \$500. Check enclosed. Have a nice day." Everything clear? Well, not to some people.

Robert Neff, a San Jose police officer, wasn't a professional gambler—but he played for high stakes. He bet his liberty when he filed "classic" Fifth Amendment returns for 1974 and 1975, providing no information—except 100 pages of tax protestor literature. A jury convicted him of failure to file (not unusual in such cases). Neff appealed, arguing that what he did was sanctioned by the Supreme Court in *Garner*. Good defense, right?

Wrong. Unlike Roy Garner, Neff had no reason to claim the Fifth. His conviction was affirmed, based on *Sullivan*. Wham, bam; bye-bye Bobbie.

But sometimes people get lucky. Robert Ellis of Kismet, Kansas, beat the system. He filed a Fifth Amendment return for 1976, and the feds prosecuted him on one count for that one year. A fantastic break. It's much easier to prove intent with a few years of such tax returns to point to, but they went after Ellis any-

way. The judge, moved by Ellis's poverty, ignorance, pregnant wife, and—get this—his blind reliance on some tax-protestor guru, found that his failure to file wasn't willful.

But don't get any crazy ideas.

The law is a tapestry of *all* relevant cases, not just the happy exceptions. *Ellis* was a prosecutor's mistake, decided solely upon the confused motivations of a woeful defendant, who messed up only once, and who might as easily have babbled about astrology instead of the Fifth Amendment.

Yet *Ellis* is the type of case that misleads the gullible. If some tax rebel is recruiting you, he'll show you decisions like *Ellis*. "See, boy? Nuthin' to it. *Ellis* did it. You can too." But he won't tell you that he's showing you one oddball case, and hundreds went the other way.

In my opinion, no one should rely upon the tax-protestor litany as authority for filing a "classic" Fifth Amendment tax return. Believing in such folklore is like believing in faith healing. Strange things do happen, but oddities prove nothing about the curative properties of mumbo-jumbo.

So forget the Fifth on April 15th. Unless you're a gambling man.

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