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**THE RAMPART SCANDAL
AND THE CRIMINAL JUSTICE
SYSTEM IN LOS ANGELES COUNTY**

Police officers in the anti-gang CRASH unit in the Rampart Division of the Los Angeles Police Department framed innocent individuals by planting evidence and committing perjury to gain convictions. Innocent men and women pleaded guilty to crimes they did not commit and were convicted by juries because of the fabricated cases against them.¹ Many individuals were subjected to excessive police force and suffered very serious injuries as a result.²

Any analysis of the Rampart scandal must begin with an appreciation of the heinous nature of what the officers did. This is conduct associated with the most repressive dictators and police states. It occurred in Los Angeles and the task must be to understand how it happened and what steps must be taken to ensure that it never occurs again. There is certainly every reason to believe that such conduct can, and often does, occur in other major cities.

On March 1, 2000, the Los Angeles Police Department's Board of Inquiry issued a report titled, "Rampart Area Corruption Incident." Shortly before the report was released, I was asked by Ted Hunt, President of the Los Angeles Police Protective League, to prepare an independent analysis of the Board of Inquiry's report. The unusualness of this request must be emphasized. The Police Protective League is the official union for the rank and file officers in the LAPD. Traditionally, it has been quite conservative and often has opposed reforms in the Department. I was stunned that they asked me; I have handled police abuse cases against the LAPD and often have been a voice for major reforms in the Department. I agreed to do this analysis after being convinced that Hunt genuinely is concerned with reforming the Department and after being promised that I could work with anyone I wanted and say anything I wished.

My work on this report began immediately upon release of the Board of Inquiry report. I recruited five highly regarded experts to work together on this effort. These were: Paul Hoffman, Laurie Levenson, Sam Paz, Connie Rice, and Carol Sobel. These are among the preeminent civil rights attorneys in Los Angeles. All of them, like me, were volunteers; none of us has received any compensation in any way for our work on this report. None of us has had any prior connection to the Police Protective League or the Los Angeles Police Department; several have represented plaintiffs in suits against

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the LAPD. All of these individuals are very knowledgeable about law enforcement in general and the Los Angeles Police Department in particular.

The Police Department's Board of Inquiry Report is 362 pages; it contains 108 recommendations. Unfortunately, though, the Report for all of its length and detail ignores the real problems in the Department and therefore fails to provide meaningful solutions. Hardly a word in the Board of Inquiry Report criticizes the management of the Police Department—the Police Commission, the Police Chief, and the command staff. The failures are largely attributed to middle and low rank personnel in the Department. Not a single recommendation of the 108 listed calls for any structural changes in the Department or its management. The Board of Inquiry Report, as discussed below, minimizes the scope of the problem and, perhaps more importantly, minimizes the responsibility for the scandal. As a result, although most of its recommendations are desirable, individually and collectively, the 108 proposals would not bring about the needed systemic reforms of the Department.

Specifically, the Board of Inquiry report is lacking in the following ways. First, it fails to identify the extent of the problem and, indeed, minimizes its scope and nature. Second, the report fails to recognize that the central problem is the culture of the Los Angeles Police Department, which gave rise to and tolerated what occurred in the Rampart Division and elsewhere. For instance, it is telling that there is virtually no reference in the Board of Inquiry Report to the “code of silence” described by the Independent Commission on the Los Angeles Police Department (the “Christopher Commission”).³ Third, the Board of Inquiry report fails to consider the need for structural reforms in the Department, including reforming the Police Commission, strengthening the independence and powers of the Inspector General, and creating permanent oversight mechanisms for the Department. Fourth, the problems in the Department's disciplinary system are unduly minimized. At every step, from receipt of citizen complaints through adjudication in boards of rights, there are serious problems that need to be remedied. Fifth, the report fails to acknowledge serious problems with how the Department handles excessive force cases, particularly officer-involved shootings. Sixth, the report fails to recognize the broader problems in the criminal justice system in Los Angeles County. Prosecutors, defense attorneys, and judges must share responsibility when innocent people are convicted. Each of these six major failings of the Board of Inquiry report is discussed, in turn, below.

My report was released on September 11, 2000. The Police Commission has created its own committee to study the Rampart scandal and the LAPD. Its report is due in mid-October. Additionally, in May 2000, the United States Department of Justice announced its intent to sue the LAPD for having a pattern and practice of violating civil rights. After four months of secret negotiations, a proposal for a consent decree was presented to the City Council

in late September. After lengthy debates, the City Council, by an 11-2 vote, approved entering into the consent decree.

This article is a summary of some of my major conclusions concerning the Rampart scandal and some of my major recommendations.⁴

I. The Board of Inquiry report fails to identify the extent of the problem and, indeed, minimizes its scope and nature.

Crucial, basic questions must be answered in appraising the extent of the Rampart scandal and the magnitude of the problems confronting the Los Angeles Police Department. How many officers in the Rampart Division CRASH unit participated in illegal activities? How many officers in this unit and in the Rampart Division knew of illegal activity and were complicit by their silence? How high within the Department was there some knowledge of illegal activities by Rampart officers? Was there similar illegal activity in other CRASH units, in other specialized units, and in other divisions?

The Board of Inquiry report provides no answer to these questions. Nonetheless, the Board of Inquiry minimizes the problem, calling it the "Rampart Incident," saying that the problem was a result of a "few" officers, and declaring that corruption is not a problem throughout the Department. These conclusions are at odds with everything that I learned in preparing this report and with the Justice Department's investigation which concluded that abuses occur "on a regular basis."

To ensure that there is a complete and adequate investigation to determine the full extent of the problem, I recommend the following. First, an independent commission should be created by the City of Los Angeles with the mandate of thoroughly investigating the Los Angeles Police Department, including assessing the extent and nature of police corruption and lawlessness. The Commission must be given adequate funds, powers, and personnel for a thorough investigation. The Commission should be external to the Police Department and report to the Mayor, the City Council, the City Attorney, the Police Commission, and the people of Los Angeles.

Second, officers with knowledge of wrong-doing in connection with the Rampart scandal should be encouraged to reveal what they know by granting them immunity from discipline for their failure to reveal wrong-doing previously. This, however, would not immunize any other wrong-doing by officers; the immunity would be solely for the failure to come forward and report prior wrong-doing by others. This likely should be extended to knowledge of wrong-doing in other CRASH units, and as warranted to other units and divisions.

I have personally spoken to several officers who said that they have knowledge of illegal activities, in Rampart and elsewhere in the Department, but that they will not come forward because of fear of being disciplined for their

previous failure to report the wrong-doing. Undoubtedly, many officers in the Department witnessed illegal activities in Rampart and elsewhere. Even the Board of Inquiry report acknowledges this in its statement: "None of the employees interviewed recognized any particular trend toward a Code of Silence, which is certainly ironic, to say the least, given what we now know regarding events at Rampart."⁵

The full extent of the scandal only will be learned if officers who witnessed wrong-doing testify. However, several officers have said to me that they are afraid that if they come forward now, "they will lose their badge." The Chief of Police has refused to provide any amnesty or immunity for those who come forward with information regarding the wrong-doing they have witnessed.

Such immunity is essential to learn the nature and extent of the corruption. In New York, the Mollen Commission succeeded, in part, by granting such immunity. In Los Angeles, I have been told by high level officials in the District Attorney's office that such immunity from discipline is essential in order to expose and prove the lawlessness.

The first step in reforming the Department must be to learn its problems. The Board of Inquiry report failed to answer the key questions in this regard.

II. The Board of Inquiry report fails to recognize that the central problem is the culture of the Los Angeles Police Department, which gave rise to and tolerated what occurred in the Rampart Division and elsewhere.

The culture within the Los Angeles Police Department gave rise to the Rampart scandal and allowed it to remain undetected for so long. Every police department has a culture — the unwritten rules, mores, customs, codes, values, and outlooks — that creates the policing environment and style. The LAPD's organizational culture drives everything that happens within the Department, including its serial scandals. Only if this culture is changed can there be meaningful and effective reform of the Los Angeles Police Department.

One of the greatest failings of the Board of Inquiry report is its failure to examine the problems with the culture of the Los Angeles Police Department, its manifestation in a code of silence, and in the need to shift to community policing as a key aspect of changing the orientation of the Department.

The culture of the Los Angeles Police Department emphasizes control and the exclusion of scrutiny by outsiders, including the Police Commission and its Inspector General, as well as courts and prosecutors. The culture of the Los Angeles Police Department exercises control over the rank and file officers through a highly stratified, elaborate discipline system that enforces voluminous rules and regulations, some of them very petty. The result is star-

tling degree of alienation and hostility to the management of the Department. The culture of the Los Angeles Police Department, as documented by the Christopher Commission, emphasizes overly aggressive policing, resulting in the use of excessive force.

Most importantly, a code of silence is deeply embedded in the Los Angeles Police Department. The Christopher Commission declared: "Perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten code of silence."⁶ Everything we learned confirms that this code of silence remains within the LAPD. Indeed, widespread distrust of the disciplinary system, as discussed below, causes officers to be even less likely to invoke that process and report the wrong-doing of others. The code of silence is reinforced in many ways, as the Department punishes whistleblowers and those who expose the wrong-doing of others.

Changing the culture of the Police Department and reforming its practices will require many dramatic changes, including a shift from overly aggressive police tactics and a mentality that excludes outside oversight, to one that emphasizes community policing and seeks to end the code of silence. This change will not happen voluntarily. The failure to implement many of the key recommendations of the Christopher Commission is evidence that there must be judicial enforcement of reforms, either through a consent decree or a court order as part of a judgment.

First, community policing must be instituted. The Christopher Commission called for a shift from overly aggressive, para-military policing to community policing. The Chief of Police has been very resistant to this. Shifting to community policing must include restoration of the Senior Lead Officers program, where an officer is assigned to be a liaison with the community. Evaluation and promotion criteria should include community-based policing activities. Officers must receive training on community policing activities and regular meetings with the community must occur. All of these reforms have been implemented since my report was released.

To deal with the code of silence there must be greater protections for "whistleblowers" within the LAPD who expose wrong-doing by other officers. There must be a policy protecting officers who expose wrong-doing from retaliation. There must be a system where officers may report wrong-doing by other officers to the Inspector General, with an assurance of confidentiality, and with protection from reprisals. There must be a procedure and standards for investigating and punishing supervisors who retaliate against whistleblowers.

Recruitment and training within the LAPD must be changed. There must be more careful screening of recruits and increased efforts to hire more women, racial minorities, and gay and lesbian officers. Countless studies show that

women police officers are less likely to use excessive force and less likely to be complicit in a code of silence. Training must be reformed to include greater attention to civil rights and civil liberties; all too often I heard about training supervisors telling new recruits to ignore the manuals and practice street policing as it was done in the LAPD.

III. The Board of Inquiry report fails to consider the need for structural reforms in the Department, including reforming the Police Commission, strengthening the independence and powers of the Inspector General, and creating permanent oversight mechanisms for the Department.

The Board of Inquiry report identifies no problems with the structure of the Police Department and apparently does not see this as in any way responsible for the Rampart scandal. Not a single one of its recommendations is addressed to structural change in the governance of the Los Angeles Police Department.

A. The Police Commission

Structural reforms are essential in improving the Police Department. One essential change is to create a full-time, paid Police Commission and to change the manner of selecting and removing Commissioners to ensure greater independence. Under the Los Angeles City Charter, the Police Commission is the manager for all aspects of the Department, except for police discipline which is the responsibility of the Chief of Police. The Police Commission does not exist only for oversight or policy-making; it is the Department's manager. This task cannot be effectively done by a part-time, unpaid Commission. Under the Charter, all Commissioners are appointed by, and are removable by, the Mayor. The problem is that Commissioners then are much more likely to reflect one philosophy and, at times, refrain from expressing a difference of opinion because of the risk of being removed by the Mayor or not reappointed. If the Mayor is strongly aligned with the Police Chief, and the Commissioners are seen as aligned with the Mayor, then there is an inherent erosion of public confidence in the Police Commission. That, of course, is exactly the situation today. Mayor Richard Riordan has been outspoken in his support of Police Chief Bernard Parks and Parks' policies (and almost totally silent in voicing any criticisms of the Department or as to the needed reforms). The appointment authority should be dispersed (such as by having the Mayor appoint two police commissioners and having one each by the President of the City Council, the City Attorney, and the City Controller). Removal of a commissioner should require approval of the City Council.

B. The Inspector General

There must be a substantial strengthening of the independence of the Inspector General. A key Christopher Commission reform was proposing the

creation of an Inspector General to oversee the administration of discipline within the Department. The first Inspector General saw her role and powers gutted as she was instructed that she could not report to the Police Commission and could not have access to case files. The new City Charter strengthens the role and independence of the Inspector General, but it does not go far enough. The Inspector General needs more protection from removal and clearer authority to investigate any matter, unimpeded by the Police Commission.

C. A permanent special prosecutor

Finally, there must be an external oversight mechanism for the worst abuses by LAPD officers. A permanent special prosecutor should be created, ideally in the Attorney General's office, to conduct criminal investigations and prosecutions of illegal activity by officers. The District Attorney's office regularly works with police officers in all of its cases. It is not realistic or desirable to entrust it with on-going criminal investigations and prosecutions of these officers.

IV. The Board of Inquiry report unduly minimizes the problems in the Police Department's disciplinary system.

The Christopher Commission declared: "[T]he Commission concludes that the current system of discipline does not work. There are failures in every stage of the disciplinary system from complaint intake to punishment. Minor tinkering or adjustment will not solve these problems; a major system overhaul is required."⁷ Serious problems remain at every step of the disciplinary system.

A. Citizen complaints

Many complained to us about how difficult it is to file complaints against officers. Individuals must be able to file complaints without needing to appear in a police station. In other words, a procedure should be developed to receive citizen complaints by fax, telephone, letter, and e-mail. Complaint forms should be widely available.

B. Screening complaints

The key task is to separate complaints against officers that require further investigation from those that are trivial and do not. In this regard, a probable cause officer should be created to screen complaints and determine which complaints are worthy of further investigation. Probable cause officers should receive training. There should be regular audits of the activities of probable cause officers.

C. Investigating complaints

Internal Affairs is responsible for investigating allegations of wrongdoing by officers. We heard many officers express great distrust of Internal Af-

fairs. We learned of instances of Internal Affairs failing to pursue serious allegations of wrong-doing within the Rampart Division.

There are many serious problems concerning the Internal Affairs division. Assignments to Internal Affairs are for limited time periods, usually no more than two or three years for most individuals, some for far shorter time periods. This turnover in personnel in Internal Affairs often results in significant turnover in handling a single case. More insidiously, it means that officers from Internal Affairs soon will be returning to work with the same officers that they were disciplining.

The Board of Inquiry relies heavily on greater responsibility and authority for Internal Affairs as a solution to the Department's problems. But as presently constituted and operating Internal Affairs is not a remedy to the crises within the LAPD; it is a significant part of the problem. Substantial reforms of Internal Affairs are essential. Most importantly, creating civilian oversight of Internal Affairs, as was done recently in the Sheriff's Department, is crucial.

D. Adjudicating complaints

The Los Angeles City Charter provides that disciplinary charges against police officers are adjudicated by a Board of Rights comprised of two command officers and one civilian. This composition of the Board of Rights was created as a result of a recommendation by the Christopher Commission.

The current disciplinary system is widely distrusted by officers. Many believe that it often is controlled by the Chief of Police and is used in an arbitrary fashion, sparing command staff from punishment and imposing sanctions on the rank and file. This perception causes friction between the leadership and the rank and file, undermines morale, and reinforces the code of silence as officers are unwilling to make complaints in a process they distrust.

The Board of Inquiry report flatly rejects any change in the disciplinary system. In light of the crisis of confidence in the existing system this is an untenable position. There must be reform and there are many options to be explored. One possibility, approved by the Elected Los Angeles Charter Reform Commission but not included in the new Charter, would be to reconstitute the Board of Rights to include one command officer, one officer of the rank of Sergeant II or higher, and one civilian. Another would be binding arbitration. Another, likely the most promising, would be a citizen review board. Any of these changes would require an amendment to the Los Angeles City Charter because the Board of Rights' composition and procedure is defined there.

E. Punishing violations

We have heard many officers complain about their perception of unequal punishments being imposed for similar conduct. Predictable, uniform pun-

ishment always is desirable. Therefore, it is important to develop a “uniform penalty guide” for discipline of officers. In other words, this would require standards be developed to determine the punishment for specific infractions and offenses.

F. Tracking violations

The Christopher Commission recommended the creation and implementation of a system for tracking disciplinary records of officers. This recommendation never was implemented. The Board of Inquiry recommends instituting such a system. This is essential and must be accompanied by standards as to when and how information in the tracking system may be accessed and used. Also, there must be a better system for tracking all settlements and judgments against the City because of the conduct of LAPD officers. This is a key reform instituted in the consent decree between the Justice Department and the City.

V. The Board of Inquiry report fails to acknowledge serious problems with how the Department handles excessive force cases, particularly cases dealing with officer involved shootings.

The primary focus of the Christopher Commission was on the problem of excessive force within the Los Angeles Police Department. The Rampart scandal shows that despite the implementation of the Christopher Commission recommendations, serious problems remain. Two specific issues are discussed.

A. Officer involved shootings (OIS)

There are serious problems with how officer involved shootings are investigated by the LAPD. As described in the Board of Inquiry report, the practice is that officers are not separated, but are allowed to remain together, return to the station, wait together, meet with the same attorney together, then go back to the scene of the shooting (with the same lawyer consulting multiple officers) and walk through, discuss the evidence and compare stories and develop a scripted smoothly choreographed version of the facts. The tape recorded statement occurs only after the officially sanctioned walk-through with the assistance of the OIS investigators is completed. The interview is often prompted with leading questions.

In preparing the OIS report, the officer’s version of the facts is included in the summary of the shooting, but the tape recorded statements of the witnesses are only summarized. Thus, when the report is approved by the OIS supervisors, any contradictory statements are not included. When the report is widely disseminated to the Use of Force Board, the Police Commission, the Inspector General, the Chief of Police and others, the one-sided version of the facts almost invariably leads to the conclusion that the use of force was within policy. Overall, the present OIS procedure is designed to protect the

City and LAPD officers from liability.

An independent investigative unit for officer involved shootings should be created. A new policy for obtaining statements from officers involved in shootings should be developed. Civilian oversight, through the Inspector General, of officer involved shootings should be implemented.

B. Racial bias and racial profiling

The Christopher Commission documented a problem with racism in the LAPD, especially as it affects the use of excessive force. The Commission described many types of discriminatory behavior by LAPD officers, including unjustified stops. Racial bias, including in police stops, remains a serious problem. The consent decree provides for tracking of information concerning the race of those stopped by police officers.

VI. The Board of Inquiry report fails to recognize the problems in the criminal justice system in Los Angeles County.

The Rampart scandal reveals serious problems in the entire criminal justice system in Los Angeles. The conviction, by guilty plea or verdict, of innocent people is a failure of the entire system. Judges, prosecutors, and defense attorneys all must share in the responsibility. There must be scrutiny of the court, the District Attorney, the City Attorney, and the Public Defender to determine how all can better serve to check police abuse and improve the criminal justice system. The Board of Inquiry's scope did not include these issues, but they must be considered to ensure that events like those that occurred in the Rampart division never happen again.

A. Role of Judges in Monitoring the LAPD

Under the current system, members of the judiciary have not played a role in monitoring police misconduct until efforts are made to set aside defendants' convictions. Judges must play a more aggressive role in uncovering and reporting police misconduct.

Some of these reforms are directed to ensuring that police officers better assist the courts in fulfilling their duty to provide fair legal proceedings. For example, we recommend:

- Police rules and procedures must require that officers present to prosecutors all reports concerning an incident.
- Require, by statute or amendment to the Code of Judicial Ethics, that judges inform prosecutors and the Police Department if they have made findings that a police officer made false statements or committed perjury.
- Limit the ability of the District Attorney's office to use its ability to exclude a judge, at least in terms of limiting the number of times that the District Attorney's office may exclude any single judge from criminal cases.

- Judges must take seriously their responsibility for ensuring that there is a true, factual basis for a guilty plea.
- Encourage diversity and balance in the selection of judges and promote increased sensitivity by judges to the issue of police perjury and misconduct.

B. Role of Prosecutors in Monitoring Police Misconduct

The reality is that the District Attorney's office gained convictions of innocent people. The crucial question is what might have been done to better uncover police misconduct. There is a need for clearer guidance as to the duty of prosecutors to turn information over to defendants, pursuant to *Brady v. Maryland*,⁸ concerning police misconduct. Also, there is a need to create clearer incentives for District Attorneys to uncover police perjury and wrongdoing. Prosecutors also must have a clearer duty to inform the Police Department when they learn of misconduct by officers. Recommendations for reform of the prosecutors' offices include:

- Create an independent commission to investigate the District Attorney's office's handling of Rampart cases to determine what it might have done to better prevent, expose, and deal with the Rampart scandal and, more generally, issues of police perjury and misconduct.
- Develop policies within the District Attorney's office to better identify and prevent police misconduct during trials.
- Require the District Attorney's Office to adopt an office policy defining and enforcing prosecutors' *Brady* responsibilities. The District Attorney's office just has announced a new policy of disclosing to criminal defendants material concerning disciplinary records of police officers.
- Adopt procedures for Deputy District Attorneys to report and track lying by police officers in criminal proceedings.
- Adopt procedures for Deputy District Attorneys to report and track cases declined or dismissed because of problems with officer credibility.
- Develop specific policies within the District Attorney's office requiring that the Inspector General and the Police Chief be informed whenever the District Attorney's office has probable cause that a police officer committed misconduct, such as by perjury or failing to disclose *Brady* material.
- Reconsider criteria for promotion within the District Attorney's office and the City Attorney's office to include recognition of a prosecutor's efforts to identify and act on officer perjury and misconduct.
- Revise the system for receiving and investigating citizen complaints about office behavior, including requiring that all complaints about officer misconduct be forwarded to the Inspector General.
- Create an effective mechanism for deputies in the Special Investigations

Division (SID) of the District Attorney's Office to notify prosecutors outside of SID of problems with specific officers.

- Lies by police officers to other court-related officials, including probation and parole officers, must be investigated and disclosed to defense counsel.

Conclusion

The inescapable conclusion of this study is that there are serious, indeed dire, problems within the Los Angeles Police Department. The Board of Inquiry failed to appreciate this and thus failed to propose the reforms that are imperative.

No single reform can be sufficient. Reform is not an event, but a process that will take many years to complete. The hope is that this crisis provides a unique opportunity for reform. This opportunity must not be squandered. This report is written with the strong belief that reform is possible and that future Ramparts can and must be prevented.


The consent decree between the City and the Justice Department is an essential first step to reform. But it is not enough. Many essential reforms, such as of the Internal Affairs Division, were not included. Also, the Justice Department said that any changes that would require changes in the Los Angeles Charter were beyond the scope of the consent decree. The consent decree focuses entirely on the LAPD and not other parts of the criminal justice system in Los Angeles County. All of this must be the focus after the consent decree is finalized. Major further reforms remain essential.

NOTES

- 1 As of this writing, approximately 100 convictions have been overturned. It is estimated that 3,000 cases need to be reviewed. Five officers, thus far, have been arrested and are facing criminal charges. Seventy officers, at this point, face disciplinary proceedings. Beth Shuster & Vincent J. Schodolski, "Poor Morale Rife in LAPD, Survey Finds," *L.A. TIMES*, Sept. 8, 2000, at A22.
- 2 For example, Javier Francisco Ovando, at age 19, was shot by police officers in the head and permanently paralyzed. The officers planted a sawed-off .22 caliber rifle on him and claimed that he had attacked them. Despite having no criminal record, Ovando was sentenced to 23 years in prison for assaulting the police officers. *See*, Nita Lelyveld, "Police Corruption Roils Los Angeles," at <http://www.freep.com/news/nw/qlapd27.htm>.
- 3 The Christopher Commission—the Report of the Independent Commission on the Los Angeles Police Department chaired by Warren Christopher—was formed in April 1991 after the beating of Rodney King and issued its report in July 1991.
- 4 The entire report is available on the web (it is on the U.S.C. Law School website, as well as the websites of the Police Protective League and the City of Los Angeles). Also, it will be published in its entirety in a forthcoming issue of the *Loyola Law Review*.
- 5 Los Angeles Police Department, Board of Inquiry into the Rampart Area Corruption Incident (March 1, 2000) at p. 70.

- 6 Report of the Independent Commission on the Los Angeles Police Department (1991), at 171.
- 7 *Id.*
- 8 373 U.S. 83 (1963).

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