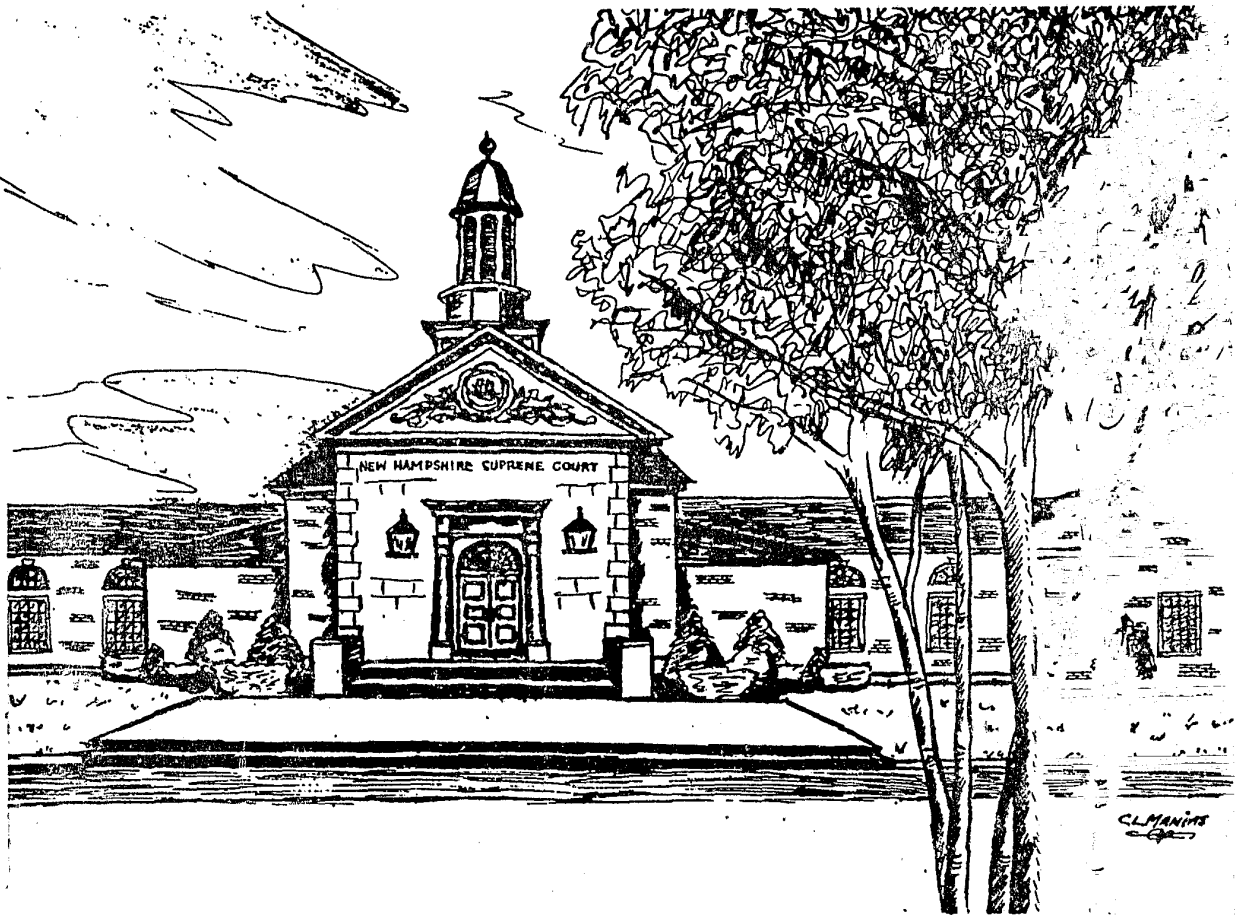


1st edition
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**THE NEW HAMPSHIRE COURT SYSTEM:
YOUR THIRD BRANCH OF GOVERNMENT**

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THE STATE OF NEW HAMPSHIRE
SUPREME COURT

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ADMINISTRATIVE ASSISTANT
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JAMES A. GAINNEY

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February 6, 1979

National Criminal Justice Reference Service
National Institute of Law Enforcement and
Criminal Justice
Law Enforcement Assistance Administration
U. S. Department of Justice
Washington, D. C. 20531

Gentlemen:

Enclosed herewith for your records and information are three
copies each of our newest publications entitled:

- 1) An Introduction to the Supreme Court of New Hampshire;
- 2) Layman's Guide to New Hampshire Court Procedures;
- 3) The Probate Court of New Hampshire;
- 4) The New Hampshire Court System: Your Third Branch of
Government;
- 5) Le Systeme Judiciaire du New Hampshire la Troisieme
Branche de Votre Gouvernement (a French version of
the booklet listed as "4").

Should you require additional copies, please contact me.

Sincerely,

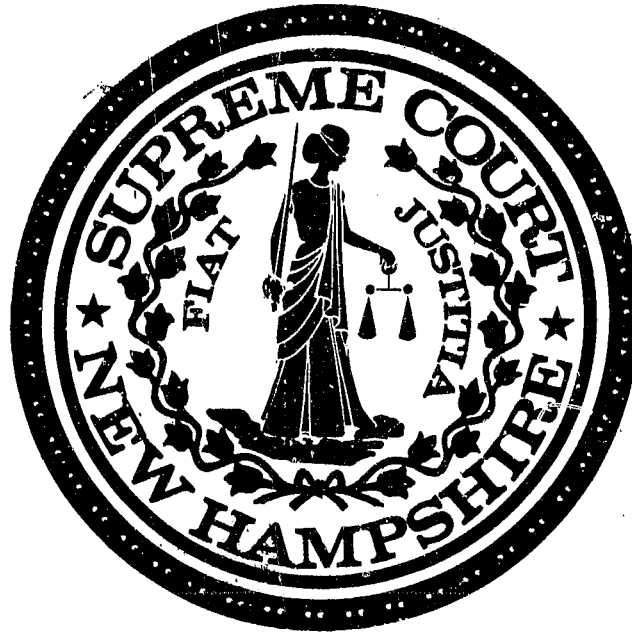
James A. Gainney

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Enclosures 5

THE NEW HAMPSHIRE COURT SYSTEM:

YOUR THIRD BRANCH OF GOVERNMENT



First Edition 1977

Second Edition 1978

This pamphlet was produced with the assistance of the New Hampshire Governor's Commission on Crime and Delinquency Subgrants Nos. 78-I-A1950 E06 and 77-I-A2156 E04.

NCJRS

FEB 13 1979

ACQUISITIONS

"Today we can say . . . that the
Judiciary in this state may be
fairly described as alive, well
and awake. We have many
problems to solve. The task is
not an easy one and we need . . .
your continued cooperation in
making the court system more
effective and more efficient."

Honorable Frank R. Kenison,
Chief Justice, Supreme Court
of New Hampshire, "The State
of The Judiciary," delivered
to the New Hampshire General
Court, March 3, 1977.

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Please note: This pamphlet has been prepared to increase public understanding of the New Hampshire Court System. It is not meant as a detailed statement of law but merely as a general guide to how your courts work.

CREATION OF THE COURTS

The New Hampshire Constitution says that the "judicial power of the State shall be vested in the supreme court, a trial court of general jurisdiction known as the superior court, and such lower courts as the legislature may establish under Article 4th of Part 2." Thus under Article 72-a of Part 2, the Supreme and Superior Courts are "constitutional" courts, which may only be changed by amendment to the Constitution, while the District and Municipal Courts may be changed or abolished by the Legislature, Probate Court is also a constitutional court under Article 80 of Part 2 of the Constitution.

THE WORK OF OUR COURTS

Like other court systems of our country, the New Hampshire courts were established to settle disputes between citizens and to hear cases involving crimes against the public. Consider the following: John Q. and Mabel Citizen are driving through downtown Concord. Suddenly, their vehicle is struck from behind by a drunken driver. The impact sends John into the dash. He is hospitalized for two weeks, and his spouse receives a serious back injury that doctors agree will cause her pain the rest of her life.

Fortunately for John Q. Citizen and his spouse, two sets of rules have been established that will provide them with the means of settling their problems: (1) Civil law, which will allow both John and Mabel to seek money damages from the drunken driver for the injuries they received, and (2) Criminal law, the law that gives the State the authority to prosecute the drunken driver for his wrong. Because ignorance of the law is no excuse for its violation, the drunken driver is responsible for his actions; John and Mabel will have their "day in court" and the law will have once again demonstrated its power to influence human behavior and relationships.

Our civil law has developed from the Constitution, court decisions in previous cases, and from the specific laws passed by the Legislature. In civil actions a jury generally finds the facts, unless the parties to the action decide to try the case in front of a judge only, and the resulting money awarded to the winning party is known as a verdict. In certain cases, a verdict in dollars will be inadequate to cure the damage done or continuing damage, as in the case of the smoldering dump whose smoke or smell drives a homeowner out of his home. In such circumstances, a court exercises what is known as its "equity powers" and issues a "decree" which, in the example stated, would order the manager of the dump to correct the situation.

Criminal law is almost entirely defined by statutes (laws passed by our Legislature and signed by our Governor) although court decisions interpret the statutory law. Crimes are divided into two categories: (1) Felonies, where the penalty may be a state prison sentence from one year and a day to life imprisonment; and (2) Misdemeanors, where the

possible jail sentence is less than one year and a day. Minor infractions, such as offenses against city ordinances or motor vehicle rules are called "violations," not crimes, and are punishable by a fine only.

Appeals may be made from decisions of the trial courts and governmental agencies to the New Hampshire Supreme Court. Appeals are made on issues of law, such as a challenge of a trial judge's application of law to the facts found by a jury. Criminal convictions may be appealed by the defendant but only certain rulings in criminal cases may be appealed by the prosecution. The Supreme Court of New Hampshire is in Concord and consists of five judges. Unlike the trial courts, witnesses are rarely called upon to testify at the Supreme Court. The Supreme Court may hear the attorneys for both sides and the attorneys also submit written analyses, known as "briefs," which support their arguments. Generally, the opinions of the five Justices of the Supreme Court are handed down approximately 30 to 60 days after they hear the oral arguments. These opinions may affirm, reverse, or modify the decisions of the trial court or agency. The Supreme Court may send the case back for a new trial in the lower court or for further decision in the governmental agency.

The decisions of the Supreme Court interpret the law so as to set standards that may be followed in future cases. All the Supreme Court decisions are published in a book called the New Hampshire Reports.

A newly organized Sentence Review Division of Superior Court has been established for review of sentences set by judges in criminal cases. This three-judge panel has the power to affirm, decrease or increase a criminal's sentence to our state's prison.

The ten Probate Courts in the State deal with estates, trusts, and wills as well as adoptions and related matters. The ten Probate Judges opened approximately 8,600 new files in 1977.

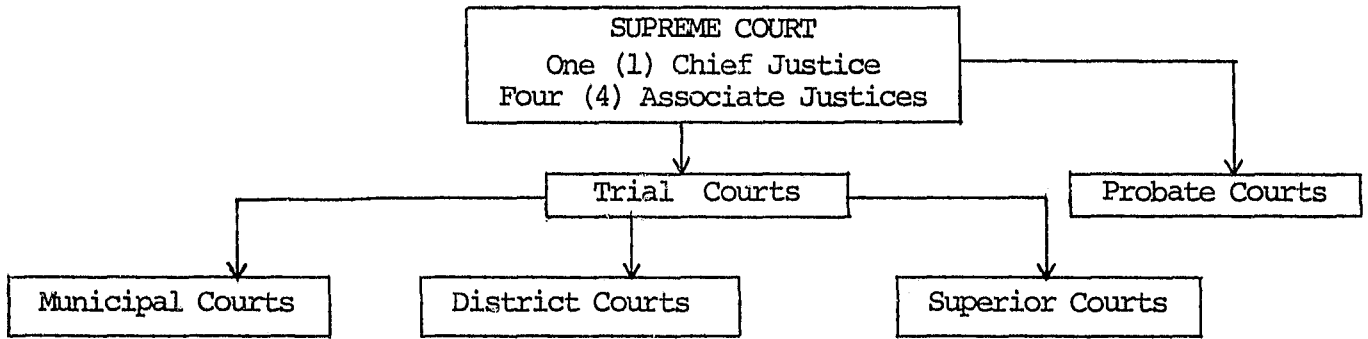
THE JUDICIARY

In New Hampshire all judges are nominated by the Governor and confirmed by the five-member Executive Council. By law, all judges must retire from the New Hampshire Court System at age seventy. All judges are subject to a code of ethics, known as the Code of Judicial Conduct, that is enforced by the State Supreme Court. The Judges of the Supreme and Superior Courts, as well as some District Court Judges, serve full time and may not maintain a law practice.

THE ADVERSARY SYSTEM

The court system in New Hampshire, like other American court systems and the system in Great Britain, utilizes the adversary system of justice. This system assumes that two lawyers arguing the opposite point of view will establish the facts and present the law involved in the case. The judge is there to maintain impartiality and to render judgment in a jury-waived trial in light of the law and the facts involved in the case.

COURT STRUCTURE FOR THE STATE OF NEW HAMPSHIRE



17 in State

Approximately 9,000 cases handled in 1977.

Jurisdiction

Civil: Small Claims (\$500.00 or less and not involving title to real property), landlord and tenant, and juvenile cases.

Criminal Cases: Misdemeanors, violations, and probable cause hearings for felonies headed to the Superior Court.

Appeals

Go to Superior Court for second criminal trial. Other appeals on law questions go to the Supreme Court.

41 in State

Approximately 179,000 cases handled in 1977.

Jurisdiction

Civil: (\$3,000.00 or less and does not involve title to real property). This includes contracts, landlord and tenant, damages to person and property, and juvenile cases. If there is no Municipal Court, litigation of small claims is in the District Court.

Criminal Cases: Misdemeanors, violations, and probable cause hearings for felonies headed to the Superior Court.

Appeals

Go to Superior Court for second criminal trial. Other appeals on law questions go to the Supreme Court.

Sessions held in all 10 counties with a total of 15 judges on circuit. This is the only court that has trials by jury.

Jurisdiction

Civil: (Where the dispute is more than \$500.00 or involves title to real property). Handles domestic relations matters including divorce, alimony, and family support. Almost 18,000 cases disposed of in 1977.

Criminal Cases: Tries violation and misdemeanor appeals from District and Municipal Courts. The Superior Court is the only court for trial of felonies. Over 6,000 criminal cases were disposed of in the Superior Courts statewide in 1977.

Appeals

Go to Supreme Court.

All of these courts dispose of over 220,000 cases a year.

THE FEDERAL COURT

Many controversies in New Hampshire go to the United States District Court for the District of New Hampshire. This court is operated solely by the Federal Government and handles cases where the amount disputed is over \$10,000 and where the parties to the action are from more than one state. Cases involving civil rights and violations of Federal Laws are tried in this court. Criminal cases involving violations of federal criminal laws are also heard in the Federal District Court.

CRIMINAL CASES IN SUPERIOR COURT

Bringing the Charge. Criminal charges are instituted against an individual in one of two ways in Superior Court:

- (1) Through an Indictment or true bill (which may be waived), a charge made by a Grand Jury, or
- (2) Through the filing of an Information in court by the County Attorney, a charge made by the State.

In either case, the charge must set forth the name or description of the person accused and the time, date and place of the alleged criminal act as well as the nature of the charge. Multiple charges in an Indictment are called "counts."

The Grand Jury. The Grand Jury is a body of citizens (not more than 23 nor less than 12) summoned by the court to inquire into felonies committed in the county. Grand Jury proceedings are private and secret. Possible criminal defendants are not entitled to be present at the proceedings, and no one appears to cross-examine witnesses on the defendant's behalf. Ordinarily, the Grand Jury hears such cases and witnesses as the County Attorney calls before it and determines if enough evidence exists to charge an individual with a crime. The Grand Jury may investigate and call witnesses on its own initiative.

Arrest Procedure. When an Indictment is returned by a Grand Jury, or an Information is filed by the County Attorney, the Clerk of the Court issues a Warrant for the arrest of the person charged, if he has not already been arrested and taken into custody. One charged with a crime may, before trial, be either released on his own recognizance (where the judge determines that the accused and the public will not be harmed and that the accused is more than likely to show up for his scheduled trial), or held until bail is posted. Bail is not a fine; bail is required only to help insure the appearance of an accused at his trial. Failure to appear may result in a forfeiture of the deposited cash or bond and may result in being charged with the criminal act of defaulting on bail.

The defendant formally charged with a crime is entitled to an attorney at all times. If he is unable to procure an attorney and if he requests one, the court will appoint an attorney to represent him at public expense and without cost to him providing he is indigent. These rights are guaranteed to all citizens under the Constitution.

Arraignment. In most instances, unless a Waiver of Arraignment is filed, a criminal case is placed on the court's calendar for arraignment. On the date fixed, the accused appears, the Indictment or Information is read to him, his rights are explained by the judge, and he is asked whether he pleads guilty or not guilty to the charge. If he pleads not guilty, his case will be set later for trial; if he pleads guilty, sentence may be imposed immediately or his case will be set later for sentencing.

Plea Bargaining. Plea bargaining is an arrangement between the prosecution and the accused and his attorney whereby the accused pleads guilty in exchange for a predictable recommended sentence. One purpose of plea bargaining is to reduce court time and delay before trial, to give the defendant some certainty in the disposition of his case, to confine the upper limits of the judge's sentence or to decrease pre-trial confinement. Both prosecution and defense participate because they are interested in limiting the uncertainties inherent in adversary proceedings. It is important to recognize that plea bargaining, which is essentially the criminal counterpart to the common civil practice of "settling out of court," allows the courts to manage their caseloads with very limited resources. The court is not obligated to accept a bargained plea; if it declines to do so, the case is then tried.

Preparation for Trial. As in civil cases, very careful preparation on the part of the State and the defense precedes the trial. However, the defense may first enter a motion challenging the jurisdiction of the court over the particular offense involved, or over the particular defendant, and may file a motion for dismissal, as in a civil suit. Other motions, of course, may be filed as well.

Because the Constitution requires that an accused in a criminal case must receive a "speedy" trial, criminal cases consume the bulk of the Superior Court's time, and as a result, civil suits are often delayed because of the lack of enough judges, even though over seventy percent (70%) of the cases entered in the Superior Court are civil.

CIVIL CASES

Civil cases involve everything people and companies ever have disputes about. Civil cases often involve personal injury and property damage. In cases of this nature, the victim or his surviving family begins a civil suit by filing a writ or bill in equity. These pleadings are a formal statement that tell the court the pertinent facts about a dispute and request appropriate relief.

The party who begins a civil suit or action is the plaintiff. The other party is the defendant, who must respond by filing a written answer. Personal injury cases involve such matters as automobile accidents, products liability and libel or slander.

The courts often hear civil cases in which people have made agreements, contracts, and one claims that the other hasn't kept them. The court may also handle disputes over the ownership of real estate. Some

one may ask the court to decide who really owns a certain piece of land or who has what rights to it.

Once the answer has been filed, the case moves into the pre-trial stage. This stage involves a number of alternative steps which an attorney for either side may want to take. These steps may include what is known as discovery procedure whereby either attorney tries, through subpoenas, depositions, and interrogatories, to find out what evidence the other side has developed. Subpoenas are used to require the production of documents; depositions and interrogatories require answers to questions which give the attorneys a good idea of the evidence and a chance to study the evidence before the trial. Depositions may be oral, video-taped or written; interrogatories are always written.

At any time during the proceedings, the attorneys will usually try to work out an agreement settling the case. However, if the two parties can't agree on a settlement, the case will go to trial and verdict.

In New Hampshire civil cases may be heard by a judge alone, or by a judge and a jury. There are certain instances, such as in the case of a bill in equity, where no provision is made for a jury trial.

THE JURY TRIAL IN SUPERIOR COURT

Juror names are drawn at random by the office of the Clerk of Superior Court for a given county from lists of names submitted by local authorities. Some persons, for example, attorneys, sheriffs, practicing doctors, firemen and policemen, are exempt from serving as jurors. Persons over the age of seventy who are selected for jury duty may ask to be discharged as jurors. The court also has authority to discharge any selected juror upon a showing that such person is unfit to serve as a juror.

After a jury panel has been chosen for a term of court (most counties have three a year) the 12 or 6 person juries are chosen for various trials from the available jurors sitting that term. The trial jurors are called petit jurors. A case starts when the attorney for the plaintiff (the person or company who brought the civil action) or the attorney for the State (in a criminal action) makes an opening statement telling what his client claims and outlining the evidence he expects to present to prove his case. The defendant's attorney, after the plaintiff rests his case, usually will make a similar statement, telling what his client claims and the evidence he expects to produce. These statements of the attorneys are used only to "paint the picture" of the case and are not evidence.

Evidence may be in the form of a written document, an object, such as a gun or an implement, a photograph, an X-ray, or some other tangible thing and is called an exhibit. Normally, however, most of the evidence consists of the sworn testimony of the witnesses. Occasionally, an attorney may feel that a trip to the scene of the accident (or crime) will help the jury's understanding of the facts

in a case. This "view" of the scene is also evidence.

After all the evidence has been introduced, the lawyers for both sides may present their final arguments, with each attorney giving the reasons why he thinks his client should win. The judge then instructs or "charges" the jury on the laws which apply to the case. The jury then retires to a jury chamber where their discussion of the case is informal and secret. In New Hampshire, all juries must be unanimous in their decisions. The verdict in criminal cases is given orally in open court by the foreman of the jury. In civil cases, verdicts are returned in writing.

Sentencing. Sentencing of a criminal defendant by the judge can be viewed as the final product of the judicial system. Sentences are the principal means at the disposal of courts to bring about lawful behavior in society. They may reflect trends in public opinion, the availability of community resources and the statutory levels set for a given crime.

Civil and criminal trials in Municipal and District Courts are by a judge alone and generally follow the same manner just described for the Superior Court, but with modifications due to the absence of the grand and trial juries.

THE PEOPLE WHO WORK IN THE COURT

Judges are vital and central to the court system. Their ability and behavior have much to do with the quality of justice in the courts. In addition to the judge, in the courtroom itself, there are a great many other people who are part of the proceedings. In almost every proceeding there are present:

- (1) A court reporter, who is either a Certified Shorthand or Stenographic Reporter or a Court Recording Machine Operator. The reporter sits near the judge and takes down everything that is said during a trial. If a case is later appealed to the Supreme Court, the court reporter types the record and a copy is sent to the Supreme Court to aid the Justices in their determination of whether error was made in the original trial.
- (2) A bailiff (usually a deputy sheriff). The bailiff keeps order in the court.
- (3) A clerk or deputy clerk.

In a criminal case, the following are present also:

- (1) The County Attorney, Assistant County Attorney, or a member of the Attorney General's staff. These people are responsible for prosecuting the case.

- (2) Defense lawyer or lawyers.
- (3) The defendant (accused).
- (4) Witnesses and complaining parties
- (5) If it is a jury trial, the jurors.
- (6) Arresting officer (policeman).

In civil cases, there are present:

- (1) The plaintiff (the person bringing the lawsuit).
- (2) The defendant, who is being sued.
- (3) The attorney(s) for both parties.
- (4) Witnesses.
- (5) Expert witnesses, for example, doctors, and accountants, who unlike most witnesses, may be permitted to give their opinions on matters within the scope of their training and expertise.
- (6) If it is a jury trial, the jurors.

CLERKS

The Clerks of Court are appointed by the judges and are paid by the district or county except for the Clerk of the Supreme Court who is paid by the State. The Clerk is the heart of the court and is responsible for all scheduling, paperwork, phone calls, and other arrangements that are necessary for the efficient handling and disposal of cases. Because much of the paperwork in the Supreme Court and Superior Court involves legal procedure and other matters of law, the Clerks for these courts are usually lawyers.

The Register of Probate is an office similar to that of a Clerk of Court. Compensation for the Register of Probate is a combination of a salary paid by the State and probate fees. The Register of Probate is elected to a two-year term.

A limited number of copies of this publication
are available on request:

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Administrative Assistant to the Chief Justice,
Frank Rowe Kenison Supreme Court Building,
Concord, New Hampshire 03301

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