



Professor Therese Maynard

Hot Topics Presentation – August 4, 2020 at 5pm

Insider Trading and In-House Counsel: A Cautionary Tale

Gene Levoff had everything a transactional lawyer could dream of: a Stanford law school grad, a successful career as a corporate lawyer, a position of prestige with one of the most high-profile companies in the world and the SEC not breathing down his neck. Yet, one day, whether it was greed or something else, he did something reckless that would ultimately cost him his career . . . and possibly his freedom.

NOTE to Students: I have provided below the three news articles that I would like you to read before we meet on August 4. For your convenience, at the end of this file, I have also included the power point slides that I will refer to during the course of my presentation on August 4. I look forward to meeting all of you!

Reading Assignment:

- **CNBC article dated February 13, 2019**
- **Silicon Valley Business Journal article dated October 25, 2019**
- **Bloomberg article dated April 27, 2020**

Power Point Slides



TECH

The former Apple lawyer who was supposed to keep employees from insider trading has been charged with insider trading

PUBLISHED WED, FEB 13 2019 11:47 AM EST UPDATED WED, FEB 13 2019 3:09 PM EST
Sara Salinas@SARACALINAS

KEY POINTS

- Gene Levoff, senior director of corporate law and corporate secretary until September, “traded on material nonpublic information about Apple’s earnings three times during 2015 and 2016,” according to the SEC.
- Before his termination in September, Levoff was “responsible for Apple’s compliance with securities laws,” the SEC complaint says.
- On more than one occasion, he disobeyed the company’s “blackout” period for stock transactions, selling or buying stock worth tens of millions of dollars, according to the SEC.



People shop in an Apple retail store in Grand Central Terminal, January 29, 2019 in New York City.
Drew Angerer | Getty Images

The Securities and Exchange Commission on Wednesday charged a former [Apple](#) executive with insider trading.

Gene Levoff, senior director of corporate law and corporate secretary until September, “traded on material nonpublic information about Apple’s earnings three times during 2015 and 2016,” according to the lawsuit filed Wednesday in the U.S. District Court of New Jersey.

“Levoff also had a previous history of insider trading, having traded on Apple’s material nonpublic information at least three additional times in 2011 and 2012. For the trading in 2015 and 2016, Levoff profited and avoided losses of approximately \$382,000,” the complaint says.

Levoff’s position at Apple granted him insider access to not-yet-public earnings results and briefings on iPhone sales, the complaint says. On more than one occasion, he disobeyed the company’s “blackout” period for stock transactions, selling or buying stock worth tens of millions of dollars, according to the SEC.

The agency alleges he bought shares and profited when the stock popped after positive earnings reports, and sold to avoid downturns that followed poor results.

Later on Wednesday, the U.S. Department of Justice [announced](#) it was charging Levoff with one count of securities fraud. He's set to appear in court on Feb. 20.

In a statement to CNBC, Levoff's attorney Kevin Marino said, "We are reviewing the civil and criminal allegations against Mr. Levoff and look forward to defending him in both matters."

Levoff was put on leave from Apple in July 2018 and terminated in September, the SEC lawsuit says.

"After being contacted by authorities last summer we conducted a thorough investigation with the help of outside legal experts, which resulted in termination," Apple said in a statement Wednesday.

Before his termination, Levoff was "responsible for Apple's compliance with securities laws," the SEC complaint says.

The complaint says:

In fact, Levoff shared responsibility for ensuring that employees complied with Apple's insider trading policies. On at least three occasions in 2010 and 2011, Levoff sent emails to company employees notifying them that a blackout period was about to commence and that they were prohibited from trading Apple securities for the duration of the period. In fact, Levoff sent two such emails immediately prior to his insider trading in 2011.

For example, on February 24, 2011, Levoff sent an email to Apple employees explaining that a blackout period would begin on March 1, 2011, and remain in effect "until 60 hours after earnings are released in April 2011."

The first sentence of Levoff's February 24, 2011 email stated: "REMEMBER, TRADING IS NOT PERMITTED, WHETHER OR NOT IN AN OPEN TRADING WINDOW, IF YOU POSSESS OR HAVE ACCESS TO MATERIAL INFORMATION THAT HAS NOT BEEN DISCLOSED PUBLICLY."

You can read the full SEC complaint here: <https://www.sec.gov/litigation/complaints/2019/comp24399.pdf>

Source: https://www.cnbc.com/2019/02/13/sec-files-insider-trading-lawsuit-against-former-apple-lawyer.html?_source=sharebar|email&par=sharebar

Apple's former insider trading watchdog has been indicted for ... insider trading



[Enlarge](#)

Apple Park, Apple's "spaceship" headquarters as seen on Sept. 10, 2019.

VICKI THOMPSON | SILICON VALLEY BUSINESS JOURNAL



By [Ryan Fernandez](#) – Associate editor, Silicon Valley Business Journal
Oct 25, 2019, 10:31am EDT

If ever the phrase “You had one job...” applied, this case might be it.

CNBC reports that [Gene Levoff](#), former corporate secretary and senior director of corporate law at Apple Inc., [has been indicted for insider trading](#) — one of the very activities he was supposed to prevent as an attorney at the Cupertino-based company.

“Between February 2011 and April 2016, Levoff — the top corporate attorney at ‘Company-1,’ who also served as the company’s assistant secretary and corporate secretary — allegedly misappropriated material, nonpublic information about Company-1’s financial results and then executed trades involving the company’s stock,” according to an Oct. 24 news release by the [New Jersey U.S. District Attorney’s office](#).

Neither the statement nor the indictment itself directly refer to Apple but enough details are present to surmise what company the documents are actually talking about.

In the indictment, U.S. Attorney [Craig Carpenito](#) accuses Levoff of using insider knowledge to “[enrich himself by obtaining money and avoiding losses](#) by purchasing and selling Company-1 securities on the basis of material nonpublic information regarding Company-1 gained by Levoff through his position at Company-1,” saying that he was able to avoid losses of about \$377,000 while making off with about \$227,000 in profit.

Furthermore, Levoff is alleged to have executed trades during a blackout period — when employees can’t buy or sell stock — even as he was telling others about the blackout.

Levoff, who was hired in 2008 and was senior director of corporate law from 2013 until 2018 (when Apple fired him after placing him on leave two months earlier as it investigated), faces six counts each of securities and wire fraud.

According to the news release, he could face up to 20 years in prison and a \$5 million fine for the securities counts, and for the wire fraud counts, up to 20 years in prison and a fine of either \$250,000 or “twice the gain derived from or loss caused by the offense” — whichever is greater.

In February 2019, the U.S. Securities and Exchange commission [charged Levoff](#) for allegedly doing the exact same things — the difference being that the SEC’s case is a civil complaint, and the latest case is criminal in nature.

Bloomberg reported at the time that the SEC was seeking “[monetary penalties and a prohibition](#) on Levoff serving as an officer or director of a public company.”

Source: <https://www.bizjournals.com/sanjose/news/2019/10/25/gene-levoff-apple-lawyer-indictment.html>

Technology

Ex-Apple Lawyer Calls Insider Charges Unconstitutional

By

Malathi Nayak

April 27, 2020, 2:14 PM PDT *Updated on April 27, 2020, 4:17 PM PDT*

- Former in-house counsel says he didn't violate criminal laws
- Insider trading definition divined by judges, lawyer argues



Gene Daniel Levoff and his lawyer Kevin Marino, right, exit from federal court in Newark, New Jersey in 2019.

Photographer: Victor J. Blue/Bloomberg

A former Apple Inc. in-house attorney says his insider-trading prosecution is unconstitutional because no specific criminal law bars such conduct.

Gene Levoff on Monday asked a New Jersey federal judge to dismiss his 2019 indictment in which prosecutors accused him of repeatedly trading on information he gleaned about Apple's revenue and earnings dating back to 2011.

"The definition of insider trading is wholly judge-made: Every element of the crime and the scope of regulated individuals subject to it was divined by judges, not elected legislators," Levoff's lawyer Kevin Marino said in a filing. "This alone renders the criminal prosecution of insider trading unconstitutional."

Courts for years have upheld criminal indictments in insider-trading cases brought by prosecutors. But Marino argued that despite numerous opportunities to examine the constitutionality of a federal common law of insider trading, courts have refused to do so.

That argument isn't likely to hold up, said Miriam Baer, a professor at Brooklyn Law School. The Supreme Court dealt with an insider-trading case as recently as 2016. That case was on different grounds, Baer said, "but if they thought the way insider trading law has been developed was unconstitutional, you'd think this would have come out by now."

Baer said it would be "good policy" for Congress to draft laws that specifically prohibit insider trading. "But urging Congress to enact new statutes is a far cry from arguing the status quo is unconstitutional."

The U.S. Attorney's Office in New Jersey declined to comment on Levoff's filing.

Levoff has been charged under the U.S. Securities Exchange Act that prohibits "manipulative or deceptive devices or contrivances" but doesn't mention insider trading. He's also charged with wire fraud.

Levoff's trades based on the inside information led to about \$227,000 in profits, while allowing him to avoid \$377,000 of losses, according to prosecutors. Levoff was Apple's senior director of corporate law when the company fired him in September 2018 after placing him on leave two months earlier.

Source: <https://www.bloomberg.com/news/articles/2020-04-27/ex-apple-lawyer-calls-insider-trading-charges-unconstitutional>



INSIDER TRADING AND IN-HOUSE COUNSEL: A CAUTIONARY TALE

**Hot Topics Presentation
By Therese Maynard**

WHAT ARE PUBLICLY TRADED COMPANIES?

- A publicly traded company is one whose shares are sold on the open market, like the NASDAQ or NYSE, and can be purchased by anybody.
- The SEC requires companies with more than 500 shareholders and \$10 million in assets to register with the SEC.
- Companies usually chose to go public as a strategy to raise capital.



HOW DOES A COMPANY GO PUBLIC?

- A company must have an IPO (initial public offering) in order to go public. Going public increases their ability to gain capital but imposes much more restrictions on the management of the company. It is also extremely costly and time consuming to go public.
- The board will now have to answer to shareholders and will have to file quarterly filings with the SEC
- Ex: On May 18, 2012, Facebook held it's IPO on NASDAQ, offering 421,233,615 shares at \$38 a share. They raised \$16 billion through that offering.



WHAT ARE THE DIFFERENCES BETWEEN A PRIVATE AND PUBLIC COMPANY?



- A privately held corporation can't rely on selling stocks on the public market to raise cash in order to fund its growth. However, the management doesn't have to answer to stockholders and isn't required to file disclosure statements with the SEC.
- Some famous privately held companies are Mars (candy!), Cargill, Fidelity Investments, Koch Industries, and Bloomberg.

WHAT IS THE SEC? (NOT TO BE CONFUSED WITH THE COLLEGE FOOTBALL CONFERENCE)

- The Securities and Exchange Commission was founded on June 6, 1934 after being created by an act of Congress in response to the great depression
- “The mission of the US Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”
- One of the main functions of the SEC is to stop insider trading and securities fraud.
- The organization is split into 5 divisions: Corporate Finance, Trading and Markets, Investment Management, Enforcement, and Risk, Strategy, & Financial Innovation



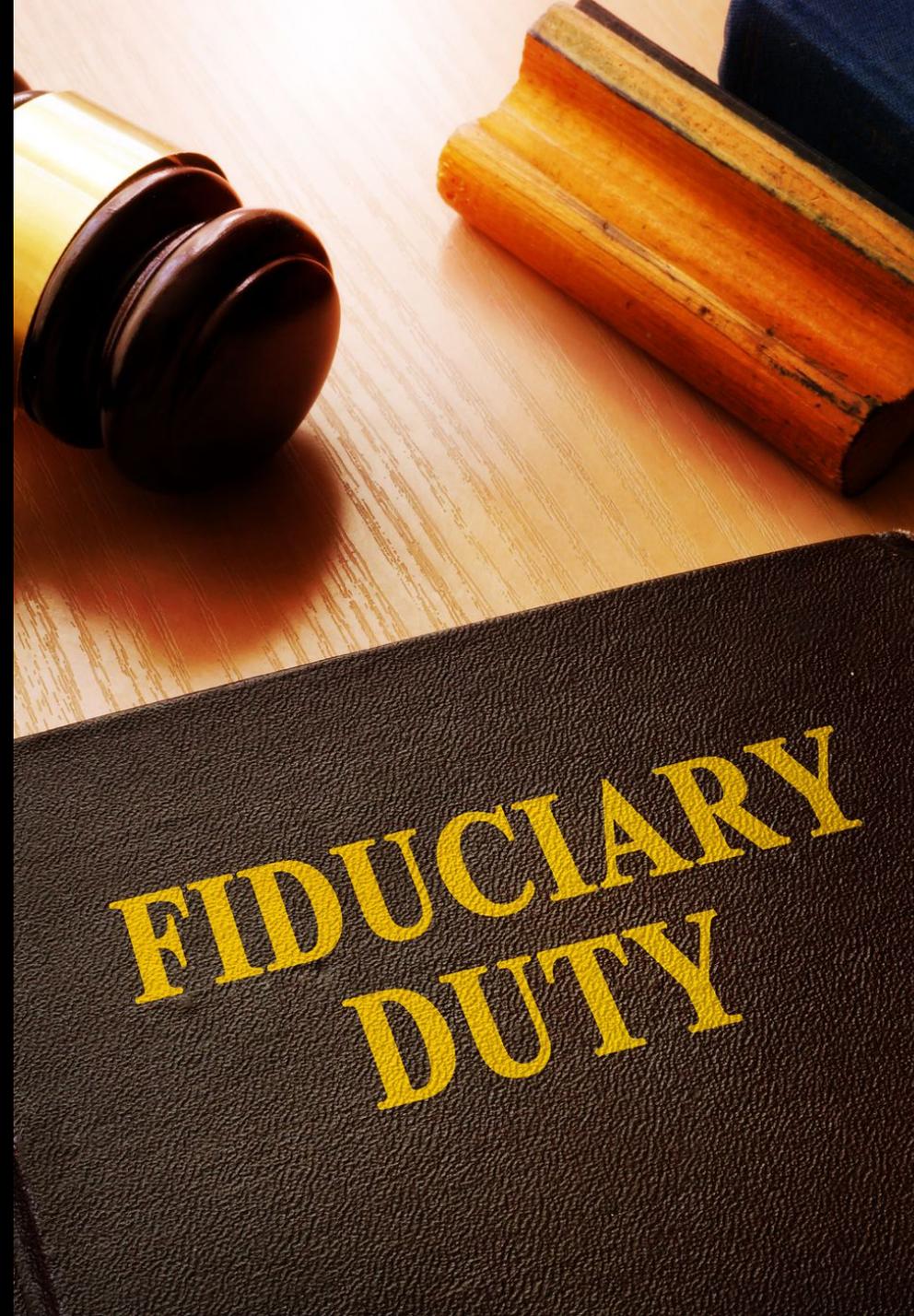
WHAT IS INSIDER TRADING?

- From the SEC: “the buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, on the basis of material, nonpublic information about the security.”
- Material information is any information that could substantially impact an investor’s decision to buy or sell the security.
- Does not have to be a publicly traded company.



FIDUCIARY DUTIES: WHO HAS THEM AND WHY THEY ARE SO CRITICAL

- Fiduciary duties are responsibilities that people with some sort of connection to a company promise to comply with, such as the fiduciary duties of loyalty and care.
- It's a relationship of trust that the person with the duty won't act against the company's interests.
- It's a concept present in all business entities.

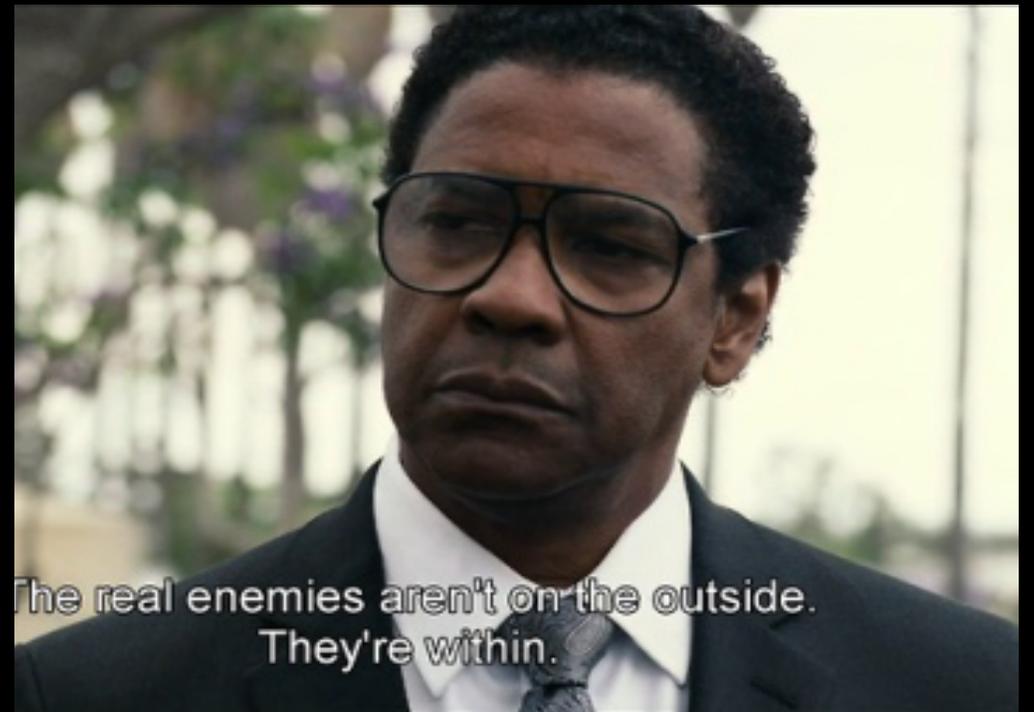




IN-HOUSE COUNSEL V. FIRM ATTORNEYS

THE ROLE OF IN-HOUSE COUNSEL AND THEIR DAY-TO-DAY LIVES

- Unlike government attorneys, solo-practitioners, and those with law firms, in-house counsel only has ONE client: the company that hired them.
- Their work must always be consistent with the mission and goals of the company that hires them, and they will have to be able to deal with various departments within the company.



THE ROLE OF IN-HOUSE COUNSEL AND THEIR DAY-TO-DAY LIVES PT. 2

- An in-house attorney will be called upon both for their legal expertise and their business acumen.
- They must be a jack of all trades unless the company is big enough to require the attorney to specialize (such as IP law)
- There is no pressure for the attorney to bring in new clients and no need to worry about billable hours since you are a salaried worker.
- But salary may not be as lucrative as in private practice, but stock options and bonuses may make up for that!



HOW ARE IN-HOUSE COUNSEL DIFFERENT FROM OTHER KINDS OF ATTORNEYS?

- At firms, the client is the most important thing, and eventually new associates will be expected to produce new business and to be constantly be billing hours.
- Time spent not billing is lost and could have been generating revenue.
- Basically client is KING.

Law Firms At A Glance

Firm Size	<i>Small</i>	<i>Medium</i>	<i>Large</i>
Hours	May be shorter than at large firms	Definitely a full-time job	Long hours are expected
Salary	On the low end	Average	Usually quite high
Training	Do-it-yourself	Some training	A well-developed system
Resources	Expect to do your own paperwork	Usually some support staff	Paralegals, word processors, a law library-every thing you need
Practice Type	Mostly general	Some specialization	Lots of different specialty departments

<https://careers.findlaw.com/how-to-find-a-legal-job/private-practice-or-inhouse-choosing-the-right-path-for-you.html#:~:text=While%20attorneys%20at%20law%20firms,level%20of%20risk%20is%20acceptable.>

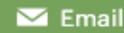
WITHOUT FURTHER ADO...GENE LEVOFF AND THE APPLE INSIDER TRADING SCANDAL



You really
can't
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Technology

Apple's former insider trading watchdog has been indicted for ... insider trading



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By [Ryan Fernandez](#) – Associate editor, Silicon Valley Business Journal
Oct 25, 2019, 10:31am EDT

COMPANIES IN THIS ARTICLE

Apple Inc.
Cupertino, CA
Consumer Electronics
\$260.2B **137K**
Revenue Employees

[See full profile >](#)

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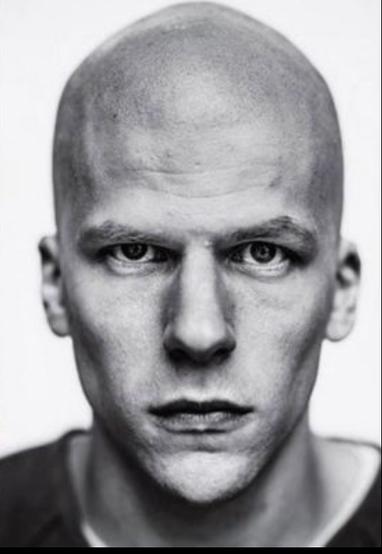
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You had
ONE JOB
GENE!
JUST
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LITERALLY
ONLY
ONE.



SO....JUST
EXACTLY WHO
IS GENE
LEVOFF?
(BESIDES BEING
SUPERMAN'S
WORST
ENEMY?)



Gene Daniel LeVoff, a former lawyer in charge of Apple's legal incident trading online, exits from federal court in Newark, New Jersey, U.S.

STORYTIME!

- Gene Daniel Levoff, 44, graduated from Stanford Law School and was admitted to the California Bar on December 11, 2001. His license is currently inactive (for obvious reasons *cough* insider trading *cough*)
- After graduating from Stanford he held positions at major law firms and one publicly traded company before joining Apple in 2008.



STORYTIME! PT. 2

- Before long he became the Senior Director of Corporate Law, the Corporate Secretary of Apple, and was a member of Apple's disclosure committee who eventually abused his power to unlawfully trade Apple securities ahead of Apple quarterly earnings announcements.
- Levoff oversaw the corporate law group at Apple, a group of approximately 20-30 attorneys and paralegals responsible for Apple's global corporate law issues. Levoff was responsible for Apple's compliance with securities laws, including providing legal advice in connection with Apple's SEC filings and financial reporting, and for managing Apple's corporate subsidiary structure. Levoff served as a corporate officer of every major Apple subsidiary.

**POWER CORRUPTS, AND
ABSOLUTE POWER
CORRUPTS ABSOLUTELY.**

LORD ACTON

HOW DID GENE BENEFIT FROM INSIDER TRADING?

- From his insider trading over the years Gene made nearly \$245,000 in pure profits and avoided losses of \$385,000. He also can afford to live in San Carlos, California.
- San Carlos is one of the most expensive places to live in California, being one of the main suburbs of San Francisco.



SO...DO YOU THINK GENE COMMITTED INSIDER TRADING?

- He owed a fiduciary duty to Apple as part of their legal team.
- He was in possession of material information that was not public.
- He made profits and avoided losses because of his trades.



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CORPORATE COUNSEL

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News

Is Insider Trading Prosecution Unconstitutional? Ex-Apple Attorney's Counsel Still Says Yes

"Consistent with its 30,000-foot approach to Levoff's motion, the Government labels his conduct 'insider trading at its most basic,' but fails to supply the statutory definition of the crime—a curious tactic if its proposition is indeed so obvious," Kevin Marino, who represents former Apple Inc. in-house attorney Gene Levoff, said in a response to prosecutors.

By **Dan Clark** | June 04, 2020 at 02:20 PM



Law Firms Mentioned

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