



the Commentator

The Student Newspaper of the New York University School of Law

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Journal of Law and Business Hosts Annual Symposium on Global Financial Crisis



From left to right, Jackson Murley, Chancellor William Allen, Sabrina Ursaner '10, Professor Lucian Bebchuk, Theodore Mirvis.

By DENNIS CHANAY '11
STAFF WRITER

On Friday, January 22, the NYU *Journal of Law and Business* hosted its Fifth Annual Symposium, "Legal Aftershocks of the Global Financial Crisis." Continuing the journal's tradition of addressing timely issues at the intersection of law and business, the day-long event brought together three all-star panels of legal scholars and practitioners to discuss the aftermath of the 2008-09 financial crisis.

The event drew approximately 330 guests to NYU's Greenberg Lounge and the overflow space, Tishman Auditorium, to listen and interact with panels moderated by Professors William Allen, Geoffrey Miller and Barry Adler. Professor Jesse Fried of Harvard Law School was Friday's keynote speaker, while Fried's colleague and co-author of *Pay Without Performance*, Professor Lucian Bebchuk, spoke to a separate audience the previous evening. Both Fried and Bebchuk addressed issues of executive compensation, its role in the financial crisis, and the need to align compensation with long-term incentives.

The first panel, moderated by

Allen, addressed corporate governance after the financial crisis, its relationship to the crisis, and the prospects of enhanced shareholder power. Panelists included Carol Bowie, head of RiskMetrics Group's Governance Institute; John Coates, Professor of Law and Economics at Harvard Law School; Justice Jack Jacobs of the Delaware Supreme Court; Vice-Chancellor Stephen Lamb, Partner at Paul, Weiss, Rifkind, Wharton & Garrison and retired Vice-Chancellor of the Delaware Court of Chancery; and Theodore N. Mirvis, Partner at Wachtell,

General Counsel and Senior Vice President of the Federal Reserve Bank of New York; John Coffee, Professor and Director of the Center on Corporate Governance at Columbia Law School; H. Rodgin Cohen, Senior Chairman of Sullivan & Cromwell; Annette Nazareth, Partner at Davis Polk & Wardwell; and Bradley Sabel, Partner at Shearman & Sterling.

The third and final panel was moderated by Adler and focused on bankruptcy and restructuring of financial institutions as well as issues surrounding the concept of "too big to fail." Panelists included William Ackman, founder and CEO of Pershing Square Capital Management; Marcia Goldstein, Partner and Chair of the Business, Finance & Restructuring Department of Weil, Gotshal & Manges; the Honorable Arthur Gonzalez, Judge of the United States Bankruptcy Court of the Southern District of New York; Michael Krimminger, Special Advisor for Policy to the Chairman of FDIC; and Edward Morrison, Professor of Law and Economics at Columbia Law School.

Lipton, Rosen & Katz.

The second panel, moderated by Miller, addressed reform of the financial industry, including Congressional legislation and the actions of the Federal Reserve. Panelists included Joyce Hansen, Deputy



From left to right: Chancellor Allen, Carol Bowie, Justice Jack Jacobs, Vice Chancellor Stephen Lamb, Theodore Mervis, Professor John Coates.

The Commentator Speaks to Incoming Vice Dean Hertz

By ANDREW KLOSTER '10
STAFF WRITER

On June 1, Vice Deans Liam Murphy and Barry Friedman will be completing their terms. Randy Hertz and Jeannie Forrest will replace them. This issue *The Commentator* spoke with Hertz; Next issue, we will speak with incoming Vice Dean Forrest.

AK: Tell us a little bit about why you agreed to serve as one of the incoming Vice Deans.

RH: I look forward to greater interaction with

students. The role of the professor and the role of the administration are similar: to get the students the best education possible while removing all the little roadblocks that make that difficult.

AK: And as Vice Dean you will be in a position to do that?

RH: Well, the office has changed over time. When Oscar Chase and Stephen Gillers served as Vice Deans, their functions as Vice Deans were similar. In 2004 Clayton Gillette and Barry Adler sort of split the roles in the same way that Barry Friedman and Liam Murphy do now. This time we are doing something different, with Jeannie coming in as a professional administrator and I will be taking on more of Liam's role in

curricular development. But we will be learning as we go.

One of the things I did and will continue to do as the Director of Clinical and Advocacy Programs is to take seriously students' concerns about clinics. Based partly on these concerns we've added a variety of new programs, such as a



tax clinic and an administrative clinic, and we've reassessed the programs we already have. We are reassessing the Lawyering Program right now. Improving existing courses and helping to develop new ones will be

something I hope to succeed at as a Vice Dean.

AK: Do you have any ideas right now?

RH: Again, in directing the clinics we've stayed on the cutting edge, adding new litigation clinics, non-litigation clinics, and clinics in new practice areas. This is because we recognize the changing student needs.

I recently served as the Chair of the ABA Section of Legal Education and Admissions to the Bar. I learned a lot about what's going on at other law schools right now and I know we can put a lot of that into practice here at NYU. I hope to preserve the best of what we have and I hope to learn from other schools' experiments.

Arthur Miller Loans Art to Japan Society



Professor Arthur Miller's collection of Japanese prints will go on display in New York City at the Japan Society in an exhibition entitled "Graphic Heroes, Magic Monsters: Japanese Prints by Utagawa Kuniyoshi from the Arthur R. Miller Collection."

Infra

We have a brand new, completely original crossword puzzle for your procrastination needs.

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Who is going to win the Super Bowl between the Colts and the Saints? You might have to sit through an entire law school class to figure it out.

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Obama: Cowboy Up and Start Getting Some Things Done

By DOUG MARTIN '11
STAFF WRITER

The recent election of Scott Brown to Ted Kennedy's former seat in Massachusetts has led to a litany of remarks about the waning fortunes of President Obama and the Democrats. Political commentators, especially of the Fox News sort, have called the election a wake up call of sorts for Democrats. Pundits claim that the election must be proof that the nation is fed up with anything from health care to the stimulus, or even just the drive towards socialism that the Democrats are allegedly pushing. These talking heads, both in the media and in the halls of Congress insist that the Democrats must "move to the center" or risk alienating the population.

These ideas, put simply, are utterly ridiculous. Even ignoring the fact that Martha Coakley was a poor candidate who ran a horrible campaign and did just about everything she could to anger Massachusetts voters, they're way off base. If Massachusetts was an indicator of anything, it was that people are fed up with the slow pace of progress and change, for which President Obama was elected in a landslide and for which the Democrats received a supermajority in both Houses.

The idea that the Democrats in power have been too

"liberal" or "leftist" is asinine. They can't realistically move any further to the "center" (read: right) without just outright adopting Republican policies. While pundits and politicians on the right like to harp on how left-wing Obama and the Democratic Congress have been, let's examine those claims in detail. The TARP program and stimulus are both programs be-

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gun under Bush that have been continued under Obama. Don't Ask Don't Tell still remains policy, regardless of Obama's promises that it would be removed. The detention center in Guantanamo is still active. Our troops are still fighting in Iraq. The war in Afghanistan has been accelerated.

What has this centrism gotten Obama and the Dems politically? Nothing but rebuke from both sides of the political spectrum! Obama's attempts at straddling the political center has only managed to aggravate conservatives and liberals. If anything, that should be an indicator of his centrism. Take Afghanistan for example: when Obama revealed his strategy for winning the war, the right

condemned him for thinking about it too long before committing tens of thousands of our soldiers to combat as well as for announcing a departure date. The left condemned him for creating a "surge" instead of winding down our involvement and for committing us for too much longer. Instead of gaining support on both sides, Obama merely lost the support

Republicans do. The claim that Republicans want health care reform but want it in a different way rings hollow. They had control of all three branches of government for most of Bush's two terms and they did nothing. It's not their idea and they're not going to pass it.

So what should you do, Democrats? Quit waffling, quit compromising, quit trying to build bridges to the other side and take action! Stop complaining that the Republicans are going to filibuster and let them do it already. Who do you think will look more ridiculous to the nation: Democrats trying to pass health care reform, job creation and environmental protection or Republicans reading the phone book on national television? As presidential historian Doris Kearns Goodwin recently stated, "[the Republicans] are gonna look like jerks." Otherwise, threaten the reconciliation measure. When Republicans threatened to use the "nuclear option" several years ago, it scared enough members on both sides of the aisle to reach an agreement.

On top of that, keep your promises. If people elected you while you were saying you would end programs like Gitmo and Don't Ask Don't Tell, then maybe they expect those things to be ended. I know it sounds crazy, but I think there really were a lot of people who

thought change really meant change.

When it comes to members of your own party that won't get on board, play hardball. Strip the Liebermans of the party of their chairmanships and other privileges. He and his ilk aren't voting with you anyway. It was loudly touted that the Republican Party's move to the right would isolate them and make them seem too extremist. Everyone thought that the nation's population would go the way of Arlen Specter. But it seems people forgot that we have a two-party system. As Massachusetts showed, if you don't like the party in power, you only have one other real choice. So the Republicans succeeded in making themselves a near homogeneous block that will vote whichever way their leadership wants.

So many people on both sides claim to decry the divisive partisanship that has overtaken Washington. People claimed hopefully that Obama was "post-partisan." But this partisan era will only end when it has really bled itself dry. In the meantime, there's a country to run. Liberals and Democrats disliked Bush's "cowboy" politics and diplomacy and maybe rightly so. But for better or worse, he got things done. It's time for Democrats to cowboy up and get some things done too.

Your Girl's Favorite Columnist

from the one side he could have counted on: the left. He didn't lose the right because he never really had it.

The fact is, he won't get it. Republicans don't want to support Obama. Anyone remember Rush Limbaugh commenting how he hoped Obama would fail? Why would Republicans want the leader of the other party to succeed even if he promotes their policies? They want to succeed with those policies themselves as the party in power. They're willing to filibuster health care reform even though our health care problem is arguably a much greater threat to the US than Saddam Hussein ever was in 2003. Too bad the Democrats didn't have the courage or audacity to filibuster like the

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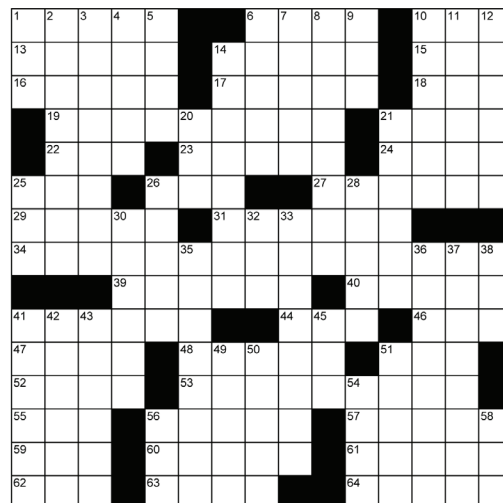
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CROSSWORD

By CHRIS ROBERTSON '11

CROSSWORD EDITOR

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Sometimes... Cheap Food is Cheap for a Reason. *See Bianca*

By STAVAN DESAI '11
STAFF EDITOR AND
ELYSE FEUER '11
STAFF EDITOR

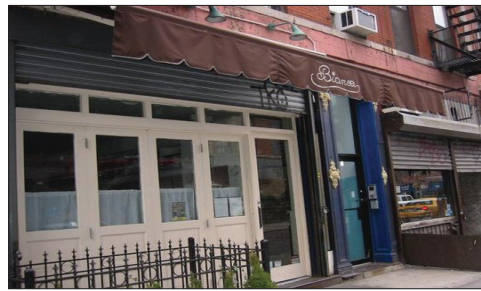
Bianca, a local Italian “gem,” has decent reviews, is pretty cheap and is always packed, so we decided to see if it would live up to the hype. We chose a Thursday because the place is small and doesn’t take reservations. If you do have to wait, there is a pretty standard bar next door and the owner comes over to get you when your table is ready. After discovering it was cash-only, we ran to the ATM on Bowery, but were seated promptly when we returned.

The decor is simple, with lots of wood and wine bottles lining the shelves, giving it a comfortable, neighborhood feel. When we arrived at about 6:45, the restaurant was less than half full, but by 7:30, it was at capacity.

The restaurant has a pretty affordable wine selection, although we chose not to sample it on this particular night. We had read that Bianca was known for their pasta dishes, so we ordered the special—a tagliatelle pasta with crab meat, asparagus and capers (\$9.50) and the Ravioli di Ricotta con Burro e Salvia (\$9.50).

The special pasta sounded very interesting and unique when first read to us, but after looking at the menu a second time, we found a very similar looking dish with just a few different ingredients. In addition, the special had many issues both in planning and execution. The

pasta itself was extremely fresh and cooked perfectly al dente. However, Bianca ruined the wonderful fresh pasta by loading on about two cups of an “everything-but-the-kitchen-sink” sauce. A word of advice: More isn’t always better, sometimes it’s just



more. By our count, the dish had: olive oil, tomatoes, capers, kalamata olives, crab meat, asparagus and garlic. Even though most of these ingredients are pretty Italian, and may even sound good, they do not go together. The capers were overly pungent, both in smell and flavor, which made us suspect they may not have been fresh. One ends up trying to avoid the sauce completely and just eat the pasta—not something you want in an Italian pasta dish. Also, we were disappointed that the waitress did not offer fresh grated Parmesan or cracked pepper to us (there was no pepper on the table either), which we saw offered to other tables.

The Italian name given to the Ravioli translates (roughly) to Ravioli filled with Ricotta Cheese, and served with butter and sage. Now if you read that and thought, “Ravioli with Sage and Brown Butter,” you would have read it like we did, and be justified in doing so, given that it

is a very stock preparation in Italian restaurants. However, as we found out, it literally was Ravioli with Butter, not Brown Butter. The pasta itself seemed like it was made fresh, which was nice, but lacked flavor and was a little too thick. The ravioli filling, of spinach and ricotta cheese, was very nice and well balanced, but there simply was not enough of it given the size of the raviolis. There was sharp Parmesan grated on top, which provided a nice contrasting flavor, but again there was simply not enough of it, and what was there was concentrated on one small portion of the dish. There were also two sage leaves, which seemed like they had actually (to the restaurant’s credit) been sizzled a bit. That is how sage is supposed to be on this dish. However, the flavor of sage

was drowned in unflavored butter. If the butter had been given a chance to brown, the strong butter flavor would have been mellowed, and the other flavors of the dish would have had a chance to shine, but here every part of the dish was overwhelmed by the taste of melted butter. For a dish that is fairly common and easy to execute, it ended up being, and I quote our discussion at the table, a “catastrophic failure.”

We opted for two desserts in hopes that Bianca could redeem itself on something and ordered the Tiramisu (\$6.50) and the Tortino di Cioccolata, a chocolate mousse cake topped with bittersweet chocolate ganache (\$6.50). The Tiramisu was only ok. The generous portion was served over a coffee creme anglais. However, the presentation was so messy that we first thought something was wrong and melting out of the tiramisu. We also didn’t like how

extremely good and was by far the best dish of the night. There was a thin, crunchy chocolate cookie crust at the bottom and then a thick chocolate mousse filling. The texture was dense, almost like a cheesecake made of chocolate mouse, and the flavor was spot on. The mousse itself was wonderfully complemented by a bittersweet chocolate ganache that was infused with espresso. We did notice that both desserts were served with a slice or two of strawberry and that the fruit did not look very fresh.

All in all, the bill came out to under \$40 (before tip) for two entrees and two desserts—pretty good for New York City! Unfortunately, the low numbers on the bill may not be worth subjecting yourself to extremely sub-par Italian food. There’s an Italian place next door, Quartino Bottega Organica, which is pescetarian (mostly vegetarian, though), with a focus on wheat flour and organic ingredients. You may want to skip Bianca and try Quartino the next time you’re looking for affordable Italian on Bleeker, although maybe pop in to Bianca for the chocolate mousse dessert.

Bianca is located at 5 Bleeker Street between Elizabeth and Bowery. The restaurant has a white exterior with an awning. Reservations are not accepted, so arrive early on Thursday, Friday and Saturday nights or plan to wait at the bar next door. Cash only. Open for dinner only. 212-260-4666.

Want more inspired ideas about where to dine, what to drink, or how to cook? Check out our food blog at idcrossbestreetforthat.wordpress.com.

Comment

I’d Cross the Street for That

was not incorporated at all into the dish, and after those two bites, the benefit was gone. This brings us to the sauce (which is described last for a reason). Imagine ravioli, which up to this point is not great, but it’s better than it is worse. Now imagine taking a few sticks of butter, melting them in the microwave, pouring them on top, and then serving it... we no longer have to imagine. The ravioli

the restaurant had little chocolate chunks mixed in with the whipped mascarpone. Tiramisu is usually smooth and here you finished each bite chewing the chocolate bits. While that may sound good to some, in practice it was not. The overall flavors of the Tiramisu weren’t great either. It wasn’t bad per se, but it was at or below average.

The Tortino di Cioccolata was

Leno v. Conan: The Meaning Behind the Late Night Wars

By JOSEPH JEROME '11
MANAGING EDITOR

Over the winter break, while having dinner with my folks and their friends, they got to talking about how “goofy” Conan O’Brien was. None of the assembled adults could comprehend his sense of humor so it fell to me, the child,

to explain why Conan was a better comedian than Jay Leno. The entire conversation was a pretty clear indictment against Conan by the baby-boomer generation and I felt some irony when not one week later NBC was announcing plans to replace him with the Chin once again. The late night drama that ensued, captivating Hollywood and media alike, was largely a superficial event, overshadowing more important crises, but the entire fiasco feels to me like a metaphor for a lot that’s wrong with the United States today. Yes, that’s something of an absurd claim, but bear



with me. Let’s look at NBC: the primetime champion of the 1990s largely blundered through the past decade. It replaced you can even call reading local newspaper typos comedy (I’ve never considered *The Commentator’s* misprints that funny), but his comedic sensibilities certainly held some appeal to my parents’ generation. Maybe they felt like they could have a beer with him. Conan, however, rode to power on the sensibilities of the key 18-49 demographic. His success was a triumph of youth over old thinking, or so it was for seven months. From day one, however, Conan on *The Tonight Show* was not the Conan of *Late Night*. Perhaps it was hype, a triumph of style over substance or simply a traumatic move into a den of jackals (Hollywood I mean), but Conan wasn’t the same. Sure, he had the same silly self-deprecating demeanor, but much of the spark of *Late Night* was replaced by even more banal interviews and a longer, more topical, more Jay Leno-esque opening monologue. If rumors are true, the directive on high to Conan was to be more serious and more conventional with his comedy. Obviously, the end result was that America got Jay Leno back one way or another. This happened despite desperate campaigning by young people and the full mobilization of new media—Team Coco rallied in the rain. If a Team Chin even exists, it’s my parents who are happy to not have to watch self-pleasuring bears on the boobtube while balancing their checkbooks. They won; Team Coco lost. Next month Jaywalking returns after the local news and it’s as if the last year in late night television never happened. After some bold

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Worse, Conan’s staff finds itself jobless after undertaking a cross-country move and their prospects are not nearly as good as their millionaire leader’s. Many of the staff are young twenty-somethings who are now left adrift and rudderless. From my point of view, the whole NBC imbroglio feels a bit familiar... somehow.

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The Colts Tackle the Saints in a Robust Discourse on the Socratic Method and a Super Bowl Preview



By MICHAEL MIX '11
EDITOR-IN-CHIEF

Get your wings and beer ready because it is almost Super Bowl Sunday. This year, the high-flying Indianapolis Colts and New Orleans Saints battle for NFL supremacy in Miami and broadcast on CBS. Last year, I argued both sides as to why the Steelers and Cardinals could both win. This year, I am taking it a step further, as I predict this year's outcome in the best way possible — the Socratic Method.

with Justin Timberlake! At receiver, the Colts lost Marvin Harrison but they have not missed a beat as Pierre Garçon and Austin Collie have stepped right into his place across from the incomparable Reggie Wayne. This one is a no-brainer.

Professor: But what about coaching? Wouldn't

the Colts have been better off with Tony Dungy instead of the inexperienced Jim Caldwell?

Student A: Dungy was surely a great coach but Caldwell has done just fine this year in his place. 14-2 in the regular season and 2-0 in the playoffs? I can live with that.

Professor: How about resting his starters at the end of the regular season though?

Student A: Caldwell has his eyes on the prize. He does not

they aren't going to remind anyone of the 1985 Chicago Bears, but they get the job done. Look at the way they completely shut down the Jets' vaunted rushing game in the AFC Championship.

Professor: After Shonn Greene went down with an injury.

Student A: True, but Thomas Jones is a top-5 running back in this league and he couldn't get anything going.

Professor: But the Colts' made Mark Sanchez look like Joe Montana! How are they going to stop Drew Brees?

Student A: Well how are the Saints going to stop Peyton Manning? The Saints' defense is worse!

Professor: Let me throw out a hypothetical. What would happen if Dwight Freeney got injured?

Student A: Now you're just hiding the ball.

Professor: It's a legitimate question.

Student A: No, seriously, you are hiding my ball. I couldn't find my football earlier, but I think I see it on your desk.

Professor: Let's move on. Is Student B here?

Student B: I thought I was on call next class, but I'll answer anyway.

Professor: Good for you. So if you were the Saints, how would you argue this case?

Student B: Well the Saints have an outstanding offensive attack. Peyton Manning may have won MVP, but there is no one better than Drew Brees. He has overcome obstacles at every stage of his career, he threw more touchdowns

during the regular season than Manning and he is the consummate professional. Marques Colston and Robert Meachem might not have the name recognition of Reggie Wayne, but they are certainly not slouches either.

Gunner (raising hand excitedly): Excuse me, excuse me, Professor, but I have been thinking about a really important hypothetical for hours. What happens if The Who play "Won't Get Fooled Again" too loudly, causing Reggie Bush to come down with an ear injury, in turn frustrating the Saints' punt-return team?

Professor: Uh, we'll talk about it at office hours. Anyway, earlier, we posed the question of how the defense will stop Manning? What do you think?

Student B: Well I'll admit that it's a shaky argument, especially with Charles Grant out for

back in the league. And they still have Will Smith to lead the pass rush. Wouldn't it be fitting if Will Smith gets Super Bowl MVP honors in Miami?

Professor: If that's a pop-culture reference, I'm not up on anything that happened after 1980.

Student B: I think there is something else at play too. Last year, I remember reading an article in *The Commentator* saying that the Cardinals could win because of that franchise's history of futility. Since the team didn't have the history of the Steelers, the players would realize that they had the chance to be considered by the fans to be the ultimate Cardinals team of all time, and that would motivate them. I think that factor could be at play here for the Saints, a team with a history of futility

so profound that fans used to wear paper bags on their heads.

Professor: That is not a terrible argument, but you fail to consider that the Cardinals lost last year.

Student B: True, but this year could be different because of the added motivation of a city devastated by Hurricane Katrina.

Professor: True. I guess the take-home point of today's class is that with two high-powered offenses such as these, both teams have a shot. But I am surprised no one mentioned that the Saints barely won the NFC Championship even though the Vikings had six fumbles and five

turnovers. That proves that the Saints may not be quite ready for prime time yet. I have the Colts winning 38-20.



Dwight Freeney's major ligament tear puts his availability for the Super Bowl into doubt.

Comment The Guy Behind the Guy Behind the Guy

Professor: All right, Colts versus Saints. Tell me, what is the Colts' argument for why they will win the Super Bowl?

Student A: It obviously starts with Peyton Manning. He is the MVP of the league, he won a Super Bowl three years ago and he is playing great football right now. Also, the man plays ping-pong in commercials

want to pull a New England Patriots and lose in the Super Bowl after a perfect regular season.

Professor: Not so fast. In this league, defense wins championships. How is the Colts' defense going to stop the Saints' high-powered offense?

Student A: Don't short-change the Colts' defense. Sure,

Commentator CROSSWORD Solution

A	H	S	V	S		S	S	S		E	R	E
M	A	B	I	B		R	E	R	B	L	C	P
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Solution

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