



ASSOCIATION OF  
FAMILY AND  
CONCILIATION COURTS



eNEWS

## Season's Greetings from AFCC

*Peter Salem, AFCC Executive Director*

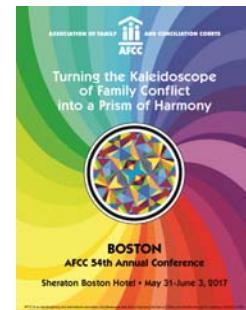
As we approach the holiday season I must confess that I am not quite feeling it. Perhaps it is the being pummeled with post-election angst and/or bravado, not to mention other world atrocities. (I should spend less time on Facebook and cable news.) Maybe it's that gift shopping is done online. Don't get me wrong, I hate circling mall parking lots and long cash register lines, but they at least require leaving the house and human interaction. It might just be that most of the children in my family are grown, there are no grandchildren (are you listening Daniel?), so the wonderment of the holidays is not present. But my holiday spirits are beginning to rise I write this message because I start to think about what AFCC accomplished. [Read more.](#)

## AFCC 54th Annual Conference – Boston Program Now Available Online and Registration is Open

*Turning the Kaleidoscope of Family Conflict into a Prism of Harmony*

MONTHLY E-  
NEWSLETTER  
VOL. 11 NO. 12  
December 2016

### Upcoming AFCC Conferences



### [AFCC 54th Annual Conference](#)

Turning the Kaleidoscope of Family Conflict into a Prism of Harmony  
May 31-June 3, 2017  
Sheraton Boston Hotel  
Boston, Massachusetts

**Diamond Sponsor**  
**OurFamilyWizard.com**

May 31-June 3, 2017, Sheraton Boston Hotel

The AFCC 54th Annual Conference program brochure is now available online! Start making your plans to attend. Registration will open **January 4, 2017**. Printed copies of the brochure will be mailed to AFCC members and colleagues. The scholarship application is available and can be found on the AFCC website.  
[View the program brochure.](#)

## Ask the Experts: A Dozen Things Lawyers and Judges Should Know About Custody Evaluations

*Leslie Ellen Shear, JD*

Judges and lawyers commission child custody evaluations and work with the reports and testimony of evaluators. [Here are a dozen things I think they should know.](#)

## The 7th World Congress on Family Law and Children's Rights

Save the date and join other AFCC members at the 7th World Congress on Family Law and Children's Rights, June 4-7, 2017, at the Convention Centre Dublin. Many AFCC members will be flying to Dublin to take part in this conference, directly following the AFCC 54th Annual Conference.  
[More information.](#)

## The National Database of Professionals Assisting Self-Represented Litigants

The National Self-Represented Litigants Project launched a database of Canadian professionals to assist self-represented individuals find lawyers, paralegals, and other professionals who are offering unbundled and affordable services.  
[Read more about the database.](#)  
[Search the database.](#)

## Member News



### Platinum Sponsors Estadile, Barrett, Jacobs & Mone

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### Stable Paths



### AFCC Chapter Conferences

#### [Arizona Chapter Annual Conference](#)

*A Mosaic of the Modern  
Family: New Theories,  
New Evidence, New  
Strategies*

January 27-29, 2017  
Sedona, Arizona

#### [Louisiana Chapter Annual Conference](#)

*Time, Money and Power:  
Disputes in High-Conflict  
Families*

January 27-28, 2017  
Baton Rouge, Louisiana

#### [California Chapter Annual Conference](#)

*Custody Complexities:  
Hard Decisions*

February 10-12, 2017  
Costa Mesa, California

#### [Alberta Chapter Annual Conference](#)

*The New Millennial Family:  
Navigating Best Practice in  
a Changing World*

March 16-17, 2017  
Calgary, Alberta

#### [Washington Chapter](#)

A new book edited by AFCC members **Abigail M. Judge** and **Robin M. Deutsch** was recently released, titled [Overcoming Parent-Child Contact Problems: Family-Based Interventions for Resistance, Rejection, and Alienation](#).

**Hon. Thomas Trent Lewis**, former president of the AFCC California Chapter, was named the Supervising Judge of the Los Angeles County Superior Court Family Law Division.

**Diane Wasznicky**, former president and current treasurer of the AFCC California Chapter, was inducted into California's Association of Certified Family Law Specialists' Hall of Fame.

## Give the Gift of AFCC Membership This Holiday

Purchase an AFCC membership for a colleague, mentee, student, or friend this holiday season! The AFCC office will send along a card to the recipient with your well wishes for the new year. Call the AFCC office, 608-664-3750, today to give the gift of an AFCC membership.

## Give to the AFCC Scholarship Fund

Help your colleagues attend AFCC conferences by giving to the AFCC Scholarship Fund. The annual appeal letter was recently mailed to all AFCC members. Please consider giving today, every gift makes a difference. Receiving your gift by the end of 2016 helps us plan for next year, and will provide US taxpayers with a deduction for the 2016 tax year. Will you contribute to allow a hard working professional like yourself attend an AFCC conference?

### [Donate online today.](#)

Thank you to those who have already donated to the scholarship fund! [Scholarship Donors 2016-2017.](#)

## AFCC March Trainings in Chicago

Save the date for these upcoming training programs:

[Annual Conference](#)  
*Parents Come in All Sizes and Forms*  
March 25, 2017  
Seattle, Washington

### AFCC Webinar Series

*What Family Law Professionals Need to Know About Self-Represented Litigants*  
John Greacen, JD and Katherine Alteneader, JD  
February 8, 2017 1:00pm Eastern

*Visitation Resistance*  
Matthew J. Sullivan, PhD  
April 12, 2017 1:00pm Eastern

*LGBTQ Clients and Family Law in a Post-Obergefell Era*  
Allan Barsky, JD, MSW, PhD  
June 20, 2017 1:00pm Eastern

### AFCC Trainings

**Parenting Coordination: Practice Foundations**  
*Matthew J. Sullivan, PhD*  
March 6-7, 2017  
Loyola University Chicago, Philip H. Corboy Law Center  
Chicago, Illinois

**The Model Standards and Beyond: Custody Evaluations and Risk Management**  
*David A. Martindale, PhD, ABPP*  
March 8-9, 2017

*Parenting Coordination: Practice Foundations*

Matthew J. Sullivan, PhD

March 6-7, 2017

Loyola University Chicago, Philip H. Corboy Law Center  
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*The Model Standards and Beyond: Custody Evaluations and Risk Management*

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March 8-9, 2017

Loyola University Chicago, Philip H. Corboy Law Center  
Chicago, Illinois

The program brochure will be available in January.

[More information.](#)

## AFCC Webinar Series

*What Family Law Professionals Need to Know About Self-Represented Litigants*

John Greacen, JD and Katherine Alteneeder, JD

February 8, 2017, 1:00pm-2:00pm Eastern Time

**Registration Opens January 4, 2017 at 11:00am Eastern Time**

For the complete schedule and titles of the upcoming webinar series, [click here](#). All webinars have been recorded and can be found under the [Member Center of the AFCC website](#).

## Nominate an AFCC Colleague for an Award

AFCC awards acknowledge many important contributions made by individuals and organizations to enhance the lives of children and families involved in family courts. Your nominations help recognize and bring attention to these accomplishments. Even if your nomination is not selected this year, the act of nominating a colleague helps to highlight the broad range of achievements in the field and helps to cultivate a culture where individuals and organizations are

Loyola University Chicago,  
Philip H. Corboy Law  
Center  
Chicago, Illinois

Are you an AFCC member? [Join](#) or [Renew](#)

The opinions expressed in articles published or linked to in the *AFCC eNEWS* are those of the authors and do not necessarily reflect the positions of the Association of Family and Conciliation Courts.

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acknowledged for their contributions.

**Nominations for the following awards, to be presented at the AFCC Annual Conference in Boston, will be accepted online through March 15, 2017:**

**John E. VanDuzer Distinguished Service Award**

recognizes outstanding contributions and/or achievements by AFCC members;

**Stanley Cohen Research Award**, sponsored by the Oregon Family Institute, recognizes outstanding research and/or achievements in the field of family and divorce; and

**Irwin Cantor Innovative Program Award** recognizes innovation in court-connected or court-related programs created by AFCC members.

[Submit a nomination online, see past recipients, learn more about the awards and criteria.](#)



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## Message from the Executive Director

As we approach the holiday season I must confess that I am not quite feeling it. Perhaps it's being pummeled with post-election angst and/or bravado, not to mention other world atrocities. (I should spend less time on Facebook and cable news.) Maybe it's that gift shopping is done online. Don't get me wrong, I hate circling mall parking lots and long cash register lines, but they at least require leaving the house and human interaction. It might just be that most of the children in my family are grown, there are no grandchildren (are you listening Daniel?), so the wonderment of the holidays is not present. But my holiday spirits are beginning to rise I write this message because I start to think about what AFCC accomplished and how:

- In 2016 AFCC hosted more than 2,000 people for conferences, training programs and webinars, involving incredible efforts by presenters and others who volunteer their efforts.
- A five-year project, [\*AFCC Guidelines on Examining Intimate Partner Violence\*](#), was completed that involved collaboration between AFCC, the National Council of Juvenile and Family Court Judges, and the Battered Women's Justice Project, three very different organizations.
- *Family Court Review* published two collaboratively written papers on research in family law by seven of the most distinguished researchers in our field.
- In collaboration with our colleagues at the Institute for the Advancement of the American Legal System, AFCC published a series of guides on [\*unbundling legal services\*](#).
- Our previous AFCC President flew halfway around the world to represent AFCC in Ireland and the United Kingdom, where AFCC members worked extremely hard to create opportunities that are expanding the AFCC presence in the region.
- Not to be outdone, the current AFCC President has launched a tour of AFCC Chapter training programs and is crisscrossing North America, visiting, and presenting to, no fewer than 11 chapters by spring.
- The AFCC Scholarship Fund provided more than 50 scholarships and several travel stipends to [\*help those with financial need attend AFCC conferences\*](#).
- *Family Court Review* transitioned seamlessly to a new editorial structure and leadership team.

The above list is by no means inclusive. Our 21 AFCC Chapters continue to offer local opportunities for member engagement in the US, Canada, and Australia (and hopefully Europe soon!). The AFCC Task Force on Access to Family Court Services is completing work on research and information related to this important topic. A new task force is looking at providing guidance on the use of social science research in family law. And AFCC is partnering with colleagues in other organizations to work on issues related to children, custody evaluation, intimate partner violence, and more.

Here is the kicker: The AFCC staff consists of only seven people. They are incredibly efficient, effective, and member-oriented. You probably have not even noticed that we are in the process of having every piece of technology overhauled this year! Our staff deserves enormous credit for the way in which AFCC operates and I would put them up against any other association staff out there. That said, no seven people in the world could accomplish so much. The volunteers, partners and AFCC members who engage wholeheartedly in our efforts are critical to the association's success.

It is not possible to name everyone who makes time consuming and selfless contributions to AFCC and our mission. But I thank each and every one of you, because having thought about all we have collectively accomplished this year, I am now in the holiday spirit!

Thank you all for your contributions to AFCC and to the children and families we serve. Thank you also to our organizational partners, listed below.

Happy holidays, and wishing you a healthy, happy, angst-free 2017.

**Thanks to our AFCC Partners:**

American Academy of Matrimonial Lawyers  
American Bar Association Section of Dispute Resolution  
Association for Conflict Resolution  
Battered Women's Justice Project  
International Academy of Collaborative Professionals  
Institute for the Advancement of the American Legal System  
Loyola University Chicago School of Law Civitas Childlaw Center  
Maurice A. Dean School of Law at Hofstra University  
National Association of Counsel for Children  
National Council of Juvenile and Family Court Judges  
Sayra and Neil Meyerhoff Center for Children, Families and the Courts, University of Baltimore  
School of Law  
Wiley-Blackwell Publishers  
World Congress on Family Law and Children's Rights



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## Ask the Experts: A Dozen Things Lawyers and Judges Should Know About Custody Evaluations

*Leslie Ellen Shear, JD*

Judges and lawyers commission child custody evaluations and work with the reports and testimony of evaluators. Here are a dozen things I think they should know.

### 1. Who is the Report For?

The child custody evaluation report and the evaluator's testimony should be directed at all of the decision-makers, i.e., the parents and their advisors: (1) mediators, collaborative teams, and settlement judges working with the parents to develop a parenting plan; (2) the bench officer adjudicating custody in the event that settlement efforts fail; and, (3) a possible appellate court reviewing a trial court and possibly creating precedent. Settlement, not trial, is the normative outcome. In some jurisdictions, the range of parenting plan decisions that the parents can make is significantly broader than the law allows. Evaluations are most useful when they address the risks and benefits of alternate parenting plans, including options that the parents may be able to adopt even if a trial court might be subject to greater constraints.

Judges and lawyers should expect evaluators to take a pragmatic approach to report writing, tying the data gathered and the analysis to the terms of a parenting plan. The parents, their lawyers, and the judge are not psychologists and an evaluation report should not be a journal article, a report to a professional team, or a detailed exegesis of evaluation procedures. Too often the report sets forth allegations and data without reference to the analysis, leaving the reader to speculate about what the evaluator believed to be true, and what significance the evaluator gave each fact. When the data-gathering and presentation is organized around the plan rather than gathered by family member, the analysis is stronger and the report is a coherent essay.

Evaluators should show appreciation of the importance of parental identity to the parents they evaluate, and should recognize that parent-child relationships enjoy special constitutional protections. Evaluators must balance concerns about the dignity of family members, diplomacy, and use of diagnostic language where it is warranted by the data and analysis. If the report is clear about parenting deficits, deficiencies, and risks then



settlement feels like an admission to many parents who decide to fight. If the report is diplomatic, the importance of recommendations for the protection of kids may be missed by the decision makers, as may the seriousness of risks that a parent presents.

## **2. Appointment Orders and Procedures Disclosures**

The forensic setting differs materially from the clinical setting. Evaluators are court-appointed neutrals and officers of the court. Evaluations are court-ordered; they are not consensual processes. Even if the parents stipulate to an evaluation, their failure to fully cooperate in the process can result in contempt of court – punishable by fine or jail time. Judges and lawyers should develop and use detailed appointment orders (see samples in the materials linked in the note at end) rather than directing the parties to privately engage the evaluator. Thus, the Court has a duty to supervise the evaluation, specify the purpose and scope of the evaluation, and determine compensation of the evaluator. Unlike a private contract, an appointment order does not require the evaluator or parties to file a separate civil action to enforce compensation or other provisions.

Rather than obtain informed consent, the evaluator has a duty to disclose the procedures that will be employed in the evaluation. By providing a written procedures disclosure before the evaluation begins, the evaluator gives the parties and counsel an opportunity to seek clarification, object to a particular procedure, or seek protective orders. Where the parents are asked to sign releases or privilege waivers, those documents should be distributed through counsel just as any other document signed by parties in the course of litigation. Lawyers and judges are wise to develop “standard” stipulations and appointment orders for their jurisdictions so that evaluations are not delayed by negotiations over the terms of appointment orders, and lawyers are not afraid of being blamed for the terms of the appointment order. Typically, the language for a stipulated appointment may contain releases and consents while an appointment order made without a stipulation cannot contain those provisions.

## **3. What is the Purpose and Scope of the Evaluation?**

When I began practice in 1976, the purpose of a child custody evaluation (and custody adjudication) was to pick a custodial parent. In the decades that followed, there has been a profound paradigm shift from picking a parent to developing, implementing, and adapting a parenting plan.

It is the responsibility of the appointing court to define the purpose and scope of the evaluation. A full evaluation addresses the risks and benefits of alternate parenting plans. Where the court wants a narrow question addressed, the appointment order should expressly identify the limited scope of the evaluation. Judges and lawyers should be mindful that complex issues are not suitable for limited scope evaluations (see the recommended boundaries in the *AFCC Guidelines for Brief Focused Assessment*).

## **4. Elements of a Parenting Plan**

Judges and lawyers should direct evaluators to address each of the elements of a parenting plan. Those key elements are:

- Communication and Civility
- Information Access and Exchange
- Allocation of Decision-making Authority
- Residential Schedule
- Holidays/Vacations/Special Days
- Logistics
- Support Services
- Review and Adaptation

Assessing legal custody is as important as assessing the residential schedule. It too often gets short shrift. Johnston and Roseby (*In the Name of the Child* (1<sup>st</sup> Ed.), 1997)

[It] is clear that the schedule alone does not account for differences in young children's adjustment and cannot substitute for the kind of working relationship that parents must develop. The reframing of the agenda—that is, focusing on the parents' communication rather than on the schedule—is the first order of business when beginning an intervention with highly conflicted parents. In this approach, the schedule is defined as an important buffer that may be necessary but is certainly not sufficient to ensure the well-being of the young child. *To address the schedule only is like providing a paper parasol in a hurricane. As might be expected, the parasol constantly has to be taped up or replaced.* [Emph. added]

## **5. Roles: Forensic not Clinical**

Judges and lawyers play an important role in teaching fundamentals of the adjudicatory process and forensic roles to the evaluators in their community. Most evaluators are trained as clinicians not forensic psychologists. Clinical skills are important for evaluators but evaluators need to know what is different in the forensic setting. Most of the clinical paradigms (including informed consent) do not apply in the forensic setting.

Here's a quick look at the contrasts in roles:

- Characteristics of clinical role
  - Informed consent
  - Therapeutic alliance
  - No systematic data-gathering
  - Privilege, confidentiality, privacy
- Characteristics of forensic neutral role
  - Order not consent
  - Objective and inscrutable
  - Systematic data-gathering
  - Communications made for purpose of evidence/expert testimony
  - Due process, state action & the duty of transparency.

## **6. Specialized Expertise**

Judges and lawyers should understand that most clinicians do not have the training and experience to conduct a child custody evaluation. Evaluators must be familiar with research and scholarship on divorce, child custody, and parenting plans; investigation and assessment methods for child custody; how family courts work; and the basics of forensic roles.

It takes concerted effort – interdisciplinary organizations like AFCC, trainings, supervision and mentorship, some great books on custody evaluation, subscribing to the key journals in the field, listservs, and constant work to learn and keep up. Judges and lawyers can encourage recruitment, promote internship opportunities, and supervision to develop the next generation of evaluators. Recruitment is a huge challenge because of fear of the courtroom and fear of licensing complaints.

## **7. Dual Roles? Hybrid Roles?**

None of the formal roles, rules, and standards for mental health professionals in child custody evaluations existed when I began practice in 1976. They evolved from experimentation and pilot projects over time. I watched the development from an investigative model to a mental health assessment model to the more comprehensive current view. While the roles and rules have become formalized over time, it is important to remember that the various rules and guidelines are the product of professionals thinking about what works best to help families develop, implement and adapt wise parenting plans. We should not freeze models and demonize other pilot projects as intrinsically unethical.

Here are some possible hybrid roles. Which do you think are wise to try, and which do you think cross lines that should never be crossed:

- Med-arb or recommending mediation?
- Transition from evaluation to settlement?
- Combined assessment and intervention?
- Transition from evaluation to therapist?
- Transition from evaluation to parent coordinator?
- Transition from therapist to evaluator?

## **8. Legally and Scientifically-Informed (analysis and methods)**

Evaluations need to be broadly, legally informed. Judges and lawyers should provide legal training for evaluators, but also bear in mind that the law is evolving. Evaluators should explain what makes a real world difference for the children since the parents are not bound by all of the legal parameters of custody adjudication. Moreover, appellate courts learn what matters for children from the reports and transcripts in appellate records. Thus, the

evaluator's work product may help the development of the law, support variance from precedent and new precedent.

Judges and lawyers should not expect custody analysis to be scientifically determined, but should expect evaluators to be scientifically informed about analysis and methods. Evaluators need to know about divorce-separation dynamics, family systems, child development, parenting, parenting plans and custody research, cultural differences, substance abuse, interpersonal violence, resistance-rejection (alienation/estrangement) dynamics, abduction risk, special needs children and parents, long-distance parenting, stepfamilies, and non-traditional families. They must use multiple scientifically-informed methods with a scientific mindset. Those methods include clinical interviewing, observation, investigation, and, in some cases, psychological testing. They must consult or associate with experts when there are issues outside the evaluator's expertise.

## **9. The Multi-Modal Method**

Today, most books and guidelines for evaluators stress the importance of what is now described as the multi-modal method for child custody evaluations. (See *AFCC Model Standards* 5.4, "Use of Diverse Methods, child custody evaluators shall strive to use multiple data gathering methods in order to increase accuracy and objectivity.") Dr. Norman Stone and I were thinking about this in the 1980's and when I went back to look, I was pleased to see that our thinking stands up all these decades later. We wrote:

The use of multiple methods of data gathering enhances the confidence of conclusions concerning personal attributes. More importantly, it provides the expert corroborative data at different levels of inference thereby strengthening the logical basis of conclusions. For example, test data may raise hypotheses about certain characteristics of a child and a parent. Interview data may be used to test these hypotheses. Parent-child interaction observations may demonstrate specifically how these characteristics are manifest within the family. Teacher reports may demonstrate how these characteristics impact the child's social and intellectual functioning. As a result, evaluation conclusions are based upon a logical chain of inference in which independent observations of questionable reliability and validity are subject to a test of "best fit.

Stone & Shear (1988) [Article reprinted in the link in the Note below.]

## **10. Boundaries**

Judges, lawyers, and evaluators are bound by legal and ethical standards. All of us need to understand and be mindful of:

- Fundamental liberty, privacy, and autonomy interests
- Statutory grants of authority to family courts
- Issues before the court
- Privileged and confidential data
- Statutes and order governing evaluation

- Licensing rules
- Professional standards, & guidelines

## **11. Reports, Feedback Sessions, and Testimony**

The parents are the primary decision-makers, even when the case is adjudicated rather than settled, the parents must understand why the court reached that decision, and must understand the requirements of the parenting plan orders.

Clarity is crucial. Evaluators should remember that 14% of adults cannot read, only 13% of adults read at a proficient level, 28% of adults didn't read a book in the last year and 50% of adults can't read a book written at an 8<sup>th</sup> grade level (US literacy statistics reported by the Washington Post). Thus reports and custody orders must be written for the parents (and others) to understand.

Reports and testimony should be organized to maximize understanding. Here are my suggestions (See *Family Portraits* article in the materials linked to in the Note below for greater detail.):

- Introduce the family, the purpose, and scope
- Summary of recommendations
- Organize data by plan components
- Address and assess expressed concerns
- Explain limitations, weight, and significance of data
- Which plan particulars matter and which can be flexible?
- Support services and behavioral goals
- Criteria for revisiting the plan

## **12. Retained and Reviewing Experts**

There are multiple valuable roles for retained experts in cases where the expense is affordable and warranted. Those roles include work-product consultant, testifying parent shadows, didactic experts, and reviewing experts. Retained experts can provide valuable pre-evaluation declarations and testimony (without making best-interests recommendations) to educate the court about the need for a full evaluation, or as didactic experts on issues before the court. Where a parent has expressed concerns or made allegations about impaired parenting, a parent-shadow retained expert can observe the parent and child together for extended periods and opine about what was observed as part of the evidence considered in connection with temporary orders. They can observe depositions of parents and witnesses – and play different roles depending upon whether they are work-product consulting experts or testifying experts. They can review the files and work product of evaluators and attend the depositions of evaluators. Testimony of retained experts at trial can be crucial to a court's assessment of the weight and sufficiency (and occasionally the admissibility) of an evaluator's work product.

The work of retained experts can elevate the level of practice in a community – there is nothing like the prospect of scrutiny as a motivator. Consulting experts often advise the party and counsel that the evaluation was performed well and encourage settlement. Retained testifying experts should include a proviso in their engagement letters that their methods, opinions, and testimony will be the same as if they had been court-appointed to conduct the review or provide the didactic testimony, and that they advised the party and counsel that their opinions may not support the client’s goals. Adherence to those standards separates respected professionals from hired guns.

Note:

(This article is based upon a presentation given at the AFCC 12th Symposium on Child Custody Evaluations in November, 2016. Visit <http://tinyurl.com/hslolwc> for the slides, supplemental materials and Leslie’s biographical information. Thanks to Hon. Denise McColley (Ohio) for coming up with this topic and moderating the presentation in Atlanta.)



An interdisciplinary and international association of professionals dedicated to improving the lives of children and families through the resolution of family conflict.

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