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ARTICLES

Roundtable Recap—Mothers in Law: Women and Work-Life Balance
By Angel Chiang

On April 6, the Diversity & Inclusion Committee hosted a roundtable entitled Mothers in Law: Women and Work-Life Balance, to address common issues facing working mothers in the legal profession. The committee’s own Chisa Putnam—a working mother herself and newly minted magistrate judge in York County, South Carolina—moderated the panel of speakers:

• Jacqueline Epstein, the owner of Epstein Law Firm in New Orleans, Louisiana;
• Tashanna Golden, an attorney at the Housing Unit of the Staten Island Office of Legal Services;
• Brittany Pereira, an attorney at Robert A. Ades & Associates, PC, in Washington, D.C., who focuses her practice on family law; and
• Alison Stein, a partner at Jenner & Block’s Content, Entertainment & Media practice.

Each panelist brought her own perspective on the challenges of achieving work-life balance as a working mother and attorney, which made for a lively discussion. Below is a summary of the roundtable’s highlights.

How can female attorneys distinguish themselves in a male-dominated profession?
All of the panelists agreed that women should not shy away from bringing their unique perspective to the workplace, and many in fact thought that their personal experiences as women and mothers made them better equipped in the workplace than their male counterparts. Jacqueline Epstein, for instance, felt that women are better able to resolve disputes in her family law practice because they encounter personal disputes every day in their home lives and acquire skills that are easily transferable to her practice. Tashanna Golden thought that it is a disservice for women to mirror what men do in the workplace rather than bring their own personal experiences to bear on their professional life. She advised that women should not try to blend in, but rather stand out. Alison Stein said that at law firms, female litigators often are underestimated, but that women can use that to their advantage—for example, in deposing a male witness who assumes that women are less aggressive and therefore less capable.

What are the most important things working women can do at work and at home to create work-life balance?
All of the panelists agreed that female attorneys who juggle busy schedules at home and in the office cannot do it without the help of a good support network—whether that takes the form of a partner, family members, or friends. Alison Stein said that having a second or third parent who may not be a biological parent is important for women with big jobs and that she has found it helpful to be flexible about her schedule and leverage technology to do her job. Alison claimed that her flexibility and willingness to work during times when she is at home, on vacation, etc., has gained her the respect of her colleagues and in turn afforded her more leeway to devote her
attention to her family when necessary. Jacqueline Epstein, a single mother, says that she receives a lot of child care help from her ex-husband, who is also a family law attorney, as well as her mother, who lives nearby. Brittany Periera said that she stays super-organized at work to minimize the intrusions on her home life and that, when she is at home, she tries to carve out time to connect with friends who are also mothers. Tashanna Golden advised that she made sure to declare her priorities to her colleagues and that the nature of her workplace—a legal services office—means that she does not have to worry about how taking time for her family might potentially hurt her partnership prospects.

The panelists also agreed that it is important to manage expectations and communicate with their colleagues. Alison Stein said that it’s always better to over-communicate than under-communicate and that she tries to give a lot to her work when she’s able to so she can earn goodwill and have more flexibility later. Brittany Periera said that she has also learned to relinquish some of the guilt associated with needing to set boundaries and communicate realistic expectations to her colleagues about her time.

**How do you deal with male counterparts receiving better pay/promotions because they haven’t had the lull in their career caused by parenthood?**

Many of the panelists disagreed with the premise that parenthood caused a lull in their careers. Alison Stein, for instance, did not feel that her taking maternity leave twice delayed her partnership prospects. She did, however, feel that her male counterparts had an advantage over her in business development now that she has made partner, because a lot of business referrals still come from the “old boys’ network.” Brittany Periera said that she did not feel disadvantaged by her maternity leave because of the nature of her family law practice. She said that in family law, her reputation matters more than the fact that she is a mother.

**How do you avoid being out of sight/out of mind when telecommuting?**

All the panelists agreed that whether telecommuting is a good option depends on the culture of the workplace, and they would only encourage it if the workplace culture encourages it. Tashanna Golden, who was out on maternity leave at the time of the roundtable, said that she is still trying to keep up her legal skills by attending trainings at work when they come up. Jacqueline Epstein said that she telecommutes frequently but finds that she is actually more available to her clients because she communicates with them a lot by text message.

**Does being a woman increase the difficulty of work-life balance?**

All the panelists agreed that there is definitely a double standard applied to working women. For instance, Alison Stein says that at her son’s preschool, the default contact on the parent directory is the child’s mother, and she had to call the school to make sure that both she and her husband would receive notices from the school. Sometimes the double standard hurts men more than women, however. Some of the panelists said that sometimes it is harder for men to be involved in parenting and to take time away from their careers.
How does the current system help female-specific work-life balance?
All the panelists unanimously agreed that the current parental leave system is inadequate and that even calling it “maternity leave” is problematic because it assumes that parental leave applies only to mothers. Jacqueline Epstein said that maternity leave is not long enough and it is not in employers’ interests to require a woman to return to work when she is not yet able to be efficient at home, much less at work.

Does the underrepresentation of women in the law contribute to a lack of flexibility for work-life balance?
Tashanna Golden disagreed that there was an underrepresentation of women in the legal profession; the gender breakdown of male and female law students is about even. She does believe, however, that there is an underrepresentation of women in higher positions in the law, such as law firm partners. She has observed that there are greater numbers of successful female attorneys in smaller practices, and she thought that starting one’s own practice might be a better route to success for female attorneys. Jacqueline Epstein took four years off from work when she had her children, but felt that it did not have a detrimental effect on her career because she kept up with professional networking activities and pro bono work during that time so that she could stay relevant. Jacqueline also earned a degree in library and information sciences during her time away from work and eventually decided to start her own practice rather than accept a position as the lead law librarian at a major New Orleans law firm. She said that the risk of starting her own firm has paid off financially, and she finds running her own business to be much more rewarding. Alison Stein, who has stayed at a big firm, advised women to keep up with changes in the law and continue with CLEs even when they take time off from work.

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The Growing Wave of Gender Discrimination Lawsuits Against Big Law

By Carmen D. Caruso

On a sleepy news day on the eve of the Fourth of July, the American Lawyer reported that the increasing frequency of gender discrimination lawsuits by female lawyers against their law firms may bring a little “bad publicity” but “few serious repercussions” to the defendant law firms.

That observation may change either when these cases reach trial and a plaintiff prevails, individually or representing a class of lawyers at her firm. These days less than 1 percent of civil cases filed in federal court are tried to a jury. These cases belong in that 1 percent.

Lawyer Kerrie Campbell’s claims against Chadbourne & Parke LLP are close to trial as she survived Rule 56 summary judgment, where discrimination claims are frequently extinguished. Ms. Campbell is a seasoned litigator who moved laterally to Chadbourne & Parke LLP 17 years into her career, after being a partner at two other law firms. Campbell alleges individual and proposed class claims against Chadbourne, which expelled her from the partnership after she sued. A district court in the Southern District of New York found questions of fact requiring trial on whether Campbell was an employee despite her partner status. How this threshold issue plays out may affect how law firms will be structured and managed, but it stops short of resolving the critical issue of whether the defendant law firm is guilty of gender discrimination on an individual or class basis.

Even if Kerrie Campbell was not an employee, as a partner she will have triable claims for breach of fiduciary duty and breach of contract, including claims based on the implied covenant of good faith and fair dealing, which is so wonderfully described in the Restatement as protecting “faithfulness to an agreed common purpose and consistency with the justified expectations of the other party; it excludes a variety of types of conduct characterized as involving bad faith because they violate community standards of decency, fairness or reasonableness.” Woe to any law firm arguing that discrimination against female partners or racial minority partners on either an individual or systematic basis was the law firm’s “agreed common purpose” or consistent with anyone’s “justified expectations” or “community standards of decency.” Woe indeed.

No doubt, settlement prospects have improved for plaintiff Kerrie Campbell, and if she accepts a check, none of us can blame her. But if she and other like plaintiffs settle quietly, the “few serious repercussions” narrative is likely to continue. The essential element of that narrative, as reported by the American Lawyer, is that being sued for discrimination is “more or less routine” and “part of the bundle of risks” faced by any business, such that law firms should not be singled out for criticism when sued.

The American Lawyer may be correct expressing the current attitude, and perhaps it is not a coincidence these lawsuits are being brought against large law firms that routinely defend their business clients from similar cases, as opposed to being filed against plaintiff law firms that fight
injustice or at least aspire to. This may not be the first time someone observed that lawyers tend to resemble their clients. Our often maligned transition from a profession to a business is frequently derided but overstated. Lawyer Abraham Lincoln was astute in the business of running his law practice, as all good lawyers have always tried to be. What has changed is the way modern law firms strive to be more efficient in rewarding high producers at the expense of more lockstep compensation plans that bred more collegial relationships. Loyalty to one’s firm has gone the way of loyalty to team or city in professional sports. Free agent lawyers like Kerrie Campbell seek the best platform to develop their business and the highest return for their efforts. Or they start their own firms, taking charge of their destiny.

Which brings us back to Kerrie Campbell, who alleges that after she arrived at Chadbourne, she was victimized by deeply entrenched, gender-based pay and bonus disparities, and that female partners were excluded from decision-making authority in a male-dominated culture and management structure. She challenges the firm’s use of a point system to determine terminations, bonuses, raises, and promotions. The points are supposed to be allocated objectively based on all the usual metrics (origination, production, collection), but Ms. Campbell alleges the actual point allocation is anything but objective and is contaminated by discriminatory animus resulting in female partners with better numbers making less money than their male peers do. In addition, assuming none of this was disclosed to her when she came in laterally, she might seek to add a fraud claim.

Credit Kerrie Campbell for suing in her own name. In a similar lawsuit against Proskauer Rose LLP, a “Jane Doe” female partner alleges her male partners earn up to 65 percent more than she does, even when they are less successful, and this plaintiff also claims to have suffered inappropriate comments about her physical appearance. Being Jane Doe works fine at the pretrial stage, but if her case goes to trial in open court, that veil will be lifted.

Here’s hoping Kerrie Campbell, Jane Doe, and all the other female or racial minority plaintiffs out there bring their cases to trial, for only then will their issues see the light of day and only then can the narrative be challenged. These plaintiffs will take plenty of lumps. Look no further than the media’s treatment of Ellen Pao, who brought a gender discrimination claim against her venture capital firm to trial and lost. Another professional woman, writing in Fortune, penned that Pao deserved to lose because she was “so reticent and obviously insecure” that it was not clear how she could “have advanced so far in fiercely competitive Silicon Valley.”

Ouch. It’s never easy to be the plaintiff in a case that is transactional in nature, one in which the plaintiff did business with the defendant only to allege she suffered discrimination or was defrauded. These cases invite the defense of putting the plaintiff on trial, to leave the jury believing she was unworthy or opportunistic or, as was so endearingly said of Ellen Pao, “Like whistleblowers, gadflies and other disruptors, plaintiffs are usually people who don’t get what they want the way that the rest of us do. So, they sue.”
Yes, female lawyers are suing and we will not know where the truth lies until these cases are tried. But we know these claims are plausible as female partners continue to lag male partners in compensation and in making partner. There are rays of hope, but overall these numbers have moved little despite plenty of effort to promote diversity.

The juries in these cases will not likely hear industry-wide data, which would be unduly prejudicial to the law firms on trial. But these juries will hear plenty about the way these firms divvy up their dollars, and their numbers are only the backdrop to what will be high drama about the way lawyers are treated and decisions are made in modern law firms. How is origination determined when more than one lawyer gains the client? How are associates assigned to the partners’ cases or matters? How are new business introductions made? Who is invited to meet the clients? And, ever important, who gets to try cases or head up the deal team? These are not facts the law firms will want to discuss in open court, and at a minimum, motions in limine will likely be granted to protect client confidences as the lawyers prepare to duke it out.

Maybe everything at the defendant law firms is fair and square and they will be vindicated. Or maybe, as I have argued in a plaintiff’s Title VII case, men have behaved inconsistently toward women since Adam and Eve, such that it is easy to believe that men who love their mothers, wives, and sisters (and want their daughters to be president someday) have no trouble being unfair to women they work with. There are many reasons this is so, ranging from the proverbial fear she might be a better lawyer than he, to punishment for arousing misplaced romantic feelings, and all sorts of stuff in between called “implicit bias.” Cross-examination will be tricky for both sides, and these cases will likely be decided on the jury’s perception of who holds up better, the alleged victim or the alleged discriminators.

And this is how it should be, for it is well known and widely believed that “the crucible of cross-examination” is “much more conducive to the clearing up of truth.” Crawford v. Washington, 541 U.S. 36, 61–62 (2004) (citing 3 Blackstone, Commentaries on the Laws of England 373). Defendants committing pattern and practice discrimination are not likely to fool a jury into thinking otherwise. Win or lose, Kerrie Campbell is a hero for challenging the business as usual narrative and forcing our profession to define what we stand for. Recent ethical proscription of discriminatory conduct by lawyers is welcomed, but as always, the common law will deliver justice on case-by-case basis.

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Often Missing from Conversations about Diversity and Inclusion: Cognitive Diversity

By Sara Canaday

I don’t typically write or comment on issues of diversity and inclusion. But an often-overlooked aspect of the topic—cognitive diversity—is starting to come into the spotlight, and I have some insights on it because of the focus of my work. In my experience, I’ve seen that companies produce the best results and are better able to innovate when their team members don’t all think, process information, or see the world in the same way. Leaders who innovate and make an impact seek out those who don’t share their opinions and resist the tendency to over-rely on their experience and what has worked in the past.

Writing in Harvard Business Review, researchers Alison Reynolds and David Lewis report some fascinating findings that echo my experience. Reynolds and Lewis studied how well executive teams could complete a strategic execution task under time pressure. They discovered that the kinds of diversity we most commonly think of—gender, race, age—had no correlation to a team’s results. What did make a difference was whether the team members had different perspectives and different styles of processing knowledge.

You’ve probably seen the impact of low cognitive diversity in your own work. For example, maybe you’ve interacted with a team that worked harmoniously but that overlooked a business threat or an opportunity to innovate.

What does the concept of cognitive diversity mean for leaders? As Reynolds and Lewis point out, “we recruit in our own image.” It’s important to address this bias when it comes to factors like race, gender and age, of course. But leaders must also be aware that they favor people who think as they do as well. When leaders surround themselves with people who “constantly validate and reflect their own beliefs,” it stifles fresh thinking, Vivek Bapat, senior vice president and global head of marketing strategy at SAP SE, writes in Harvard Business Review. When this happens, leaders, teams, and entire organizations lose their way, Bapat says.

Leaders can also encourage cognitive diversity in their day-to-day practices. For example, when everyone seems in lockstep on a decision, “find someone who disagrees and cherish them,” Reynolds and Lewis write. Cultivate an environment where team members know they can speak up, ask questions, and express dissent. Train employees to recognize their unconscious biases so that they can better collaborate with others who differ from them. Both of these actions are pillars of the CEO Action for Diversity & Inclusion™.

A culture that encourages (explicitly or implicitly) conformity of thought breeds stagnation and imperils a company. For that reason, initiatives to build diversity in how employees think deserve a place alongside demographic diversity programs.

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How SEO Law Provides a Path for Underrepresented Students into Corporate Law
By Van Ann Bui and Grace Pajonk

Donna Scaffidi, whose mother hails from the Dominican Republic, has dreamed of being an attorney since she was seven years old. While in college, Ms. Scaffidi began the process of compiling a list of target law schools. She searched LinkedIn for diverse students and alumni from those institutions to familiarize herself with the typical background and path of a successful “corporate lawyer.” During her investigation, she noticed one activity that continuously appeared in the profiles of the accomplished law students and lawyers she researched: SEO Law Program. Intrigued, Ms. Scaffidi reached out to learn more. In May 2017, she was admitted to the SEO Law Fellowship Program and, as part of the program, is currently interning at Cadwalader, Wickersham & Taft LLP in New York before beginning her studies at the University of Michigan Law School.

The SEO Law Fellowship Program identifies, trains, and develops talented black, Hispanic, and Native American law students for summer internships at the nation’s premier law firms in order to increase the recruiting pipeline of attorneys entering such firms. Ms. Scaffidi, along with 99 other underrepresented incoming law students, were selected from over 1,300 applicants to participate in this year’s program. Participating law firms receive access to accomplished students as their interns who arrive at the firms prepared and trained through an intensive academic and career preparatory program.

The SEO Law Fellowship Program was formed in 1986. Among its earliest partners were Fried, Frank, Harris, Shriver & Jacobson LLP; Skadden, Arps, Slate, Meagher & Flom LLP; and Simpson Thacher & Bartlett LLP. Today, the program partners with 34 corporate law firms, including 31 firms represented in the AmLaw 100, participating in 12 cities across the United States.

This year’s fellows will be attending 17 different law schools: Harvard Law School (22), Columbia Law School (19), New York University School of Law (8), University of Chicago Law School (7), Yale Law School (7), Stanford Law School (5), University of California–Berkeley School of Law (5), Cornell Law School (4), Georgetown Law School (4), University of Pennsylvania Law School (3), University of Michigan Law School (3), Duke Law School (3), University of Texas School of Law (3), University of Virginia School of Law (3), Fordham Law School (2), USC Gould School of Law (1), Northwestern Law School (1).

Prior to the start of their internships, fellows attend SEO’s Law Institute, a two-week academic and career development training session. Created to provide a strong academic foundation to ensure the fellows receive top grades in school, the Law Institute offers seminars taught by legal writing professors who help students understand how to read and brief legal opinions, how to synthesize a rule from a case or statute, how to prepare an effective law school outline, how to perform legal analysis, and how to draft legal memoranda.
The Law Institute supplements the seminars with lectures by law school professors that aim to simulate a real lecture hall, including a simulated exam at the end of each week. For many fellows, including Michael Vance, a fellow who is interning at Jones Day in Houston, Texas, and will be attending the University of Texas School of Law, the opportunity to take a practice exam before law school helps to demystify what to expect when they head off to school. Mr. Vance states, “A lot of it is so new—even though I had significant work experience, I didn’t know anything about what to expect going into law school or the legal profession. SEO helped me build up confidence going into school in the fall.”

In addition to the academic training, the SEO Law Fellowship Program organizes workshops and intimate panel discussions with its partner law firms to discuss with the fellows how to prepare for, and excel in, their internships and legal careers. Partner law firms provide training on various topics, including handling summer assignments, email and phone etiquette, making a good first impression, and networking and relationship building.

Following the Law Institute, the fellows head to their internships. Equipped with the training they receive from the Law Institute, the fellows arrive at their internships eager and prepared to work and learn. Malikah Williams, who is interning at Cravath, Swaine & Moore LLP in New York and will be attending Harvard Law School, will be the first lawyer in her family. Ms. Williams says, “No one I knew had any insight into this world—how to enter into the firm, how to navigate talking to attorneys, how to engage with my coworkers. SEO gave me a window into corporate law and made it apparent that this is something I’m interested in.”

Through the experience, students become strong firm ambassadors when they arrive on campus. Lucas Fernandez-Rocha, who is interning at Skadden Arps in New York and will be attending Duke University School of Law, says, “My experience at the firm has been incredible—better than I could have ever expected. I’ve loved the people I’ve met and the work I’ve received. Everyone is incredibly friendly and wants to help; so many attorneys want to give us advice. This experience has been invaluable.”

In addition to receiving exposure to the fellows interning at their own firms, our partner law firms receive a book of résumés for all of the students in the class as well as the opportunity to host events for the entire class of fellows throughout the summer. Milbank, Tweed, Hadley & McCloy LLP recently cosponsored an event with SEO Law, featuring guest speaker Preet Bharara, who discussed the challenges and opportunities regarding diversity in the legal profession.

Other summer events organized by our partner firms include a New York Mets game hosted by Weil, Gotshal & Manges LLP; a Diversity Networking Reception hosted by Paul, Weiss, Rifkind, Wharton & Garrison LLP, featuring guest speaker April D. Ryan (White House correspondent and Washington bureau chief for American Urban Radio Networks and CNN political analyst); and a Citywide Diversity Reception hosted by Simpson Thacher, featuring...
guest speaker Misty Copeland (the first African American female principal dancer with the American Ballet Theatre).

Aside from the mentorship the fellows receive from attorneys at our partner law firms, the fellows also benefit from an incredible support network from the other fellows in the class. Mr. Fernandez-Rocha says that not only is he learning how to navigate the corporate law environment but he is also doing it with a vast network of diverse students attending schools across the country. “It has only been one summer but my best friends in New York are the people I met through SEO. I’ve developed close friendships and a wide network that I know will be vital to me throughout law school and my legal career.”

Ms. Scaffidi, who up until a couple of months ago had only encountered SEO Law through LinkedIn profiles of people she admired, adds that “[m]y journey—uncharted by anyone in my family—has been filled with great growth and learning opportunities because of the mentors, sponsors, and the support network I have cultivated through my SEO Law family.”

SEO also tries to instill the value of giving back to the community. “One of the biggest things I can do is to help those who don’t have access to lawyers understand the role of a lawyer and to use my position of knowledge now to provide access and opportunities to those communities,” says Mr. Vance. Mr. Fernandez-Rocha was recently approached by a prospective law student seeking his advice about the SEO Law Fellowship program. He says, “My whole life, I’ve had to reach out to people to ask for advice and now people are coming to me and I’m able to provide that advice.”

About her future in corporate law, Ms. Williams says, “It’s not often that you feel overprepared for something, but doing SEO, I feel more than prepared to be in this field now, and that’s a great feeling.”

If you are interested in becoming a partner of the SEO Law Fellowship Program, please contact Van Ann Bui, the director of the Law Program, at seolaw@seo-usa.org. Our partner law firms receive highly talented summer interns of color, access to the entire class of students entering the nation’s most selective schools through a résumé book, and an early opportunity to build relationships with the students through panel discussions and networking receptions throughout the summer. To learn more about the program, please visit www.seolaw.org.

The following law firms are participating in the 2017 SEO Law Fellowship Program:

- Akin Gump Strauss Hauer & Feld LLP (Washington, D.C., New York City, Los Angeles)
- Cadwalader, Wickersham & Taft LLP (New York City)
- Cleary, Gottlieb, Steen & Hamilton LLP (Washington, D.C., New York City)
- Clifford Chance LLP (New York City)
- Cooley LLP (San Francisco Bay Area)
- Covington & Burling LLP (Washington, D.C., San Francisco Bay Area)
- Cravath, Swaine & Moore LLP (New York City)
- Davis Polk & Wardwell LLP (San Francisco Bay Area, New York City)
- Debevoise & Plimpton LLP (New York City)
- Fried, Frank, Harris, Shriver & Jacobson LLP (Washington, D.C., New York City)
- Gibson, Dunn & Crutcher LLP (New York City)
- Hogan Lovells US LLP (Washington, D.C., New York City)
- Jenner & Block LLP (Washington, D.C., New York City)
- Jones Day (Atlanta, Chicago, Cleveland, Columbus (Ohio), Dallas, Washington, D.C., Houston, New York City, San Francisco)
- Kirkland & Ellis LLP (Washington, D.C., New York City)
- Kramer Levin Naftalis & Frankel LLP (New York City)
- Latham & Watkins LLP (Washington, D.C., New York City)
- Linklaters LLP (New York City)
- Milbank, Tweed, Hadley & McCloy LLP (New York City)
- Morrison & Foerster LLP (New York City, San Francisco Bay Area)
- O’Melveny & Myers LLP (Washington, D.C., Los Angeles, Orange County, New York City, San Francisco)
- Otterbourg, Steindler, Houston & Rosen, P.C. (New York City)
- Paul, Weiss, Rifkind, Wharton & Garrison LLP (New York City)
- Proskauer Rose LLP (New York City)
- Ropes & Gray LLP (New York City)
- Shearman & Sterling LLP (Washington, D.C., New York City)
- Simpson Thacher & Bartlett (New York City)
- Skadden, Arps, Slate, Meagher & Flom LLP (Washington, D.C., New York City, Wilmington (Delaware))
- Sullivan & Cromwell LLP (New York City)
- Vinson & Elkins LLP (Dallas, Houston)
- Wachtell, Lipton, Rosen & Katz (New York City)
- Weil, Gotshal & Manges LLP (New York City)
- White & Case LLP (Washington, D.C., New York City)
- WilmerHale (Washington, D.C., New York City, Palo Alto)

*Van Ann Bui* is the director and *Grace Pajonk* is the associate director of the Law Program at Sponsors for Educational Opportunity (SEO) in New York City, New York.
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