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*With journalists being laid off in droves, ideologues have stepped forward to provide the “reporting” that feeds the 24-hour news cycle. The collapse of journalism means that the quest for information has been superseded by the quest for ammunition. A case-study of our post-journalistic age.*

by **Mark Bowden**

# The Story Behind the Story

IMAGE CREDIT: STEPHEN WEBSTER/WONDERFUL MACHINE

**I**F YOU HAPPENED to be watching a [television news channel on May 26](#), the day President Obama nominated U.S. Circuit Court Judge Sonia Sotomayor to the Supreme Court, you might have been struck, as I was, by what seemed like a nifty investigative report.

First came the happy announcement ceremony at the White House, with Sotomayor sweetly saluting her elderly mother, who as a single parent had raised the prospective justice and her brother in a Bronx housing project. Obama had chosen a woman whose life journey mirrored his own: an obscure, disadvantaged beginning followed by blazing academic excellence, an Ivy League law degree, and a swift rise to power. It was a moving TV moment, well-orchestrated and in perfect harmony with the central narrative of the new Obama presidency.

But then, just minutes later, journalism rose to perform its time-honored pie-throwing role. Having been placed by the president on a pedestal, Sotomayor was now a clear target. I happened to be watching Fox News. [I was slated to appear that night](#) on one of its programs, *Hannity*, to serve as a willing foil to the show’s cheerfully pugnacious host, Sean Hannity, a man who can deliver a deeply held conservative conviction on any topic faster than the speed of thought. Since the host knew what the subject matter of that night’s show would be and I did not, I’d thought it best to check in and see what Fox was preoccupied with that afternoon.

With Sotomayor, of course—and the network’s producers seemed amazingly well prepared. They showed a clip from remarks she had made on an obscure panel at Duke University in 2005, and then, reaching back still farther, they showed snippets from a [speech she had made at Berkeley Law School in 2001](#). Here was this purportedly moderate Latina judge, appointed to the federal bench by a Republican president and now tapped for the Supreme Court by a Democratic one,

unmasked as a Race Woman with an agenda. In one clip she announced herself as someone who believed her identity as a “Latina woman” (a redundancy, but that’s what she said) made her judgment superior to that of a “white male,” and in the other she all but unmasked herself as a card-carrying member of the Left Wing Conspiracy to use America’s courts not just to apply and interpret the law but, in her own words, to *make policy*, to perform an end run around the other two branches of government and impose liberal social policies by fiat on an unsuspecting American public.

In the Duke clip, she not only stated that appellate judges make policy, she did so in a disdainful mock disavowal before a chuckling audience of apparently like-minded conspirators. “I know this is on tape and I should never say that, because we don’t make law, I know,” she said before being interrupted by laughter. “Okay, I know. I’m not promoting it, I’m not advocating it, I’m ... you know,” flipping her hands dismissively. More laughter.

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**VIDEO:** Watch Fox News’ May 26 special report on Sotomayor

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Holy cow! I’m an old reporter, and I know legwork when I see it. Those crack journalists at Fox, better known for coloring and commenting endlessly on the news than for actually breaking it, had unearthed not one but two explosive gems, and had been primed to expose Sotomayor’s darker purpose *within minutes of her nomination!* Leaving aside for the moment any question about the context of these seemingly damaging remarks—none was offered—I was impressed. In my newspaper years, I prepared my share of advance profiles of public figures, and I know the scut work that goes into sifting through a decades-long career. In the old days it meant digging through packets of yellowed clippings in the morgue, interviewing widely, searching for those moments of controversy or surprise that revealed something interesting about the subject. How many rulings, opinions, articles, legal arguments, panel discussions, and speeches had there been in the judge’s long years of

service? What bloodhound producer at Fox News had waded into this haystack to find these two choice needles?

Then I flipped to MSNBC, and lo!... they had the exact same two clips. I flipped to CNN... same clips. CBS... same clips. ABC... same clips. Parsing Sotomayor's 30 years of public legal work, somehow every TV network had come up with precisely the same moments! None bothered to say who had dug them up; none offered a smidgen of context. They all just accepted the apparent import of the clips, the substance of which was sure to trouble any fair-minded viewer. By the end of the day just about every American with a TV set had heard the "make policy" and "Latina woman" comments. By the end of the nightly news summaries, millions who had never heard of Sonia Sotomayor knew her not only as Obama's pick, but as a judge who felt superior by reason of her gender and ethnicity, and as a liberal activist determined to "make policy" from the federal bench. And wasn't it an extraordinary coincidence that all these great news organizations, functioning independently—because this, after all, is the advantage of having multiple news-gathering sources in a democracy—had come up with exactly the same material in advance?

**T**HEY HADN'T, OF course. The reporting we saw on TV and on the Internet that day was the work not of journalists, but of political hit men. The snippets about Sotomayor had been circulating on conservative Web sites and shown on some TV channels for weeks. They were new only to the vast majority of us who have better things to do than vet the record of every person on Obama's list. But this is precisely what activists and bloggers on both sides of the political spectrum do, and what a conservative organization like the [Judicial Confirmation Network](#) exists to promote. The JCN had gathered an attack dossier on each of the prospective Supreme Court nominees, and had fed them all to the networks in advance.

This process—political activists supplying material for TV news broadcasts—is not new, of course. It has largely replaced the work of on-the-scene reporters during political campaigns, which have become, in a sense, perpetual. The once-quadrennial clashes between parties over the White House are now simply the way our national business is conducted. In our exhausting 24/7 news cycle, demand for timely information and analysis is greater than ever. With journalists being laid off in droves, savvy political operatives have stepped eagerly into the breach. What's most troubling is not that TV-news producers mistake their work for journalism, which is bad enough, but that young people drawn to journalism increasingly see no distinction between disinterested reporting and hit-jobbery. The very smart and capable young men (more on them in a moment) who actually dug up and initially posted the Sotomayor clips both originally described themselves to me as part-time, or aspiring, journalists.

The attack that political operatives fashioned from their work was neither unusual nor particularly effective. It succeeded in shaping the national debate over her nomination for weeks, but more serious assessments of her record would demolish the caricature soon enough, and besides, the Democrats have a large majority in the Senate; her nomination was approved by a vote of 68–31. The incident does, however, illustrate one consequence of the collapse of professional journalism. Work formerly done by reporters and producers is now routinely performed by political operatives and amateur ideologues of one stripe or another, whose goal is not to educate the public but to *win*. This is a trend not likely to change.

[Writing in 1960](#), the great press critic A. J. Liebling, noting the squeeze on his profession, fretted about the emergence of the one-newspaper town:

The worst of it is that each newspaper disappearing below the horizon carries with it, if not a point of view, at least a potential emplacement for one. A city with one newspaper, or with a morning and an evening paper under one ownership, is like a man with one eye, and often the eye is glass.

Liebling, who died in 1963, was spared the looming prospect of the no-newspaper town. There is, of course, the Internet, which he could not have imagined. Its enthusiasts rightly point out that digital media are in nearly every way superior to paper and ink, and represent, in essence, an upgrade in technology. But those giant presses and barrels of ink and fleets of delivery trucks were never what made newspapers invaluable. What gave newspapers their value was the mission and promise of journalism—the hope that someone was getting paid to wade into the daily tide of manure, sort through its deliberate lies and cunning half-truths, and tell a story straight. There is a reason why newspaper reporters, despite polls that show consistently low public regard for journalists, are the heroes of so many films. The reporter of lore was not some blue blood or Ivy League egghead, beholden to society's powerful interests, be they corporate, financial, or political. We liked our newsmen to be Everymen—shoe-leather intellectuals, cynical, suspicious, and streetwise like Humphrey Bogart in *Deadline—U.S.A.* or Jimmy Stewart in *The Philadelphia Story* or Robert Redford and Dustin Hoffman in *All the President's Men*. The Internet is now replacing Everyman with *every man*. Anyone with a keyboard or cell phone can report, analyze, and pull a chair up to the national debate. If freedom of the press belongs to those who own one, today that is everyone. The city with one eye (glass or no) has been replaced by the city with a million eyes. This is wonderful on many levels, and is why the tyrants of the world are struggling, with only partial success, to control the new medium. But while the Internet may be the ultimate democratic tool, it is also demolishing the business model that long sustained newspapers and TV's network-news organizations. Unless someone quickly finds a way to make disinterested reporting pay, to compensate the modern equivalent of the ink-stained wretch (the carpal-tunnel curmudgeon?), the Web may yet bury Liebling's cherished profession.

Who, after all, is willing to work for free?

MORGEN RICHMOND, FOR ONE—the man who actually found the snippets used to attack Sotomayor. He is a partner in a computer-consulting business in Orange County, California, a father of two, and a native of Canada, who defines himself, in part, as a political conservative. He spends some of his time most nights in a second-floor bedroom/office in his home, after his children and wife have gone to bed, cruising the Internet looking for ideas and information for his blogging. “It's more of a hobby than anything else,” he says. His primary outlet is a Web site called [VerumSerum.com](http://VerumSerum.com), which was co-founded by his friend John Sexton. Sexton is a Christian conservative who was working at the time for an organization called [Reasons to Believe](http://Reasons to Believe), which strives, in part, to reconcile scientific discovery and theory with the apparent whoppers told in the Bible. Sexton is, like Richmond, a young father, living in Huntington Beach. He is working toward a master's degree at Biola University (formerly the Bible Institute of Los Angeles), and is a man of opinion. He says that even as a youth, long before the Internet, he would corner his friends and make them listen to his most recent essay. For both Sexton and Richmond, Verum Serum is a labor of love, a chance for them to flex their desire to report and comment, to add their two cents to the national debate. Both see themselves as somewhat unheralded conservative thinkers in a world captive to misguided liberalism and prey to an overwhelmingly leftist mainstream media, or MSM, composed of journalists who, like myself, write for print publications or work for big broadcast networks and are actually paid for their work.

Richmond started researching Sotomayor after ABC News Washington correspondent George Stephanopoulos [named her as the likely pick](#) back on March 13. The work involved was far less than I'd imagined, in part because the Internet is such an amazing research tool, but mostly because Richmond's goal was substantially easier to achieve than a journalist's. For a newspaper reporter, the goal in researching any profile is to arrive at a deeper understanding of the subject. My own motivation, when I did it, was to present not just a smart and original picture of the person, but a fair picture. In the quaint protocols of my ancient newsroom career, the editors I worked for would have accepted nothing less; if they felt a story needed more detail or balance, they'd brusquely hand it back and demand more effort. Richmond's purpose was fundamentally different. He figured, rightly, that anyone Obama picked who had not publicly burned an American flag would likely be confirmed, and that she would be cheered all the way down this lubricated chute by the Obama-loving MSM. To his credit, Richmond is not what we in the old days called a "thumbsucker," a lazy columnist who rarely stirs from behind his desk, who for material just reacts to the items that cross it. (This defines the vast majority of bloggers.) Richmond is actually determined to add something new to the debate.

"The goal is to develop original stories that attract attention," he told me. "I was consciously looking for something that would resonate."

But not just anything resonant. Richmond's overarching purpose was to damage Sotomayor, or at least to raise questions about her that would trouble his readers, who are mostly other conservative bloggers. On most days, he says, his stuff on Verum Serum is read by only 20 to 30 people. If any of them like what they see, they link to it or post the video on their own, larger Web sites.

Richmond began his reporting by looking at university Web sites. He had learned that many harbor little-seen recordings and transcripts of speeches made by public figures, since schools regularly sponsor lectures and panel discussions with prominent citizens, such as federal judges. Many of the events are informal and unscripted, and can afford glimpses of public figures talking unguardedly about their ideas, their life, and their convictions. Many are recorded and archived. Using Google, Richmond quickly found a list of such appearances by Sotomayor, and the first one he clicked on was the video of the 2005 panel discussion at Duke University Law School. Sotomayor and two other judges, along with two Duke faculty members, sat behind a table before a classroom filled with students interested in applying for judicial clerkships. The video is 51 minutes long and is far from riveting. About 40 minutes into it, Richmond says, he was only half listening, multitasking on his home computer, when laughter from the sound track caught his ear. He rolled back the video and heard Sotomayor utter the line about making policy, and then jokingly disavow the expression.

"What I found most offensive about it was the laughter," he says. "What was the joke? ... Here was a sitting appellate judge in a room full of law students, treating the idea that she was making policy or law from the bench as laughable." He recognized it as a telling in-joke that his readers would not find funny.

Richmond posted the video snippet on YouTube on May 2, and then put it up with a short commentary on Verum Serum the following day, questioning whether Sotomayor deserved to be considered moderate or bipartisan, as she had been characterized. "I'm not so sure this is going to fly," he wrote, and then invited readers to view the video. He concluded with sarcasm: "So she's a judicial activist ... I'm sure she is a moderate one though! Unbelievable. With a comment like this I only

hope that conservatives have the last laugh if she gets the nomination.”

A NUMBER OF LARGER conservative Web sites, notably [Volokh.com](http://Volokh.com) (the Volokh Conspiracy, published by UCLA law professor Eugene Volokh) and [HotAir.com](http://HotAir.com) (published by conservative commentator Michelle Malkin), picked up the video, and on May 4 it was aired on television for the first time, by Sean Hannity.

On Malkin’s Web site, Richmond had come across a short, critical reference to a speech Sotomayor had given at Berkeley Law School, in which, according to Malkin, the prospective Supreme Court nominee said “she believes it is appropriate for a judge to consider their ‘experiences as women and people of color’ in their decision making, which she believes should ‘affect our decisions.’”

Malkin told me that her “conservative source” for the tidbit was privileged. She used the item without checking out the actual speech, which is what Richmond set out to find. He had some trouble because Malkin had placed the speech in 2002 instead of 2001, but he found it—the Honorable Mario G. Olmos Law & Cultural Diversity Memorial Lecture—in the Berkeley Law School’s *La Raza Law Journal*, bought it, and on May 5 posted the first detailed account of it on his blog. He ran large excerpts from it, and highlighted in bold the now infamous lines: “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life.”

Richmond then commented:

To be fair, I do want to note that the statement she made... is outrageous enough that it may have in fact been a joke. Although since it’s published “as-is” in a law journal I’m not sure she is entitled to the benefit of the doubt on this. The text certainly does not indicate that it was said in jest. I have only a lay-person’s understanding of law and judicial history, but I suspect the judicial philosophy implied by these statements is probably pretty typical amongst liberal judges. Personally, I wish it seemed that she was actually really trying to meet the judicial ideal of impartiality, and her comments about making a difference are a concern as this does not seem to be an appropriate focus for a member of the judiciary. I look forward to hopefully seeing some additional dissection and analysis of these statements by others in the conservative legal community.

The crucial piece of Richmond’s post, Sotomayor’s “wise Latina woman” comment, was then picked up again by other sites, and was soon being packaged with the Duke video as Exhibits A and B in the case against Sonia Sotomayor. Richmond told me that he was shocked by the immediate, widespread attention given to his work, and a little startled by the levels of outrage it provoked. “I found her comments more annoying than outrageous, to be honest,” he said.

IN BOTH INSTANCES, Richmond’s political bias made him tone-deaf to the context and import of Sotomayor’s remarks. Bear in mind that he was looking not simply to understand the judge, but to expose her supposed hidden agenda.

Take the Duke panel first: most of the video, for obvious reasons, held little interest for Richmond. My guess is that you could fit the number of people who have actually watched the whole thing into a Motel Six bathtub. Most of the talk concerned how to make your application for a highly competitive clerkship stand out. Late in the discussion, a student

asked the panel to compare clerking at the district-court (or trial-court) level and clerking at the appellate level. Sotomayor replied that clerks serving trial judges are often asked to rapidly research legal questions that develop during a trial, and to assist the judge in applying the law to the facts of that particular case. The appellate courts, on the other hand, are in the business of making rulings that are “precedential,” she said, in that rulings at the appellate level serve as examples, reasons, or justifications for future proceedings in lower courts. She went on to make the ostensibly controversial remark that students who planned careers in academia or public-interest law ought to seek a clerkship at the appellate level, because that’s where “policy is made.”

This is absolutely true, in the sense she intended: precedential decisions, by definition, make *judicial* policy. They provide the basic principles that guide future rulings. But both Sotomayor and her audience were acutely aware of how charged the word *policy* has become in matters concerning the judiciary—conservatives accuse liberal judges, not without truth, of trying to set *national* policy from the bench. This accusation has become a rallying cry for those who believe that the Supreme Court justices should adhere strictly to the actual language and original intent of the Constitution, instead of coloring the law with their own modish theories to produce such social experiments as school desegregation, [Miranda warnings](#), abortions on demand, and so forth. The polite laughter that caught Richmond’s ear was recognition by the law students that the judge had inadvertently stepped in a verbal cow pie. She immediately recognized what she had done, expressed mock horror at being caught doing so on tape, and then pronounced a jocular and exaggerated mea culpa, like a scoring runner in a baseball game tiptoeing back out onto the diamond to touch a base that he might have missed. Sotomayor went on to explain in very precise terms how and why decisions at the appellate level have broader intellectual implications than those at the lower level. It is where, she said, “the law is percolating.”

Seen in their proper context, these comments would probably not strike anyone as noteworthy. If anything, they showed how sensitive Sotomayor and everyone else in the room had become to fears of an “activist court.”

A LOOK AT THE FULL “Latina woman” speech at Berkeley reveals another crucial misinterpretation.

To his credit, Richmond posted as much of the speech as copyright law allows, attempting to present the most important sentence in context. But he still missed the point. Sotomayor’s argument was not that she sought to use her position to further minority interests, or that her gender and background made her superior to a white male. Her central argument was that the sexual, racial, and ethnic makeup of the legal profession has in fact historically informed the application of law, despite the efforts of individual lawyers and judges to rise above their personal stories—as Sotomayor noted she labors to do. Her comment about a “wise Latina woman” making a better judgment than a “white male who hasn’t lived that life” referred specifically to cases involving racial and sexual discrimination. “Whether born from experience or inherent physiological or cultural differences... our gender and national origins may and will make a difference in our judging,” she said. This is not a remarkable insight, nor is it even arguable. Consider, say, how an African-American Supreme Court justice might have viewed [the Dred Scott case](#), or how a female judge—Sotomayor cited this in the speech—might have looked upon the argument, advanced to oppose women’s suffrage, that females are “not capable of reasoning or thinking logically.” The presence of blacks and women in the room inherently changes judicial deliberation. She said that although white male judges have been admirably able on occasion to rise above cultural prejudices, the progress of racial minorities and women in the legal profession has directly coincided with greater judicial recognition of their rights. Once again, her

point was not that this progress was the result of deliberate judicial activism, but that it was a natural consequence of fuller minority and female participation.

One of her central points was that all judges are, to an extent, defined by their identity and experience, whether they like it or not.

“I can and do aspire to be greater than the sum total of my experiences,” she said, “but I accept my limitations.”

Richmond seems a bright and fair-minded fellow, but he makes no bones about his political convictions or the purpose of his research and blogging. He has some of the skills and instincts of a reporter but not the motivation or ethics. Any news organization that simply trusted and aired his editing of Sotomayor’s remarks, as every one of them did, was abdicating its responsibility to do its own reporting. It was airing propaganda. There is nothing wrong with reporting propaganda, per se, so long as it is labeled as such. None of the TV reports I saw on May 26 cited VerumSerum.com as the source of the material, which disappointed but did not surprise Richmond and Sexton.

Both found the impact of their volunteer effort exciting. They experienced the heady feeling of every reporter who discovers that the number of people who actually seek out new information themselves, even people in the news profession, is vanishingly small. Show the world something it hasn’t seen, surprise it with something new, and you fundamentally alter its understanding of things. I have experienced this throughout my career, in ways large and small. I remember the first time I did, very early on, when [I wrote a magazine profile](#) of a promising Baltimore County politician named Ted Venetoulis, who was preparing a run for governor of Maryland. I wrote a long story about the man, examining his record as county executive and offering a view of him that included both praise and criticism. I was 25 years old and had never written a word about Maryland politics. I was not especially knowledgeable about the state or the candidates, and the story was amateurish at best. Yet in the months of campaigning that followed, I found snippets from that article repeatedly quoted in the literature put out by Venetoulis and by his opponents. My story was used both to promote him and to attack him. To a large and slightly appalling extent, the points I made framed the public’s perception of the candidate, who, as it happened, lost.

Several hours of Internet snooping by Richmond at his upstairs computer wound up shaping the public’s perception of Sonia Sotomayor, at least for the first few weeks following her nomination. Conservative critics used the snippets to portray her as a racist and liberal activist, a picture even Richmond now admits is inaccurate. “She’s really fairly moderate, compared to some of the other candidates on Obama’s list,” he says. “Given that conservatives are not going to like any Obama pick, she really wasn’t all that bad.” He felt many of the Web sites and TV commentators who used his work inflated its significance well beyond his own intent. But he was not displeased.

“I was amazed,” he told me.

For his part, Sexton says: “It is a beautiful thing to live in this country. It’s overwhelming and fantastic, really, that an ordinary citizen, with just a little bit of work, can help shape the national debate. Once you get a taste of it, it’s hard to resist.”

I would describe their approach as post-journalistic. It sees democracy, by definition, as perpetual political battle. The blogger’s role is to help his side. Distortions and inaccuracies, lapses of judgment, the absence of context, all of these things

matter only a little, because they are committed by both sides, and tend to come out a wash. Nobody is actually right about anything, no matter how certain they pretend to be. The truth is something that emerges from the cauldron of debate. No, not the truth: *victory*, because winning is way more important than being right. Power is the highest achievement. There is nothing new about this. But we never used to mistake it for journalism. Today it is rapidly replacing journalism, leading us toward a world where all information is spun, and where all “news” is unapologetically propaganda.

In this post-journalistic world, the model for all national debate becomes the trial, where adversaries face off, representing opposing points of view. We accept the harshness of this process because the consequences in a courtroom are so stark; trials are about assigning guilt or responsibility for harm. There is very little wiggle room in such a confrontation, very little room for compromise—only innocence or degrees of guilt or responsibility. But isn't this model unduly harsh for political debate? Isn't there, in fact, middle ground in most public disputes? Isn't the art of politics finding that middle ground, weighing the public good against factional priorities? Without journalism, the public good is viewed only through a partisan lens, and politics becomes blood sport.

Television loves this, because it is dramatic. Confrontation is all. And given the fragmentation of news on the Internet and on cable television, Americans increasingly choose to listen only to their own side of the argument, to bloggers and commentators who reinforce their convictions and paint the world only in acceptable, comfortable colors. Bloggers like Richmond and Sexton, and TV hosts like Hannity, preach only to the choir. Consumers of such “news” become all the more entrenched in their prejudices, and ever more hostile to those who disagree. The other side is no longer the honorable opposition, maybe partly right; but rather always wrong, stupid, criminal, even downright evil. Yet even in criminal courts, before assigning punishment, judges routinely order presentencing reports, which attempt to go beyond the clash of extremes in the courtroom to a more nuanced, disinterested assessment of a case. Usually someone who is neither prosecution nor defense is assigned to investigate. In a post-journalistic society, there is no disinterested voice. There are only the winning side and the losing side.

There's more here than just an old journalist's lament over his dying profession, or over the social cost of losing great newspapers and great TV-news operations. And there's more than an argument for the ethical superiority of honest, disinterested reporting over advocacy. Even an eager and ambitious political blogger like Richmond, because he is drawn to the work primarily out of political conviction, not curiosity, is less likely to experience the pleasure of finding something new, or of arriving at a completely original, unexpected insight, one that surprises even himself. He is missing out on the great fun of speaking wholly for himself, without fear or favor. This is what gives reporters the power to stir up trouble wherever they go. They can shake preconceptions and poke holes in presumption. They can celebrate the unnoticed and puncture the hyped. They can, as the old saying goes, afflict the comfortable and comfort the afflicted. A reporter who thinks and speaks for himself, whose preeminent goal is providing deeper understanding, aspires even in political argument to persuade, which requires at the very least being seen as fair-minded and trustworthy by those—and this is the key—who are inclined to *disagree* with him. The honest, disinterested voice of a true journalist carries an authority that no self-branded liberal or conservative can have. “For a country to have a great writer is like having another government,” [Alexander Solzhenitsyn wrote](#). Journalism, done right, is enormously powerful precisely because it does not seek power. It seeks truth. Those who forsake it to shill for a product or a candidate or a party or an ideology diminish their own power. They are missing the most joyful part of the job.

This is what H. L. Mencken was getting at when he famously described his early years as a *Baltimore Sun* reporter. He called it “the life of kings.”

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