

WOMEN TRIAL LAWYERS CAUCUS

WINTER 2010

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UPCOMING EVENTS

AAJ 2010 Winter Convention

January 30–February 3, 2010
Hyatt Regency Maui & Westin Maui
Maui, Hawaii

Women Trial Lawyers Caucus Business Meeting

Saturday, January 30, 2010
12:30 pm–2:00 pm
Westin Maui
Humpback Room (Mezzanine Level)

Women Trial Lawyers Caucus Brunch

Sunday, January 31, 2010
10:00 am–12:00 pm
Westin Maui
Aloha Pavilion
(Ko'ala—back-up location due to inclement weather)

MESSAGE FROM THE CHAIR:

Women's Caucus— It's Worth the Time

By **Melissa R. Smith, Esq.**

Gillam & Smith, LLP, Marshall, TX



In my opening comments I announced that the Women's Caucus would be emphasizing networking within the division this year. On October 28th the Caucus followed through with that commitment when we hosted our first networking reception of the year in Washington DC, in conjunction with the fall Board of Governors meeting.

On the heels of a successful membership phone bank in which the Caucus played a part in signing up 115 AAJ members, caucus members gathered at the Phoenix Park Hotel for drinks and hors d'oeuvres with fellow Caucus members and AAJ officers.

I was pleased to welcome Members of Congress to the event including Congressman Bruce Braley and Congresswoman Mary Jo Kilroy. The evening's agenda began with a welcome from Laurie Amell, President of the Trial Lawyers Association of Metropolitan Washington, DC, and included a political update from Linda Lipsen, AAJ Executive Vice President. The most exciting news of the evening came in the midst of the mixing and mingling when our very own Roxanne Barton Conlin took the opportunity to announce her candidacy for the United States Senate.

Thank you to Ingrid Evans and Miriam Bourdette for planning this successful event and thank you to the following persons and firms for sponsorship:

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MESSAGE FROM THE CHAIR *continued*

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I look forward to and invite each of you to our next Women's Caucus networking event, the Women's Caucus brunch in Hawaii. This is a Women's Caucus signature event held each year during the mid-year convention which is sure to draw an even larger gathering than our successful DC event. See you there! ■

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Building a Strong Network of Women

By Debra DeCarli, Esq.

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My second year of law school, I interned at the Third Court of Appeals of Texas. Justice Bea Ann Smith was the judge who oversaw the internship. The week after I received my bar exam results, Judge Smith sent me a handwritten note congratulating me on passing the bar, and advising me to build and be part of a strong network of women.

That advice is just as important for young women starting their legal careers as it is for women who have been practicing for some years. We all need someone we can turn to for advice, whether we are fresh new lawyers or comfortably established in our practice areas. Likewise, we all have unique experiences and knowledge that is of value to someone else. One aspect of belonging to a network is that sometimes you are the individual in need of advice or assistance, and other times you are the person able to offer help. A network gives us the links to be both recipient and provider.

How do we build those links and become part of that strong network of women? When I first started my own practice, I forced myself to go to bar section luncheons and networking events. I always dreaded feeling like an outsider and not knowing anyone. I was always grateful when someone introduced herself or included me in a conversation.

Now, I will walk up to a woman who is standing alone, or to a small group, and introduce myself. I pay attention to name tags—frequently I recognize names of people whose names I have seen on listserv emails or in newsletters, and finally get to put a face to the name of someone I have been wanting to meet. I realize that these people are not strangers at all. We are there for the same reason, to expand our networks.

Judge Smith imparted to me the importance of helping other women in your network. Through the years, I have tried to offer a helping hand where I could, ranging from advising young women in the process of applying to law school, lawyers needing someone to talk to about balancing motherhood and career, to listening to vents about the old boys club, as well as practical assistance such as sharing pleadings or discovery or sharing names of my contacts or an introduction to someone who might be able to help with a specific situation. But having a network means that help works both ways, and I have been the beneficiary at least as often as I have helped others.

I am still disappointed when I walk into a room of fifty lawyers and I am one of only a few women attorneys, or when I walk into a courtroom and I am the only female other than the clerk or the court reporter. But I take the opportunity to make those other women part of my network.

Network building is an ongoing process. Even if you feel that you have all of the resources you need at your command today, take the time and make the effort to be part of someone else's network. You never know, she might end up becoming a judge! ■

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EDU 778



Lobbying for (or Against?) our Children: The Flu Shot Debate

By Victoria J. Maniatis, Esq
assisted by Brittany Henry, Legal Assistant

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It's a crisp, sunny autumn afternoon. The sky is blue, the leaves are falling, and my five year old son is marching with his classmates in a Halloween parade. The pre-schoolers are all in full costume and giddy with the prospects of candy and mischief. What they also have in common is recent legislation in their state, New Jersey, which

mandates that they all must receive a flu shot in order to attend pre-school.

Specifically, New Jersey Administrative Code Citation 8:57-4.19, et seq., effective September 2008, requires that all children age six through 59 months attending a licensed child-care or preschool must receive at least one flu shot dose between September 1 and December 31 each year. Since 2003, the Center for Disease Control and Prevention (CDC) and American Academy of Pediatrics (AAP) has *recommended* annual flu vaccination for children 6 months to 18 years. New Jersey, however, is the first state to *require* it. If a New Jersey pre-schooler does not have the flu vaccine by December 31, they must be excluded from school through March 31 of that flu season. This legislation has raised many issues, questions, and eyebrows.

How Did We Get Here?

The drive for the mandatory vaccination is evident since 2007. Then, Eddy Bresnitz, M.D., M.S., Deputy Commissioner for the New Jersey Department of Health and Senior Services and State Epidemiologist, explained the rationale for requiring immunization of pre-schoolers as several-fold including the aforementioned CDC/AAP recommendation. Other reasons included: reducing absenteeism of sick children and their caregivers, reducing high hospitalization and death rates for afflicted children, as well as protecting others in the home and community who are not vaccinated.

According to the New Jersey Department of Health and Senior Services, New Jersey's demographics make it the prime launching pad for the flu shot initiative because of its

very mobile, high immigrant population. The density and mobility of its residents is apparent, however, the conclusion that immigrants are more likely to spread flu than non-immigrants lacks support.

What is apparent about the population of New Jersey is that it is home to more drug companies than any other state. In 2008, Governor John Corzine proudly called New Jersey the "birthplace of the Global Pharmaceutical Industry," in that 15 of the 20 major pharmaceutical companies and over 235 biotechs are located there, contributing more than \$27 billion to New Jersey's economy.

Bresnitz also confirmed that New Jersey previously received up to \$100 for each child fully immunized by age 2, via incentive dollars from the CDC. In 1999 and 2000, the New Jersey Immunization Program received \$924,450 and \$1,202,869 respectfully. Ponder that in light of the fact that New Jersey requires more vaccines for children than any other state. And then, consider that New Jersey has the highest rate of autism in the Nation with 1 in 60 boys being afflicted with the disease.

Is there a connection between increased vaccination and autism? It may be difficult to show, but many are concerned that preservatives found in childhood vaccines, Thimerosal, a mercury-containing product, are contributing to this epidemic. In 2001, the FDA concluded that Thimerosal should be phased out of children's vaccines. According to the New Jersey Coalition for Vaccine Choice, however, more than 90% of flu vaccines still contain Thimerosal—and the flu vaccine is administered annually. Who can make sense of the EPA's 2001 recommendation that children under 5 and pregnant women should limit their ingestion of fish due to unsafe levels of mercury, yet, the state of New Jersey is requiring children to subject themselves to toxic levels of exposure? For example, the annual flu shot contains a level of mercury deemed "safe" for a person weighing 550 pounds. Apparently the drug companies have more influential lobbyists than the fish farmers, but are their interests counter to those of our children?

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LOBBYING FOR (OR AGAINST?) *continued*

What to Do?

Public awareness regarding Thimerosal, mercury, and the flu shot has reached a fever pitch. Desiree Jennings, a Washington Redskins cheerleader, was the picture of health before having a flu shot, but she now suffers from dystonia, a rare neurological disorder which causes her trouble walking, speaking and frequent seizures. Comedian/Actress Jenny McCarthy saw first hand the affects of the MMR shot on her son, diagnosed with autism at the age of three. McCarthy is a board member of “Generation Rescue” an autism advocacy organization that educates parents on the possible risks of routine childhood vaccines.

Currently, there are only two exemptions to the New Jersey mandate: religious and medical. No matter which side of the flu shot fence you are on, one argument is tough to argue against—a parent’s right to choose whether their child receives a flu shot. Assemblywoman Charlotte Vandervalk is leading that charge with A 260/S-1071, that calls for adding a conscientious exemption similar to at least 19 other states. If passed, would this mean the flu shot would be so watered down in New Jersey as to make it ineffective? Not likely. Regardless of legislation, many parents in New Jersey routinely vaccinate their children against the flu.

Perhaps some parents would take pause if they knew that the annual flu vaccine has questionable efficacy. Surely they would be surprised to learn that the flu shot is not even studied for safety in children under four. Given all the

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Hyatt Regency Maui
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February 12–15
Trial Advocacy College: Damages with David Ball, Ph.D.*
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March 20–23
Trial Advocacy College: Essentials of Civil Litigation
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April 9–10
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April 30–May 2
Jazz Fest Seminar: Litigating Auto Collision Cases
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EDU 178

LOBBYING FOR (OR AGAINST?) *continued*

controversy, should the state be allowed to force this vaccine on children in order to attend school, or should parents have a voice? The debate goes on.

P.S. On November 3, 2009, the voters of NJ voted out Democratic incumbent Governor Corzine in favor of controversy-laden Republican Chris Christie. Perhaps not

so ironically, just days before the election, Christie promised parents in New Jersey that he would push for the right to a conscientious objection and spread that word over the airwaves speaking live on the Don Imus Show. Apparently, the voters heard and responded. ■

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Bankruptcy Basics: Things You Need To Know About Bankruptcy

By Jackqualyn R. Quinton, Esq.

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Bankruptcy can be a confusing maze of federal and state law. This is especially difficult for attorneys who rarely practice in this area. This article is a basic overview to help you navigate through the confusion.

Once a Bankruptcy Is Filed

Bankruptcy Estate. When a bankruptcy is filed, an estate is created. In Chapter 7 and Chapter 11 bankruptcy, the bankruptcy estate consists of property the debtor owned at the time of filing. In a Chapter 13 bankruptcy, the bankruptcy estate consists of property the debtor owned at the time of filing and property acquired through the duration of the case. A debtor who is an individual is entitled to exempt certain assets from the bankruptcy estate. Generally, exemptions are determined by state law.

Automatic Stay. Upon filing a bankruptcy, an automatic stay goes into effect. The automatic stay prohibits any attempts to collect a debt from the debtor or the debtor's assets. This would include phone calls, letters, the filing of lawsuits, seizing property, and garnishments.

There are several exceptions to the automatic stay outlined in 11 U.S.C. §362(b). Some common exceptions include prosecution of criminal actions, domestic support obligations, domestic civil actions, steps to maintain perfection of an interest in property, and enforcement of government, police or regulatory powers.

The Bankruptcy Code provides ways creditors can seek relief from the automatic stay. Section 362(d) provides that relief from the automatic stay will be granted for cause or if there is no equity in the property and it is not necessary to an effective reorganization.

Notice and Pleadings. Written notice of a bankruptcy filing is given by the bankruptcy court clerk to all creditors listed in the debtor's schedules. The notice will provide you with the filing date, case number, chapter filed, trustee assigned, hearing date(s), and the deadlines to file objections. All pleadings filed within a bankruptcy case can be accessed through the PACER service at <http://pacer.uspci.uscourts.gov/>.

In addition, if you would like to receive notice and copies of pleadings filed in a bankruptcy case, an entry of appearance and request for notices can be filed.

During the Bankruptcy Case

Claims. Pre-bankruptcy creditors have a claim against the debtor in the bankruptcy. Each claim has a classification, which determines your priority of payment from the bankruptcy estate. There are three main classifications: (1) secured claims, (2) priority unsecured claims, and (3) general unsecured claims.

Secured claims have first priority. Generally, a secured claim is paid or the collateral is surrendered back to the secured creditor. Priority unsecured claims are specific unsecured debts assigned a priority status over other general

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BANKRUPTCY BASICS *continued*

unsecured claims. A higher priority claim will be paid in full before a lower priority claim will be paid. Some common priority unsecured claims are domestic support obligations, administrative expenses, wage claims, and tax claims. General unsecured claims are all remaining claims that do not have a security interest. Unfortunately, these claims are last to be paid. Normally, a general unsecured claim is paid pennies on the dollar, if anything.

Trustee Powers. The trustee is given powers within the bankruptcy to avoid certain types of transfers of the debtor's property. The purpose of these powers is to discourage dismembering the debtor and to provide equal distribution to all creditors. The money or property recovered from the avoided transfer will be brought back into the bankruptcy estate and will be distributed to all creditors. The most noted avoidance powers are the powers to avoid fraudulent transfers, preferential transfers, and unperfected transfers.

Discharge of the Case

A discharge is the main reason people and organizations seek bankruptcy. The discharge relieves a debtor of its obligations.

In a Chapter 7 bankruptcy, an individual debtor will be given a discharge once the deadline for filing objections has passed. However, corporations and partnerships do not receive a discharge. After distributing all its assets to creditors, an insolvent organization can simply be dissolved.

In a Chapter 11 bankruptcy, a repayment plan must be confirmed by the bankruptcy court. When a plan is confirmed, it binds all parties-in-interest to the terms of the plan. In effect, this discharges the debtor of the pre-bankruptcy debt and leaves the debtor obligated to the terms of the plan.

In a Chapter 13 bankruptcy, the debtor repays pre-bankruptcy debt in a payment plan over a three to five year period. When the individual debtor fulfills the payments under the plan, a discharge will be given for those debts included in the plan.

Hearing Dates and Deadlines to Know

§ 341 Meeting of Creditors. A § 341 Meeting of Creditors must be held by the United States Trustee within a reasonable time of filing. At this hearing, the debtor must appear and submit to examination under oath.

Confirmation Hearing. In a Chapter 11 and Chapter 13 bankruptcy, the debtor must submit a proposed

repayment plan. The court must hold a hearing to confirm the proposed plan once notice has been given. Any parties-in-interest have the right to object to the confirmation of the plan.

Proof of Claims. Claims are the basis of distribution from the bankruptcy estate. A proof of claim is a written statement setting forth the creditor's claim. Although filing a proof of claim is not always necessary to receive a distribution from the bankruptcy estate, you should do so regardless. The deadline to file a proof of claim will be on the notice of bankruptcy filing or set by court order at a later time.

Objection to Exemptions. When the bankruptcy estate is created, individual debtors are allowed to exempt certain assets. The trustee and creditors can object to an exemption the debtor is claiming. The objection must be filed within 30 days after the § 341 Meeting of Creditors is concluded.

Objection to Discharge or Dischargeability. Not all debts can be discharged in a bankruptcy proceeding and not all debtors are entitled to a discharge. The Bankruptcy Code lays out many debts in § 523(a) that are exceptions to the discharge. Some common exceptions are most taxes, domestic support obligations, most student loans, fines and penalties owed to a governmental unit, and debts incurred by fraud. In addition, a debtor can be denied a discharge for misconduct listed in § 727. Some exceptions to the discharge apply automatically, while others require the creditors to seek a determination by the court.

In a Chapter 7 bankruptcy, the deadline for filing is 60 days after the first date set for the § 341 Meeting of Creditors. In a Chapter 11 bankruptcy, the deadline to file an objection is the first date set for the confirmation hearing of the repayment plan. Although the first date set can be rescheduled or postponed, the deadline for discharge will remain the same.

Objecting to a discharge in a Chapter 13 bankruptcy is somewhat different. Section 1328 provides a limited list of exceptions to a Chapter 13 discharge. If the debtor makes a motion under § 1328 for a discharge, the court will enter an order setting the deadline to file objections to the discharge. ■

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Creating an Online Identity Without Spending a Fortune

By Lucia J. W. McLaren, Esq.

Goldenberg & Johnson, PLLC, Minneapolis, Minnesota, ljmclaren@goldenberglaw.com



The impact of participating in various forms of social media and creating an online identity is becoming increasingly significant in the practice of law, not only for communication with other attorneys, but also as a cost-effective and efficient manner of connecting with potential clients and referral

sources. Research shows that internet users are spending almost three times as much time on social networking and blogging sites today than they did the same time a year ago. While the extra time and effort needed to learn about, create, and maintain an online identity may seem daunting, the internet users of today are the future clients and referral sources of tomorrow—connecting with them has never been easier, or more important, than it is today.

Social media comes in a variety of forms, from online professional directories and social networking platforms to blogs and websites. Most attorneys understand the importance of having an online presence and invest time and money in creating a static firm website. Attorneys also need to recognize that other forms of social media can work to enhance the effectiveness of the attorney's website by directing viewers to that site. Many other forms of social media, such as online directories and networking sites, are free. By setting up profiles on these free sites, attorneys can take advantage of the larger Web site's search engine optimization (SEO), allowing that attorney to appear higher in search engine results, at no additional cost to the attorney.

Creating an online identity can begin with establishing and updating profiles on professional directories. Perspective clients and potential referral sources may access professional directories to find attorneys specializing in a particular area of law in a specific area of the country. The three largest free online professional directories for attorneys are Findlaw's attorney directory (<http://pview.findlaw.com>), Justia

(<http://lawyers.justia.com>), and Avvo (<http://www.avvo.com>). Registering for each directory takes approximately ten minutes and requires basic information such as contact information and areas of practice. Justia requires a state bar license or letter of good standing to be faxed in for verification. Otherwise, the profiles are created instantly and offer quick, cheap, and effective ways to begin building an online identity.

Attorneys should also consider joining a global social networking site such as LinkedIn or Facebook. Both sites allow anyone to join and enable the attorney to connect with countless contacts from their past, plus build contacts for the future. Although both sites have their advantages, Facebook is known more as a social networking site, while LinkedIn is considered more of a professional networking site.

Creating a LinkedIn account takes approximately thirty minutes, plus any additional time for enhancing the online profile. LinkedIn basically creates an online resume, asking a series of questions regarding work experience, educational background, and areas of interest. LinkedIn's platform then uses this profile information to assist in locating professional contacts. In a matter of thirty minutes, an attorney could connect with people they know and people they have lost contact with from their professional or educational backgrounds. In addition, LinkedIn can import contacts from email accounts and cross-reference these contacts with existing LinkedIn profiles. New contacts can be connected to by entering the individual's name and email address.

Once the LinkedIn profile is created, little, if any, maintenance is needed. For example, the attorney may choose to update their profile only when updating their resume or when achieving a career goal. An attorney could also spend just a few minutes after every conference or networking opportunity adding contact information for each new attorney, potential referral source, or client they met, thus growing their network and enhancing their online

The internet users of today are the future clients and referral sources of tomorrow

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Enter the AAJ Monthly Member Referral Contest



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CREATING AN ONLINE IDENTITY *continued*

identity quickly and inexpensively. In addition, LinkedIn has an excellent SEO, which allows the attorney's profile to appear near the top of search engine results.

Attorneys may also want to join online networking sites created specifically for lawyers and legal professionals, such as "Connected", by Martindale Hubble (<http://www.martindale.com/connected>), "Legally Minded", as run by the American Bar Association (<http://www.legallyminded.com>), and Lawlink (<http://www.lawlink.com>). All three sites are free, and profiles can be created in a few minutes.

Attorneys who learn about, create, and maintain an online identity are benefiting not only by giving themselves valuable access to other attorneys, but also by connecting to potential referral sources and clients. After establishing their

online identity, an attorney who embraces the possibilities of online social media will undoubtedly reap the rewards in the future. ■

Related AAJ Resources

Introducing the New and Improved AAJ Online Member Directory

Newly-designed to help AAJ members network with colleagues and connect with potential clients. Colleagues and potential clients can search by Area of Practice, Location, and Keyword to find exactly what they are looking for. Upgrade your current listing by displaying a photo and text description. Appear above basic listings. For more information contact: Heather Ciocca; Naylor, LLC; 800-369-6220 ext. 3463; hciocca@naylor.com.

The Legal Profession as I Now Know It

By Bahar Dejbani, Esq.

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Much like other law students, I spent my time in law school studying fact patterns, reading case law, learning the elements of different causes of action, and making outlines. I saw footage of attorney client meetings and depositions—done right and gone wrong. I worked hard, like others, in order to land interviews

with firms that came to do on-campus interviews, or better known to law students as OCI. Most, if not all, of those firms being defense firms. For most, working in a high rise building in one of the prestigious firms that would come to our school and interview, with a starting salary in the six-figures, that was what law school was about. For me, I had not planned a lengthy legal career, I just wanted to work for a few years and then I had other plans.

In addition to what I learned in law school, the ideas and expectations I had about the legal profession were also influenced by the images I would see on TV—legal shows with attorneys primarily in courtrooms, depositions or settlement negotiations; courtroom dramas with quick-thinking attorneys and "Perry Mason" moments albeit loose

interpretations of civil procedure. It was quite an image, and that was what being a lawyer was about.

After law school and various TV shows, the things that I associated with being an attorney were client interviews, discovery, depositions, trial prep, and other activities of that nature—nothing more, nothing less. That is, until I actually started practicing. Although my legal career is still in its early stages, I learned pretty quickly that there is much more to being a lawyer than knowing the elements of a cause of action or the courtroom images I had seen on TV.

Working at a firm that has encouraged membership and participation in trial lawyer associations, like the Consumer Attorneys of California and the American Association for Justice, has opened my eyes to other responsibilities and obligations that trial attorneys have. These organizations have educated me on legislation and cases which not only affect my clients and practice but also serve to protect the civil justice system and consumers in general. Additionally, they have provided opportunities to get involved and do something to help affect change. Through different activities including meetings and Lobby Day events I have learned that advocating for your clients and things you believe in is not

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just about being in a courtroom, but also ensuring that certain policies are in place to safeguard consumer rights.

The Lobby Day events were particularly memorable for me. Having the opportunity to meet with legislators and discussing issues and bills that were important to, and would affect, my clients was a very rewarding experience. Not only did I learn more about the legislative process but it was during that experience where it really hit home how much politics affected my profession.

I mentioned earlier that I had other plans after a legal career and those plans were actually politically charged.

I had always wanted to, in some way, get into politics. Perhaps work at a think tank analyzing policies. After passing the bar and getting offered a position at my current firm, I never imagined that those political aspirations I had while in law school were actually going to be made a reality as part of my legal work. The legal profession as I pictured it before is now so much more. I have learned that politics is so much a part of what I do and as important as it is to have a voice for your client in the courtroom, it is equally important to have one outside of the courtroom. Needless to say, my “other plans” are no longer in consideration and I plan on embracing the legal profession as I now know it. ■



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