



# OPERATION CLEAN GOVERNMENT

Separation of Powers  
Special Edition  
March 2003

N E W S L E T T E R

## House Leaders Offer Phony Separation of Powers Bill

By Robert P. Arruda  
Chairman of Operation Clean Government

With a statewide revolution in full cry for an amendment to the Constitution that will equalize power between the three branches of government, the House leaders, running true to form, have offered separation of powers bills that increase their power! And they fully expect voters to buy it!

Why? Because House leaders have had 213 years of success at this kind of con game. The contempt that House leaders

have for the voters decree for a true separation of powers is quite clear. The situation compares with thieves caught at a break-in offering designs for a new security system.

The framers of the Constitution warned that a system of checks and balances was necessary against what they accurately saw as the natural tendency of legislatures for self-aggrandizement at the expense of the

*continued on page 3*

## Murphy Must Choose a Trojan Horse or the People's Will

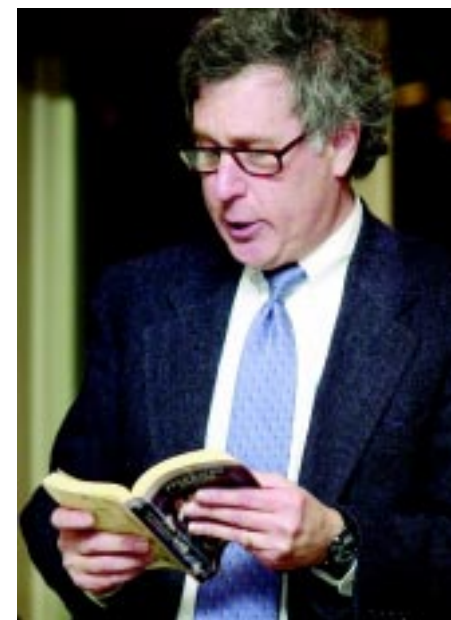
By Carl Bogus, Professor at Roger Williams University,  
Vice Chair of Rhode Island Separation of Powers Committee (RISOP),  
Chair of Common Cause SOP Task Force

When he was elected Speaker of the House, William J. Murphy told a local radio station he would pass "something" on separation of powers within two years. The qualifier was curious. He did not promise to enact separation of powers, only "something" on separation of powers. Was he unconsciously leaking a strategy to enact a merely cosmetic measure? Or perhaps even something worse — a constitutional amendment that, disguised as a separation of powers provision, would actually expand the power of the General Assembly?

Two separation of powers proposals are before the General Assembly. One, called the Lenihan-Gorham Amendment (after its sponsors in the Senate and the House), would provide for genuine separation of powers. It has been endorsed by Governor Carcieri, Operation Clean Government, Common Cause, and the Rhode Island Separation of Powers Committee (RISOP). The other proposal, supported by Representatives Fausto Anguilla of Bristol and Paul Crowley of Newport, among others, has more cosponsors in the House. But the Anguilla-Crowley proposal has serious problems.

Its most dramatic problem is absolutism. By stating that **"no department of government but the General Assembly shall exercise legislative power"** and **"no department of government [but the courts] shall exercise judicial power,"** the amendment prohibits agencies from making regulations or adjudicating disputes. This threatens to destroy state and local agencies that regulate environmental protection, utilities, construction, transportation, public health, education, zoning, and numerous other areas.

If interpreted literally, it would bring modern government to a screeching halt. It is almost as if the General Assembly were saying, If we cannot control agencies, then agencies cannot constitutionally exist at all, at least as we know them. Rather than promulgating regulations, agencies might only be able to recommend legislation which would have to be enacted by the General Assembly, where it would often fall victim to the political clout of the powerful. And rather than resolving disputes through informal proceedings before hearing examiners or administrative law judges within the agen-



Photo, courtesy of The Newport Daily News  
Carl Bogus, Roger Williams University Law Professor, explaining SOP to audience

cies, all disputes might have to be resolved in the courts.

The Anguilla-Crowley amendment's second problem is retaining the provision that states: **"The General Assembly shall continue to exercise the powers it has heretofore exercised."** This is the provision the General Assembly has relied on to trace its powers all the way back to those granted to it by King Charles II of England in 1663. Because the objective is to reduce General Assembly power, retaining the provision is oxymoronic.

Third, the Anguilla amendment substitutes the term **"separate and distinct"** for **"separate and coequal"** branches of government. Although distinct is used in more state constitutions than coequal, the term separate and coequal has nonetheless become the most widely used and understood term. Coequal branches means branches of equal status, a term that is particularly apropos in seeking to end what the state Supreme Court called Rhode Island's history of "quintessential system of parliamentary supremacy."

So Speaker Murphy has reached the Rubicon. He must now decide what he means by "something" on separation of powers. Will he enact meaningful and genuine separation of powers? There is little doubt that some members of the House are

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## Hundreds attend two forums on Separation of Powers



Photo, courtesy of The Newport Daily News

Newport area residents expressed enthusiasm for the separation of powers legislation sponsored by Governor Donald Carcieri at an informational forum held January 27 at the Atlantic Beach Club in Middletown. The Newport County Chamber of Commerce, the Rhode Island Separation of Powers Committee (RISOP), and the *Newport Daily News* cosponsored the event. Participants included Governor Carcieri, former U.S. Representative Ronald K. Machtley, Professor Carl Bogus and Bruce Lang, president of the Rhode Island Separation of Powers Committee.



Photo by Will Barbeau

Operation Clean Government held a separation of powers dinner/forum attended by more than 240 on January 20 at Rhodes on the Pawtuxet. See story on page 3.



Photo by Leo Mathieu

Governor Donald Carcieri appeared on OCG's one-hour State of the State cable TV show hosted by Andy Galli. Separation of Powers was discussed as well as other issues. State of the State is aired over a two week period as follows:

*Sunday, at 8 A.M., Channel 13, statewide*  
*Thursday, at 9 P.M., Channel 18, in Central areas of RI*  
*Friday, at 3 P.M., Channel 18, in Central areas of RI*

#### MURPHY MUST CHOSE, from page 1

telling him that his job is to preserve House power at all costs, or even better, to expand those powers, by use of a Trojan Horse amendment if necessary.

It is a difficult thing to give up power. As Aeschylus said, "For the mighty even to give way is grace." For the people to get what they so desperately want – a government of three coequal branches of government, with appropriate checks of balances – they must make the telephones of Speaker Murphy and

members of the General Assembly ring incessantly and fill their mailboxes to overflowing.

The people must make themselves heard in the letters to the editor, on talk radio, and on the street corner. This is, after all, nothing less than a peaceful revolution.

**To contact Speaker William J. Murphy**  
 Telephone: (401) 222-2466  
 E-mail: rep-murphy@rilin.state.ri.us  
 Mail: 323 State House, Providence, RI 02903

#### 22 Groups supporting Separation of Powers

American Association of University Women, Coalition of Consumer Justice, Common Cause/RI, Conservation Law Foundation, Environmental Council of RI, Greater Providence Chamber of Commerce, Hispanic-American Chamber of Commerce, Kay Coalition Against Casino Gambling, League of Women Voters/RI, Manufacturing Summit, Newport City Council, Newport County Chamber of Commerce, Northern RI Chamber of Commerce, Operation Clean Government, Portsmouth Concerned Citizens, Priests For Justice, RI Public Interest Research Group, RI Separation of Powers Committee, RI State Council of Churches, Save the Bay, Sierra Club/RI, Unitarian-Universalist Churches

### Mark Your Calendar

**Operation Clean Government will present a  
 Breakfast-Forum on Sunday, May 4, 2003**

*(Reserve by Tuesday, April 29)*

**Improving the Ethics Climate in RI  
 How to get there from here**

**Moderator: Arlene Violet**

**Panelists to be announced**

**Place: Radisson Airport Hotel**

I-95 to Exit 13 to Post Rd. left onto Post Rd.,  
 1/10 mile on the left, ample parking in the rear

**8:30 AM** Registration • **9:30** Breakfast • **10:30** Program  
 \$17.00 per person • \$136 to reserve a table of 8

Send check to: **Operation Clean Government May Forum**  
 P.O. Box 8683, Warwick, RI 02888

For more information, call: 1-877-793-3774

## Learning Not to Repeat Our Worst Mistakes

By H. Philip West, Jr.,

Executive Director, Common Cause of Rhode Island

From our tragic nightclub fire we rightly ask how to prevent another such disaster. We share a deep conviction that it should not have happened. We resolve that it must never happen again.

In the midst of our deep grief over those who perished in the fire and our concerns about war looming in Iraq it would be easy to forget Rhode Island's painful quest for constitutional Separation of Powers. That 216-year-long struggle has entered its critical phase.

Our challenge is to end the string of costly, needless Rhode Island scandals that are rooted in a system of state government that has long suffered the lack of effective checks on legislative power.

John Harwood is only the most recent Speaker of the House to be entangled in the reins of power that stretch from his office. Before him Joe DeAngelis, Matty Smith and Joe Bevilacqua were caught up in scandals that might have been averted under constitutional Separation of Powers.

Unlike their counterparts in Congress and in other state legislatures across America, Rhode Island's House and Senate leaders are required by law – laws they have written – to appoint lawmakers who will then execute laws as members of 73 executive boards, commissions and quasi-public agencies. No other state empowers its lawmakers both to write the laws and to serve on the boards that fund water projects, award scholarships, administer state pensions, float bonds, purchase video slot machines, control coastal development, dispose of trash, process sewage, and dozens of other key governmental functions.

To enact and simultaneously execute laws is an inherent and inescapable conflict of interest.

It is time to declare once and for all time that the branches of Rhode Island state government must be "separate and coequal." We in Common Cause affirm "co-

equal" in the bipartisan Gorham-Lenihan legislation for three reasons:

1. The United States Supreme Court has used "coequal" as a term of art in numerous landmark cases. Because the meaning of "coequal" has been clearly established by the highest court in our nation, it will not be subject to endless litigation here.
2. Historically, the General Assembly has wielded overwhelming power that defied checks and balances from the other branches. We need to say now and for all times that the powers of the branches are "coequal" and that no one branch can ever again presume to overpower the other two.
3. The people of Rhode Island have twice voted for "coequal," by a 66% to 33% margin on Question 6 in 2000 and by a 76% to 24% margin on Question 5 in 2002.

It is equally crucial that we follow the voters' mandate and get rid of the "broad powers" clause in our Constitution (Article VI, Section 10) that has no match in any other state Constitution. In 1999 our Supreme Court used that section to justify virtually unfettered General Assembly power. A majority of justices declared that Rhode Island did not rebel from the British parliamentary system in 1776 and that we retain a "quintessential system of parliamentary supremacy."

It's time to fix that deep flaw in our state Constitution. Shame on us if we fail to learn that disasters can be prevented.

**Visit the Common Cause web site: [www.commoncauseri.com](http://www.commoncauseri.com) and read the booklet "Democracy Betrayed," a sad story of government gone astray in the past twelve years and "Facts you need to know about unchecked and unbalanced powers in Rhode Island State Government," both found under resources.**

#### Members of the House Committee on Separation of Powers

Representative Joseph S. Almeida, Secretary, [rep-almeida@rilin.state.ri.us](mailto:rep-almeida@rilin.state.ri.us)  
 Representative Fausto C. Anguilla, [rep-anguilla@rilin.state.ri.us](mailto:rep-anguilla@rilin.state.ri.us)  
 Representative Todd R. Brien, [rep-brien@rilin.state.ri.us](mailto:rep-brien@rilin.state.ri.us)  
 Representative Elaine Coderre, Chairperson, [rep-ecoderre@rilin.state.ri.us](mailto:rep-ecoderre@rilin.state.ri.us)  
 Representative Paul Crowley, Vice Chairperson, [rep-crowley@rilin.state.ri.us](mailto:rep-crowley@rilin.state.ri.us)  
 Representative Raymond E. Gallison Jr., [rep-gallison@rilin.state.ri.us](mailto:rep-gallison@rilin.state.ri.us)  
 Representative Nicholas Gorham, [rep-gorham@rilin.state.ri.us](mailto:rep-gorham@rilin.state.ri.us)  
 Representative Peter F. Kilmartin, [rep-kilmartin@rilin.state.ri.us](mailto:rep-kilmartin@rilin.state.ri.us)  
 Representative Charlene Lima, [rep-lima@rilin.state.ri.us](mailto:rep-lima@rilin.state.ri.us)  
 Representative Susan Story, [rep-story@rilin.state.ri.us](mailto:rep-story@rilin.state.ri.us)  
 Representative Timothy Williamson, [rep-williamson@rilin.state.ri.us](mailto:rep-williamson@rilin.state.ri.us)

#### Members of Senate Committee on Oversight hearing the Separation of Powers bills

Senator Leo R. Blais, [sen-blais@rilin.state.ri.us](mailto:sen-blais@rilin.state.ri.us)  
 Senator Frank T. Caprio, Vice Chairperson, [sen-caprio@rilin.state.ri.us](mailto:sen-caprio@rilin.state.ri.us)  
 Senator Daniel J. Issa, [sen-issa@rilin.state.ri.us](mailto:sen-issa@rilin.state.ri.us)  
 Senator J. Michael Lenihan, Chairperson, [sen-lenihan@rilin.state.ri.us](mailto:sen-lenihan@rilin.state.ri.us)  
 Senator John F. McBurney III, Secretary, [sen-mcburney@rilin.state.ri.us](mailto:sen-mcburney@rilin.state.ri.us)  
 Senator Leoniday P. Raptakis, [sen-raptakis@rilin.state.ri.us](mailto:sen-raptakis@rilin.state.ri.us)  
 Senator Elizabeth H. Roberts, [sen-roberts@rilin.state.ri.us](mailto:sen-roberts@rilin.state.ri.us)  
 Senator James C. Sheehan, [sen-sheehan@rilin.state.ri.us](mailto:sen-sheehan@rilin.state.ri.us)  
 Senator V. Susan Sosnowski, [sen-sosnpwski@rilin.state.ri.us](mailto:sen-sosnpwski@rilin.state.ri.us)

**Join Operation Clean Government  
 Help us to promote Separation of Powers  
 See page 4 for membership form**

## Handful of Reps Working to Spoil True SOP bill

by Bruce Lang

President, RI Separation of Powers Committee (RISOP)

There has never been an issue in Rhode Island political history in which the populace has risen up so strongly against their own representatives, as has happened on the issue of Separation of Powers (SOP). Consider:

- Voters overwhelmingly favored SOP referendums in the last two elections. 67% in the 2000 election and then 76% in 2002;
- Virtually every citizen's organization in the state is strongly in favor of changing the Constitution to incorporate genuine separation of powers;
- The Providence Journal and every newspaper editor and radio talk show host in the state endorses genuine SOP as exemplified in the Gorham-Lenihan bills;
- Forums on Separation of Powers are crowded with citizens who react strongly against speakers who urge "more debate;"
- Governor Carcieri has made genuine SOP, in the form of the Gorham-Lenihan bill his premier priority issue;
- The State Senate passed a good SOP bill last year and almost all State Senators have endorsed the Lenihan bill this

year. Senate passage seems almost certain;

- Now three to four dozen State Reps may not be willing to give up their inordinate power. To appease the people, they say that they are in favor of SOP...BUT the Anguilla bill that they seem to support is not genuine SOP, it's a sham. This is a classic case of the "DEVIL being in the details."

Can we let such a small band of elected officials, for the sake of their personal power, deny what the federal government has, the 49 other states have, what the great majority of Rhode Islanders want and what will make RI government more fair, efficient and effective?

As Law Professor Carl Bogus of Roger Williams University reminds us, "This is a revolution." It pits almost everyone in Rhode Island against the special interests of the House of Representatives.

Representatives who resist genuine separation of powers only make themselves more visible and vulnerable for future elections. It's time for RI citizens to come together to speak up and demand genuine SOP, which is what we need and deserve.

Support RISOP with your contributions, checks made payable to: RISOP  
mail to: RISOP

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Newport, RI 02840-3516

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For more information phone 401.848.9300

### PHONY BILL, from page 1

other two branches of government. Unfortunately, Rhode Island's legislative leaders down through the years, including those currently in the House, have ignored the warning and view this mandate as opportunity knocking.

Here is the reality:

- H5360 (the 'leadership' bill) — this constitutional amendment was written with the purpose of benefiting legislators seeking not only to retain, but to increase their outrageous power;
- H5081 (the Gorham/Lenihan bill) — this constitutional amendment was written by academic experts who receive no power or money from their work and is endorsed by more than a dozen citizens' reform groups.

And, of course, House leaders are telling their constituents: "Trust us, we want separation of powers also." Well I say trust your own eyes, just read the fine print. There are no legal mysteries in these opposing bills. Just a desperate eleventh hour attempt by leadership to confuse the public and maintain their grasp on power.

To further ensure an increase in power, the leadership, on January 30, quietly slipped in bill H-5347, with this summary: **"This act would require the approval of the general assembly prior to the adoption, amendment or repeal of any rule of a state agency or authority."**

To quote Ed Achorn's February 11<sup>th</sup> column in the *Providence Journal* 'Be wary of R. I. House leaders' "...the House leaders, far from balancing power, might dramatically expand their power by requiring the executive branch to get permission from the legislature to perform its day-to-day functions!"

In other words, The Legislative branch would still dominate the executive Branch, regardless of so-called separation of powers. H-5360 expressly provides that ongoing power to the House.

Voters must ask themselves two questions:

1. Can I trust a solution offered by the very people in power who will benefit by the status quo and have been the root cause of the problem?
2. Why do the legislators think us so gullible? Most likely because for many years, prior to today's communications miracles that have made government transparent to everyone, they could get away with it.

Let your voices be heard. Recognize the con game being inflicted on you and speak up. Call, email or write your legislator and kindly explain to them the reality of this historic moment in Rhode Island's history.

Let your representative and senator know you expect them to support the Gorham reform bill H-5081 and the Lenihan companion bill in the Senate S-180. The reality is that these are the only true separation of powers bills.

## Representative Gorham Awarded Golden Broom

By Will Barbeau

More than 240 Rhode Island citizens — called "revolutionaries" by one speaker — rose to give a long, standing ovation to Representative Nicholas Gorham when it was announced that he was the recipient of Operation Clean government's Golden Broom award. Speaking at the Separation of Powers dinner/forum held at Rhodes on the Pawtuxet January 20<sup>th</sup>, OCG Chairper-



Photo by Jane Gurzenda  
Representative Nick Gorham shows off the OCG Golden Broom.

son Robert P. Arruda said "Operation Clean Government is very careful — almost stingy — in selecting recipients for this award. We're looking for people who are wonderful role models in their communities and set an example for their colleagues and all those in Rhode Island."

According to Arruda, OCG's board presented Representative Gorham with the

Golden Broom because of his "tenacious" sponsorship of bills to debate the issue in both the 2001 and 2002 sessions. Gorham now also serves on the new House Committee on Oversight that will hear the Separation of Powers bills.

In presenting "Nick" Gorham the Golden Broom, OCG Chairperson Arruda praised his dedication to government accountability, his efforts to find funding for urban school systems, and his resistance to the spread of quasi-agencies. Arruda then turned the podium over to OCG Director William H. Clay who praised Representative Gorham for his fight on behalf of separation of powers, saying: "due to one uncompromising representative...the (house's) outrageous disregard for the voters galvanized the efforts of reform groups, talk radio hosts and editorial writers who built SOP into the prime issue for the fall election."

In his responding remarks, Representative Gorham thanked many family members and co-workers for their support. He also noted that January 20<sup>th</sup> was Martin Luther King Day. He paid tribute to that leader, quoting from his speeches, and took particular note of one pertinent King phrase: "No lie can live forever."

Nicholas Gorham is a partner in the family law firm of Gorham and Gorham and was elected as a Republican representing District 40. He attended Boston University where he completed his law courses with honors. He resides in Coventry with his wife Roseanna and family.

In concluding his remarks, Representative Gorham said, "I am anxious to push forward with this issue."

See page 4 for lists of co-sponsors of the four SOP bills along with legislator contact information.

## OCG Dinner/Forum

It was as much a rally as it was a forum when more than 240 people met at Rhodes-on-the-Pawtuxet on January 20 to hear Governor Donald Carcieri, Senator J. Michael Lenihan, Representative Nick Gorham, and Professor Carl Bogus talk about the need for a separation of powers change to the R.I. Constitution.

With TV personality Dave Layman acting as Master of Ceremonies, the speakers addressed a common theme: this is a revolution, and it is just beginning.

The Governor pledged his continuing support to get the Gorham bill through during this session. Senator Lenihan reminded the audience of the difficulties that had to be overcome to get the Senate to favor the separation of powers initiative. And, after being honored with OCG's Golden Broom Award, Nick Gorham described the many humiliations he endured as leaders in the House swept his efforts under the rug by referring his bills to committee.

However, it was law professor Carl Bogus of Roger Williams University who set the tone for the evening when he called mem-

bers of the audience "revolutionaries" and reminded them that they had to take up the burdens of strong political activism in order to prevail in the current revolution.

It may have been a rousing sermon to the choir, as they say, but those who attended left knowing they must fight on, because this war is far from over.



Photo by Will Barbeau  
Senator J. Michael Lenihan, a former recipient of OCG's Golden Broom, was a panelist at this forum

Representatives

Table with columns: Name, Party-Dist, Tel #, 2nd #, Street, City, ZIP. Lists 100 representatives including Ajello, Almeida, Amaral, Anderson, Anguilla, Aubin, Benson, Brien, Callahan, Caprio, Carter, Cerra, Coderre, Coogan, Corvase, Costantino, Crowley, Dennigan, DeSimone, Enos, Faria, Flaherty, Fox, Gallison, Giannini, Ginaitt, Gorham, Handy, Harwood, Jacquard, Kennedy, Kilmartin, Lally, Landroche, Laroche, Lewiss, Lima, Long, Lowe, Malik, McCauley, McHugh, McManus, McNamara, Menard, Moffitt, Montanaro, Moran, Moura, Mumford, Murphy, Naughton, Palumbo, Petrarca, Picard, Reilly, Rose, SanBento, Savage, Schadone, Scott, Shanley, Shavers, Sherlock, Slater, Smith, Story, Tejada, Trillo, Voccola, Wasyluk, Watson, Williams, Williamson, Winfield.

Senators

Table with columns: Name, Party-Dist, Tel #, 2nd #, Street, City, ZIP. Lists 40 senators including Algieri, Alves, Badeau, Bates, Blais, Breene, Caprio, Celona, Ciccone, Connors, Cote, Damiani, DaPonte, Felag, Fogarty, Gallo, Gibbs, Goodwin, Irons, Issa, Lanzi, Lenihan, McBurney, McCaffrey, Montalbano, Paiva-Weed, Parella, Perry, Pichardo, Polisen, Raptakis, Revens, Roberts, Ruggiero, Sheehan, Sosnowski, Tassoni, Walaska.

\*Co-sponsored only the Gorham-Lenihan bill H-5081 & S-180
\*\*Co-sponsored both the Gorham-Lenihan and the Anguilla bill
\*\*\*Co-sponsored only the Anguilla bill H-5360
Senator Connors was the lone sponsor of another SOP bill S-206

Legislator email addresses have sen- or rep- followed by last name only, e.g., rep-gorham@rilin.state.ri.us
sen-lenihan@rilin.state.ri.us

with the three exceptions listed below:
Stephen Anderson — rep-sanderson@rilin.state.ri.us
Elaine Coderre — rep-ecoderre@rilin.state.ri.us
Joseph Montalbano — sen-jmontalbano@rilin.state.ri.us

For the name of your senator or representative:
call the Secretary of State's office at 222-2357
or go to www.state.ri.us/RIELEC/FINDOFF.htm

For legislator information, sponsors of the four SOP bills,
and a comparison of these bills go to www.ocgri.org
and click on any of the following at the bottom of the home page:

- "Comparison of four SOP bills"
"Find your representative"
"Representative email addresses"
"Senate email addresses"

Support Separation of Powers and other reform efforts in Rhode Island.
Join Operation Clean Government.

OCG MEMBERSHIP FORM

YES, I want to join other Rhode Island citizens and help to promote Honest, Responsible and Responsive State Government.

New member Renewal

My membership contribution to OPERATION CLEAN GOVERNMENT is enclosed:

\$12 Individual \$15 Family (list all names to be included) \$25 \$50 \$100 \$ Other

Name(s) Home Phone

Street Business Phone

City/Town State Zip

OCG is a non-profit organization, however contributions are not tax deductible because our activities include lobbying.
Yes, I would like to volunteer some time or participate on one or more of the OCG committees. Please call me.

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