Navigating Challenging Diversity and Inclusion Situations in the Workplace

Thursday, January 23, 2020 | 1:00 PM Eastern

Sponsored by the Physicians Issues Interest Group
Welcome

Business & Transactions Interest Group

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• Curtis Bernstein, Pinnacle Healthcare Consulting, Centennial, CO

Vice Chairs:
• Chance Sherer, VMG Health, Dallas, TX
• Kenya S. Woodruff, Katten, Dallas, TX
• Lauren Collins, Husch Blackwell LLP, Denver, CO
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The Business and Transactions Interest Group focuses on the law and its application to the broad scope of transactions and business operations of those involved in the healthcare industry. The Interest Group provides opportunities for its members to participate in educational activities, review and comment on legislative and regulatory developments and network with each other. Particular areas of focus of the Interest Group include mergers, acquisitions and affiliations, integrated health systems, technology (electronic and biomedical), contractual and joint venture business relationships and federal and state regulatory compliance. The Interest Group and its interest area specific sub-groups coordinate their activities with other Section Interest Groups to follow the interrelationship of developments affecting healthcare transactions and businesses in areas such as securities law, antitrust law, tax law, intellectual property law and accounting.
All attendees may type your questions into the “Question Box” on your control panel, either during or after the presentation. We will leave approximately 10 minutes for a Q&A session towards the end of the webinar.
Disclaimer

- **Disclaimer:** None of the views or comments expressed in this webinar represent the position of the American Bar Association or any Section, Division or Forum thereof, nor do they constitute an expression of any position of any of the law firms on the issues discussed by today’s speakers.
The Panel

• Speaker:  
**Anna Lloyd**, Executive Director of the Chicago Committee on Minorities in Large Law Firms, Chicago, IL

• Moderator:  
**Kenya Scott Woodruff**, Partner, Katten, Dallas, TX
Objectives

• Gain an understanding of the current state of diversity demographics and programs in the legal profession.
• Create a framework for strategically confronting uncomfortable, diversity-related conversations.
• Utilize the framework with recommendations on typical, current situations in the workplace.
• Recognize that interpersonal actions/reactions can help or hurt cultivating an inclusive, legal work environment.
Attorney Demographics

Lawyer Population

From 2009-2019, there has only been a 5% increase for female attorneys. For racial/ethnic minority attorneys there has not been significant changes from 2009-2019.

### ABA National Lawyer Population Survey
10-Year Trend in Lawyer Demographics
Year 2019

<table>
<thead>
<tr>
<th>Residence Active Attorney Demographics: Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
</tr>
<tr>
<td>Male</td>
</tr>
<tr>
<td>Female</td>
</tr>
<tr>
<td>Other (1)</td>
</tr>
<tr>
<td>Count of States Reporting Statistic</td>
</tr>
<tr>
<td>% of Lawyers with Reported Statistic</td>
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<tbody>
<tr>
<td>Male</td>
<td>69%</td>
<td>69%</td>
<td>67%</td>
<td>67%</td>
<td>68%</td>
<td>64%</td>
<td>65%</td>
<td>64%</td>
<td>65%</td>
<td>64%</td>
<td>64%</td>
<td>-5.3 pp</td>
</tr>
<tr>
<td>Female</td>
<td>31%</td>
<td>31%</td>
<td>33%</td>
<td>33%</td>
<td>34%</td>
<td>36%</td>
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<td>5.2 pp</td>
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<tr>
<td>Other (1)</td>
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<td>N/A</td>
<td>N/A</td>
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<td>N/A</td>
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<td>46</td>
<td>45</td>
<td>44</td>
<td>4</td>
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<tr>
<td>% of Lawyers with Reported Statistic</td>
<td>55%</td>
<td>57%</td>
<td>57%</td>
<td>59%</td>
<td>59%</td>
<td>61%</td>
<td>63%</td>
<td>68%</td>
<td>61%</td>
<td>63%</td>
<td>61%</td>
<td>5.6 pp</td>
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<tbody>
<tr>
<td>African-American</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>0.3 pp</td>
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<tr>
<td>Asian</td>
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<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>3%</td>
<td>2%</td>
<td>3%</td>
<td>2%</td>
</tr>
<tr>
<td>Caucasian/White</td>
<td>88%</td>
<td>89%</td>
<td>88%</td>
<td>88%</td>
<td>89%</td>
<td>88%</td>
<td>86%</td>
<td>88%</td>
<td>85%</td>
<td>85%</td>
<td>85%</td>
<td>-2.8 pp</td>
</tr>
<tr>
<td>Hawaiian/Pacific Islander</td>
<td>0%</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>1%</td>
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<td>0%</td>
<td>0%</td>
<td>0.1 pp</td>
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<tr>
<td>Hispanic</td>
<td>5%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>-0.4 pp</td>
</tr>
<tr>
<td>Multiracial (1)</td>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>0%</td>
<td>1%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Native American</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1.0 pp</td>
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<tr>
<td>Count of States Reporting Statistic</td>
<td>16</td>
<td>19</td>
<td>17</td>
<td>16</td>
<td>16</td>
<td>17</td>
<td>18</td>
<td>19</td>
<td>22</td>
<td>20</td>
<td>20</td>
<td>4</td>
</tr>
<tr>
<td>% of Lawyers with Reported Statistic</td>
<td>19%</td>
<td>22%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>25%</td>
<td>30%</td>
<td>28%</td>
<td>26%</td>
<td>35%</td>
<td>15.9 pp</td>
</tr>
</tbody>
</table>

Data Source: American Bar Association's National Lawyer Population Survey
Attorney Demographics

Law Firms

From 2009-2018, summer associate demographics for women/minorities/minority women have improved, but partner and associate attorney demographics did not keep pace with summer associates.
From 2009-2019, the number of Asian and Hispanic partners and associates increased slightly. There was almost no change for Black/African American partners. The percentage of Black/African American associates topped the number from 2009 for the first time in 10 years – but only slightly.
Law Firms

In 2018, most reporting law firms listed around .5% or less lawyers with disabilities.

<table>
<thead>
<tr>
<th></th>
<th>All Firms</th>
<th>Firms of 250 or Fewer Lawyers</th>
<th>Firms of 251-500 Lawyers</th>
<th>Firms of 501-700 Lawyers</th>
<th>Firms of 701+ Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># Reported</td>
<td>% of Total</td>
<td># Reported</td>
<td>% of Total</td>
<td># Reported</td>
</tr>
<tr>
<td>Partners</td>
<td>167</td>
<td>0.52%</td>
<td>31</td>
<td>0.33%</td>
<td>33</td>
</tr>
<tr>
<td>Associates</td>
<td>127</td>
<td>0.46%</td>
<td>13</td>
<td>0.25%</td>
<td>28</td>
</tr>
<tr>
<td>All lawyers</td>
<td>368</td>
<td>0.53%</td>
<td>52</td>
<td>0.30%</td>
<td>73</td>
</tr>
</tbody>
</table>

Note: Figures for lawyers with disabilities are based on 693 offices/firms reporting counts, including zero, in all lawyer categories. Counts of individuals with disabilities, including zero, cover 69,854 lawyers. Because so few summer associates with disabilities were reported (15 total), they are not included in the table.
Law Firms

In 2018, most reporting law firms had 2-3% LGBT lawyers and about 5% of their summer associates.
Judiciary

Although the data from 2003-2017 doesn’t create a trend, there has been a decrease in female and minority judges compared to 2003.
Attorney Demographics

Judiciary

Depending on the administration the number of female, minority, and LGBT judges varies greatly.

Table 26 - Article III Judicial Appointments by Gender and Race/Ethnicity

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Female (%)</th>
<th>Af Am. (%)</th>
<th>Hist. (%)</th>
<th>As Am. (%)</th>
<th>Na Am. (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reagan (1981-88)</td>
<td>383</td>
<td>32 (8.8)</td>
<td>7 (1.8)</td>
<td>14 (3.6)</td>
<td>2 (0.5)</td>
<td>0 (0.0)</td>
</tr>
<tr>
<td>Bush I (1989-92)</td>
<td>193</td>
<td>36 (18.7)</td>
<td>13 (6.7)</td>
<td>8 (4.1)</td>
<td>0 (0.0)</td>
<td>0 (0.0)</td>
</tr>
<tr>
<td>Clinton (1993-00)</td>
<td>378</td>
<td>111 (29.4)</td>
<td>62 (16.4)</td>
<td>25 (6.6)</td>
<td>5 (1.3)</td>
<td>1 (0.3)</td>
</tr>
<tr>
<td>Bush II (2001-08)</td>
<td>327</td>
<td>71 (21.8)</td>
<td>24 (7.3)</td>
<td>30 (9.1)</td>
<td>4 (1.2)</td>
<td>0 (0.0)</td>
</tr>
<tr>
<td>Obama (2009-16)</td>
<td>329</td>
<td>138 (42.0)</td>
<td>62 (18.8)</td>
<td>36 (10.9)</td>
<td>21 (6.4)</td>
<td>1 (0.3)</td>
</tr>
<tr>
<td>Trump (2017-18)</td>
<td>44</td>
<td>10 (22.7)</td>
<td>0 (0.0)</td>
<td>1 (2.3)</td>
<td>4 (1.2)</td>
<td>0 (0.0)</td>
</tr>
<tr>
<td>Trump (pending)</td>
<td>92</td>
<td>23 (25.0)</td>
<td>4 (4.3)</td>
<td>4 (4.3)</td>
<td>2 (2.2)</td>
<td>0 (0.0)</td>
</tr>
</tbody>
</table>

# Attorney Demographics

## Table 27 - Article III Judicial Appointments by LGBT and Disability Status

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>LGBT (%)</th>
<th>Disabled (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reagan (1981-88)</td>
<td>383</td>
<td>0 (0.0)</td>
<td>1 (0.3)</td>
</tr>
<tr>
<td>Bush I (1989-92)</td>
<td>193</td>
<td>0 (0.0)</td>
<td>1 (0.5)</td>
</tr>
<tr>
<td>Clinton (1993-00)</td>
<td>378</td>
<td>1 (0.4)</td>
<td>3 (0.8)</td>
</tr>
<tr>
<td>Bush II (2001-08)</td>
<td>327</td>
<td>0 (0.0)</td>
<td>2 (0.6)</td>
</tr>
<tr>
<td>Obama (2009-16)</td>
<td>329</td>
<td>11 (3.3)</td>
<td>0 (0.0)</td>
</tr>
<tr>
<td>Trump (2017-18)</td>
<td>39</td>
<td>0 (0.0)</td>
<td>0 (0.0)</td>
</tr>
</tbody>
</table>

27. Id. Figures for LGBT judges and judges with disabilities are not available for pending nominees. Even though the figures list the number of judges with disabilities seated by President Obama as 0, Supreme Court Justice Sonia Sotomayor, who was appointed by President Obama in 2009 and confirmed that same year, is a life-long diabetic who was diagnosed with type-1 diabetes at age seven. See Nina Totenberg, Sotomayor Opens Up About Diabetes For Youth Group, NPR, June 21, 2011, https://www.npr.org/2011/06/21/137328180/sotomayor-opens-up-about-diabetes. Justice Sotomayor, thus, seems to fall within the category of a judge with a disability. See Questions & Answers About Disabilities in the Workplace and the Americans With Disabilities Act, EEOC, accessed on Aug. 2, 2018, https://www.eeoc.gov/laws/types/diabetes.cfm#fn9 (noting that “individuals who have diabetes should easily be found to have a disability within the meaning of the first part of the ADA’s definition of disability because they are substantially limited in the major life activity of endocrine function.”).
From 2001-2015, female corporate counsels have increased 18%. Racial/ethnic minority attorneys have made slight increases.

Table 23 - Female and Minority Representation Among Corporate Counsel

<table>
<thead>
<tr>
<th></th>
<th>Female</th>
<th>Af Am.</th>
<th>Hisp.</th>
<th>As Am.</th>
<th>Na Am.</th>
<th>Mixed/Other</th>
<th>Minority</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>31.5%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>12.5</td>
</tr>
<tr>
<td>2004</td>
<td>37.0</td>
<td>2.0</td>
<td>3.0</td>
<td>3.0</td>
<td>0.0</td>
<td>2.0</td>
<td>10.0</td>
</tr>
<tr>
<td>2006</td>
<td>39.0</td>
<td>3.0</td>
<td>3.0</td>
<td>3.0</td>
<td>0.0</td>
<td>2.0</td>
<td>11.0</td>
</tr>
<tr>
<td>2011</td>
<td>41.0</td>
<td>4.0</td>
<td>3.0</td>
<td>5.0</td>
<td>&lt;1.0</td>
<td>3.0</td>
<td>15.0</td>
</tr>
<tr>
<td>2015</td>
<td>49.5</td>
<td>4.0</td>
<td>5.0</td>
<td>7.0</td>
<td></td>
<td></td>
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</tbody>
</table>

Federal Government Lawyers

African American representation is highest among federal government attorneys.

### Attorney Demographics

<table>
<thead>
<tr>
<th></th>
<th>2010 Af Am. (%)</th>
<th>2010 Hisp. (%)</th>
<th>2010 As Am. (%)</th>
<th>2010 Na Am. (%)</th>
<th>2010 Minority (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Clerks</td>
<td>33 (9.0)</td>
<td>13 (3.5)</td>
<td>32 (8.7)</td>
<td>1 (0.3)</td>
<td>79 (21.5)</td>
</tr>
<tr>
<td>Male</td>
<td>9 (2.4)</td>
<td>3 (0.8)</td>
<td>8 (2.2)</td>
<td>0 (0.0)</td>
<td>20 (5.4)</td>
</tr>
<tr>
<td>Female</td>
<td>24 (6.5)</td>
<td>10 (2.7)</td>
<td>24 (6.5)</td>
<td>1 (0.3)</td>
<td>59 (16.0)</td>
</tr>
<tr>
<td>General Attorneys</td>
<td>3,026 (8.7)</td>
<td>1,391 (4.0)</td>
<td>1,888 (5.4)</td>
<td>202 (0.6)</td>
<td>6,507 (18.7)</td>
</tr>
<tr>
<td>Male</td>
<td>1,068 (3.1)</td>
<td>701 (2.0)</td>
<td>757 (2.1)</td>
<td>93 (0.3)</td>
<td>2,619 (7.5)</td>
</tr>
<tr>
<td>Female</td>
<td>1,958 (5.6)</td>
<td>690 (2.0)</td>
<td>1,131 (3.3)</td>
<td>109 (0.3)</td>
<td>3,888 (11.2)</td>
</tr>
<tr>
<td>Admin. Law Judges</td>
<td>100 (6.1)</td>
<td>72 (4.4)</td>
<td>23 (1.4)</td>
<td>19 (1.2)</td>
<td>214 (13.0)</td>
</tr>
<tr>
<td>Male</td>
<td>50 (3.0)</td>
<td>55 (3.3)</td>
<td>10 (.6)</td>
<td>13 (0.8)</td>
<td>128 (7.8)</td>
</tr>
<tr>
<td>Female</td>
<td>50 (3.0)</td>
<td>17 (1.0)</td>
<td>13 (0.8)</td>
<td>6 (0.4)</td>
<td>86 (5.2)</td>
</tr>
</tbody>
</table>

### Attorney Demographics

#### Table 30 - Law Faculty by Gender and Minority Status\(^{30}\)

<table>
<thead>
<tr>
<th></th>
<th>Fall, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Deans (%)</td>
</tr>
<tr>
<td>Minority</td>
<td>42 (20.8)</td>
</tr>
<tr>
<td>Female</td>
<td>58 (28.7)</td>
</tr>
</tbody>
</table>

30. ABA Section of Legal Educ. & Admissions to the Bar, *Statistics: Ethnic/Gender Data: Longitudinal Charts, Law School Faculty & Staff by Ethnicity and Gender*, [http://www.americanbar.org/groups/legal_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) (scroll down and click “Law School Faculty & Staff by Ethnicity and Gender”) [hereinafter *Law School Faculty Chart*] (for 2013 data). Figures are based on all full-time faculty listed in the AALS DIRECTORY OF LAW TEACHERS for whom race/ethnicity is known.
What legal employers are doing

- Diversity Committees
- Strategic Action Plans
- Hiring Chief Diversity Officers and diversity staff
- Affinity groups
- External organizations
  - Calls to Action--ABA Resolution 113
  - Membership
- Initiatives and events
- Professional development and mentoring
- Training
Creating an inclusive workplace

- Fostering a welcoming environment includes how we react and respond to everyday interactions.
  - How do we react when we are directly confronted with a challenge
  - How do we react when we witness a challenge
  - How do we create an impactful, teachable moment
  - How do we sustain a change
Strategic Conversations

- Pause
- Reflect and assess
- Overview
- Mindfulness
- Point of view
- Teach and follow up
Step 1: Pause

- Take a moment to calm emotional, immediate reactions.
- Reflect on why the situation makes you uncomfortable.
- Think about how to best approach the situation.
- Being able to start a conversation with non-accusatory, non-judgmental language will lessen a defensive response.
- Visualize what a success looks like for the conversation.
Step 2: Reflect and Assess

- Reflect on the intent of the comment/situation.
- Think about the point of view of the perpetrator.
- Ask questions
  - “Could you explain what you mean?”
  - “Why did you say that?”
  - “What happened?”
- Assess the best time and place for a response or longer discussion
Step 3: Overview

- Understand and articulate the diversity and inclusion goals of the organization.
- Explain how the comment/situation may hinder the organization's goals.
- Help the person understand the “bigger picture” and context of their comment.
- Describe how the comment/situation is troubling to you.
- Remind the person that when creating diverse and inclusive environments, things may change.
Step 4: Mindfulness

- Have a mindful conversation about the issue.
- Be present; be an active listener.
- Slow down; respond intentionally.
- Avoid assumptions, blame, and accusations. Be aware of your own emotions and potential triggers in the conversation.
- Speak from personal experiences. Ask questions.
Step 5: Point of View

- Help the perpetrator understand why the comment/situation may have offended you or someone else.
- Assist interrupting unconscious bias and elevate awareness.
- Draw from specific personal experiences or examples.
- Share different perspectives.
- Talk about commonalities.
Step 6: Teach and Follow-Up

• Help further understanding by offering resources about the topic and inviting the person to internal or external diversity-related events.

• Don’t avoid the person after the conversation. Follow-up and engage in discussions about diversity and inclusion.
First interrupt/stop the possibly biased, uncomfortable situation, but before you implement the PROMPT strategy, decide if:

• Your response can be fully articulated in the moment and with others around without causing unneeded embarrassment or hostility;

OR

• You assert an initial response but have a conversation at a later time, privately.
Scenarios: #MeToo Backlash

- Mike Pence/Billy Graham Rule
- “I’m afraid to be alone in a room with…”
- Limiting social interactions or hiring of women
Talking Points/Recommendations

• Men and women should be given equal opportunities/access for success. Exclusion will only perpetuate the inequities for women in law.
• Mentoring and promoting women is essential to stopping harassment.
• Awareness and training that goes beyond sexual harassment prevention.
Scenarios: Tokenism

- Diverse attorneys are used in RFPs or pitch teams to clients but receive little or no work from the matter.
- Diverse attorneys are asked to more frequently appear in marketing materials for business development or recruiting.
Talking Points/Recommendations

- Discuss why tokenism is problematic.
- Diverse attorneys will only benefit if opportunities are meaningful.
- Tokenism hurts retention of diverse attorneys.
- Combat tokenism with diverse hiring, mentorship and training, and opportunities for meaningful client interactions and work.
- Have candid conversations with diverse attorneys about staffing matters and marketing in relation to organizational diversity objectives.
Scenarios: Hiring Discussions

- The affirmative action argument
- Cultural “fit”/”polish”
- “It’s so hard to pronounce their names…”
- Elitism
Talking Points/Recommendations

• Explain the organization's diversity recruitment goals. Dispel myths about “quotas” or hiring “unqualified” candidates.
• Discuss how implicit bias (particularly affinity bias) can infiltrate hiring preferences and processes.
• Look at hiring criteria and metrics for bias.
• Help the understanding that diversity isn’t just people looking different.
• Cultural competency is important for candidates to feel they are coming into an inclusive work environment.
Scenarios: Microaggressions

- Mixing people up
- Mispronouncing names
- Making comments on hair/clothes/neighborhoods
- Compliment or insult
- Assumptions
Talking Points/Recommendations

• Discuss why the microaggression may be offensive or demeaning.
• Talk about how microaggressions affect retention of diverse attorneys.
• Cultural competency and implicit bias awareness and trainings help lessen microaggressions.
Resources

Resources

• Verna Meyers, What If I Say The Wrong Thing, 2014.
• Arin Reeves, The Next IQ, 2012.
For more information

• Anna Lloyd, Executive Director
  Chicago Committee on Minorities in Large Law Firms
  https://chicagocommittee.org/
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• Kenya S. Woodruff, Partner
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Questions?

All attendees may type your questions into the “Question Box” on your control panel, either during or after the presentation.
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