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The Seventh Generation: The Future of Minnesota's American Indian Youth

Priscilla A. Day

American Indian cultural beliefs hold that our children are sacred. Traditionally, we believe our children enter this world as precious spirits to be taken care of and nurtured through life's changes from an infant to a child, a child to an adolescent, from adolescence to adult and then into another sacred role, that of elder. Unfortunately, policies designed to destroy this way of life have had their impact. Couple that with systemic racism in policy and practice, and you can see why Minnesota's American Indian youth are struggling. Today, one of Minnesota's most forgotten populations are American Indian children. Policy makers and those who lead Minnesota's Human Service, Juvenile Justice, and other organizations can play a critical role in turning this situation around.

This article asks the reader to consider the role policy can play in addressing what is happening with American Indian youth. While money cannot solve all problems, money along with strong policy and practices can intervene in the lives of families and children. Research has shown that strategic changes in policy and practice can help these children grow up to be productive, contributing citizens.

American Indian youth

American Indian youth want what all youth want: a chance to live a life in which they have choices about their future. Some want to finish high school and go on to college. They might have plans to be a doctor, a tribal attorney, a teacher, or a social worker. Some want to stay in their

community, perhaps attend a tribal college, while others want to move across the country. Some youth are unsure of what they want to do and don't have any particular plans except to get a job. Unfortunately for some American Indian youth, their main concern is how to get through the week or even the day. They don't have the luxury of planning for the future.

Historically, American Indian peoples believed in planning for the seventh generation. The concept of planning for the seventh generation comes from the Great Law of Peace from the Haudenosaunee (Iroquois) culture. It refers to a worldview that considers the long-term impact of decisions made today on the health and wellbeing of those who will follow us into the future. This concept of considering the impact of the decisions we make today on our relatives seven generations from now is a wise way of governing. This kind of reflection should give pause to policy makers who are initiating important decisions that do exactly that: impact the futures of our children and their children.

As parents, we all want our children to lead a better life than we did. A life full of opportunity for better education, expanded job choices, and of course, a life in a family system that can care for and offer safety and security for that child, to pass on family stories, norms, values and beliefs. In Minnesota, that opportunity is not shared equally. One group more than all others is losing their children through out-of-home placement in the child welfare system at unacceptable rates. This loss has the devastating effect of rippling into all aspects of life for American Indians.

According to Census data, American Indians represent about 1% of Minnesota's population. This population, who once lived mostly on reservations, is now about equally divided between rural reservations (in the counties with the highest poverty rates) and in the Minneapolis/St. Paul area. This population shift was due to a policy of removal that occurred in the 1950s in which American Indian people were encouraged to move from reservations to cities across the United States. My parents, in fact, participated in this "relocation" by moving to Minneapolis during the school year for work and then returning to northern Minnesota in the

summer to help my grandparents run our family resort. Most American Indian families were not able to return home, and now we have several generations of “urban” Indian families who have never lived on a reservation, though most have visited relatives or participated in ceremonial events on their home reservation.

One of the many decisions that policy makers have to consider is what is happening to some of the most vulnerable Minnesotans — American Indian youth. Minnesota’s American Indian youth are in peril. Look at any statistic and it tells a grim story. According the Annie E. Casey Foundation, American Indian youth live in poverty at rates much higher than white youth: 35% vs. 5.9% respectively. They continue to have unacceptably high dropout rates from school, at 18% vs. 4.5%. Rates of youth ages 16-19 who aren’t in school or working are much higher for American Indian youth — 17.9% vs. 3.5% — than for white youth (Annie E. Casey, April 2002).

The Casey Foundation found that in Minnesota, 13.9% of all children live in poverty. However, in four counties the child poverty rate is incredibly high. These counties all have high percentages of American Indians: Mahnommen, 35%; Beltrami, 29.9%; Clearwater, 25.5%; and Cass, 24%. Research shows that poverty greatly increases negative outcomes for children, indicating that the children in these counties are very vulnerable. According to the National Center for Children in Poverty, the percentage of American Indian children in Minnesota living in poverty during 2006-2008 was 38.8%, compared to 8.3% of white children (American Community Survey, 2006-2008). Poverty impacts children in numerous harmful ways and has been shown to be a contributing factor to high out-of-home placement, low educational attainment, homelessness, increased contact with child welfare, juvenile justice and other institutions where they experience harsher outcomes than white youth.

American Indian youth: Out-of-home placement rates

There are many issues this article could have focused on, but I chose to look at one issue that underlies so many of these negative statistics involving American Indian youth:

out-of-home placement rates. To grasp this issue, there are several key concepts you need to understand. The first is tribal sovereignty.

What is tribal sovereignty?

Sovereignty means that tribes have retained through treaties the legal right to determine their own future. They practice this right through self-governing nations run by officials who are elected by tribal membership.

“This inherent political right sets ... Indian nations apart from all other racial and ethnic groups in the United States. Sovereignty is the internationally recognized power of a nation to manage its own affairs and govern itself. Tribes are sovereign because they were independent nations when Europeans came to North America. This sovereignty is codified within the United States Constitution, which recognizes tribes as distinct governments. The many treaties that the U.S. government made with tribes further legalized the independent nation status of tribes” (Day & Tellett, 2004, p. 12).

The Supreme Court has repeatedly reaffirmed the sovereignty of tribes.

Being a sovereign nation provides tribes with a unique political status that other groups of color do not possess.

“As sovereign nations-within-a-nation, American Indian tribes have the power to establish a form of government, determine membership, make and enforce laws, tax, police, administer justice, license and regulate activities, zone, exclude people from the reservation, and charter business organizations. Limitations on tribal powers are few and include the same limitations applicable to states: neither states nor tribes can make war, engage in foreign relations, or make coin money” (Day & Tellett, 2004, p. 12).

This sovereignty is what gives tribes the right to establish their own tribal courts and manage their own child welfare programs. Tribal membership is determined by “blood quantum” with most tribes, requiring tribal members to document that they have tribal ancestry in their tribe of one-fourth or more heritage to be eligible for enrollment. Being enrolled allows members to participate in tribal government and tribal programs. Membership or being eligible for membership is important in child welfare because that is what determines whether a child is eligible to be included under the Indian Child Welfare Act.

Felix Cohen, an attorney who wrote about tribal sovereignty says:

Perhaps the most basic principle of all Indian law, supported by a host of decisions ... is the principle that those powers lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather *inherent powers* of a limited sovereignty which has never been extinguished. Each tribe begins its relationship with the federal government as a sovereign power, recognized as such in treaty and legislation (Cohen, 1942, p. 31; emphasis added).

What he is saying is that tribes *retained* many of their original rights through treaty and legislation. These rights have been upheld in courts throughout the years. When the state deals with a tribe, it is dealing with a sovereign power, not an interest group. As a tribal member, I am a citizen of the United States, of Minnesota, and of my tribe, with rights and responsibilities to each. This unique political status is misunderstood by most Minnesotans and often leads to ongoing misunderstandings and poor policy decisions.

What is the relationship between tribes and states?

The relationship between tribes and states is largely misunderstood.

“The Supreme Court clearly defined the relationship between States and American Indian Nations in 1932. It said that states are largely excluded from the nation-to-nation relationship between the U.S. government and American Indian Nations, and that tribal governments are not subordinate to state governments. Furthermore, although reservation or trust lands lie within state boundaries, they are not part of state lands, and, as such, state laws do not apply on these lands” (Day & Tellett, 2004, p. 12).

Minnesota, however, is a Public Law 280 state, which means that the state does exercise some jurisdiction within tribal boundaries with the exception of the Red Lake Nation and Bois Forte. Because of the complexity of jurisdictional issues, most tribes have memorandums of agreement with the counties that border their reservation boundaries, including agreements about child welfare.

Tribes have been fighting to maintain their sovereign rights from the beginning of European contact. Child welfare has often been used as a tool of forced assimilation. “Historically, the attempts to undermine tribal sovereignty, destroy tribal cultures, and forced the assimilation of American Indian people through their children were often masked in the language and practice of child welfare” (Geary & Day, 2010, p. 3). Unfortunately, while awareness seems to have improved, the practice of child removal from tribal communities continues to be problematic. Because Minnesota is a Public Law 280 state, with a state-administered, county-run system of child welfare, the state can have significant influence intervening in child welfare with American Indian children by partnering with tribes to remediate the situation.

The Indian Child Welfare Act

The second important point is that because of sovereignty, in 1978 the Indian Child Welfare Act (ICWA) was passed in response to exceedingly high rates of removal of American Indian children by the child welfare system. The intent of Congress under ICWA was to “protect the best interests of

Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). “ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe” (National Indian Child Welfare Association website). This is significant because it provided Indian parents and tribes with the “jurisdictional authority to intervene in child custody proceedings held in state courts when American Indian children were involved.” It also provided criteria “that state courts must adhere to when rendering decisions in child custody cases involving American Indian children. The criteria gave preference in adoption proceedings to members of the child’s extended family, other members of the child’s tribe, and other American Indian families. The law strives to keep American Indian children in cultural environments similar to, if not the same as, those into which they were born” (Snipp, April 2002). “Active efforts” need to be exhausted to keep that child with their family and tribe. Only after all efforts have been made to stabilize the family have failed should the placement preferences be followed. Then the county should look to place an Indian child with extended family, in a home of another tribal member, in another tribe’s family, and only as a last resort in a non-native home.

It is clear, however, that ICWA is not being followed as it was intended. American Indian youth continue to be taken from their families, communities and tribes at rates far greater than other youth. The long-term impact of this has been devastating to Indian youth, their families, and tribes. These children often feel disconnected not only from their families, but also from their cultural identity. This disconnection often lasts a lifetime and can lead to depression, substance abuse, and long-term grief. Families whose children are removed also experience grief and may find that they are not ever able to fully recover. Tribal sovereignty depends on healthy tribal members. When a child is taken from their family, they are also taken from their tribe and therefore are not able to make important contributions to the health and wellbeing of the tribal community. These losses are compounded with each

child that is removed, and continue to reverberate throughout Indian country.

In 1999, Minnesota passed the Tribal State Agreement (TSA), which was updated in 2007. TSA was developed to assist counties and tribes in providing child welfare services that are consistent with the intent and purpose of the ICWA and the Minnesota Indian Family Preservation Act (MIFPA). It is designed to maintain “the integrity of the tribal family, extended family, and the child’s tribal relationship” by recognizing that the child’s best interests are “inherently tied to the concept of belonging” (TSA, Minnesota Department of Human Services website). It clearly states that “family preservation” is the “intended purpose and outcome” of the agreement. The TSA provides clear and concise guidance for dealing with American Indian youth who come in contact with the child welfare system. It provides clarification on seven areas:

- Jurisdiction
- Notice to tribes
- Transfer to tribal courts
- Full faith and credit for public acts, records, and judicial proceedings of tribes
- Intervention
- Adoption and safe families act
- Inter-ethnic adoption procedure

In addition, it defines many terms used in ICWA such as active efforts, permanency planning, placement preferences, best interests of an Indian child and many other terms (Amendment to the 1998 Tribal/State Indian Child Welfare Agreement).

The TSA was designed to strengthen the ICWA and provides specific guidance to social workers and judges in how Indian children should be dealt with in the child welfare system. While the TSA provides guidance, many people who work in child welfare are unaware of it, unfortunately, and therefore don’t use it. Like many policies, there are no rewards or punishments attached to the ICWA legislation. Without incentive to follow ICWA and by not having a consequence

attached, either positive or negative, this policy does not have the power to affect practices. The Minnesota Indian Family Preservation Act of 1985 was intended to strengthen ICWA in Minnesota and to support tribal sovereignty in tribal dealings with the child welfare system. Because these policies are not followed, Indian youth continue to end up out of their homes and communities at much greater numbers than other youth. The impact of this affects the individual youth, their families and communities not only now, but ripples into the future for many generations. Consider the long-term and collective result of this repeated trauma for Minnesota's American Indian children, families, and tribes.

The current state

In February 2010, the Department of Human Services, Children and Family Services published the *Minnesota Child Welfare Disparities Report*. In the introduction they write:

“The presence of disparities is in all systems, health care, corrections, education and child welfare. Disparities within the child welfare system are therefore disappointingly consistent with the experiences of other service systems. Several components influence disparities externally from the child welfare system: potential bias in identification and reporting; the impact of historical trauma thrust upon American Indian ... families; socioeconomic factors, including inequitable outcomes in education, health and corrections; the impact of poverty; institutional racism and discriminatory practices; and the everyday stress related to experiencing prejudicial micro-aggressive behaviors in interactions with others” (p. 5).

This report goes on to describe the ongoing “concern for disproportional representation of children by race and ethnicity in the public child welfare system and the resulting child outcomes.” The Minnesota Department of Human Services (DHS) acknowledges that even though

many changes have been made that have resulted in better outcomes for white children and families, the outcomes for minority children, especially American Indian children, have been wanting. They write, "Despite these multiple efforts, disproportionate representation by race and ethnicity continues." This disparity gap has not changed over the past four years. "American Indian children experience the greatest disproportionately along the continuum, and the rates of over-representation are expanding" (Executive Summary, *The Minnesota Child Welfare Disparities Report*, February 2010).

The report details the various areas of contact American Indian youth have with the child welfare system. As you can see, American Indian youth fare poorly across the continuum of care, compared to white children. American Indian youth are overrepresented in rates of:

- **Contact with the child protection system:** American Indian children were as high as six times more likely to be subjects of child protection assessments and investigations.
- **Experiencing neglect:** American Indian children were more than eight times more likely to be a subject of a neglect report.
- **Recurrence of child maltreatment:** American Indian children have consistently higher rates of repeat child maltreatment. This has grown or remained constant while the rates for white children appear to be declining.
- **Out-of-home care:** American Indian children were placed in out-of-home care for one or more days in 2008 at a rate more than twice that of any other group and were 12 times more likely than a white child to spend time in placement.
- **Placement stability:** the longer American Indian children remained in out-of-home care, the more they experienced multiple moves in placement settings.
- **Aging out of care:** American Indian youth have high rates of reaching the age of majority when in placement for long periods of time (Executive Summary).

These statistics are appalling. An American Indian child in Minnesota is more than eight times more likely than a white

child to be the subject of a neglect report. Studies have found a high correlation between poverty and reports of neglect. American Indian children are the least likely to be reunified with their family, with “15.3 percent of children remaining in out-of-home care after a year.” American Indian kids also lag behind children of other races who are in care for a year or more in the lack of access to “stable care.” American Indian youth who age out of foster care (turn age 18) are more likely than other youth to have been in care for at least three continuous years. So, not only do American Indian children enter out-of-home care at the highest rates, once in care they are least likely to be returned home to their families, and they are more likely to remain in care until they turn 18. At that point, they stop receiving services, making them vulnerable to crime, homelessness, and other negative outcomes.

You are probably asking yourself, “Why is this happening? Why are out-of-home placement rates for American Indian children so high?” No one has the data to fully answer these questions. However, one of the answers is because ICWA is not followed. Often “active efforts” to place a child with extended family were not tried. Many times the tribe was not notified in a timely and or appropriate manner. Sometimes the tribe makes recommendations that are not followed by the court because the county makes a recommendation that is different.

When removal is necessary, why aren’t Indian children placed in Indian homes? Again, no one has answers based on data. Most often when these placements occur, it is because ICWA was not followed. The placement preference spelled out in ICWA is very clear. If this placement were followed, Indian children would seldom end up in non-Indian homes. County workers often don’t know how to find extended family members and have limited professional and personal relationships with Indian social workers, so they lack the ability to find Indian foster homes. Worker bias must also be considered as a contributing factor; whether this bias is based on a lack of good training or personal beliefs that contradict best practices is unknown.

Because this is such a complex issue, there are likely many reasons that American Indian children are at greater risk of out-of-home placement. Research has shown that there is an association between child poverty and out-of-home placements. Whether this is because the adults in these families are unable to provide for the basic needs of their children, are under more stress and therefore more likely to be abusive, or some combination of these is less clear. Social workers may also look at poor families as “less deserving” of keeping their children and may either consciously or unconsciously hold these parents to different standards, be more likely to intervene earlier and more likely to provide more immediate and harsher interventions, thus leading to longer stays in out-of-home placement.

The National Center for Children in Poverty has developed a “Young Child Risk Calculator.” The more of these risk factors a child has, the more likely he or she is to have a chance of “poor health, school, and developmental outcomes” than other children. They go on to say, “economic hardship paired with any of the listed risk factors may indicate a greater chance of poor outcomes. Children with three or more risks are exceptionally vulnerable.” The risk factors are:

- Households without English speakers
- Coming from a large family
- Low parental education
- Residential mobility
- Single parent
- Teen mother
- Unemployed parent

(www.nccp.org/tools/risk/)

As already stated, 35% of all American Indian youth live in poverty. While in Minnesota you are unlikely to find many American Indian youth who don’t speak English, you will find that many of these youth have three or more of the risk factors listed above, making them especially vulnerable to poor outcomes, including out-of-home placement.

When you factor in a lack of knowledge by county workers about the provisions of ICWA and the TSA, social worker and

judicial bias, and the lack of incentive or punishment for not complying with ICWA, it starts to provide a picture of why these numbers are so high. By no means am I saying that these are the only reasons that American Indian youth are in out-of-home placement at such high rates, but these are at least some of the contributing factors.

When taking a broad view, Minnesota has one of the worst track records in dealing with American Indian youth (National Council on Crime and Delinquency, 2008). Suicide rates for American Indian youth remain high, at least twice the rate for white youth (Wagner & Wonacott, 2006). Minnesota, along with four other states, has one of the highest incarceration rates for Indian youth (Bigfoot, 2008). While addressing child welfare disparities is complicated because of all the variables from the initial report and response to the assessment used and ultimately the social workers' recommendations and the judge's decision, there is no doubt that Minnesota needs to do better. So what are the answers? Recognition is a necessary first step, but it is not enough.

Current efforts

The Minnesota Department of Human Services (DHS) and others recognize that they need to do a better job in serving American Indian youth. According to the DHS website, there have been recommendations in the past such as the American Indian Disparities Initiative Advisory Committee Meeting recommendations from 2003. This group spelled out eight steps DHS should take to address disparities. It is unclear how many of these recommendations have been acted on. What is clear is that child welfare disparities persist for American Indian youth in Minnesota.

Several groups continue to engage in dialogue both internally and externally with DHS about how to address child welfare disparities.

- Tribes are stepping up in an effort to address the issue. In response to data that while American Indian children represent only 1.8% percent of general child population, they represent 13.1%

of the children in state-ordered out-of-home placement, the Minnesota Indian Affairs Council* got involved. In January of 2007, staff from the University of Minnesota Duluth, Center for Regional and Tribal Child Welfare Studies were asked by the Minnesota Indian Affairs Council to work with tribes in conjunction with DHS to develop a curriculum for county and tribal workers to address the disparity of American Indian children in out-of-home placement in Minnesota. The result was “Bridging Our Understanding: American Indian Family Preservation.” Social workers who attend the training gain knowledge about American Indian families and about specific resources that have been identified by tribes as fundamental to improving service development and delivery to American Indian families and children. Each two-day course is offered at different tribal locations and is taught by tribal professionals, including a presentation by local tribal representatives. DHS began to offer this training in the fall of 2010, and it has received positive feedback.

- A recent bill in the legislature asking for a Disparities Commission did not pass, in part because it lacked consultation with tribes, which is unfortunately a common occurrence. Perhaps this Commission can be revisited with meaningful inclusion of tribal governments and their staff.
- In 2005, the Leech Lake and White Earth Reservations entered into an agreement with DHS

* The Minnesota Indian Affairs Council (MIAC) was established in 1963 (Minnesota Statutes Chapter 888, Sec. 2 (3:922)). MIAC is the official liaison between the state of Minnesota and the 11 tribal governments within the state. The Council provides a forum for and advises state government on issues of concern to urban Indian communities. The Council administers three programs designed to enhance economic opportunities and protect cultural resources for the state’s American Indian constituencies. (Retrieved from: <http://www.indianaffairs.state.mn.us/aboutus.html>).

to begin to receive IV-E dollars to provide child welfare services to their tribal members. Red Lake and Mille Lacs have also signed agreements. While this initiative does not have a long track record, it has afforded the tribes greater say in the disposition of their children, which is what ICWA was designed to do. Even with this greater say, these tribes still have to interact with counties that often don't support their tribe's child welfare recommendations

- Tribal models are emerging and deserve to be critically studied to find what works. "Throughout the long and complicated relationship of tribal governments to the U.S. federal government, the provision of culturally appropriate services and the collection of accurate data in tribal communities has been an ongoing issue. Because of this, the development of child welfare systems in which tribes provide their own services and collect and report their own data directly to the federal government is critical to the reassertion of tribal self-determination and the preservation of tribal cultures" (Geary & Day, 2010, p. 4). While there aren't one-size-fits-all models, tribes who successfully assist families with child welfare issues take an approach of "serving our relations" and tend to provide multiple levels of support to families. Because they often know families and continue to interact with them in the community, they are able to find extended family and use cultural supports to help families through difficult times. These tribes report that families seek out assistance rather than just coming in when they have had someone refer them. All of these tribal models use their cultural teachings and resources as the basis for their programs building on cultural strengths.
- In response to tribal social workers' feedback about the need for training specific to tribal needs and targeted specifically for tribal social workers, the University of Minnesota Duluth, Center for

Regional and Tribal Child Welfare Studies, began the Summer Institute in American Indian Child Welfare in the summer of 2006. It has been offered every year since on the Leech Lake Reservation with about 100 participants from three states and Canada attending each year.

These and other efforts continue to take place, but perhaps it is time for policy makers to weigh in as well.

Recommendations

As stated, many good people are working on these issues from various perspectives — legislative, training, research, and practice — but there is no comprehensive approach that brings all these entities together. While many changes have occurred and continue to evolve, there remains an urgency to address this issue. What will it take to change these outcomes? How many children and families need to suffer? What are you willing to do? How can you use your voice to make a difference? Here are some needs recently identified by Tribal Social Work Directors:

- Identify what's working to decrease disparities from existing data and reports done by various organizations that work with tribal youth, including child welfare, juvenile justice, substance abuse, mental health and other groups.
- Develop legislation with tribal input to increase ICWA compliance. Engage in other discussions with tribes about what would be helpful to reduce disparities. Provide sanctions for lack of compliance and rewards for those counties who work well with their tribal counterparts.
- Require judges and guardians ad litem to understand ICWA from a tribal perspective through training and evaluation of practices.
- Provide supports to the existing ICWA Council so they can play a central role in addressing disparities.

- Document tribal models that are working across professions and provide demonstrations and training based on them to county and tribal workers.
- Provide assistance to DHS to develop a better system to use data they collect so that it can be of greater benefit to tribes.
- Promote collaborative relationships: DHS and counties with tribes, child welfare with other professional groups such as juvenile justice, substance abuse, mental health and other groups, so they can learn from each other.
- Provide funds to tribes for long-term services to promote stability in families to prevent removals and recidivism.
- Provide legislative consequences for lack of ICWA compliance by county workers; require counties to show improvement or have additional consequences; consider a penalty for placing children in more than three placements.
- DHS should be able to require counties to understand and comply with ICWA and the Tribal State Agreement.
- Support tribes in providing culturally consistent child welfare services to tribal members.
- The State of Minnesota should partner with tribes to address the economic disparities present on and around reservations.

Recently at a meeting where I was present with tribal social service directors, several questions were asked that have been ringing in Indian country for years: *“Why is it acceptable for so many of our kids to be in out-of-home placement? Before ICWA, we used to hear grandparents asking, ‘Where are our grandchildren going?’ We are still hearing that question.”* To me, these are haunting questions. Minnesota can do much better in

working with American Indian youth.

We all know the difference public policies can make in the lives of children. Money spent on improving the lives of children has been shown to be productive in changing conditions that interfere with children reaching their full potential. Policy that assists children and families in real time improves outcomes and reduces negative outcomes such as homelessness, crime, drug use, and poverty. Money spent to assist families up front generates significant rates of return in lower long-term costs and more productive citizens. It, of course, also results in a higher quality of life for those families and children, which benefits us all. Relatively small amounts of resources can yield huge returns in fewer out-of-home placements and better all-around outcomes for Indian youth. This not only benefits those children and families, but all Minnesotans by creating a strong and vital future for the next seven generations.

“The kinship unit is very powerful. I want my descendants to have a strong sense of who their ancestors were and to understand that they have a responsibility to be a conduit for our culture. That is the only hope we have of ensuring the essence of our culture will continue...” (Medicine, B., p. 41, 2004).

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