

Discussion Paper/Teshuvah

Gay/Lesbian Ceremonies of Commitment

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I Introduction

The question of ceremonies of commitment for gay and lesbian couples has been presented to me for consideration. As the Rabbi of Congregation Agudas Achim I have the duty and responsibility to reflect upon this question, and present my conclusions to the congregation and its leadership. I am very much aware of the history of this question within our congregation, and I urge that any discussion should reflect the spirit of respect and understanding that characterizes our religious tradition. We believe that there are many facets to the Torah – and each person may well perceive a different reflection in response to many of the complex questions of modernity.

Especially I urge upon the congregation an understanding of the context of this analysis and discussion. This is a discussion of the practice and understanding of a Conservative Jewish congregation. There may well be points of view expressed that would limit the roles and opportunities of gays and lesbians within the community. These views cannot be demonized as “homophobic”. In fact those who maintain a restrictive halakhic understanding about homosexuality may well be strong advocates for the civil rights of the gay/lesbian community in wider society.

Let us recognize – and celebrate - our shared humanity, and accept that we are seeking to follow the Call of God. The echoes and record of that ancient Call are found in many sacred sources - the Torah and the Talmud, the writings of our sages, the voices of our people and deep in our own souls.

This document is not presented as an exhaustive review of academic literature, or as a full rigorous contribution to the literature of responsa, -- but as a guide to the process of analysis leading to my halakhic determination on this question for Congregation Agudas Achim.

II Human Sexuality

Jewish teaching from the Bible through the literature of the Rabbinic period stresses that a solitary and celibate life is far from ideal or praiseworthy. Bringing children into the world – “Be fruitful and multiply” is the first command of the Torah. Genesis continues to urge loving intimate relationships, asserting “It is not good for a human being to be alone ... thus a person shall leave the home of father and mother, and cleave to the one designated as the fitting partner and they shall be one flesh (Gen. chapter 2)”.

The few scholars choosing to remain unmarried and celibate are criticized by the other sages, and celibacy is even seen as a “physical suffering” - a choice to be de-legitimized even by the courts. (Rashi to B. Tamud Bava Metsi’a 51a-b).

It is also clear from many sources that procreation is not the sole purpose or intent for sexual intimacy. The imperative for marriage (and sexual intimacy) is incumbent upon women past menopause and for men known to be sterile. Our teaching sees a solitary and celibate life as departing from the ideal envisaged by God even in the process of Creation.

In our age there has been profound question concerning the nature of homosexuality. The matter has been extensively researched. It is now quite clear that it is a reasonable and responsible view to hold that sexual orientation is not a matter of “preference” or “choice”. Rabbi Dr. Elliot Dorff, Rector and Professor of Talmud and Ethics at the (Conservative) University of Judaism offers an analysis of current research in his recent paper “Medical and Moral Reasons to change the Law”

“ ... Until now, the science has been very soft on all of this. That is, we have not really known what leads to sexual orientation to begin with, for either heterosexuals or for homosexuals. What is clear is that in 1973 already, based upon clinical evidence, the American Psychiatric Association, the American Psychological Association, and the American Association of Social Workers all maintained that it was not necessary, or for that matter even desirable, to try to change a gay person into a straight person. That kind of intervention was not successful and, aside from that, led to even more problems — in many cases, unfortunately, suicide. Already in 1973, the American Psychiatric Association took homosexuality out of the DSM, the manual of mental diseases. Some maintain that this decision was politically rather than scientifically motivated. Whether that is true or not is open to question. Eighteen years later, however, when the American Psychiatric Association reaffirmed its position in 1991 based on yet more clinical evidence, clearly the science was motivating its stance. That position, though, was based solely on clinical evidence of what, in fact, works and what does not work in the treatment of people who come to them for some kind of intervention.

Just last week (October 21), a report came out of UCLA that may be the beginning of some hard scientific evidence about how we develop sexual identity. It stated: “Refuting 30 years of scientific theory that solely credits hormones for brain development, UCLA scientists have identified 54 genes that may explain the different organization of male and female brains... Published in the October (2003) edition of the journal *Molecular Brain Research*, the UCLA discovery suggests that sexual identity is hard-wired into the brain before birth and may offer physicians a tool for gender assignment of babies born with ambiguous genitalia...Sexual identity is rooted in every person’s biology before birth and springs from a variation in our

individual genome.” This is all very new. You need to know that the science is just developing, but it appears that what scientists expected all along — namely that there was some genetic base to who we are, as we are — is true.”

IIa Homosexuality and the Jewish Community

Based upon my own interviews with many gay and lesbian Jews I find it untenable to hold the view that homosexuality is a “chosen lifestyle”. The suffering associated with homosexuality, including highly elevated incidence of suicide, surely refutes the assertion that gays and lesbians “choose” their sexual orientation because of an attraction to the “lifestyle”. Rabbi Harold Schulweis recounts a pastoral conversation that had a profound effect upon his own thinking. (High Holyday Sermon, 1992, VBS Website).

“My interest in the matter is more personal, less academic. It began a few years ago. She was a woman, a member of our congregation in her late 50's who sat in the congregation and exhibited a familiarity with both the Prayer Book and the Bible. She came every Sabbath and then at the end of one service asked to see me privately. She sat across from my desk. "You may remember my son, who attended Hebrew High School and was a student at the University of Judaism. He kept the secret of his orientation to himself. Whenever the issue of gays and lesbians came up, he felt threatened, ridiculed, humiliated, hurt. I knew his sexual orientation and he knew how disturbed I was with the state of affairs. One day he announced that he was going to San Francisco for "the cure". A friend had suggested the right therapist who would change him, would teach him to be straight and normal. I kept receiving a number of letters from him. He was ebullient. Things were fine now. He had changed. He was a "new man". Then I discovered much too late that he was lying to me and to himself. My son took his life."

She stopped speaking and looked at me. "I'm here to ask you Rabbi, was my son an abomination? Was he punished? Is that why he died?" She was visibly shaken, her eyes full of tears and pain, despair and anger. "I want to know", she continued, "what does Judaism say about my son? Was he guilty or was I? Was I too strong, too domineering a mother, and my husband too weak, too detached?" She had come to me for a posthumous eulogy.”

The profound questions for the Jewish community are not those about identification and percentages. We know that there are many gay and lesbian Jews. We know that they are saints and sinners, synagogue presidents (even in the Conservative movement) and passionate atheists, rabbis, cantors, educators and administrators. Our profound questions address the ultimate nature of humanity – in what areas are we free to choose, and in what areas are our choices predestined or “hard-wired” – and what are the consequences for the believing and practicing Jewish community?

III *To'eyvah* – “Abomination” in the Bible

The Bible, in Leviticus chapter 18, seems to prohibit male homosexuality, describing the act as a *to'eyvah* (frequently translated as “an abomination”). The actual text of Leviticus 18 is ambiguous – it is not clear precisely what is being prohibited, and the designator of *to'eyvah* - “abomination” is also unclear. In addition to referencing this prohibited act, *to'eyvah* is also applied to eating shellfish and handling money on the Sabbath, among other acts. It has been

suggested by Biblical scholars that *to'eyvah* really refers to behaviors associated with the practices of ancient idolatrous cults including “sacred prostitution” both male and female.

The Bible suggests – even commands – that rebellious children be stoned to death and that a suspicious husband can have his wife subjected to a humiliating public trial by ordeal. Even by the Talmudic period these Biblical norms had been displaced – legislated out of existence by the rabbis of the early Talmudic period.

It is the case that many (in fact most) heterosexual couples married in our Conservative synagogues have been sexually intimate prior to the wedding, which is certainly inconsistent with Jewish Law. More critically, many if not most heterosexual couples in our Conservative congregations are sexually intimate although the women have not immersed in a mikveh following menstruation. According to Biblical Law this is subject to the death penalty by Divine Act, among the most severe penalties in the Bible. In spite of this we do not withhold our ceremonies from couples almost certain to violate Biblical and Rabbinic Law.

IV Halakhic Process and Authority – Evolving Norms

Rabbinic Judaism has always existed in tension between the insights of the sages of a particular historical period and the apparently immutable dicta of the Bible. Jewish tradition has always found ways to depart from even clearly established Biblical norms. Sometimes by creative “reinterpretation” and extreme “redefinition”. But sometimes by simply refuting – or “uprooting” a clear Biblical text.

In exploring the authority of rabbis to overturn Biblical norms, Rabbi Dr. Joel Roth, professor of Talmud and former Dean of the Rabbinical School at the Jewish Theological Seminary is quite clear. The principal “*yesh lechachamim koach la'akor davar min haTorah*” (The Rabbis have the power to overturn [even] items from the Torah) is developed in chapter 5 of his book “The Halakhic Process” (pub. JTS 1987). The following text is representative of his analysis, (p. 200)

“... the authority of the sages (rabbis) extends far beyond their authority as sole interpreters of the Torah. Indeed their authority includes the right to amend and to abrogate the prescriptions and proscriptions of the Torah.”

Explicitly looking at the question of medically expanded knowledge of the human condition is the case of the deaf and the mute. Rabbi Schulweis offers this example (*ibid*)

“In the Talmud, a deaf-mute was considered to be retarded, mentally incompetent, an imbecile not able to serve or witness or to be counted in the minyan or able to affect marriage or divorce. But that ruling was based on empirically false data. On a visit to the Vienna Institute for the Deaf and Dumb, Rabbi Simchah Sofer (a noted and highly conservative halakhic authority) saw that their impaired speech and hearing had nothing to do with their intelligence and accountability, and urged altering the older rabbinic judgment.”

There is a significant discussion in contemporary literature on the extent to which current societal ethical issues might contribute to the formation of halakhic discussions. Rabbi Dr.

Gordon Tucker, former Dean of the Rabbinical School at the Jewish Theological Seminary and Professor of Philosophy of Jewish Law, addresses this matter in his essay “God, the Good and Halakhah” published in the journal *Judaism* (Summer 1989; vol. 38 No. 3 pp 365 - 376).

In the past the testimony of women was invalid in a Jewish court. Rabbi Tucker notes that in recent times several Jewish courts began to accept the testimony of women. He then writes (p. 376)

“Assuming that those who allowed the testimony of women did so not out of ignorance, sloth or spite but, rather, as a response to the principles of human equality and dignity, about which expectations have changed considerably over the centuries, then those same acts should perhaps be seen as acts of civil disobedience. ... If society comes to agree with that assessment new rules are substituted, and we tend, in retrospect to see the original acts as being valid. ... Choosing the approach of principle opens up the responsibility-laden option of acting under the mandate of principle My claim is not only that this is the way that Conservative Movement halakhah has, in fact, often developed, -- but also, that it is, by far, the best way for religious law to go.”

IVa The Law Committee

As a Conservative Congregation it is right and fitting that we consider the stance and method of our Movement. The Conservative movement looks to the Committee on Jewish Law and Standards of the Rabbinical Assembly (referred to as CJLS) for guidance and rulings in matters of Halakhah. The deliberations and even the determinations of the CJLS are **not** binding upon individual rabbis or congregations. In his paper, presented at the Convention of the Rabbinical Assembly in 1996, “A Principled Defense of the Current Structure and Status of the CJLS” Rabbi Gordon Tucker (a member of the CJLS for over 15 years) notes,

“ ... Because it is a body that is ultimately here to provide service and guidance to Rabbinical Assembly members, it is also right and proper that authoritative opinions ... **not** be binding on Rabbinical Assembly members in a coercive sense, but rather only in the sense that we are bound in our covenant to one another to give extraordinary weight to CJLS response in reaching our own legal decisions.” (Responsa of the CJLS 1991 – 2000; p. 760)

“ ... (Reaffirming) the responsibility of each *mara d'atra* (rabbi as halakhic authority) to study and consider CJLS opinions, and reaffirming the right of that *mara d'atra* to choose even a halakhic path not chosen by the committee ... should not be seen as a challenge to the legal and moral suasion which the CJLS will always wield.” (ibid. p. 772)

The **only** rulings of the CJLS that are authoritative and binding upon all Conservative rabbis are those which have been adopted by a plenary meeting of the Rabbinical Assembly as Standards of Rabbinic Practice. There is no such Standard of Practice that addresses the matter of ceremonies for gay/lesbian Jews.

Some 10 years ago the CJLS addressed this question and reached a conclusion at the time that guided against the introduction of such ceremonies. In subsequent years an increasing number of Conservative Rabbis and Congregations have indeed introduced such ceremonies, and it is regarded as likely that this will become a supported position of the CJLS in the course of the next 12 to 18 months.

V Ceremonies and Rituals

Rabbi Elliot Dorff, the incoming Chair of the CJLS contends that it is not only permitted, but incumbent, upon Conservative congregations to create appropriate ceremonies and rituals of commitment for gay and lesbian couples. He rejects the categorization of homosexuality as an “abomination” and proceeds to explain how and why such ceremonies should not only be permitted but actively encouraged.

“... My conclusion was then, and is now, that we should not see homosexuality as an abomination. Leviticus and all subsequent rabbinic literature assumes that homosexuality is a choice; otherwise it would make no logical or legal sense to legislate against it, just as it would make no logical or legal sense to require people to stop breathing. We now know, primarily on the basis of what homosexuals tell us about their own experience, that the orientation is not a choice, and so we should revise our stance accordingly. In my 1992 responsum, I stated that we should state that openly and then create a Commission on Human Sexuality to spell out our beliefs and norms regarding heterosexual sex so that we have some credibility to talk then about homosexual sex. That happened, and ultimately the Rabbinical Assembly published "This Is My Beloved, This Is My Friend: A Rabbinic Letter on Human Intimacy, which I wrote together with the other members of the commission. In the Letter and in my subsequent book, *Matters of Life and Death: A Jewish Approach to Medical Ethics*, I state that some sexual activity is indeed an abomination, whether it is done by heterosexuals or homosexuals — namely, cultic, oppressive, or promiscuous sex. Other sexual activity is and should be sanctified — namely, monogamous, loving sex, again whether among heterosexuals or homosexuals.

It seems to me that we have both medical and moral reasons to conduct commitment ceremonies for gays and lesbians. Medically, people who engage in sex with multiple partners are much more at risk of contracting sexually transmitted diseases than those who are monogamous. AIDS still is incurable and lethal, and some of the diseases that were successfully controlled by antibiotics as late as a few years ago now have developed strains that resist all currently available antibiotics.

In this context, the strong Jewish interest in life and health should prompt us to encourage monogamy. Morally, promiscuous relationships make sex simply an act of physical pleasure with no assumption of moral responsibility for the partner; monogamy, on the other hand, makes it clear to both members of the couple that they are not only to enjoy sex together, which is fine, but they are to take responsibility for each other's welfare as well as that of any children they may produce. Society can only thrive when it consists of those who take on such responsibilities.

How do we encourage people to be monogamous? Among heterosexuals society does that through the institution of marriage. Marriage, of course, does not guarantee that adultery will not happen, but through marriage society makes clear its expectation that the couple will have sex only with each other, that they will grow together into maturity, and that they will assume the responsibilities of mature, adult life. Conversely, the couple, in being married before family and friends, publicly announces that they want to assume the rights and responsibilities of married life.

We should, it seems to me, do the equivalent thing for the homosexual community, creating a legal institution through which society announces the same expectations for a gay or lesbian

couple and the couple announces the same kind of commitment to each other and to the broader purposes of society. If we refuse to create such an institution, we heterosexuals are saying to homosexuals that we expect them to be promiscuous and that we do not care — perhaps, even, that we want them to be licentious so as to confirm our stereotype of them as being libertine and irresponsible. Once we create such a ceremony for gays and lesbians and give it legal status in both Jewish and civil law, we will have taken some important steps to increase the medical health and the morality of all of our lives.”

If we believe that the sexual intimacy of the gays and lesbians is not the result of a perverted choice, but the inevitable consequence of their fundamental human nature we cannot imagine that a merciful and loving God created a large segment of humanity with the intent that they remain celibate. This would truly seem to be at variance with Biblical and Talmudic norms.

It should be noted here that Rabbi Dr. Joel Roth strongly advocates the view that gays and lesbians are mandated by Torah for lifelong celibacy. He recognizes the extraordinary demand that this places upon these people. I regard his view as untenable.

Rabbi Dr. Harold Shulweis is quoted in a responsum to support the inclusion of the gay/lesbian community within the boundaries of Jewish life. (Rabbi Shulweis was ordained at an orthodox yeshivah and earned his doctorate in Jewish theology).

“How do I as a Rabbi, as a Jew draw the boundaries? How specifically do I determine what my attitude should be toward the homosexual and the gay person? My values are shaped by the faith community to which I belong. That faith community is formed by the collective conscience of the people; and that conscience is reflected in the Bible, the spiritual constitution of Judaism . . . If only Judaism were that simple that I could resolve my position by citing the appropriate text, and determine what my attitude should be on the basis of suitable quotations. Anyone with the slightest acquaintance with the history of Jewish law becomes aware that Judaism is a minimum of texts and a maximum of commentary . . . There are 70 faces to the Torah.

I do not decide this issue in vacuo, impervious to the Halachic history which has drawn and redrawn the circle so that it embraces the woman, the deaf-mute, the Christian and Muslim, the sotah [suspected adulteress], the divorcee, the proselyte. How shall the circle be drawn around the homosexual? Shall he or she be excommunicated, excluded from bona fide membership of the Jewish community? Shall we make of them outcasts, pariahs? The Jewish history of law encourages me to side with the spirit of ethical inclusivism. My decision is made on the basis of my knowledge of the men and women whose definition of self I have heard and respect. These are children of God and to treat them any less than that is a cruel blasphemy. My decision is based upon the collective moral sensibility of the Torah as it has impacted my soul. It is based on my understanding and experience of a God of love and compassion, whose unificatory attribute we extol as echad. God is the divine power that creates unity, whose special children, we are reminded in the Talmud, are the orphans, the widows, the poor, the stranger, the pariahs . . . We should love them as ourselves. For they are our sons and daughters, flesh, blood and soul of our family. They are ourselves. I believe the circumference of the circle we draw is guided by the hand of one loving God.”

We should be careful to note that the ceremony proposed by Rabbi Dorff and others is **not** one of marriage – an imprecisely defined term at best in the legal structures of almost every society. We are concerned for the enforcement of the value of monogamy and the establishment of

“faithful households among the people of Israel” which offer secure and nurturing environment in which to rear the next generation of our people. Rabbi Stuart Kelman in the responsum prepared for his congregation introduces the term “Brit Rei’ut” (A covenant of Loving Companionship) and many similar terms have been introduced.

It is the view of many of the Conservative Rabbis who have worked with such ceremonies that the utilization and introduction of the legal structures and terms of Jewish marriage are inappropriate and confusing. These ceremonies are not intended to create the halakhic status of *erusin*, *kiddushin* or *nissu’in* – and the term *ketubah* (which originated as a pre-nuptial agreement for the protection of women in a societal context of economic inequity) is inapplicable to a same-sex ritual. While certain symbolic, ritual and melodic elements may well be retained, all parties should have the utmost clarity that the ceremony is one of sanctification and commitment (in the deepest sense of the word).

The symbol of the *chuppah* (the canopy) symbolizes a settled home and might well be introduced into a ceremony for a gay or lesbian couple. While a *ketubah* is a specific document relating the marriage of a woman to a man with specific prenuptial commitments from the husband, a document formalizing the commitments of the couple could well be fitting. (Guidance from competent counsel to ensure no intrusion into the domain of US Law would be indispensable in this matter). The traditional *sheva b'rakhot* (7 wedding blessings) have a unique language and should be reserved for a heterosexual union. New blessings and praises can certainly be created for many innovative rituals – and there are already a number of possible texts that can be consulted, adapted and introduced.

Most ceremonies in the lifecycle of members of the Jewish community can be conducted in the place most fitting and appropriate in the opinion of participants. Funerals are an exception – and interestingly only several hundred years ago it was regarded as forbidden to hold a wedding in a synagogue sanctuary. In our times the sanctuary of a synagogue has come to be seen as the focal point of congregational devotion and sanctity, and is a fitting place for many celebrations. It is, therefore, entirely appropriate if it is the wish of a couple, that a gay/lesbian ceremony of commitment be held in a synagogue sanctuary. The goal of the ceremony is not only to recognize the relationship publicly – but to invest it with sanctity and commitment in the eyes of the holy community of the Jewish People.

For those who are concerned and have hesitations about such ceremonies it should be clearly noted that a synagogue could not be “defiled” or have its sanctity lessened by a ceremony of commitment. There is no act or element in such a ceremony that would in any way imperil the holiness and sanctity of the synagogue – even for those who regard such a ceremony as inadmissible or invalid.

All of this discussion is addressed to the Jewish context alone. No attention is directed to the separate but related questions of protection for the needs and rights of same-sex couples in wider society. There are important issues concerning hospital visitation, parenting rights, inheritance, medical insurance and adoption among others. These issues must be addressed in a different forum and context.

VI Conclusions

The Rabbi of a Conservative congregation serves in many capacities. One of these is as “*mara d’atra*” – the authority for the community in matters of Jewish Law or Halakhah. A conservative Rabbi is a part of the halakhic system that dates from the period of antiquity. This system is one of great diversity allowing for enormous flexibility in the approach to systemic and individual concerns. By appointing any Rabbi, a Conservative congregation is bound by the halakhic rulings of their Rabbi. A ruling (or *psak din*) may be accompanied by supporting reasoning – but need not be. Rulings on common questions concerning Shabbat, kashrut and personal status are customarily and appropriately dealt with by informal conversation – or in recent times by e-mail. Matters involving a new departure from previous practice may well be accompanied by verbal and written exposition and analysis. This allows the congregation to be involved as informed partners in the evolution of Halakhah. In the contemporary period it is common for a Rabbi to welcome and encourage discussion in halakhic matters.

Among the issues at stake in this question are the matters of the prohibitions of the Torah and consequences for individual persons. The exercise of radical flexibility in Halakhah is only undertaken with great hesitation. High among the reflections of those who do introduce such steps is the question of individual remedy. We do not introduce flexibility for a person who seeks to attend to business needs on Shabbat – for we see clearly that it is not impossible to observe the laws of Shabbat and pursue a successful career in business, in law, in academia and medicine (where certain necessary dispensations are in effect).

There seems to be no alternative recourse for the gay/lesbian members of our community. We regard them as in the halakhic state of “*anoos*” (under involuntary compulsion). Even if there are individuals for whom sexual identity is in part or even *in toto* a matter of choice the position held here that there are many for whom there is no choice. The solution of “don’t ask – don’t tell” has been problematic at best in the US military, and lacks an honesty of goals and purpose.

Congregation Agudas Achim has wrestled extensively with the question of various ceremonies for gay/lesbian couples. Rabbi Martin Pasternak conducted several teaching sessions on this topic. I have spoken extensively in synagogue and written about the process of halakhic change and human sexuality. Rabbi Leonard Gordon (a leading member of the Rabbinical Assembly) was invited to CAA as a scholar-in-residence and conducted 3 seminars on this topic.

I have held extensive conversations with many members of the synagogue and with the elected leaders of the congregation. In light of the resolution adopted by the CAA Board of Directors in December 2002 it seems best to all involved with the leadership of CAA that this question be decided by the Rabbi as a pastoral/halakhic matter. I would like to make clear that this approach and method has been carefully considered for this particular issue. In many (even most) other issues that will present for consideration a deliberative learning process involving the Avodah (Ritual) Committee and the congregation as a whole would be the expected process.

Given the historical flexibility of Talmudic Law, and the supporting opinions of great Talmudic scholars of our time – including among others Rabbi Dr. Elliot Dorff, Rabbi Leonard Gordon and Rabbi Dr. Harold Schulweis – it is my determination as the *mara d’atra* (halakhic authority

of the synagogue) that within Congregation Agudas Achim ceremonies of commitment for gay and lesbian couples are permissible and even blessed (where both partners are Jewish). These ceremonies have the potential to increase loyal households among the Jewish community, to raise the sanctity of relationships within our Congregation and bring more Jews close to Torah.

Derakheha darkhei no'am vekol netivoteha shalom
The ways of Torah are of beauty –and all her paths are of peace.

Rabbi Samuel Barth
13 Elul 5764; August 30, 2004

I am available and glad to discuss with members of the community any matter of concern in regard to this paper – or to respond to any questions. The direct line to Lynn Taylor, my secretary, is (512) 735 8404. You may reach me by e-mail at rabbibarth@caa-austin.org

There will be an open meeting during which I will be glad to respond to questions on this matter held at the Synagogue on Sunday October 31 at 4 PM.

Appended to this paper you will find some brief questions and answers which may offer guidance or further amplification in certain areas, and a letter from the Presidents of CAA offering some historical background.

There are of course positions significantly at variance with that presented here. A full presentation of the argument by Rabbi Dr. Joel Roth may be found at the following URL: www.uscj.org/POINTRoth6331
(You may need to paste this URL into your browser).

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