

KANSAS HUMAN RIGHTS COMMISSION

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AN OPEN LETTER FROM THE EXECUTIVE DIRECTOR

“We’ve come too far to turn back
now.”



William V. Minner, Executive
Director

I am pleased to report that we have completed another phenomenal fiscal year at the Kansas Human Rights Commission. In March, 1995, the backlog of cases awaiting investigation by the KHRC reached its peak at 2,768. Similarly, the average case processing delay was approximately 22 – 24 months. The monetary recovery by KHRC never had exceeded \$500,000 in any previous fiscal year. There was general dissatisfaction with Commission procedures and productivity culminating in a vote by the House of Representatives to drastically reduce our staff. The Commission was in crisis at that point and resolved to make all changes necessary to improve our productivity and effectiveness. The Commission implemented a 3-year strategic plan and can report to the public the following:

1. NUMBER OF PENDING COMPLAINTS REDUCED:

On June 30, 1998, with the end of FY98, the Commission had 943 open, pending cases. This constitutes a reduction of approximately 66% since March, 1995,

when the backlog of open complaints was at its highest (2,768). In reviewing past annual reports of the Commission, we have concluded that not since approximately 25 years ago (at some point in 1973 – 1974) did the Commission have less complaints open. These results exceed the goal of our 3-year strategic plan in that we intended to have an open case inventory of 1,171 at the end of FY98.

The Commission no longer really has a “backlog of open complaints awaiting investigation” as that phrase formerly was used. All complaints are either in the hands of mediators, investigators, (in the case of some dual-filed complaints that were first-filed with the U.S. Equal Employment Opportunity Commission; these cases are being processed and resolved by that agency), supervisors attempting conciliation of the complaints, or our legal staff, and being actively investigated or otherwise processed. Since new complaints are filed daily while others are finalized (sometimes after several months

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COMMISSION MEETING

The Kansas Human Rights Commission meets monthly at various locations throughout the state. Commission meetings are open to the public and individuals interested in attending may obtain more information by contacting the Commission's main office.



The SPECTRUM is a publication of the Kansas Human Rights Commission. The SPECTRUM was created to inform the public of current civil rights issues and keep interested persons up-to-date on issues pertinent to KHRC. Topics to be addressed in this and future issues of the SPECTRUM include current legal decisions, commentaries, upcoming events of interest, educational updates on issues such as age discrimination, sexual harassment, wage discrimination, unfair housing practices.

Free subscriptions are available. If you would like to be placed on our mailing list, please contact our main office at the above address. All comments and suggestions are appreciated, and should be addressed to the editor, Maureen Carroll, at the main office in Topeka: (785) 296-3206.

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of investigative, administrative or legal action), we will always have a quantity of open, pending complaints. However, we have significantly reduced, and have continued plans in place to eliminate what has been considered the traditional problem of "backlog" before the Commission. From March, 1995, through the end of FY98, the Commission completed processing on approximately 5,900 complaints (1,848 were completed during FY98). Thus, the Commission processed new complaints while addressing the record backlog of pending complaints and successfully reduced the overall number of pending complaints as set forth above.

2. AVERAGE CASE-PROCESSING TIME REDUCED:

The Commission has reduced the average case processing time from the approximately 22 - 24 months in March, 1995, to approximately 7.6 months. It is believed that this is the lowest average case processing time the Commission has experienced since the 1970.

3. NEW RECORD ESTABLISHED FOR MONETARY RECOVERY ON COMPLAINTS:

In FY98, Commission programs produced monetary recovery of \$1,542,101 for individuals filing discrimination complaints with the Commission. This figure does not include the value of job reinstatements, hiring, facility or policy modifications, etc., but merely reflects actual monetary payments to complainants with the resolution of the complaints. These recovery figures include a Commission record conciliation of \$200,000 on an employment discrimination case in which the Commission found "Probable Cause", a record mediation of \$126,000, a record settlement in a court case involving a familial status housing discrimination complaint, and a record settlement in a public accommodation case. The \$1,542,101 recovery represents a record for monetary recovery by the Commission in a given fiscal year and is approximately double the record recovery of FY97 of \$773,824, which itself was almost double the recovery of FY96 (\$400,352).

In the 39 months since the Commission began effectuating management initiatives, program and procedural changes, and seeking statutory amendments to make KHRC more efficient, the Commission has accomplished monetary recovery totaling \$2,853,564, which is equal to approximately 68% of all the money recovered by the Commission in its efforts of the previous 20 years (\$4,239,065).

4. KANSAS LEGAL SERVICES THIRD-PARTY MEDIATION PROGRAM FOR KHRC COMPLAINTS SUCCESSFUL:

As part of its plan to reduce the backlog of complaints pending KHRC, the Legislature and

Governor approved funding in FY96, 97 and 98 for a third party mediation program. Under this program, KHRC is allowed to contract with Kansas Legal Services, Inc. (KLS) to conduct a voluntary program in which the parties to discrimination complaints filed with KHRC may attempt to mediate and resolve their controversies short of having KHRC investigate and process the complaint. Twenty-five percent of the program cost is being funded by private funds (from the Kansas Bar Foundation, with some previous funding having come from the Southwestern Bell Foundation). The State matched the private funds on a 3-1 basis. This is an excellent example of a public-private partnership effort to accomplish the policy goals of the State more efficiently and to help deal with problems of discrimination in Kansas. The process has been highly successful. In FY97, **113** complaints were resolved by KLS mediation. In FY98, **116** complaints were resolved. According to participant surveys provided, participants in the processing were highly satisfied with the program, even in cases in which settlement did not result.

KLS and KHRC representatives made a presentation about the mediation program to the International Association of Official Human Rights Agencies (IAOHRA) in Miami, Florida, in August of 1997. As a result of the presentation there has been great interest nationally about the successful program in Kansas. KLS and KHRC have been contacted by representatives of other states who wish to initiate such a program. We have also been contacted by representatives of the U.S. Equal Employment Opportunity Commission in Washington, D.C. for information about the program that they might use in expanding their mediation programs for federal discrimination complaints. In fact, KLS has recently been awarded a regional EEOC contract to mediate complaints first filed with EEOC in the western half of Missouri and from Kansas (where the complaints were not filed, or (Continued on page 4).

not first-filed, with KHRC). EEOC officials have described our mediation program as "a model for the nation." The mediation program and its success has become so well-known that it is now the subject of an academic study through the Center for Employment Dispute Resolution of Loyola University of Chicago. At some point in the future there will be an article published in a professional journal regarding the program.

The mediation program was the feature of an article last year in the Kansas Bar Association Journal.

5. COMPLIMENTS AND SUPPORT OF KHRC PROGRAMS FROM THE LEGISLATURE AND OTHERS:

During the most recent legislative session, as had occurred the previous session, the KHRC received compliments from legislators for its progress. One state senator who reviewed Commission reports and explanations of the actions taken to accomplish these results said that they just simply constituted "a blueprint of how a state agency should be run." During budget hearings the Commission's progress was referred to by legislators as "remarkable", and our Commissioners were complimented by senators during confirmation hearings. Some of our staff members refer to the turnaround in Commission processes' as a "miraculous miracle."

6. COMMISSION SATELLITE OFFICES OPENED AND DEDICATED:

In July, 1997, KHRC opened satellite offices in Dodge City and Independence, Kansas to better serve persons in southwest and southeast Kansas. We were able to help fund the opening and staffing of these offices in part by reorganizing the Office of Hearing Examiner, and utilizing contract pro-tem hearing officers for the reduced amount of public hearings coming before the Commission.

7. OTHER ACTIONS UNDER THE COMMISSION'S 3-YEAR STRATEGIC PLAN:

In addition to actions referred to above, the Commission's 3-year strategic plan included implementation of the following management initiatives, program changes, statutory amendments, etc., all of which have now been accomplished.

These actions included:

--streamline the investigative process by eliminating unnecessary paperwork, reports, lengthy case summaries, etc. required of investigators;

--more utilization of technology; increased availability of computers to staff; provide voice-mail for staff;

--statutory amendment to allow Complainants to request dismissal of their complaint if Commission does not make a finding within 300 days of the complaint being filed, in order to facilitate filing of the matter in court;

--increase the case production standards for investigators (from 5 per month to 7 for follow-up investigators and from 7 to 10 per month for Preliminary Investigation Conference investigators);

--distribute all case files amongst the investigators for more efficient evaluation and action in response to correspondence, etc., than if the case files are held in a separate unassigned "backlog";

--legal staff checking with the U.S. District Court clerk to regularly monitor for cases where the parties have chosen to file in court and remove the case from the administrative process, but have not expeditiously notified KHRC of the decision, in order to effectuate more timely closure of the related KHRC complaints;

--contract with city human relations commissions across the state to perform investigative services for KHRC on complaints in the KHRC backlog not also on file under city ordinance with the city HRC's;

--cancel the inefficient case processing contract' with the U.S. Department of Housing and Urban Development, process housing discrimination cases per more efficient KHRC procedures, recoup any lost federal funds from HUD by increasing the amount of employment discrimination case investigations and receiving increased and offsetting Federal funds through an expanded contract with EEOC;

--while not abridging anyone's rights to file complaints with KHRC, direct the KHRC Intake Department to make effective efforts to better screen complaints proposed for filing in an effort to avoid the filing of non-jurisdictional or similar complaints;

--implement the Kansas Quality Management program. (Continued on page 5).

8. KHRC PARTICIPATION IN GOVERNOR'S INTERNSHIP PROGRAM:

During the Summer, 1998, KHRC has successfully participated in the Governor's Internship Program and welcomed Washburn University Law Student, Susan Duran, as an intern who performed a variety of law clerk duties for the Commission.

9. KHRC EDUCATIONAL ACTIVITIES AND MISCELLANEOUS ACCOMPLISHMENTS:

The Commission now annually presents an employment discrimination conference in Topeka and is allowed to use fees generated by the conference, not only to pay the costs of that conference, but to use for other educational activities across the state. Our Education Specialist is in great demand for presentations. KHRC has established an informational website at <http://www.ink.org/public/KHRC>. We have also maintained regular publication of the Commission's newsletter entitled "The Spectrum" to provide the public with updates about the Commission and relevant issues.

In summary, the agency feels that it would be difficult to find a comparable state agency anywhere in the country that has improved and progressed so markedly as has the KHRC in the past months. While the Legislature and Governor have increased our staffing somewhat after the staff reductions in 1995, this progress has been accomplished with slightly less staff than we have had in the past. In addition, the agency has met all mandated staff reductions and salary savings over recent fiscal years. We have met these performance goals despite significant situation of key personnel. For example, Executive Director, Robert W. Lay, and Intake Manager, Beverly Youngs, both retired, and both Assistant Director Patricia Scelzo, and Commissioner Carol Harris-Franklin were lost to career promotions (Ms. Scelzo to become the Executive Director of the State Board of Indigents Defense Services and Commissioner Fark-Franklin to become a Vice-President of Mutual of Omaha). We have not sought any inordinate budgetary enhancements to perform the agency's mission and (in line with KCM principles) to continuously improve our processes. We have truly met the goal of "doing more with less". All our progress has been accomplished by appropriate means while maintaining or increasing the quality of our investigative and administrative work. Like any public agency, the Commission occasionally has its detractors, and certain individuals resisted the proposals for change and improvement adopted by the Commission. However, it is now clear that the changes worked. We believe that

no reasonable person can dispute the success of the Commission at this point.

1998 marks the 45th anniversary of the adoption of the Kansas Act Against Discrimination and the establishment of this Commission. As we celebrate this historic milestone, the agency stands committed to staying its course of improvement and remaining as an effective tool to address illegal discrimination in the State of Kansas into the next millennium. To that end, the Commission has adopted a new Strategic Plan for the upcoming year. Pursuant to the request of the legislature, we have implemented in FY99 a customer satisfaction surveying process for cases going through the follow-up/full investigation process which supplements the customer surveying already being done for cases in the Preliminary Investigation Conference Unit (PIC) process and that done by KLS for the mediation program. While there is always room for anything to improve, we believe the agency is moving rapidly to peak efficiency and effectiveness. We pledge to build upon the Commission's current success and move forward, ever mindful of the message from a familiar old spiritual that, "We've come too far to turn back now."

ASSISTANT DIRECTOR APPOINTED

Robert M. "Mike" Hollar was appointed Assistant Director by KHRC Commissioners in June, 1998. Formerly a budget specialist for the SRS Budget Unit, he has served the State for nearly 8 years.

Mr. Hollar is a retired Naval Officer with over 20 years of military service. He is married to the former Nancy R. Romee, and is father to Melissa Hollar, age 24, of Phoenix, Arizona, Christopher Hollar, age 21, of Fayetteville, North Carolina, and Kimberly Hollar, age 15. Stationed overseas in Turkey, Korea and Hawaii, the Hollars enjoyed Korea so much they brought part of it back by adopting Kimberly.

Mr. Hollar holds a B.S. in Accounting from the University of Albuquerque, and a Masters of Business Administration from Chaminade University, Hawaii.

INVESTIGATORS TO ATTEND NAHRW CONFERENCE

The Commission's most productive investigators for the months of May and June, 1998, earned a trip to Denver, Colorado for their efforts during that period of time.

The Commission has selected investigators Vamba Nzwilli and Orie Kirksey from the Topeka office, Sue Bernisen from the Independence office, and Marvin Stone from the Wichita office for an opportunity to expand their knowledge of current civil rights issues by attending the NAHRW (National Association of Human Rights Workers) conference to be held in Denver, Colorado this year. Ms. Kirksey will not be able to attend the conference. The Commission congratulates these investigators for earning this award.

KHRC GAINS LEGAL INTERN

Susan Duran was appointed as a summer intern for KHRC beginning in June, 1998, as part of Governor Bill Graves's internship program for students and state employees. This program is designed to expand individual participation in state government and provide deserving students the opportunity to learn about the operation of state agencies.

Ms. Duran will stay on this fall as a volunteer doing directed research to receive credit to complete her law degree.

Ms. Duran grew up in Independence, Kansas,

and moved to Lawrence, Kansas, where she attended high school.

Ms. Duran lettered in varsity soccer and tennis and played in the chamber orchestra. She will receive her JD from Washburn Law School in May, 1999.

Ms. Duran received her BA from Bethany College in 1996, majoring in history and political science.

DISABILITY ETIQUETTE

Disability Etiquette

Reprinted in part from the Eastern Paralyzed Veterans Association guide by Judy Cohen.

THE BASICS

Ask Before You Help. Just because someone has a disability, don't assume s/he needs help. If the setting is accessible, people with disabilities can usually get around fine. Adults with disabilities want to be treated as independent people. Offer assistance only if the person appears to need it. And if s/he does want help, ask how before you act.

Think Before You Speak. Always speak directly to the person with a disability, not to his or her companion, aide or sign language interpreter. Making small talk with a person who has a disability is great; just talk to them as you would with anyone else. Respect their privacy. If you ask about their disability, they may feel like you are treating them as a disability, not as a human being. (However many people with disabilities are comfortable with children's natural curiosity and do not mind if a child asks them questions.) **Don't Make Assumptions.** People with disabilities are the best judge of what they can or cannot do. Don't make decisions for them about participating in any activity. Depending on the situation, it could be a violation of the ADA to exclude people because of a presumption about their limitations.

KEEPING CURRENT:

RECENT SUPREME COURT CASE INTERPRETING THE ADA

By Barbara Girard, Staff Attorney

Bragdon v. Abbott, 118 S. Ct. 2196 (Decided 6/25/98), is the first case ever decided by the U.S. Supreme Court on the ADA. Bragdon, a dentist, refused to treat Abbott because she had HIV. Bragdon contended that Abbott was not protected by the ADA because her HIV infection was in its early stages and had not reached the point of being a disability as defined by the ADA. In addition, the dentist asserted the Abbott's HIV presented a direct threat to the safety and health of the dentist and other individuals who worked in his office, which caused Abbott to lose any ADA protection she may have had.

Abbott sued Bragdon under the public accommodations provisions of the ADA, but the Supreme Court's analysis applied to the employment law provisions as well. The Supreme Court held that HIV in any stage, including the asymptomatic stage, did constitute a "physical impairment" that substantially limited one or more major life activities. The Equal Employment Opportunity Commission (EEOC) has taken this position since the enactment of the ADA. The Court stated that "the disability determination does not turn on personal choice" and "(w)hen significant limitations result from the impairment, the definition is met even if the difficulties are not insurmountable."

HIV substantially limited the major life activity of child bearing and Abbott was protected by the ADA. The question of whether her HIV posed a direct threat would be sent back to the lower court for further consideration.

Although the case is not actually an em-

ployment case, the ruling seems as applicable to employees and employers as it is to the public accommodations arena. Whether an individual with HIV is a patient or an employee, he or she is protected by the ADA. The disability occurs from the moment of infection. Additionally, the Supreme Court made it clear that a complete list of major life activities had not yet been identified and any current list is not exhaustive.

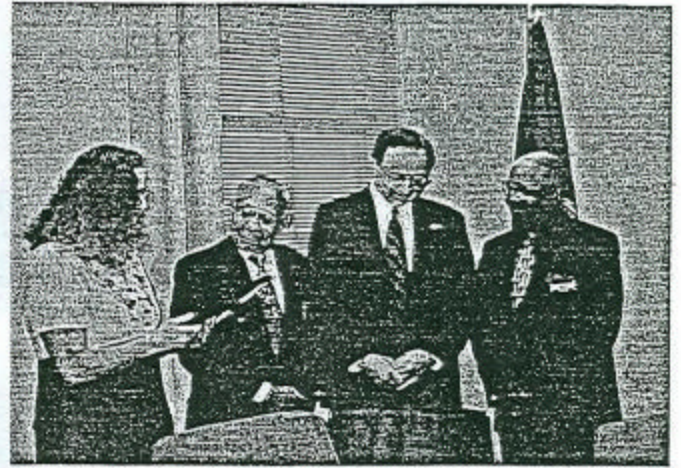
The Supreme Court's ruling in the case may mean that federal courts will adopt a broader definition of disability, one that is more in line with that provided by the EEOC Guidelines. The determination of whether someone has a disability will be made before mitigating measures such as treatment and/or medication are considered. If so, more individuals claiming ADA protection will argue that they are able to perform the essential functions of the job with or without reasonable accommodations and that the employer owed them a duty to provide a reasonable accommodation. More cases will be decided based on the duty to accommodate, rather than whether someone is actually covered by the ADA.

The KHRC will continue to monitor federal case law that will provide guidance when interpreting the KAAD which has provisions very similar to federal discrimination law.





Commissioner Butler, Beverly Youngs, Chairman Wesley,
Director Minner, Patricia Scalia



Commissioner Butler, Robert Lay, Chairman Wesley

KHRC RECOGNIZES ACCOMPLISHMENTS

In appreciation of the record-breaking accomplishments achieved by KHRC over the last three years, Commissioners recognized former members of the Kansas Human Rights Commission staff, and Kansas Legal Services manager Larry Rute.

KHRC Chairman Robert Wesley presented awards to former Director Robert Lay, former Assistant Director Patricia Scalia, former intake supervisor Beverly Youngs, and KLS manager Larry Rute. Staffers were brought back to help celebrate the remarkable success of KHRC's three-year strategic plan, implemented in 1995.

Due to the dedication, hard work and perseverance of the KHRC and KLS staff, the 3-year strategic plan has been a resounding success. As former Director Robert Lay pointed out, "What we accomplished in the last three years was really all the staff working together...I was really proud to have been a part of that during that period of time".

The Commission faced a burgeoning caseload in an era of growing demands to reduce public spending. Due to the desire for

State government to "do more with less", KHRC had lost (5) investigator positions with the continuous increase in complaints filed with KHRC.

Changes expanding disability discrimination rights and prohibiting familial status discrimination in housing meant a continued increase in unlawful discrimination cases. Sexual harassment complaints were on the upswing as well, due to publicity surrounding the Thomas-Hill matter.

KHRC implemented its 3-year strategic plan to address these great challenges and to reduce the backlog of cases and processing time.

The 3-year strategic plan successfully dealt with this burgeoning caseload and included the implementation of a third-party mediation program in conjunction with Kansas Legal Services, Inc. KLS mediation, a voluntary service offered free of charge to parties of discrimination, is staffed by KLS employees and funded by private funds from the Southwestern Bell Foundation and the Kansas Bar Foundation with 3-1 matching funds from the State budget.

Eliminating requirements of an inefficient case-processing contract with HUD in housing cases,

(Continued on page 9)

KHRC RECOGNIZES ACCOMPLISHMENTS

KHRC SPONSORS EMPLOYMENT DISCRIMINATION CONFERENCE

(Continued from page 8)

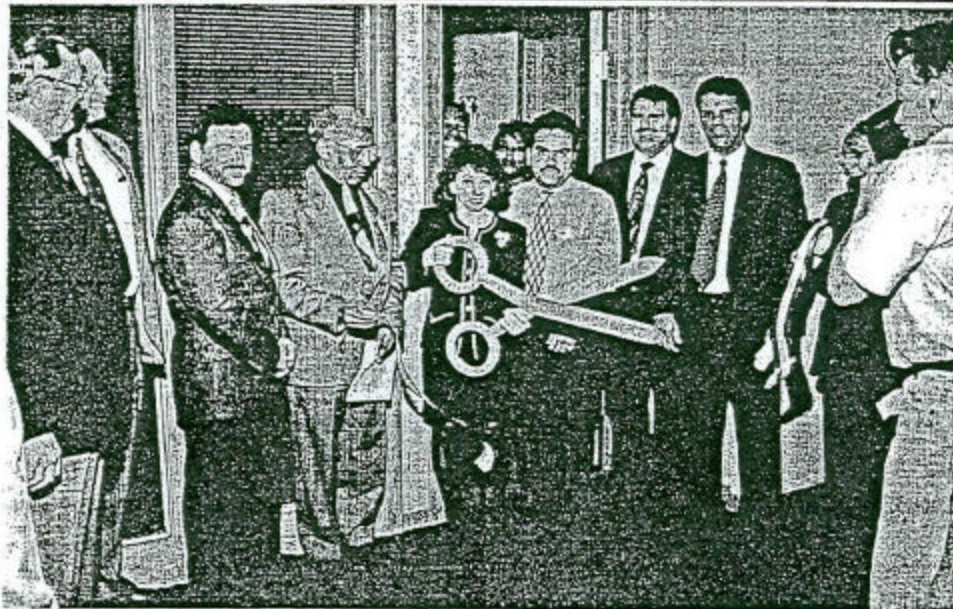
and reorganizing KHRC's Hearing Examiner's office reduced costs and freed funds for use in other areas. For example, the delivery of more efficient services throughout the state by the opening of satellite offices in southwest and southeast Kansas. The plan couldn't have been successful without the overall allegiance to the continuous improvement of our services by KHRC staff and the encouragement of supporters. Senator Tim Emert of Kansas stated in a letter to the Chairman that KHRC's accomplishments are, "Unbelievable... for any organization and particularly a state agency."

KHRC staffers can be proud of the fact that in the last 39 months the current inventory has been reduced by approximately 66%, processing time has gone from about 22 -24 months to approximately 7.6 months for completion, and monetary recovery on complaints has never been higher.

The Kansas Human Rights Commission's Annual Employment Discrimination Conference is to be held in Topeka on October 7, 1998, at the Pozez Education Center, Stormont Vail Medical Center.

The conference will begin with an update and overview of employment discrimination law with Ruth Benein, noted Kansas City employment attorney, and an afternoon ADA update with David Neuberger, a St. Louis attorney specializing in disability issues. Additionally there will be three breakout sessions offering a selection of employment law and civil rights topics, including: Title VII overview, sexual harassment law, gender discrimination, racial harassment, the Fair Labor Standards Act, Workers' Compensation, the Family & Medical Leave Act, and more.

This year's conference will again offer continuing educational units for attorneys, social workers, and others. Please contact the Kansas Human Rights Commission for more information.



The ribbon cutting ceremony for the opening of the Kansas Human Rights Commission's Dodge City, Kansas satellite office took place on April 23, 1998 in the Military Plaza Offices. From left to right: George Hendrix, Brandon Myers, Mark Jones, Chairman Wesley, Director Minner, Dora Luchini-Lucero, Commissioner Jones, Fernando Juardo, Commissioner Astorga, Commissioner DeLaTorre, Commissioner Butler.

SPECTRUM

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UPCOMING EVENTS:

EMPLOYMENT DISCRIMINATION
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OCT 7, 1998
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