

*If the Suit Doesn't Fit: Marcia Clark and the O. J. Simpson Trial*

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**Abstract:** The People of the State of California v. Orenthal James Simpson is widely recognized as the ‘Trial of the Century’ due to the heavy publicity and public interest it generated. Each of the trial’s prominent courtroom actors would face constant media attention throughout the trial. But the scrutiny was different for Marcia Clark, the lead prosecutor and sole female trying the case. Both inside and outside of the courtroom, Clark’s appearance would receive uniquely extensive attention, occasionally being admired, although more frequently it was criticized. After the trial Clark laughed off the notion that she tried to play along—changing her appearance to appease her critics. Yet any individual observing the trial can see that her appearance, and demeanor, did change. Additionally, Clark admits she made certain changes to her appearance. Clark’s inconsistent appearance evidences an internal dilemma she experienced during the trial: whether to respond to the attention her appearance was garnering by changing herself to appease her critics, or to ignore it, remaining unchanged. Clark was put in the double-bind that has hindered many women lawyers and professionals. Striking the perfect balance between personal identity and traditional standards of professionalism in a field still dominated by men remains a challenging task without a clear solution. As women continue to enter professional fields such as the legal profession in increasing numbers, we must stop asking them to choose between who they are as people and who they want to be as professionals.

**On Trial**

The Simpson case has become far more than a murder trial. It is a primer on society, whether the topic be race relations, the justice system or working women (Boxall 1995, n.p.).

Obviously I was aware that the media was giving me a bad time about my appearance. They slammed my hair, my makeup, and I didn’t care. Because what I cared about was that jury (Clark and Fernandez 2016, n.p.).

The butchered bodies of Nicole Brown Simpson, the ex-wife of Orenthal James Simpson (O. J. Simpson), and Ronald Goldman were found the morning of June 13, 1994 in Brentwood, Los Angeles, on Bundy Drive, outside the house where Nicole lived with her and O. J.’s two children (Clark and Carpenter 1997). The two had been stabbed to death (The Editors of Encyclopaedia Britannica 2019). Los Angeles County, California Deputy District Attorney Marcia Clark received a call that morning from a friend and colleague, Detective Phil Vannatter of the LAPD’s Robbery/Homicide Division (Clark and Carpenter 1997). As Clark was a prosecutor,

Vannatter called her to see if a search warrant would be approved by a judge in this case considering what they knew about it so far (Clark and Carpenter 1997). The detective did need assistance from the District Attorney's office, but Clark realized he was also giving her an early connection to a new case, which she appreciated (Clark and Carpenter 1997). Clark's early involvement in the case, as well as her strong homicide prosecution record and the extensive physical evidence this case presented (physical evidence was Clark's specialty), made Clark the clear choice for this case assignment (Clark and Carpenter 1997). Clark would later on be joined by co-prosecuting attorney Christopher Darden (Pak 2019).

As a result of being assigned to the Simpson case, Marcia Clark would become a household name. However, Simpson was well known prior to the trial due to his successful football career, first at the University of Southern California and then nationally, as the number one draft choice of the Buffalo Bills in 1969 (The Editors of Encyclopaedia Britannica 2019). Although knee injuries caused Simpson to retire after the 1979 football season, he had already accumulated a large fan base through his football career and continued to live in the public spotlight as a broadcaster, actor, and advertising spokesman after his retirement from the sport (The Editors of Encyclopaedia Britannica 2019).

On June 17, 1994 Simpson was arrested and charged with the two murders due to the extensive incriminating evidence recovered (Clark and Carpenter 1997). This evidence included blood drops at the crime scene containing Simpson's genetic marker, a glove found at Simpson's Rockingham home—stained with blood containing genetic markers of Simpson and the two victims, Simpson's record of violence toward his wife, Simpson's obfuscating manner in responding when asked about his whereabouts on the night the crime occurred, and his having no alibi (Clark and Carpenter 1997). Yet Simpson pleaded not guilty and, with the large team of high-priced and prominent lawyers he had hired to handle his defense, they went to trial (Pak 2019). O. J. Simpson's defense team, frequently referred to as the "Dream Team" because of each member's prominence, included lead attorney Robert Shapiro, Johnny Cochran, F. Lee Bailey, Barry Scheck, Robert Kardashian, and Alan Dershowitz (Pak 2019, n.p.). Cochran, who would take over the role of lead counsel from Shapiro during the trial, had accepted the position of Assistant District Attorney for Los Angeles County in 1978 (Pak 2019). Cochran's time at the District Attorney's office was brief, but one of Cochran's subordinates while in that role was Lance Ito (Pak 2019). Ito, appointed to the bench in 1989, was the presiding judge in Simpson's trial (Pak 2019).

The People of the State of California v. Orenthal James Simpson would come to be known as the "Trial of the Century," due to the heavy publicity and the wide public interest with which it was met (Pak 2019). Each of the prominent courtroom actors—Simpson's Dream Team, Judge Ito, and the prosecution—would come to face constant media attention and scrutiny throughout the trial (Chiang 1995). But the attention Clark would receive was unique, as were her circumstances during the trial, as a mother, as a person going through a divorce, and as a woman, working in a courtroom full of men (Clark and Fernandez 2016; Clark and Carpenter 1997).

In the aftermath of the trial during an interview with *Vulture*, Clark laughed at the notion that she gave her appearance any consideration during the trial, rhetorically questioning "How [she could] have had a makeover and still looked *that* bad?" and claiming any supposed makeover was a "media creation" (Clark and Fernandez 2016, n.p.). But Clark's appearance did change, and she admits certain intentional changes to her appearance, such as accepting donated suits and having her hair professionally redone (Clark and Fernandez 2016). Clark's inconsistency indicates she experienced a common double-bind for women lawyers, and her experiences raise several important questions regarding appearance standards for professional women (specifically lawyers)

and the obligation (if any) these women have to try to meet them:

1. Are female professionals, and lawyers in particular, obligated to change their appearance and demeanor for the possibility of greater success at work?
2. Does changing one's presentation actually lead to greater success at work for female professionals?
3. If professional women try to conform to traditional appearance standards, will unequal gendered expectations and burdens ever change?

### **Marcia Clark**

Marcia Rachel Clark was born in California on August 31, 1953 (Biography.com Editors 2020). Clark's father, Abraham, was an Israeli immigrant who worked as a chemist for the Food and Drug Administration (Clark and Carpenter 1997). Her mother, Rozlyn, was trained as a classical pianist, but never performed professionally. Instead, as Clark remarked in her 1997 book, "she married" (1997, 153). Clark's family relocated many times, at least ten, throughout her childhood due to her father's job with the FDA (Clark and Carpenter 1997). While Clark did not enjoy her family's constant moves, throughout her childhood she did enjoy "a remarkable amount of freedom" (Clark and Carpenter 1997, 153).

In 1971 Clark graduated from high school and headed to college, graduating from the University of California, Los Angeles, in 1976 where she earned a degree in political science. She then went to law school, graduating from the Southwestern University School of Law in Los Angeles in 1979 (Biography.com Editors 2020). After graduating from law school, Clark began her legal career as a criminal defense attorney and was hired as an associate at a small criminal defense firm. At first, Clark was primarily assigned to represent accused drug dealers, but after a few months she began receiving assignments to represent violent criminals. At this point Clark began questioning her career choice, as "every time [she] scored an acquittal, [she] had to reckon with the possibility that [she] might have released another rabid dog onto the streets" (Clark and Carpenter 1997, 51). The point when Clark definitively realized criminal defense was not for her soon came. After winning a dismissal for a man charged with multiple vicious murders by making clear that the District Attorney's office lacked the necessary evidence, Clark came to the realization that she needed a change while having a conversation with her boss, Jeff Brody. She remarks:

Instead of feeling jubilant, though, all I could think of was that I might have helped spring a murderer. My face must have betrayed my conflict. "Don't worry, Marcia," Jeff reassured me. "The prosecution will refile." (Indeed, they did.) And then he gave me a piece of solid advice. "I think you'd feel more comfortable as a prosecutor" (Clark and Carpenter 1997, 51).

A prosecutor is an attorney who represents the residents within a local, state, or federal government area in criminal trials, further described by the American Bar Association as "an administrator of justice, a zealous advocate, and an officer of the court" (The American Bar Association 2017, n.p.). The District Attorney, who is elected in most places in the United States but appointed in others, is the chief prosecutor, although they are typically assisted by other prosecutors working as Deputy or Assistant District Attorneys (Schumacher 2010). Instead of just representing one client like most attorneys, the job of prosecutors is to represent and protect the entire jurisdiction they are working for, and it is commonly understood that the prosecutor works on behalf of 'the People' (Schumacher 2010). Working for the District Attorney as a prosecutor was a better fit for Clark than working as a criminal defense attorney because prosecutors work to bring cases against

criminals rather than to represent accused criminals in court, as criminal defense attorneys do (Schumacher 2010).

Clark took the advice of her boss, and scheduled an interview with John Van de Kamp, the District Attorney of Los Angeles County at the time (Clark and Carpenter 1997). Van de Kamp hired Clark and she took the prosecutor's oath to represent the People (Clark and Carpenter 1997). Clark went on to achieve an extremely successful career as a prosecutor and finally felt like she was doing good work on the side of justice (Clark and Carpenter 1997). Clark had prosecuted 20 homicides prior to the Simpson case, including the high-profile murder case of television actress Rebecca Schaeffer. Clark won 19 of the cases, losing only one, and believed deep in her heart that each of the 20 defendants she brought a case against was guilty (Clark and Carpenter 1997). In her memoir Clark states:

I never worried that I'd do my job so well that an innocent man would go to jail.... I could never throw myself into the pitched battle of a major criminal trial unless I believed in my head, heart, and soul that the defendant was guilty. When the Simpson case fell into my lap, I had been on the job for fourteen years. I had prosecuted literally thousands of defendants. I could feel a clench in my gut when I realized we had the right man (Clark and Carpenter 1997, 52).

### **For the People**

When an attorney goes to trial, it is precisely their job to do everything they possibly can (within legal and ethical limits) to ensure the jury rules in their client's favor. But Clark's burden was even heavier as a prosecutor, for she was tasked with administering justice on behalf of the People and had an obligation to represent and deliver justice for the entire county of Los Angeles. As the start of the Trial of the Century drew closer, Clark prepared arguments, witnesses, and her hair for the performance of her life.

Before the trial began on January 25th, 1995, Clark was instructed by the District Attorney's office press person to get a haircut because she looked "messy" (Clark and Fernandez 2016, n.p.). She complied, having her hair cut and permed before the start of the trial. Responsible for two young children, Clark had her hair permed for convenience, correctly anticipating the extensive time demands this high-profile case would ask of her. She also received advice from the prosecution's jury consultant on how to change her appearance and demeanor to achieve greater success with the jurors at trial.<sup>1</sup>

After observing Clark to determine how she could improve her work and presentations to better resonate with the jury, the prosecution's jury consultant advised Clark to soften her appearance, to wear more pastels and talk softly (Clark and Fernandez 2016). Observing these changes, one reporter wrote at the time:

The earliest profiles of Clark described her as a foul-mouthed pool player who traded whiskey shots with cops in her off hours. Her boss couldn't say for sure that she had a family. A sharp mind and a sharper courtroom tongue. Just the kind of pit bull to put up

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<sup>1</sup> Lawyers sometimes hire a jury consultant to assist them in achieving successful outcomes at trial. Typically hired before the trial even begins, jury consultants, sometimes referred to as trial consultants, may be asked to complete a wide variety of tasks depending on the case. These tasks can include preparing witnesses, writing statements, determining how to best present evidence, holding mock trials, researching the jurors, advising the attorney on how to best present their arguments at trial, and generally serving as an advisor for the lawyer or side the consultant serves.

against Simpson's expensive legal talent. When that didn't play well in front of a mock jury, we were introduced to a new Marcia Clark. The one who smiled warmly and giggled self-consciously. The one who politely signed autographs during trips to the park and the grocery store with her kids. The one who tucked the boys in at night before returning to the office to finish her 18-hour day. The Marcia Clark remake covered personal appearance, too. The mole on her lip became as famous as Cindy Crawford's. Her hemline was lowered and her wardrobe refitted with contributions from friends in response to the comments of Geraldo Rivera's panel of experts. She started wearing jewelry and soft pastels (Reimer 1995).

Despite any early efforts Clark made to better present herself in front of the jury, as the trial progressed and her workload on the Simpson case grew, Clark's hair naturally grew out. After waking up one day in the midst of the 'Trial of the Century' to realize her perm had grown out, Clark decided to blow out her hair, thinking to herself, "they won't notice" (Clark and Guthrie 2016, n.p.). Not only was Clark's 'bad hair day' all the media could talk about, but after entering court that day, Judge Ito addressed her saying "Ms. Clark, *I think*" (Clark and Fernandez 2016, n.p.). Realizing the media was not going to leave her alone regarding her hair and her appearance, and that the attention she was getting was beginning to influence her work inside the courtroom, Clark decided to again respond, to try to alter her appearance to appease her critics (Clark and Fernandez 2016, n.p.).

The District Attorney at the time, Gil Garcetti, had suits donated to Clark, suits that were of a quality much nicer than her off-the-rack ones that the media had given so much negative attention (Clark and Fernandez 2016, n.p.). Additionally, Clark headed to the hairdresser to see the famous stylist Allen Edwards who was known for doing celebrities' hair. Edwards trimmed and dyed Clark's hair, and got rid of her curls (Daunt 1995). Next appearing in court on April 11, 1995, Clark entered and was met with applause from those waiting to enter the courtroom, reporters included, not because of the strong arguments she made, but because of her new look. Clark laughed, playing along with a little pirouette as she passed. The headlines the next day read variations of "A good hair day: Prosecutor Marcia Clark sheds curls for a new look" (Daunt 1995, n.p.).

Although unquestionably better than the media attention Clark had been receiving, the focus was still on her appearance and not her work (Clark and Fernandez 2016; Clark and Carpenter 1997). Clark was not the only one in the trial receiving media attention focused on their physical appearance and personal life (Chiang 1995). For instance, the public learned Johnny Cochran's first wife alleged he was abusive toward her (Flynn 2016). But no one else received media attention to the degree that Clark did, and furthermore, the criticism Clark faced did not cease to exist once she entered the courtroom as it did for the other attorneys, on the prosecution and defense (Clark and Fernandez 2016). Throughout the trial Judge Ito made comments about the length of Clark's skirts, at one point cautioning the jury not to be distracted by them. No comments were directed at the other attorneys regarding their clothing. She was also censured for her use of profanity, although the other lawyers never were. On this treatment, she explains:

Obviously I was aware that the media was giving me a bad time about my appearance. They slammed my hair, my makeup, and I didn't care. Because what I cared about was that jury. And so what was hugely upsetting to me was the sexist treatment I got from the judge. That was happening on a daily basis, and nothing could be worse for a lawyer than to be

undermined in front of the jury by a judge because the jury takes their cue. To the extent that the judge treats you like an idiot, the jury says, “*she’s an idiot.*” And he treated me like a second-class citizen (Clark and Fernandez 2016, n.p.).

### **Appearance in Court**

Although women and men make up roughly equal numbers of law students today, the legal field is a professional field in which women are still far behind men. Women make up only 38% of all lawyers (Cheeseman Day 2019). But those female lawyers also make significantly less money than men. “At mid-career, when earnings peak, the top 10 percent of female lawyers earn more than \$300,000 a year, while the top 10 percent of male lawyers earn more than \$500,000” (Cheeseman Day 2019, n.p.). And as for women at the top of the legal field, perhaps no statistic is more reflective of the significant inequality than the following: of the 114 justices who have served on the bench of the United States Supreme Court since it first convened in 1790, only 4 have been women (Campisi and Griggs 2018, n.p.).

The legal field has been slow to progress, as have appearance standards for attorneys, which contribute to gender inequality in the field. The persisting, dominant image of a lawyer—a cisgender, heterosexual, white man wearing a dark suit, white shirt, and conservative shoes—creates problems for those who choose not to conform, and for those who cannot (Cooper 2019). These nonconformists are outsider lawyers “for whom compliance with appearance norms [challenges] their fundamental [identity],” such as women (Cooper 2019, 1). It is also critical to note that certain women, for instance white women, may be able to resemble the dominant image more, and more easily, than others such as women of color who are bound both by their gender and their race—not all outsider lawyers are marginalized to the same degree. Although the “Expectations of appearance conformity create profound concerns that go well beyond style preferences, raising questions of autonomy and core identity,” the decision to not conform or the inability to conform can have serious consequences for the outsider lawyer’s success at work (Cooper 2019, 1). These negative consequences arise due to the innate tendency of humans to “make quick judgements imbued with unconscious bias” (Cooper 2019, 1). While those who conform to the dominant expectation of presentation are more likely to be viewed as “smart, likeable, and good,” those who do not (including those who cannot) “may find themselves excluded from opportunities for professional development and success” (Cooper 2019, 18).

The ‘pink tax,’ exclusively imposed on women, is defined by Jennifer Palmieri as “the additional hour or more required for hair and makeup” (Palmieri 2018, 110). On average women spend 55 minutes a day on their appearance, on things such as hair and makeup, possibly to make themselves look more presentable in accordance with the standards they are expected to meet (Dahl 2014, n.p.). Those 55 minutes per day amount to a little over one day every month and 335 hours (2 weeks) every year, that on average each woman gives entirely to improving her appearance and that men do not (Dahl 2014). The tax poses a unique burden for women, however many professional women would not even consider going to the office without having spent this time on her appearance first. Women are expected to pay this tax, yet the reality is the extra time spent may be useless.

Female attorneys are put into an uncomfortable double-bind where they are expected to appear both in accordance with a traditional professionalism that has been masculinized while also demonstrating femininity (Cooper 2019). Finding this perfect balance is not only a unique burden women are expected to carry; it may also be an impossible one. This is seen throughout the Simpson trial: Clark may have constantly negotiated with herself on how to best present herself,

but she received attention whether it was a good hair day or bad, a fancy designer suit or an off-the-rack one.

A lawyer's appearance may be completely unrelated to their ability as a lawyer, yet it is apparent that it has serious implications for how the lawyer is perceived, and therefore for their success as a lawyer (Cooper 2019). For a female lawyer, to appear in full compliance with the traditional, dominant image of a lawyer is impossible due to her gender (Cooper 2019). Female lawyers, then, are left with two options: to try to conform or to not conform (Cooper 2019). Although female lawyers may not be able to perfectly resemble the persisting image of what a lawyer looks like, attempts to conform may not be completely futile if a perfect balance between professionalism and femininity is achieved (Cooper 2019). However, this conformity requires most female lawyers to change themselves (Cooper 2019). For some, this minimization of "aspects of one's core identity can cause stress, significantly erode self-esteem, damage emotional well-being, negatively affect physical health, and compromise one's performance in the workplace or at school" (Cooper 2019, 8). While changing oneself to attempt to conform can be hurtful to the female lawyer on a personal level, the other option, to not conform, allows the female lawyer to remain fully true to herself, although possibly at the expense of her success at work (Cooper 2019). This may not be a lose-lose situation for every outsider lawyer, but for many it is.

It is also relevant to consider the progress of the legal field more generally. If all women work to conform to the traditional standards imposed on them, will the unequal gendered expectations and burdens ever change?

### **The Verdict**

The 6<sup>th</sup> Amendment to the Constitution of the United States of America guarantees that, in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury (U.S. Const. amend. VI 1791). "Impartial" here means fair, neutral, and unbiased. But jurors are still human beings, and that does not change once they are sworn in at the start of a trial. Therefore, a truly unbiased, impartial jury may never be possible, but may be even less likely in such a high profile case as O. J. Simpson's.

Clark cared about that jury and what each member of it thought of her, at least insofar as those jurors had the power to determine the outcome of the case that she had put so much time and energy into in order to win. Yet internally unsure how to best present herself, Clark never fully committed either way, changing her appearance in some ways but not fully conforming, never achieving the perfect balance of professionalism and femininity.

Ultimately, the Trial of the Century spanned eleven months from start to finish. The jury was sworn in on November 9, 1994, opening statements were made on January 24, 1995, and the verdict was announced on October 3, 1995. After the closing statements were presented, the jury headed off to the jury room to deliberate in private, with extreme discretion. The trial lasted 11 months, but the jury made their decision in 2 hours. As the impartial jurors filed into the courtroom for Simpson's verdict to be read, Clark "thought [she] saw a couple of them smile at the defendant" (Clark and Carpenter 1997, 477). Then, the reading of the verdict forms began, and Clark heard, "We the jury... find the defendant, Orenthal James Simpson, not guilty of the crime of murder..." (Clark and Carpenter 1997, 478).

### **Epilogue**

In the words of Marcia Clark, "The defendant's blood [was] found where there shouldn't [have been] blood. The defendant's hair where there shouldn't be hair. There was enough physical

evidence in this case to convict O. J. Simpson twenty times over” (Clark and Carpenter 1997, 3). Yet Simpson was acquitted and allowed to walk free, although his freedom would be short-lived. Simpson’s criminal trial, with a relatively high standard of proof “beyond a reasonable doubt,” resulted in acquittal. But a couple of years later, Simpson was tried in a civil lawsuit where the standard of proof is lower: “the preponderance of evidence.” For this charge, he was found liable for the deaths of Ron Goldman and Nicole Brown Simpson. O. J. Simpson was ordered to pay the victims’ families compensatory and punitive damages (Deutsch 2019). Thirteen years later to the day of his 1995 acquittal, in October of 2008, Simpson was found guilty of 12 charges unrelated to the murders, including robbery and kidnapping, stemming from a 2007 incident in Las Vegas in which Simpson stole sports memorabilia previously belonging to him (Brown et al. 2017). In 2017 Simpson was granted parole on all of his charges and as of this writing, he is a free man (Deutsch 2019).

As for Marcia Clark, Simpson’s acquittal was disappointing. In fact, she recalls feelings of violation, confusion, dislocation, and grief in the immediate aftermath (Clark and Carpenter 1997, 478). But Clark was not completely surprised—during the trial when “no one else seemed to be seriously considering [the prospect of Simpson’s acquittal] ... [Clark] felt uneasy” (Clark and Carpenter 1997, 477). For her, the jury’s “short deliberation meant trouble... that the jury had made up its mind weeks, probably months, before” (Clark and Carpenter 1997, 476). As time went on, Clark struggled with feelings of guilt, as if she’d “let everyone down” (Clark and Carpenter 1997, 480). Clark began following O. J. Simpson’s civil trial “with bittersweet satisfaction” (Clark and Carpenter 1997, 483). And eventually, she began writing about the Simpson trial and her experiences, which helped her shake off a sense of malaise she experienced following the end of the trial. Ultimately, Clark decided to resign from her job at the District Attorney’s office. She states:

I wouldn’t be able to try cases for a long, long time. Either the defense would try to get me removed, for fear the jury would be biased in my favor—or my own office would be afraid to deploy me, because a jury might be biased against me. As I saw it, the Simpson trial had ruined me as a prosecutor (Clark and Carpenter 1997, 480).

Clark would soon receive a book deal, allowing her some financial security, more free time to spend with her young sons, and an opportunity to tell her side of the story. Yet leaving the District Attorney’s office was painful for Clark. “Leaving the office felt like amputating a limb” (Clark and Carpenter 1997, 481).

As of 2020, little has changed for women in the legal profession. In 2010, the Chicago Bar Association held a “What Not to Wear” fashion show “in which judges, law professors, and law students were invited to ‘nitpick’ women’s courtroom attire” (Erger 2014, 300). In 2017, then House Speaker Paul Ryan attempted to enforce a dress code barring woman from wearing sleeveless attire in the House chamber and speaker’s lobby (Robbins 2017). In 2018, the multinational professional services firm, Ernst & Young (EY) held a training for their female employees; instructions the women received included “When women speak, they shouldn’t be shrill. Clothing must flatter, but short skirts are a no-no. After all, ‘sexuality scrambles the mind.’ Women should look healthy and fit, with a ‘good haircut’ and ‘manicured nails’” (Peck 2019, n.p.).

During the Simpson trial, Clark was caught in this system of unequal gendered expectations and burdens. This is evidenced by the unique attention her presentation received and her apparent



uncertainty on how to respond to the attention. The expectations of what a lawyer should look like continue to hurt outsider lawyers, such as women, on personal and professional levels, decades later. Furthermore, the validity of our justice system rests on the belief that everyone will get a fair trial. It is crucial we recognize no one can receive a fair trial until each of those tasked with presenting the evidence in court have. One day, whether due to outsider lawyers whose attempts to conform to traditional appearance standards are successful thus allowing change from the inside, or due to the nonconformists pushing the boundaries of what is acceptable, the system will change. It must.

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