

The Time is Now

A Conversation on Disabilities and Change

BY JOHN HISKI RIDGE AND JOHN BROADBENT

El policies should incorporate people with disabilities, including people with physical disabilities and those who are neurologically diverse." This doesn't seem controversial on its face. Most people working in the legal community want to be inclusive, and most believe this statement is true.

But the reality falls short of the policy. People with disabilities are underrepresented—or not represented at all—in our law schools, law firms, and other workplaces. Even organizations focused on promoting diversity, equity, and inclusion frequently lack representatives

from the related community. Which raises the question, "Why?"

Part of the answer is that we may not regularly encounter people with disabilities or those who are neurologically diverse in our professional lives (at least that we're aware of). Many don't even know a single person with a disability, or if they do, they have never had a conversation with their friend about their experience as a person with disabilities. But bringing the policy and the reality together requires that we talk about the issues and challenges facing people with disabilities as they navigate the legal arena. And that is what this article begins: the conversation.

Background

John Ridge: To start with, why don't you tell the readers a little bit about yourself?

John Broadbent: I recently started as an associate in the Denver office of Brownstein Hyatt Farber Schreck, LLP. I work in the firm's Corporate and Business and Government Relations practices. Before that, I studied at the University of Colorado Law School, where I graduated with Dean's List honors. During law school, I contributed a published paper on international disability law, was fortunate enough to serve in the chambers of two Colorado Supreme Court justices, and provided (attorney-supervised) legal assistance to local startup clients through the school's Entrepreneurial Law Clinic.

John R: How about before law school?

John B: I graduated with distinction from Duke University with a major in classical civilizations. I then spent several years working in the technology M&A sector, creating financial models and presentations that drove business strategy.

John R: Would you be willing to tell us about your disability?

John B: Absolutely. I was born in the New York City area in 1991, two months premature due to rare, severe intestinal blockages. Without innovative surgery, my life would have been cut short days after birth. Through a skin biopsy, doctors soon diagnosed me with a rare genetic condition called osteogenesis imperfecta, which weakens my bones and makes it more difficult to build muscle. Only 25,000 people have this condition in the United States. Despite initially testing with relatively high Apgar scores, my condition was subsequently characterized with terms like "failure to thrive" and "dying brain." The doctors had serious doubts about whether I would ever walk, talk, or lead any kind of productive or meaningful life.

Fortunately, the concerns about my cognition were alleviated by elementary school, when teachers caught my classmates cheating off me in spelling quizzes.

John R: That's funny.

John B: It is funny, looking back. But I still had to contend with this rare bone disorder, an underdeveloped musculature, a severe speech impairment, a hearing impairment, and a rare neurologic condition called spasmodic dysphonia. I also had to get daily growth hormone injections to ensure that I would grow to a socially acceptable height for an American male.

Through many years of physical, occupational, and speech therapy, I slowly built strength and developed strategies to mitigate the impact of my physical disabilities. But it truly took a village of wonderful people to get me to where I am today. And my mother was the orchestrator of it all.

John R: I would love to meet your mom someday.

John B: You would like her. She is my greatest advocate.

It's your turn now. Why don't you tell the readers about yourself?

John R: Like you, I'm a lawyer. I mostly practice state and local tax law, which I enjoy immensely. I have been at this business for more years than I care to admit at this point. I still remember the days when lawyers used

dictaphones and BlackBerries (the precursor to the iPhone). I occasionally miss my dictaphone.

John B: I was going to ask, "What's a Black-Berry?"

John R: Okay, now I feel a bit aged out! John B: Why don't you tell the readers why you are interested in our topic?

John R: When I was a kid (many decades ago), I had a friend on the autism spectrum. Back then, people with cognitive differences were treated terribly, and he was no different. I never understood why people went out of their way to be so cruel, so I used to stand up for him the best I could. I didn't know it then, but I was fighting for justice and equality. That struggle remains important to me today.

Later on, when I became a father, I found out that my daughter has 22q11.2 deletion syndrome, which is a genetic difference that causes both cognitive and physical disabilities. But her biggest challenges have come from the way others treat her. Educators have ignored her, employers won't give her a chance, and medical providers are just uninformed. I feel like I have been fighting from day one to get her equal access to a quality education and employment, and to inform her medical community about 22q.

And lastly, like you, I deal with the neuro-chemical condition called spasmodic dysphonia. But I came of age in the legal world at a time when we had to hide our disability challenges. The advice I was given as a young associate was to "hide it and never speak about it." So I did.

Do you want to hear something funny?

John B: Sure, what?

John R: This is the first time I ever said it aloud, in public. It's challenging, my friend, after hiding it from my colleagues for so long. I admire you, John B, because you are so willing speak about your disabilities to help others.

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820 Pearl Street, Suite H, Boulder, Colorado, 80302 303-402-6717 sj@jurdem.com www.jurdem.com **John B:** Are you worried about discussing it here?

John R: After hiding it for 20-plus years, I guess I do have some concerns. But we'll see. I'm frequently surprised by the generosity and decency of lawyers in the Colorado bar. It's a good bar.

The Importance of the Conversation

John B: Tell me more about why this particular conversation is important to you.

John R: I'm interested in having this conversation so others can be informed. But it's more than that. By telling our personal stories, even in a medium such as this, readers can meet people with disabilities and begin to comprehend the discrimination that occurs in our society and the legal community. Let's face it, it's easy to ignore the issues when they're just academic concepts like discrimination and prejudice. But it's hard to ignore them when they're presented by a person we've met or by one of our friends, because then it's real. In telling our personal stories, my hope is that the struggle will become more apparent to others. In raising the issues and talking about them in a personal manner, readers will become personally involved. I hope.

But why don't you tell me why this conversation is important to you?

John B: It's important because we're seeing a far lower than acceptable number of people with disabilities holding professional positions, especially in law. I feel strongly that the legal profession has a special duty—given its place as the arbiter and enforcer of our legal rights—to do more to welcome the perspectives of those with disabilities into its ranks. Missing the experiences that those with disabilities can bring to the table, the legal system itself fails in its mission to deliver zealous representation and justice for everyone.

Think about it like this: according to a CDC study, over 10% of American adults report having difficulty with at least one area of basic functioning (hearing, seeing, mobility, communication, cognition, or self-care). Yet at every step along my journey, from college to Wall Street to law school to legal employment, I would be lucky to see one or two people with disabilities among the hundreds and possibly

thousands of people with whom I interacted. At my law school, for example, I encountered no one else in my three years there who had obvious physical disabilities. In my observations, I am the exception that proves the rule: if you have disabilities, it is extraordinarily more difficult to "make it" in this country—particularly if you're striving to do so in a field wholly unrelated to disability.

The data bears this out also. According to a Bureau of Labor Statistics survey, only 16.4% of adults with disabilities have completed a bachelor's degree or higher education, com-

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pared with 34.6% of those without disabilities.² Conversely, 21.3% of adults with disabilities have not graduated from high school, compared to just 10% of those without a disability. The disparities worsen when looking at employment statistics. According to the same survey, only 26.1% of adults with bachelor's degrees or higher who have a disability are employed.³ In stark contrast, 75.9% of their able-bodied peers have a job.

We need to address these issues and solve them, especially in the legal community.

John R: I agree. And the time is now.

Personal Experiences

John B: Why don't you tell me about a recent experience you've had that might be helpful to readers?

John R: Recently I had a negative experience, but I'm hesitant to dwell on these types of things. They can take on a life of their own if we let them.

John B: We need to have a safe environment to discuss both the positive and negative experiences.

John R: Okay, but call me on it if it gets too over-the-top.

Recently, I was talking to a lawyer in leadership about the need to open up employment in our workplaces to people with disabilities, including lawyer and staff positions. I presented an idea suggesting that large state agencies, law firms, and companies in Colorado should take the lead in employing such people to set an example for the rest of the state. It would only take a few entities to start a trend that would benefit the entire community.

I'm going to quote his response here: "We can't put employees like that in front of clients. The clients will never accept them."

John B: That is terrible! What did you say?

John R: I remember having to close my eyes and fight to hold my tongue in check.

Comments like this are frustrating. Not only are they ignorant, but they're also broadly discriminatory. This gentleman, in one throwaway comment, denied all people with disabilities access to legal jobs. And he did so based on the idea that all people with disabilities are the same, all people with disabilities cannot succeed in corporate positions, and all clients are so biased that they don't want to be around people with disabilities.

John B: Wow. I don't know how I would have responded.

The good thing is that these ideas are usually defeated when people actually see disabled lawyers providing counsel and representation to clients. My personal experience has taught me that, perhaps after a bit of discomfort, coworkers are open to welcoming lawyers with disabilities when they realize that they are just as capable and reliable as others.

John R: I agree with you 100%. I think most comments like this come from people who

don't have regular contact with people with disabilities.

Still, it's frustrating because I can remember when these exact comments were said about women and people of color. Most leaders have come to understand how unacceptable such words are in connection with these latter two categories, but they remain acceptable when directed at people with disabilities.

Mea culpa, that was a bit of a soapbox!

John B: Not to worry. We're having this conversation to discuss our experiences in the hope that they'll help move the issue forward.

John R: Thanks for reminding me.

We need to start seeing people with disabilities as individuals, just like everyone else. They have strengths they bring to the table and areas where they need improvement, again just like everyone else. Once we really come to understand this, we'll be able to set aside long-standing prejudices.

Why don't you tell me more about your personal experience as a person with disabilities?

John B: Notwithstanding all the intrinsic barriers of having disabilities, the most onerous barriers I have faced (and eventually surmounted) have been extrinsic.

John R: Can you give me a specific example?
John B: Growing up, I faced hostility—
sometimes severe hostility—from people who
thought I was different. And in some respects, I
was: I was significantly smaller, visibly weaker,
and my movements suggested that something
was obviously different about me. Despite my
best efforts to fit into the mainstream, I have
always felt like a fish out of water.

John R: Do you still feel this way?

John B: In many ways, yes. The lack of inclusivity in the legal profession has been jarring to me.

I am among the first cohort of disabled people who have spent virtually their entire lives under the protection of the Americans with Disabilities Act. Although I expected the disabled community to be *somewhat* underrepresented, the extent of the underrepresentation is shocking. Throughout my entire journey into the legal world—including several internships and dozens of interviews that eventually led me to my current position—I have not met *a single*

person who comes from even a remotely similar background as me.

The underrepresentation is so great that even the committees specifically devoted to diversity and inclusion rarely consider disability as a factor to prioritize.

John R: It's true. People with disabilities have gotten lost in the DE&I discussion. A simple look at the programs for disabled lawyers and staff in our law offices shows this to be the case.

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John B: What programs?

John R: Thank you for making my point. There are very few vibrant programs, at least that I am aware of. To be sure, there are firms that have such programs, and I don't want to suggest that they don't exist. But we can do a much better job.

John B: Why do you think that's the case? Why aren't people with disabilities included in DE&I policies to a greater extent? **John R:** Well, I have a theory. Do you want to hear it?

John B: Sure. Tell me.

The Three Stages of Discrimination

John R: People with disabilities have been left behind in the push to diversify workplaces, in part due to the varying stages of discrimination in the United States.

John B: I'm not following you.

John R: Let me back up just a bit.

I was reading the French philosopher Simone de Beauvoir a while ago, specifically her book *The Second Sex*. If you haven't read it, you should. It'll blow your hair back. It was a game changer in philosophy and in the fight for gender equality.

Her ideas got me thinking about the history of the discrimination that people with disabilities have had to endure. She has some good language that we can use to describe it.

John B: Okay. Tell me more about this.

John R: As I was thinking about it, I realized there are identifiable historical trends in the patterns of discrimination against persons with disabilities.

Stage 1

John R: Most of us are familiar with the first stage of discrimination, which involved the bad old days when people with disabilities were openly discriminated against or ignored.

John B: If you couldn't hide your disability, you were essentially unemployable, at least in the legal market.

John R: You are correct, my friend. And this is not to say that all firms practiced discrimination during these times, or that all lawyers did so. There were certainly successful lawyers with disabilities in those days, and wonderfully supportive colleagues. This is just a general description to assist our understanding of the stages or paradigms of discrimination. I don't want to be accused of overstating the case.

John B: You're not. I think we all understand that there are exceptions to every rule in every paradigm. But let me tell you a story that illustrates this stage 1 perfectly.

John R: This sounds interesting.

John B: Despite having graduated with distinction from Duke and having excellent

work experience—including a legal internship at Blackstone—I found it difficult to find a job after college. Not just a good job, or well-paying job, or high-potential job—literally any job. I found it impossible to get my foot in the door. From delivery boy to insurance representative to paralegal, some aspect of my disabilities always seemed to get in the way.

At one point, I got an interview with an "elite" law firm in New York City. Having applied for one of their corporate paralegal positions, my interviewers first discussed my qualifications and basic work experience. Then they asked me about my skills at alphabetizing, filing, and otherwise handling physical papers. I told them, truthfully, that while it might take me a little longer to perform those particular tasks, my background clearly showed skills in other areas that would be useful to the firm and their clients. They acknowledged that I was extremely well-qualified for the position and a great fit culturally. But I will never forget what they said next.

They said, "Our firm runs on billable hours. We have concerns about your ability to efficiently do some of the things we will ask of you on behalf of our clients." Needless to say, I did not get the job. Other firms with which I interviewed also rejected me for what I suspect is the same reason, but they simply did not disclose it.

To some degree, I appreciated the New York firm's honesty because I feel such candor will make the legal industry better in the long run. But the hiring decisions of those firms are examples of discrimination that I and others have felt in the legal profession. The hypersensitivity to physical capabilities blinded these firms to the real value I could have brought to their clients. Though I might have taken longer in some physical aspects of the work, my analytical and critical thinking skills, attention to detail, and writing ability would likely have been more valuable in the long run. In other words, instead of looking at the efficiencies I could have brought to the firm in non-physical tasks, they focused on potential inefficiencies arising from physical tasks and used billable hours as a reason to not hire a person with disabilities.

John R: That is a great illustration of first paradigm discrimination.

John B: Do you have any final thoughts about stage 1?

John R: Yes. One last comment.

One of the worst things about this stage, in my opinion, is that such discriminatory treatment creates a sense of otherness. And that otherness is not meant to be a positive distinction but is meant to create a sense of "less than" in people with disabilities.

When we single out a group for specific discriminatory treatment, whether explicitly or implicitly, we're saying to that group that everyone in that collective unit is not a part of us. They are something different, by which we mean not as good as us. That can be hard to deal with.

John B: It is hard to deal with. And it frustrates me that this first paradigm is still going on today, at least in some places.

John R: Yeah, we need to fix this right away. **John B:** Tell me about the second stage.

Stage 2

John R: This is the stage where individuals in diverse groups are accepted, but not for who they are as individuals. They are accepted to promote the good of those doing the accepting.

John B: Can you give me an example?

John R: Sure. It wasn't that long ago when women were by and large underrepresented in the partner ranks at law firms around the country. This slowly began to change in the latter part of the 20th century, and while there is still a lot of work to do, there are now more women partners than ever before. But when it first started to change, law firms would hold up their female partners for the business community to see as a marketing tool. It was as if they were saying, "Look at us, 'we' are great because 'we' promote women." Certainly, promoting women to partner was the right thing to do. But instrumentalizing female partners to assist male partners with marketing is still discrimination.

This is classic second stage behavior. Individuals who were previously subject to stage 1 discrimination are now accepted, but not all of them, and they are accepted chiefly in an instrumentalized fashion. These individuals are still an "other," but an accepted other so

that they can be used to promote the good of the groups doing the instrumentalization.

John B: I agree with this characterization, but this stage is a little more complicated for people with disabilities.

To be hired or included in the "partner" ranks, people with disabilities have to establish that they are capable of doing the job for which they are applying and that their disabilities will not prevent them from doing the job. I think we should acknowledge this up front.

John R: I agree that certain disabilities prevent certain individuals from doing certain jobs, and that people with disabilities do in fact have this added step as they move forward in our workplaces.

John B: For example, I had to prove I was qualified to be a lawyer before I was offered my current job, and that my disabilities wouldn't prevent me from doing my job.

Just as an aside, this is also why I always tip my restaurant servers well, not just because they are grossly underpaid but because I appreciate that I could never in a million years carry plates and drinks for a living. I'm not capable of doing that job.

John R: Nice example.

But let me add one caution here. We need to be careful that we don't allow our cultural biases to define whether a specific disability would prevent a person from doing a particular job. For example, I can't count the number of times I've heard people say that having 22q11.2 D.S. would prevent a person from being a lawyer or doctor or engineer or some other professional. But this bias has been proven wrong on many occasions. Certainly, having 22q would prevent some individuals from being a lawyer, but not others. These types of generalized characterizations need to be done away with.

John B: That is a concern. And let me add one other caution. We need to remove the occupational barriers currently in place that make it difficult for a person with disabilities to prove that she is qualified.

The LSAT is a good example of one such barrier. This test relies on proxy "skills" like speed-writing, fast reading, and quick diagramming that provide little or no information on one's potential as a lawyer. Standardized tests should measure quality of thought, not proxy skills. We need to remove this barrier and develop a more inclusive LSAT—one that actually evaluates a potential lawyer's ability to formulate and critically analyze legal arguments.

John R: That's such a wonderful description of one of these barriers. I take it you'll agree that the bar exam is another barrier?

John B: Yes, I do. And there are many others we can discuss at some other time. But these are sufficient, I think, to help us understand this second stage as it relates to people with disabilities.

John R: What are your final thoughts on this stage?

John B: It's unfortunate, but I think that this stage is a necessary step for people to be truly accepted. Let me give you an illustration that helps explain why I believe this.

When I was younger, around middle school age, everyone who knew me could tell I was significantly weaker and less coordinated than others. When baseball season started, I was always picked dead last in the draft. No one wanted me, and for good reasons. I was short, slow, and uncoordinated, and I could be a liability on defense with my unreliable balance. In one instance that my mom still often mentions, I hit a grounder to shortstop and my coach thought it was a good idea to run out, pick me up, and physically carry me down the first base line to try and beat the throw.

In eighth grade, however, this sort of treatment changed. My new coach drafted me because he had a daughter with disabilities, so he could see past mine. Instead of dwelling on the things I could not do as well as others, he saw those areas where I could contribute, even with disabilities. With this outlook, he made a point of including me in every aspect of the team. I love baseball, and even though I was never going to be a great athlete, I used my disabilities to my advantage. I took smart swings and made pitchers work to throw me out. I had a decent throwing arm, so my throws from the outfield were solid. But more than that, I could see things in other people's games—perhaps a position they could take on the field or a batting motion-that would elevate their ability in some small degree.

These capabilities helped me to shine. I had a .500 on-base percentage (the highest in the league, I believe), my team won the league championship, and my teammates unanimously voted me into the league's all-star game.

If I had not been "used" in this admittedly somewhat tokenizing way, no one would have seen the potential for where I (and others like

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me) could contribute. When I was included, everyone could see the value-add that I brought—so much so that the players themselves named me one of their two representatives on the town's all-star team. And here is my point: I believe that giving people a working example of where people with differences (regardless of type) can contribute is a very effective method of changing cultures for the better.

John R: That's a great story, and a good point. We have to pass through stage 2 to get to stage 3, and providing good examples of how people with disabilities can contribute will help us get there.

Stage 3

John R: This last stage is where we eventually want to be. People who were previously discriminated against are finally accepted for who they are: unique people. In this paradigm, law firms will hire employees with disabilities simply because these individuals are good employees. Software companies will hire employees on the spectrum simply because they are good employees. Schools will start admitting neurologically diverse students and assisting them, just as they do athletes and musicians. And others can fill in the rest of the examples.

The barriers to entry will be removed, and people with disabilities will be hired solely based on their qualifications and skills.

The point is, we will stop characterizing people based on their genetic code and disabilities, and start focusing on their individual traits.

John B: We have a long way to go to get there. John R: Yeah, I am afraid so. But we have to do something to push our way forward, and this conversation will hopefully help.

Promoting Effective Changes

John R: Is there anything else we can do to help introduce this third stage to our legal community here in Colorado? Any ideas?

John B: For me, inclusion in the legal profession has to start from the bottom up. That means we need to start with a more inclusive LSAT, as we previously discussed. I suspect (based on my own experience) that the legal profession's entrance exams (including the bar exam) are among the most resistant barriers to entry for those with disabilities.

From there, reform of the accommodation structure is needed. Though I recognize the challenges presented by those who seek to cheat the system, the burden of proof required to certify one's status as disabled is particularly onerous and can feel dehumanizing. Even for someone as obviously disabled as I am, it felt like the LSAT evaluators saw me as a potential

cheater until I proved otherwise. And even when I had established my condition, they would often overrule the recommendations of medical professionals to grant fewer accommodations than I had requested. Regardless of outcome, the accommodations process was always a negotiation, and thus it felt at times like my existence in the legal profession was *conditional* and somewhat *temporary*—easily snuffed out by arbitrary determinations of how truly disabled I am.

Finally, the profession itself needs to change. Law firms and government institutions need to prioritize hiring disabled lawyers outside of the specific, disability-advocacy realm into which many professionals with disabilities find themselves slotted. Their DE&I committees need to include people with disabilities, not just for their own sake but because those with disabilities bring unique perspectives that often are not considered.

What changes do you suggest?

John R: First, I think we need to recognize the commitment to equality that our governor has brought to his office. He recently signed SB 21-095, which creates a hiring preference pilot program for qualified applicants with disabilities. He is pushing the issue forward. And some law firms are doing likewise. Your firm, for instance, appears to have a wonderful commitment to the disabled community.

Second, we—being the Colorado bar—need to recognize the problem: people with disabilities are still subject to a fair amount of discriminatory behavior. Conversations like this one can raise the awareness. And the bar itself can also help by setting up a specialty bar for lawyers with disabilities.

Third, our firm DE&I committees need to give equal time and consideration to lawyers and staff members with disabilities.

The second and third points can be met pretty easily if people really want to take action. The next goal is a bit more challenging.

We need to change the way we think about people with disabilities. We as lawyers need to stop thinking that people with disabilities are incapable of practicing law or working in our firms. This is true of all people with disabilities, but especially people who are neurologically di-

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verse. We are still stuck in this paradigm where lawyers on the spectrum, with 22q11.2 D.S. or some other neurological condition are thought of as intellectually incapable. This simply needs to stop! Lawyers with disabilities are just like everyone else. We have strengths and areas that need improvement; some are MENSA smart and some struggle with complex reasoning; and some are wonderful people, and some less than wonderful. But this is true of everyone, and we just need to look around our own firms to confirm this. So we need to stop singling out people with disability challenges for extra scrutiny.

Am I making any sense here?

John B: Perfect sense. Anything else you want to say?

John R: We are lawyers. This means that we should lead our society in social justice reform and the equal treatment of people. Right now, we don't, especially when it comes to the treatment of people with disabilities. Private companies like Microsoft are way ahead of us in their commitment to hiring people with disabilities and neurological diversity, and they have hiring practices to back up their policies. But we can do better. By starting the discussion, we can move forward and become the leaders of society we should already be.

How about you? Any final thoughts?

John B: Overall, I see tremendous opportunity for the legal profession to lead the way in reflecting the egalitarian values upon which this country was (at least in part) founded but still has yet to fully live up to. Individuals with disabilities are valuable and should be included into the rich tapestry that forms our society, not shunned to obscurity simply out of fear or intolerance.

John R: Thanks for the wonderful conversation, John. I always enjoy our talks.

John B: As do I, my friend. I look forward to digging deeper into this topic with you. ①





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in the workplace, leadership, legal writing, and mountain climbing. He is a graduate of Boston College, where he earned both his JD and a Ph.D. in philosophy. He is the author of *Maggie and Me*, a blog that discusses issues facing young adults with disabilities—johnhiskiridge. com. **John Broadbent** is an associate at Brownstein Hyatt Farber Schreck, LLP. After overcoming significant physical disabilities from birth, he enjoys bringing the same tenacity and grit to help solve his corporate clients' toughest legal challenges.

NOTES

- 1. Centers for Disease Control and Prevention, Nat'l Center for Health Statistics, Disability and Functioning, https://www.cdc.gov/nchs/fastats/disability.htm.
- 2. Bureau of Labor Statistics, US Department of Labor, The Economics Daily, People with a disability less likely to have completed a bachelor's degree, https://www.bls.gov/opub/ted/2015/people-with-a-disability-less-likely-to-have-completed-a-bachelors-degree.htm.

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