



Working to Reform Marijuana Laws

## **NORML's Testimony on Marijuana Decriminalization Before Congress (1999) Keith Stroup, Esq.**

**Testimony of R. Keith Stroup, Esq.  
Executive Director, NORML**

before the  
Subcommittee on Criminal Justice, Drug Policy and Human Resources  
Committee on Government Reform  
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The National Organization for the Reform of Marijuana Laws (NORML) has been a voice for nearly 30 years for Americans who oppose marijuana prohibition. A nonprofit, public-interest lobby, NORML represents the interests of the millions of otherwise law-abiding citizens who smoke marijuana responsibly.

### **Official NORML Position**

#### **(a) Complete Decriminalization**

NORML supports the removal of all penalties for the private possession and responsible use of marijuana by adults, cultivation for personal use, and the casual nonprofit transfers of small amounts. This model, generally called "decriminalization," greatly reduces the harm caused by marijuana prohibition by protecting millions of consumers from the threat of criminal arrest and jail. It represents a cease fire in the war against marijuana smokers; smokers would no longer be arrested, although commercial sellers would be.

#### **(b) Regulation and Legalization**

NORML also supports the development of a legally controlled market for marijuana, where consumers could buy marijuana for personal use from a safe, legal source. This model is generally called "legalization". The black market in marijuana, and the attendant problems of crime and violence associated with an uncontrolled and unregulated black market, could be eliminated, as was the case when alcohol prohibition was ended in 1933, by providing consumers with an alternative legal market.

#### **(c) Responsible Use**

Most importantly, marijuana smoking is not for kids and must be used responsibly by adults. As with alcohol consumption, it can never be an excuse for misconduct or other bad behavior. Driving or operating heavy equipment while impaired from marijuana should be prohibited. In addition, we recommend that responsible smokers adhere to emerging tobacco smoking protocols in public and private settings. The NORML Board of Directors has adopted the attached "Principles of Responsible Cannabis Use", also available on our web site ([www.norml.org](http://www.norml.org)), discussing acceptable conduct.

### **Brief History of Marijuana Prohibition**

Marijuana cultivation in the United States can trace its lineage some 400 years. For most of our nation's history, farmers grew marijuana -- then known exclusively as hemp -- for its fiber content. Colonialists planted the first American hemp crop in 1611 near Jamestown, Virginia. Soon after, King James I of Britain ordered settlers to engage in wide scale farming of the plant.<sup>1</sup> Most of the sails and ropes on colonial ships were made from hemp as were many of the colonists' bibles, clothing, and maps.<sup>2</sup>

According to some historians, George Washington and Thomas Jefferson cultivated marijuana and advocated a hemp-based economy.<sup>3</sup> Some colonies even made hemp cultivation compulsory, calling its production necessary for the "wealth and protection of the country."<sup>4</sup> Marijuana cultivation continued as an agricultural staple in America through the turn of the 20th century.

Marijuana first earned recognition as an intoxicant in the 1920s and 1930s. Recreational use of the drug became associated primarily with Mexican-American immigrant workers and the African-American jazz musician community. During this time, hemp was renamed "marihuana" and the plant's longstanding history as a cash crop was replaced with a new image: "The Devil's Weed."

In 1930, the federal government founded the Federal Bureau of Narcotics (FBN), headed by Commissioner Harry Anslinger. The group launched a misinformation campaign against the drug and enrolled the services of Hollywood and several tabloid newspapers. Headlines across the nation began publicizing alleged reports of marijuana-induced insanity and violence. Exaggerated accounts of violent crimes committed by immigrants reportedly intoxicated by marijuana became popularized. Once under the influence of the drug, criminals purportedly knew no fear and lost all inhibitions. For example, a news bulletin issued by the FBN in the mid-1930s purported that a user of marijuana "becomes a fiend with savage or 'cave man' tendencies. His sex desires are aroused and some of the most horrible crimes result. He hears light and sees sound. To get away from it, he suddenly becomes violent and may kill."<sup>5</sup>

Similar reports swept the country. A widely publicized issue of the Journal of Criminal Law and Criminology asserted that marijuana users are capable of "great feats of strength and endurance, during which no fatigue is felt. ... Sexual desires are stimulated and may lead to unnatural acts, such as indecent exposure and rape. ... [Use of marijuana] ends in the destruction of brain tissues and nerve centers, and does irreparable damage. If continued, the inevitable result is insanity, which those familiar with it describe as absolutely incurable, and, without exception ending in death."<sup>6</sup> A Washington Times editorial published shortly before Congress held its first hearing on the issue argued: "The fatal marihuana cigarette must be recognized as a deadly drug and American children must be protected against it."<sup>7</sup> This steady stream of propaganda influenced 27 states to pass laws against marijuana in the years leading up to federal prohibition and set the stage both culturally and politically for the passage of the "Marihuana Tax Act in 1937."

Rep. Robert L. Doughton of North Carolina introduced the Act in Congress on April 14, 1937 to criminalize the recreational use of marijuana through prohibitive taxation. The bill was the brainchild of Commissioner Anslinger who later testified before Congress in support of the bill.

Congress held only two hearings, totaling one hour of testimony, to debate the merits of marijuana prohibition.<sup>8</sup> Federal witness Harry Anslinger testified before the House Ways and Means Committee that "this drug is entirely the monster-Hyde, the harmful effect of which cannot be measured." He was joined by Assistant General Counsel for the Department of the Treasury, Clinton Hester, who affirmed that the drug's eventual effect on the user "is deadly." These statements summarized the federal government's official position and served as the initial justification for criminalizing marijuana smoking.<sup>9</sup>

The American Medical Association (AMA) represented the lone voice against marijuana prohibition before Congress. AMA Legislative Counsel Dr. William C. Woodward testified, "There is no evidence" that marijuana is a dangerous drug. Woodward challenged the propriety of passing legislation based only on newspaper accounts and questioned why no data from the Bureau of Prisons or the Children's Bureau supported the FBN's position. He further argued that the legislation would severely compromise a physician's ability to utilize marijuana's therapeutic potential. Surprisingly, the committee took little interest in Woodward's testimony and told the physician, "If you want to advise us on legislation, you ought to come here with some constructive proposals ... rather than trying to throw obstacles in the way of something that the federal government is trying to do."<sup>10</sup>

After just one hearing, the Ways and Means Committee approved the "Marihuana Tax Act." The House of Representatives followed suit on August 20 after engaging in only 90 seconds of debate.

During this abbreviated floor "discussion," only two questions were asked. First, a member of Congress from upstate New York asked Speaker Sam Rayburn to summarize the purpose of the bill. Rayburn replied, "I don't know. It has something to do with a thing called marijuana. I think it is a narcotic of some kind." The same representative then asked, "Mr. Speaker, does the American Medical Association support the bill?" Falsely, a member of the Ways and Means Committee replied, "Their Doctor Wharton (sic) gave this measure his full support ... [as well as] the approval [of] the American Medical Association."<sup>11</sup> Following this brief exchange of inaccurate information, the House approved the federal prohibition of marijuana without a recorded vote.

Doughton's bill sailed though the Senate with the same ease. The Senate held one brief hearing on the bill before overwhelmingly approving the measure. President Franklin Roosevelt promptly signed the legislation into law on August 2, 1937. The "Marihuana Tax Act" took effect on October 1, 1937.

Thus began the criminal prohibition of marijuana that remains in place today. It was surely not a thoughtful or considered process that led to the federal prohibition of marijuana, and that tradition persists today when marijuana policy is occasionally revisited.

### **Marijuana Prohibition: A Costly Failure That Must Be Ended**

Current marijuana policy is a dismal and costly failure. It wastes untold billions of dollars in law enforcement resources, and needlessly wrecks the lives and careers of millions of our citizens. Yet marijuana remains the recreational drug of choice for millions of Americans.

Congress needs to move beyond the "reefer madness" phase of our marijuana policy, where elected officials attempt to frighten Americans into supporting the status quo by exaggerating marijuana's potential dangers. This is an issue about which most members of Congress are simply out of touch with their constituents, who know the difference between marijuana and more dangerous drugs, and who oppose spending \$25,000 a year to jail an otherwise law-abiding marijuana smoker.

In fact, if marijuana smoking were dangerous, we would certainly know it; a significant segment of our population currently smoke marijuana recreationally, and there would be epidemiological evidence of harm among real people. No such evidence exists, despite millions of people who have smoked marijuana for years. So while we do need to fund more research on marijuana, especially research regarding medical uses -- which, by the way, has been delayed by the federal government for years -- we certainly know marijuana is relatively safe when used responsibly by adults.

It's time for Congress to let go of Reefer Madness, to end the crusade against marijuana and marijuana smokers, and to begin to deal with marijuana policy in a rational manner. The debate over marijuana policy in this Congress needs to be expanded beyond the current parameters to include consideration of (1) decriminalizing the marijuana smoker and (2) legalizing and regulating the sale of marijuana to eliminate the black market.

### **(a) Millions of Mainstream Americans Have Smoked Marijuana**

It is time to put to rest the myth that smoking marijuana is a fringe or deviant activity engaged in only by those on the margins of American society. In reality, marijuana smoking is extremely common and marijuana is the recreational drug of choice for millions of mainstream, middle class Americans. Government's surveys indicate more than 70 million Americans have smoked marijuana at some point in their lives, and that 18-20 million have smoked during the last year.<sup>12</sup> Marijuana is the third most popular recreational drug of choice for Americans, exceeded only by alcohol and tobacco in popularity.

A national survey of voters conducted by the American Civil Liberties Union (ACLU) found that 32% -- one third of the voting adults in the country -- acknowledged having smoked marijuana at some point in their lives.<sup>13</sup> Many successful business and professional leaders, including many state and federal elected officials from both political parties, admit they used marijuana. It is time to reflect that reality in our state and federal legislation, and stop acting as if marijuana smokers are part of the crime problem. They are not, and it is absurd to continue spending limited law enforcement resources arresting them.

Like most Americans, the vast majority of these millions of marijuana smokers are otherwise law-abiding citizens who work hard, raise families and contribute to their communities; they are indistinguishable from their non-smoking peers, except for their use of marijuana. They are not part of the crime problem and should not be treated like criminals. Arresting and jailing responsible marijuana smokers is a misapplication of the criminal sanction which undermines respect for the law in general.

Congress needs to acknowledge this constituency exists, and stop legislating as if marijuana smokers were dangerous people who need to be locked up. Marijuana smokers are simply average Americans.

### **(b) Marijuana Arrests Have Skyrocketed**

Current enforcement policies seem focused on arresting marijuana smokers. The FBI reports that police arrested 695,000 Americans, the highest number ever recorded, on marijuana charges in 1997 (the latest year for which data are available), and more than 3.7 million Americans this decade; *83% of these arrests were for simple possession, not sale.*<sup>14</sup> Presently one American is arrested on marijuana charges every 45 seconds. Approximately 44 % of all drug arrests in this

country are marijuana arrests. Despite criticism from some in Congress that President Clinton is "soft" on drugs, annual data from the Federal Bureau of Investigation's (FBI) Uniform Crime Report demonstrate that Clinton administration officials are waging a more intensive war on marijuana smokers than any other presidency in history. Marijuana arrests have more than doubled since President Clinton took office. This reality appears to conflict with recent statements by White House Drug Czar Barry McCaffrey that America "can not arrest our way out of the drug problem."

Unfortunately, this renewed focus on marijuana smokers represents a shift away from enforcement against more dangerous drugs such as cocaine and heroin. Specifically, marijuana arrests have more than doubled since 1990 while the percentage of arrests for the sale of cocaine and heroin have fallen 51%. Drug arrests have increased 31% in the last decade, and the increase in marijuana arrests accounts for most of that increase.

### **(c) Marijuana Penalties Cause Enormous Harm**

Marijuana penalties vary nationwide, but most levy a heavy financial and social impact for the hundreds of thousands of Americans who are arrested each year. In 42 states, possession of any amount of marijuana is punishable by incarceration and/or a significant fine. Many states also have laws automatically suspending the drivers' license of an individual if they are convicted of any marijuana offense, even if the offense was not driving related.

Penalties for marijuana cultivation and/or sale also vary from state to state. Ten states have maximum sentences of five years or less and eleven states have a maximum penalty of thirty years or more. Some states punish those who cultivate marijuana solely for personal use as severely as large scale traffickers. For instance, medical marijuana user William Foster of Oklahoma was sentenced to 93 years in jail in January 1997 for growing 10 medium-sized marijuana plants and 56 clones (cuttings from another plant planted in soil) in a 25-square-foot underground shelter. [15](#) Foster maintains that he grew marijuana to alleviate the pain of rheumatoid arthritis. Unfortunately, Foster's plight is not an isolated event; marijuana laws in six states permit marijuana importers and traffickers to be sentenced to life in jail. [16](#)

Federal laws prohibiting marijuana are also severe. Under federal law, possessing one marijuana cigarette or less is punishable by a fine of up to \$10,000 and one year in prison, the same penalty as for possessing small amounts of heroin and cocaine. In one extreme case, attorney Edward Czaprynski of Michigan served 14 months in federal prison for possession of 1.6 grams of marijuana before a panel of federal appellate judges reviewed his case and demanded his immediate release. [17](#) Cultivation of 100 marijuana plants or more carries a mandatory prison term of five years. Large scale marijuana cultivators and traffickers may be sentenced to death.

Federal laws also deny entitlements to marijuana smokers. Under legislation signed into law in 1996 states may deny cash aid (e.g., welfare, etc.) and food stamps to anyone convicted of felony drug charges. For marijuana smokers, this includes most convictions for cultivation and sale, even for small amounts and nonprofit transfers. More recently, Congress passed amendments in 1998 to the Higher Education Act which deny federal financial aid to any student with any drug conviction, even for a single marijuana cigarette. No other class of offense, including violent offenses, predatory offenses or alcohol-related offenses, carries automatic denial of federal financial aid eligibility. While substance abuse among our young people is a cause for concern, closing the doors of our colleges and universities, making it more difficult for at-risk

young people to succeed, is not an appropriate response to a college student with a minor marijuana conviction.

Even those who avoid incarceration are subject to an array of punishments that may include submitting to random drug tests, probation, paying for mandatory drug counseling, loss of an occupational license, expensive legal fees, lost wages due to absence from work, loss of child custody, loss of federal benefits, and removal from public housing. In some states, police will notify the employer of people who are arrested, which frequently results in the loss of employment.

In addition, under both state and federal law, mere investigation for a marijuana offense can result in the forfeiture of property, including cash, cars, boats, land, business equipment, and houses. The owner does not have to be found guilty or even formally charged with any crime for the seizure to occur; 80% of those whose property is seized are never charged with a crime. Law enforcement can target suspected marijuana offenders for the purpose of seizing their property, sometimes with tragic results. For example, millionaire rancher Donald Scott was shot and killed by law enforcement officials in 1992 at his Malibu estate in a botched raid. Law enforcement failed to find any marijuana plants growing on his property and later conceded that their primary motivation for investigating Scott was to eventually seize his land. [18](#)

State and federal marijuana laws also have a disparate racial impact on ethnic minorities. While blacks and Hispanics make up only 20 percent of the marijuana smokers in the U.S., they comprised 58 percent of the marijuana offenders sentenced under federal law in 1995. [19](#) State arrest and incarceration rates paint a similar portrait. For example, in Illinois, 57 percent of those sent to prison for marijuana in 1995 were black or Hispanic. [20](#) In California, 49 percent of those arrested for marijuana offenses in 1994 were black or Hispanic. [21](#) And in New York state, 71 percent of those arrested for misdemeanor marijuana charges in 1995 were nonwhite. [22](#)

Arresting and jailing otherwise law-abiding citizens who smoke marijuana is a wasteful and incredibly destructive policy. It wastes valuable law enforcement resources that should be focused on violent and serious crime; it invites government into areas of our private lives that are inappropriate; and it frequently destroys the lives, careers and families of genuinely good citizens. It is time to end marijuana prohibition.

### **Decriminalization Is A Common Sense Option**

In 1972, a blue-ribbon panel of experts appointed by President Richard Nixon and led by former Pennsylvania Governor Raymond Shafer concluded that marijuana prohibition posed significantly greater harm to the user than the use of marijuana itself. The National Commission on Marijuana and Drug Abuse recommended that state and federal laws be changed to remove criminal penalties for possession of marijuana for personal use and for the casual distribution of small amounts of marijuana. [23](#) The report served as the basis for decriminalization bills adopted legislatively in 11 states during the 1970s.

A number of other prestigious governmental commissions have examined this issue over the last 25 years, and virtually all have reached the same conclusion: the purported dangers of marijuana smoking have been greatly overblown and the private use of marijuana by adults should not be a criminal matter. [24](#) What former President Jimmy Carter said in a message to Congress in 1977, citing a key finding of the Marijuana Commission, is equally true today:

"Penalties against drug use should not be more damaging to an individual than the use of the drug itself. Nowhere is this more clear than in the laws against possession of marijuana in private for personal use."[25](#)

**(a) Favorable Experience with Decriminalization in the US**

Led by Oregon in 1973, 11 states adopted policies during the 1970s that removed criminal penalties for minor marijuana possession offenses and substituted a small civil fine enforced with a citation instead of an arrest.[26](#) Today, approximately 30% of the population of this country live under some type of marijuana decriminalization law, and their experience has been favorable. The only U.S. federal study ever to compare marijuana use patterns among decriminalized states and those that have not found, "Decriminalization has had virtually no effect on either marijuana use or on related attitudes about marijuana use among young people."[27](#) Dozens of privately commissioned follow up studies from the U.S. and abroad confirm this fact.[28](#)

Decriminalization laws are popular with the voters, as evidenced by a 1998 state-wide vote in Oregon in which Oregonians voted 2 to 1 to reject a proposal, earlier adopted by their legislature, that would have reimposed criminal penalties for marijuana smokers. Oregonians clearly wanted to retain the decriminalization law that had worked well for nearly 30 years.

Since the Shafer Commission reported their findings to Congress in 1972 advocating marijuana decriminalization, over ten million Americans have been arrested on marijuana charges. Marijuana prohibition is a failed public policy that is out of touch with today's social reality and inflicts devastating harm on millions of citizens.

**Conclusion**

It is time we adopted a marijuana policy that recognizes a distinction between use and abuse, and reflects the importance most Americans place on the right of the individual to be free from the overreaching power of government. Most would agree that the government has no business knowing what books we read, the subject of our telephone conversations, or how we conduct ourselves in the bedroom. Similarly, whether one smokes marijuana or drinks alcohol to relax is simply not an appropriate area of concern for the government.

By stubbornly defining all marijuana smoking as criminal, including that which involves adults smoking in the privacy of their home, government is wasting police and prosecutorial resources, clogging courts, filling costly and scarce jail and prison space, and needlessly wrecking the lives and careers of genuinely good citizens.

It is time that Congress acknowledge what millions of Americans know to be true: there is nothing wrong with the responsible use of marijuana by adults and it should be of no interest or concern to the government.

In the final analysis, this debate is only incidentally about marijuana; it is really about personal freedom.

Attachments:

1. [NORML's Principles of Responsible Cannabis Use](#)

2. [Decriminalization Endorsements From Government Commissions](#)
3. [NORML Statement on the Medical Use of Marijuana and H.R. 912](#)

## Endnotes

- 1 Lester Grinspoon, M.D., Marijuana Reconsidered (second edition) (San Francisco: Quick American Archives, 1994), p.11
- 2 Grinspoon, p. 11; "The Hemp Industry in the United States" in USDA Yearbook (Washington, DC: U.S. Government Printing Office, 1901, pp. 541-2.
- 3 Grinspoon, p. 12; John Roulac, Industrial Hemp:Practical Products -- Paper to Fabric to Cosmetics (ojai, California: Hemtech Publishing, 1995), p. 8; Rowan Robinson, The Great Book of Hemp (Rochester, Vermont: Park Street Press, 1996 pp. 129-133.
- 4 Wayne D. Rasmussen, ed., Readings in the History of American Agriculture (Urbana, Illinois: University of Illinois Press, 1969), p. 296; Roulac, p.7.
- 5 Grinspoon, p. 17.
- 6 Robinson, p. 147.
- 7 U.S. Congress, House Ways and Means Committee, Taxation of Marijuana, Hearings on H.R. 6385, 75th Congress, 1st Session, April 27, 1937, statement of Clinton Hester.
- 8 Richard J. Bonnie, The History of the Non-Medical Use of Drugs in the United States: A Speech to California Judges Association 1995 Annual Conference, (reprinted not for profit by Iowa NORML, 1997).
- 9 U.S. Congress, House Ways and Means Committee, Taxation of Marijuana, Hearings on H.R. 6385, statements of Harry Anslinger and Clinton Hester.
- 10 U.S. Congress, House Ways and Means Committee, Taxation of Marijuana, Hearings on H.R. 6385, statements of William C. Woodward and Rep. Robert L. Doughton.
- 11 U. S. Congress, House of Representatives, Congressional Record, 75th Congress, 1st session, June 14, 1937, p. 5575.
- 12 Substance Abuse and Mental health Services Administration Office of Applied Studies, 1997 National Household Survey on Drug Abuse (Washington, DC: U.S. Department of Health and Human Services, 1998).
- 13 American Civil Liberties Union, National Survey of Voters' Opinions on the Use and Legalization of marijuana for Medical Purposes (Washington, DC: March 31, 1995 - April 5, 1995).

- 14** Federal Bureau of Investigation Uniform Crime Reports, Crime in the United States: 1997 (Washington, DC: U.S. Government Printing Office, 1997- 1998).
- 15** Adam Smith, "Pot of Trouble," Reason Magazine, May 1997, pp. 47-48.
- 16** Morgan and Zimmer, Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence (New York City: Lindesmith Center, 1997).
- 17** "Thou Hath No Shame: The Cruprynski Affair." The Champion, September/October 1995, pp. 27-29.
- 18** Daryl Kelley, "Investigation of Deputy Urged in Fatal Drug Raid," Los Angeles Times, March 31, 1993, p. B4.
- 19** Morgan and Zimmer, Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence (The Lindesmith Center: New York, 1997).
- 20** Ibid; Illinois Department of Corrections, personal communications with Drs. Morgan and Zimmer, October 1, 1996.
- 21** Ibid.; California Department of Justice, Crime and Delinquency in California, 1994 (Sacramento, 1995).
- 22** Ibid.; New York State Division of Criminal Justice Services, Characteristics of 1995 Adult Arrestees for Marijuana (New York City, 1996).
- 23** National Commission on Marijuana and Drug Abuse, Marijuana A Signal of Misunderstanding, (Washington, DC: U.S. Government Printing Office, 1973).
- 24** New Zealand Parliamentary Health Select Committee, "Inquiry into the Mental Health Effects of Cannabis," Parliament House, Wellington, New Zealand, 1998; Canadian Centre on Substance Abuse National Working Group on Addictions, "Cannabis Control in Canada: Options Regarding Possession," Toronto, 1998; Connecticut Law Review Commission, "Drug Policy in Connecticut and Strategy Options: Report to the Judiciary Committee of the Connecticut General Assembly," Hartford, CT, 1997; Drug & Alcohol Services Council (South Australia), Monitoring, Evaluation & Research Unit, "The Effects of Cannabis Legislation in South Australia on Levels of Cannabis Use," Parkside, South Australia, 1991; California Research Advisory Panel, "Twentieth Annual Report of the Research Advisory Panel," Sacramento, CA, 1989; Committee on Substance Abuse and Habitual Behavior, Commission on Behavioral and Social Sciences on Education, National Research Council, "An Analysis of Marijuana Policy," National Academy Press, Washington, D.C., 1982, California Legislature Senate Select Committee on Control of Marijuana, "Final Report: Marijuana: Beyond Misunderstanding," Sacramento, CA, 1974; First Report of the National Commission on Marijuana and Drug Abuse, "Marijuana: Signal of Misunderstanding (The Shafer Report)," U.S. Govt. Printing Office, Washington, D.C. 1972; Le Dain Commission, "Report of the Commission of Inquiry into the Non-Medical Use of Drugs," Queens Printer, Ottawa, Canada, 1972; Advisory Committee on Drug Dependence, "Cannabis: Report by the

Advisory Committee on Drug Dependence (The Wooten Report),” Her Majesty’s Stationary Office, London, 1968.

**25** Message to Congress, August 2, 1977.

**26** Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, Oregon.

**27** Johnson, L.D., O’Malley, P.M., and Bachman, J.G. “Marijuana Decriminalization: The Impact on Youth 1975-1980,” Monitoring the Future, Occasional Paper Series, paper 13, Institute for Social Research, University of Michigan, 1981.

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