

# The INDEPENDENT

NEWSLETTER OF  
THE INDEPENDENT INSTITUTE



VOLUME XVI, NUMBER 2

## Forums: Iraq Solutions and Food Biotech

## New Books on Liberty and Tort Reform

The Independent Institute inaugurated its new office in Washington, D.C., on Feb. 16th with a forum on U.S. policy in Iraq. The forum showcased a distinguished panel of experts, representing diverse perspectives and backgrounds in scholarship, geopolitical analysis, and journalism. They tackled tough questions on what the U.S. approach should be to Iraq's constitutional crisis, ongoing sectarian violence, and fledgling civil war.

**Lawrence Korb** (Senior Fellow at the Cen-



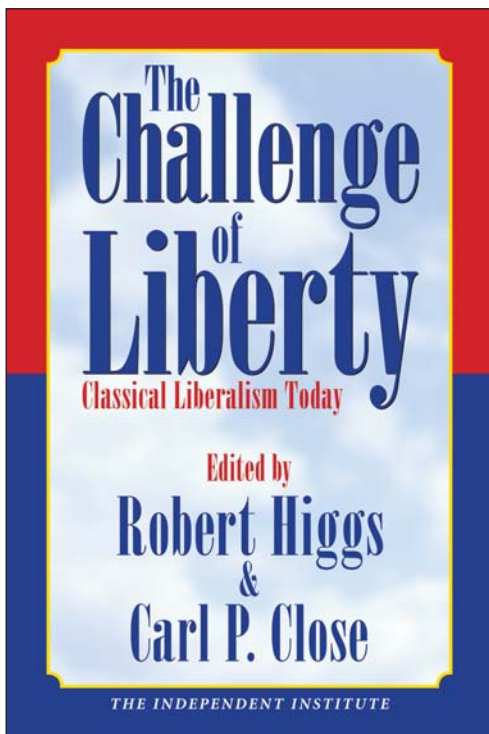
*Lawrence Korb, former Assistant Secretary of Defense, addressed the Independent Policy Forum on the future of Iraq.*

ter for American Progress) discussed the military overstretch in the Iraq war, and why it is necessary to rethink U.S. interventionist foreign policy. **Lt. Gen. William E. Odom** (Senior Fellow, Hudson Institute; former Director, NSA) called for leaving Iraq and lamented the degree

*(continued on page 3)*

The Independent Institute recently published two new books: *The Challenge of Liberty: Classical Liberalism Today* and *Judge and Jury: American Tort Law on Trial*.

• Classical liberalism has enjoyed an intellectual renaissance in recent years, as scholars from a wide range of disciplines have breathed new life into a rich tradition pioneered by John Locke, Adam Smith, and Alexis de Tocqueville. In *The Challenge of Liberty*, edited by **Robert**



**Higgs** and **Carl P. Close**, eighteen economists, historians, and philosophers re-examine the ideals of classical liberalism and show how it supports such pillars of free societies as individual rights, human dignity, market processes, and the rule of law.

“The founding of the American Republic

*(continued on page 3)*

## IN THIS ISSUE:

Independent Policy Forum.....	1
New Books on Liberty and Tort Reform .....	1
President’s Letter .....	2
Independent Institute in the News .....	4
<i>The Independent Review</i> .....	5
Summer Seminar for Students .....	8



## President's Letter:

# Making Ideas Count

On January 17, 2005, we released *The Way Out of Iraq*, by Senior Fellow **Ivan Eland**, the first major study to propose partitioning Iraq based on its three major ethnic and religious groups, and the response has been overwhelmingly positive.

On February 16, 2006, we inaugurated our new Washington office with the Policy Forum, “**Innovative Solutions for Iraq**” (see p. 1), at which Dr. Eland again proposed partitioning Iraq as the solution to the escalating conflict, allowing a successful U.S. withdrawal.

Within weeks, Sen. Joseph Biden of the Senate Foreign Relations Committee, and Leslie Gelb, former President of the Council on Foreign Relations, proposed similar ideas in a *New York Times* article, followed by favorable articles in the *Washington Post* and elsewhere. All echoed Dr. Eland's report, recognizing that events verging on civil war were already signaling a de facto partition and noting the need to allow religious and ethnic separation. The Institute's work further shows that neither the U.S. nor the insurgents can win, “nation building” fails repeatedly (see p. 5), and decentralization has resolved conflicts in the Balkans, Eastern Europe, and the U.S. itself.

While more than 80% of Americans initially supported the war in Iraq, 60% now want a timetable set to withdraw U.S. forces (May 2006 CBS/*New York Times* poll). Additionally, an ABC/*Washington Post* poll found that 59% believe the war was a mistake, 52% believe the government deliberately misled the public, and 76% consider the number of U.S. casualties unacceptable.

Why didn't such a proposal emerge elsewhere despite widespread attention? The answer is no different from why so few question U.S. policies in the first place. While others are busy positioning themselves in the Washington power game, the Independent Institute focuses on seeking the truth, regardless of polls or interest-group politics.

In this light, recent Institute books like *The Challenge of Liberty and Judge and Jury* (p. 1), our journal *The Independent Review* (p. 5), and other programs continue to provide such insights. Your tax-deductible support as an **Independent Associate Member** makes this truly unique program—and its growing impact—possible. We would welcome and appreciate your involvement.

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**Independent Policy Forums: Innovative Solutions for Iraq • Frankenfood Myth**

(continued from page 1)

to which American influence throughout the world has been squandered by an unnecessary war. **Peter Brookes** (Senior Fellow, Heritage Foundation) defended U.S. foreign policy, suggesting that more international financial support would greatly assist in rebuilding Iraq. **Gareth Porter** (Independent Analyst, Inter Press Service) concluded that only by pulling out of Iraq could the U.S. government make the terrorist threat there subside.

**Ivan Eland** (Senior Fellow and Director of The Independent Institute’s Center on Peace and Liberty) discussed the idea of Iraqis partitioning their country or forming a loose, decentralized confederation to reduce the threat of an explosive civil war. The forum was inspired in part by Eland’s research on Iraq having an impact in opinion-making circles, as more pundits

and even legislators have asked whether a partitioned Iraq would be more successful than a centrally and coercively unified country.

These discussions of non-partisan, fundamental reforms that actually hold hope of fixing many of our country’s social, economic, and political problems is the goal of the Independent Institute. In opening an office in Washington, D.C., the Institute continues its mission to maintain high standards of principle and scholarly rigor, as well as our dedication to freedom, to breathe much-needed new life into the otherwise narrow and partisan debate so typical in the nation’s capital.

For a DVD or CD of “Innovative Solutions for Iraq,” see [www.independent.org/store](http://www.independent.org/store).

- The debate over genetically modified food

(continued on page 7)



(Left to right) Lt. Gen. William E. Odom (Senior Fellow, Hudson Institute), Peter Brookes (Senior Fellow, Heritage Foundation), Gareth Porter (Independent Analyst, Inter Press Service), and Ivan Eland (Senior Fellow, Independent Institute’s Center on Peace and Liberty) addressed the Independent Policy Forum, “Innovative Solutions for Iraq.”

**New Books: The Challenge of Liberty • Judge and Jury**

(continued from page 1)

and to varying degrees the 19th century constitutions of many European states, along with the relative peace, growing international trade, and buoyant spirit of progress and optimism that spread across Europe and beyond before World War I, constituted victories for classical liberalism,” write Higgs and Close in the book’s introduction.

What enabled the early classical liberals to spearhead the abolition of slavery, the liberalization of the economy from mercantilist policies that harmed consumers, and the spread of peace and freedom during the 19th century? What questions are contemporary classical liberals asking each other about how best to translate their “intellectual” gains into “practical” gains, in the hope of fostering a new era of growing liberty, peace, and prosperity?

*The Challenge of Liberty* addresses these questions and more. In Part I, Nobel Laureate **James M. Buchanan**, **Dwight Lee**, **Steven Horwitz**, and **Anthony de Jasay** examine the rise, fall, rebirth, and vitality of classical

liberalism. Part II examines the relationship between freedom and the moral society, with

(continued on page 6)

**Praise for**  
*The Challenge of Liberty*

“The continuing vitality and relevance of the classical liberal tradition is on ample display in *The Challenge of Liberty*.”  
—**Bruce J. Caldwell**, Professor of Economics, U. of North Carolina, Greensboro

“The authors have maintained consistently high standards of scholarship, as well as a refreshing capacity to provoke readers into a reconsideration of long-held views.”  
—**Nathan Rosenberg**, Professor of Public Policy (Emeritus), Stanford University

“*The Challenge of Liberty* provides probing examinations of the case for liberty.”  
—**Eric Mack**, Professor of Philosophy, Tulane University

## *The Independent Institute in the News*

• **Opinion:** **Ivan Eland** wrote opinion articles for *American Prospect*, *Providence Journal*, *USA Today*, and *In These Times*. **Alvaro Vargas Llosa's** op-eds appeared in Argentina's *Clarín*, El Salvador's *El Diario De Hoy*, *La Prensa* in Nicaragua, *El Panama America*, *Providence Journal*, *Silicon Valley/San Jose Business Journal*, *Holland Sentinel*, *San Francisco Chronicle*, and *Investor's Business Daily*. **Benjamin Powell's** articles on immigration, economics, and housing appeared in *Nashville Business Journal*, *East Bay Business Times*, *Providence Journal*, *Dallas Morning News*, Mexico's *Vanguardia*, *Sacramento Business Journal*, *Daily News of Los Angeles*, *Phoenix Business Journal*, *Silicon Valley/San Jose Business Journal*, and *Riverside Press-Enterprise*. Additionally the *Wall Street Journal* ran an op-ed by **S. Fred Singer**, **William Watkins** appeared in *Herald Journal*, and *The Freeman* published an article by **Robert Higgs**.



*Independent Institute Senior Fellow Robert Higgs is interviewed on Czech TV.*

• **Radio:** The Dubai Ports World controversy, the CIA leak investigation, talks of nuclear development in Iran, and the ongoing war in Iraq all kept **Ivan Eland** busy with interviews on KRXA's "Peter B. Collins"; "Bev Smith Show" on KSAC, WCHB, WAMO, WHAT, WAOK, and WDBZ; Newsweek on Air; Boston's WBZ; Atlanta's WRFG; WRYY's "Garland Nixon Show" in Washington, DC and Annapolis, MD; KDKA's "Chris Moore Show" of Pittsburgh; KAHL's "Carl Wigglesworth Show"; CIUT in Toronto; USA Radio Network's "Michael Dresser"; WSLB's "Richard Wilson Show"; WBT in Charlotte; KTSA in San Antonio; Westwood One's "Jim

Bohannon"; KIRV in Fresno, CA; WCEV Radio Islam of Chicago; the Australian Broadcasting Company, Louisiana NPR; Utah NPR; Mississippi's WAKK; "Ed Norris Show" on WHFS in Baltimore; WGIB in Illinois; George Putnam Show; KPSI in Palm Springs; WPHT; and Louisiana Live. Busy with much international travel, **Alvaro Vargas Llosa** appeared on Voice of America, Sweden's Konflikt, CHQR "The World Tonight" in Canada, Radio Left, La Ventana, and a series of other national and international shows. Additionally, **Benjamin Powell** was interviewed on the economics of illegal immigration on San Francisco's KCBS.

• **Television:** **Ivan Eland** discussed Dubai Ports World and security on Associated Press, Al-Jazeera, and CNN's "Lou Dobbs Tonight." **Alvaro Vargas Llosa** appeared on Spanish-language programming in Miami with Oscar Haza as well as TZ Azteca in Mexico. Additionally, **Benjamin Powell** discussed immigration on San Francisco's KRON4 News, and Independent Policy Forums on eminent domain and the war in Iraq aired multiple times on C-SPAN's "BookTV."

• **Book Reviews:** *Strange Brew* appeared in *Beverage*, *Re-Thinking Green* appeared in *Environment and Climate News*, *The Voluntary City* and *Resurgence of the Warfare State* appeared in *Orange County Register*, and *Restoring Free Speech and Liberty on Campus* appeared in *The Futurist* and *Capital Times*.

• **Additional Highlights:** Print interviews with our experts were published in *Beijing Review*, *Pittsburgh Tribune-Review*, *Desert Sun*, and a host of Latin American papers. Additionally, our experts were quoted in *Associated Press*, Spain's *El Pais*, Germany's *Der Spiegel*, University Wire, *U.S. News & World Report*, *San Jose Mercury News*, *San Francisco Chronicle*, EFE, Agence France Presse, *Berkeley Daily Planet*, *Voice of America News*, *Australian Broadcasting Company*, *Pittsburgh Tribune-Review*, *New York Post*, *Daily News of Los Angeles*, *Seattle Post-Intelligencer*, Salon.com, *Newsday*, *Vancouver Sun*, *National Review*, *Latin American Weekly Report*, and *American Spectator*. •

*The Independent Review***Treating Doctors as Drug Dealers • Nation Building**

Among the articles in the spring 2006 issue of *The Independent Review* are two standouts that challenge the premises of federal power in two key areas.

**A Shortage of Pain Doctors**

- Undertreated physical pain is an important medical problem today. An estimated 75 to 100 million Americans suffer from pain caused by cancer, lower back disorders, arthritis, migraine and cluster headaches, HIV/AIDS, accidents, and other maladies. It gets worse: Only 4,000 to 5,000 doctors specialize in pain management—about one doctor for every 6,000 chronic pain patients, according to one industry expert.

The shortage of pain doctors is due partly to the relatively new, dynamic nature of pain medicine as well as the aversion by many to painkillers containing narcotics. In addition, government policy has played a significant role in making the shortage worse, argues **Ronald T. Libby** (University of North Florida) in “Treating Doctors as Drug Dealers: The Drug Enforcement Administration’s War on Prescription Painkillers.”

According to Libby, overzealous federal drug officials have demonized pain doctors for allegedly overprescribing painkillers and thereby turning patients into prescription drug addicts. Since 2001, federal and state prosecutors have accelerated their indictments and prosecutions of pain doctors with a series of well-publicized criminal indictments, which have “frightened many physicians out of the field of pain management altogether,” writes Libby, whose article complements a 2001 study which found that 40 percent of California primary-care physicians reported that “fear of investigation affected how they treat chronic pain.”

Libby gives several reasons for believing the government’s campaign against pain doctors is unwarranted. First, many of the few patients whose deaths were attributed to oxycondone painkillers have also had other drugs in their system, suggesting that oxycondone is not necessarily the culprit. Second, many patients addicted to prescription painkillers have had prior drug-abuse problems, suggesting that pain doctors are not responsible for these addicts getting hooked. Third, government officials have underestimated the ease with which the drugs in question can be obtained without a doctor’s prescription, including by theft and over the Internet. Fourth, prosecutions have coincided with a change toward self-financing of some drug enforcement programs, such as the DEA’s Diversion Control Program, suggest-

ing that perverse incentives make overzealous prosecutions more likely.

“The most obvious (though least likely) course of action to deal with these problems would be for Congress to end the costly, regrettable war on drugs,” writes Libby. “Barring that course, the best way for law enforcement officials to battle the problem of diversion would be to combat the theft of the drugs from warehouses, manufacturing facilities, and trucks en route to pharmacies. More important, the DEA, the Department of Justice, Congress, and state and local authorities should end the senseless persecution of doctors and allow them to pursue the treatment options they believe are in the best interests of their patients, free from the watchful eye of law enforcement.”

See *The Independent Review* (Spring 2006) at [www.independent.org/publications/tir/article.asp?issueID=45&articleID=573](http://www.independent.org/publications/tir/article.asp?issueID=45&articleID=573).

**Does Nation Building Work?**

- Building stable democracies in place of “failed states” has been one of the most talked-about foreign-policy topics in recent years. Advocates of democratic nation building often offer the success stories of postwar Japan and Germany as models worth emulating. But are those two countries representative of nation-building efforts? What is the overall track record of attempts to plant liberal democracies in lands ruled by lawlessness or tyranny?

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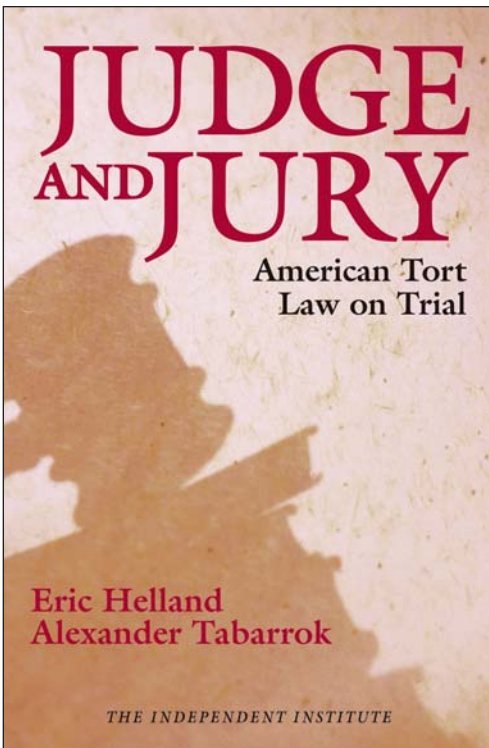
## New Books: *The Challenge of Liberty* • *Judge and Jury*

(continued from page 3)

chapters by **Charles Rowley**, **Daniel Klein**, **Suri Ratnapala**, and **Linda Raeder**. Part III focuses on the challenge of securing liberty, particularly on the requirements for a robust, pro-liberty constitution, with chapters by **Suri Ratnapala**, **James A. Dorn**, **Jeffrey Rogers Hummel**, and **Hans Sherrer**. Part IV explores classical liberalism's affinity for freedom of conscience, as against "group think," and examines contemporary threats to individualism via government schooling, nationalism, blind group loyalty, and the politicization of mental health, with chapters by **James Otteson**, **Anthony de Jasay**, **Laurie Calhoun**, and **Thomas Szasz**. Part V concludes with responses to criticisms against classical liberalism leveled by Robert Nozick, John Gray, John Rawls, and John Roemer in chapters written by **Charles Rowley**, **Daniel Klein**, **Quentin Taylor**, and **Michael Wohlgenuth**.

To purchase copies of *The Challenge of Liberty*, see [www.independent.org/store/book\\_detail.asp?bookID=63](http://www.independent.org/store/book_detail.asp?bookID=63).

• Is the U.S. tort system, including product liability and medical malpractice, in crisis? Are juries too easily swayed by emotion? How does the method by which judges are selected



affect tort awards when a defendant comes from another state? Do contingent fees create a conflict of interest between plaintiffs' lawyers and their clients?

In their new book, *Judge and Jury: American Tort Law on Trial*, economists **Eric Hel-**

**land** and **Alexander Tabarrok** subject these questions to scrutiny—and reveal several surprising findings:

Tort awards vary by county poverty rates and by ethnicity. As county poverty rates increase from 4.1% to 21.9%, the average award triples from just over \$400,000 to just over \$1.3 million. For every percentage point increase in the poverty rate, awards increase by about \$34,000. A percentage point increase in black and Hispanic poverty rates raises awards by \$20,000 and \$78,000, respectively, but the same percentage increase in white poverty rates decreases awards by \$8,644.

### Praise for *Judge and Jury*

*"Helland and Tabarrok's dispassionate analysis of the effects of race and poverty on jury behavior is a model for all intelligent discussions of legal reform."*

—**Richard A. Epstein**, James Parker Hall Distinguished Service Professor of Law, University of Chicago

*"Judge and Jury reveals a system that hasn't gone wild, as some would argue, but is sufficiently unreliable to more than warrant the broad distrust of American courts."*

—**Philip K. Howard**, author, *The Death of Common Sense*

*"Judge and Jury should be of great interest to anyone interested in the U.S. tort system."*

—**Mark Geistfeld**, Professor of Law, New York University

Partisan elections encourage judges to rule in favor of larger awards. In cases involving out-of-state defendants and in-state plaintiffs, the average award is \$363,000 higher in states with partisan elections compared to states with nonpartisan elections. Approximately \$230,000 of this is due to a bias against out-of-state defendants, and the rest is due to generally higher awards against business in partisan states.

Helland and Tabarrok also find that contingent fees help reduce frivolous lawsuits because a lawyer on contingent fee is unlikely to take a potential losing case. They also look at reform proposals, including the Class-Action Fairness Act of 2005 and limitations on judges and juries by statute and by contract.

To purchase copies of *Judge and Jury: American Tort Law on Trial*, see [www.independent.org/store/book\\_detail.asp?bookID=62](http://www.independent.org/store/book_detail.asp?bookID=62). •

## **Independent Policy Forums: Innovative Solutions for Iraq • Frankenfood Myth**

(continued from page 3)

was the topic of “The Frankenfood Myth,” the December 13th Independent Policy Forum, held in Oakland, Calif.

Is the use of gene-splicing technology risky per se? Are fears of this technology out of sync with the potential risks? What are the greatest health risks we are likely to encounter?

**Henry I. Miller**, Former Director of the FDA’s Office of Biotechnology (and co-author, *The Frankenfood Myth: How Protest and Politics Threaten the Biotech Revolution*), and renowned biochemist **Bruce Ames** (U.C. Berkeley) addressed these and related questions.

One point often ignored by activists, Miller said, is that delaying the use of gene-spliced food crops itself carries risks. In the fall and winter of 2002 to 2003, residents of Zambia and Zimbabwe suffered a severe food shortage while gene-spliced, genetically improved corn shipped from industrialized countries sat untouched in local warehouses. Although the same kind of corn had been consumed daily by millions of Americans without ill effects, officials insisted it was too risky because it had not been proven safe for human consumption.

That no ill effects had been observed shouldn’t seem surprising because, according to Miller, “neither the use of gene-splicing technology nor moving genes per se makes

organisms unsafe. What makes a difference is not the source of a gene that’s being moved, but its function and the way it interacts in its new environment.”

Bruce Ames then discussed misconceptions about cancer risks that have predated fears of genetically modified food crops.

One prevalent myth, he said, is that natural chemicals are safer than synthetic chemicals. In fact, about 60 percent of all chemicals are carcinogenic, and one of the most potent carcinogens known—afflotoxin—is made by a mold. Small exposures to carcinogens seldom cause cancer, however.

Rather than worry about exposure to parts per billion of a pesticide, Ames said, we should improve our unbalanced, unhealthy diets,

(continued on page 8)



(Left to right) **Henry Miller** (former FDA official) and **Bruce Ames** (U.C. Berkeley) addressed the Independent Policy Forum on “The Frankenfood Myth.”

## **The Independent Review: Treating Doctors as Dealers • Nation Building**

(continued from page 5)

In “Does Nation Building Work?” independent scholar **James L. Payne** examines the history of democratic nation building—i.e., invading a country with the establishment of a lasting democracy being a key objective. (Payne excludes from his analysis purely peacekeeping missions, punitive missions, and the establishment of military outposts without interfering significantly in local politics.)

Payne’s findings should give pause to would-be nation builders. Since 1850, Britain and the United States have sent military troops abroad 51 times to engage in democratic nation building but have left behind lasting democracy in only 14 of those countries—a success rate of only 27 percent.

However, even this low number overstates the weak case for nation building, Paynes argues, because it includes instances in which a country

probably would have become democratic even without outside military intervention. The Dominican Republic, for example, appears to have been heading toward democracy just prior to the U.S. occupation of the mid-1960s.

Payne concludes that advocates of nation building—theorists as well as military and bureaucratic “practioners”—lack the knowledge to achieve their announced goals.

“The dirty little secret of nation building is that *no one knows how to do it*,” he writes. “Huge amounts of government and foundation money have been poured into this question, and, in response to the dollars, the scholars and bureaucrats have produced only reams of verbose commentary.”

See “Does Nation Building Work?” by James L. Payne at [www.independent.org/publications/tir/article.asp?issueID=45&articleID=576](http://www.independent.org/publications/tir/article.asp?issueID=45&articleID=576). ●

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for Students: August 7–11**

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### Summer Seminar Faculty

Clockwise from upper left: **Brian Gothberg** (Academy of Arts U.), **Benjamin Powell** (San Jose State U.), **Edward Stringham** (San Jose State U.), **Fred Foldvary** (Santa Clara U.), and **James Ahiakpor** (California State U., East Bay).

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## Independent Policy Forums

(continued from page 7)

which cause about one third of all cancers—about the same percentage caused by smoking.

For a transcript of “The Frankenfood Myth,” see [www.independent.org/store/events/event\\_detail.asp?eventID=113](http://www.independent.org/store/events/event_detail.asp?eventID=113).●

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