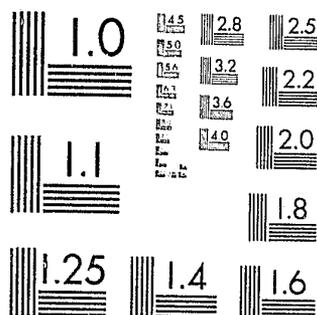


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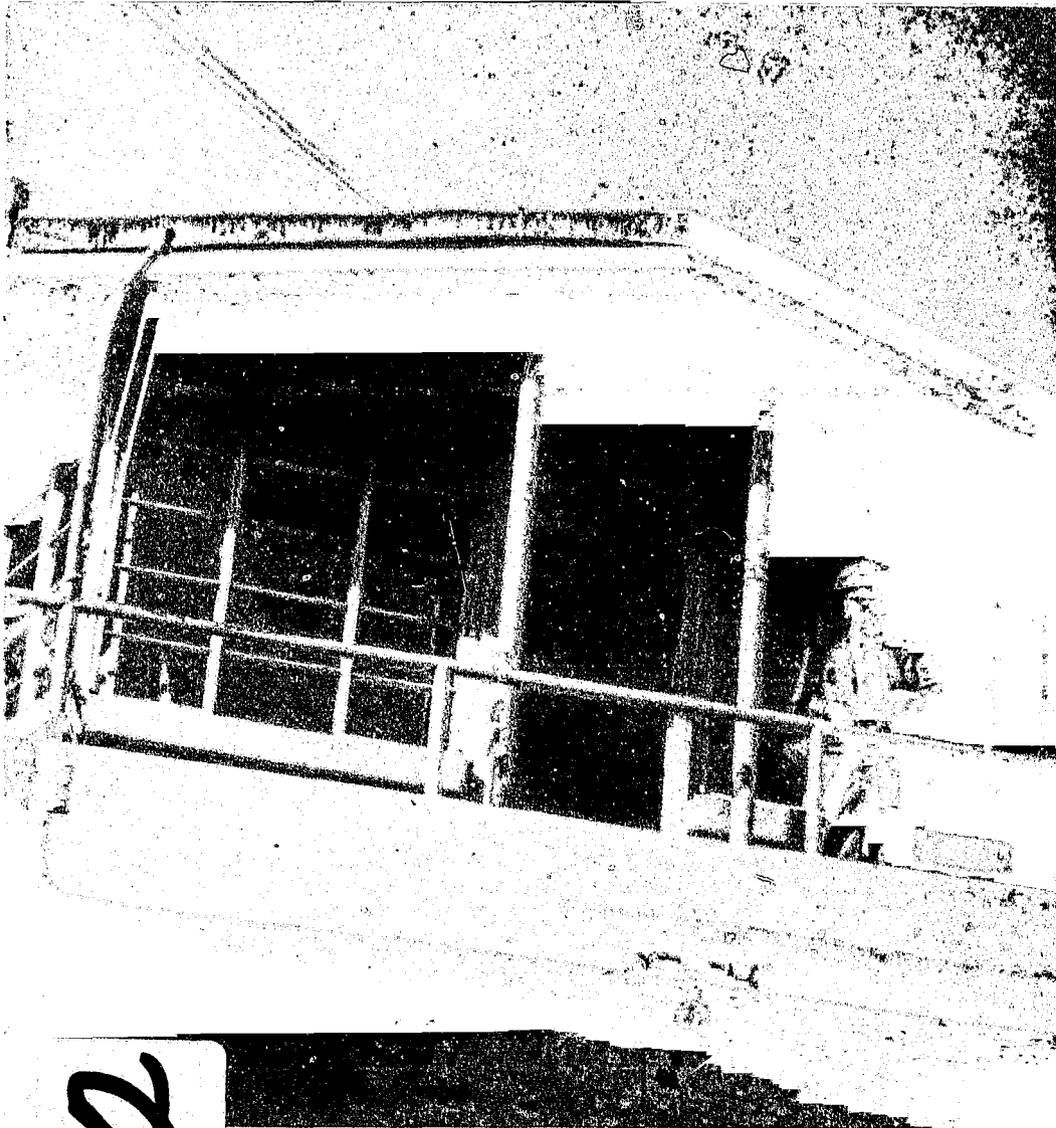
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DO WE NEED MORE PRISONS?

A plea for planning before building

ACQUISITION

by

Milton G. Rector

President, National Council on Crime and Delinquency

FEDERAL BUREAU OF PRISONS
FISCAL YEAR 1978 BUDGET REQUEST

Statement by Milton G. Rector, President,
National Council on Crime and Delinquency

Before the: Subcommittee on State, Justice,
Commerce and Judiciary of
U.S. House of Representatives,
Appropriations Committee

April 5, 1977

I am pleased to appear before this subcommittee today on behalf of the National Council on Crime and Delinquency, a non-governmental, public interest organization, to discuss the Bureau of Prisons' 1978 budget request. I wish to direct my attention to the portion of that request which would support planning and construction of five new federal prisons and jails.

The federal government, primarily through the Law Enforcement Assistance Administration, has allocated substantial funds to the testing of alternatives to conventional criminal justice programs and policies in recent years. This subcommittee should satisfy itself that the U.S. Department of Justice and the federal judiciary are utilizing these alternatives to the extent warranted before pouring more funds into conventional approaches. The federal government needs a balanced approach which utilizes non-institutional sentencing alternatives and non-conventional residential options as well as secure confinement for those offenders who require it. The cur-

rent budget request before you does not reflect a commitment to such a balance.

In simple terms, this subcommittee should not appropriate any new funds in 1978 for planning or construction of federal prisons or jails because

- the appropriations requested would entail a long-term commitment to the most expensive way of dealing with a current problem, and
- there are more immediate, less expensive, more flexible, legally authorized alternatives available to deal with that problem.

The justifications provided for the Federal Bureau of Prisons' 1978 budget request for \$67.5 million for "Buildings and Facilities" all center on the problem of crowding. If more bedspaces were available in federal prisons, overcrowding could be avoided, antiquated institutions could be closed, and institutional environments could be improved. There are several ways in which more bedspaces can be made available. The budget request before you represents the course advocated by the Department of Justice -- building more federal prisons. An alternate course available involves greater utilization of existing bedspaces and programs outside of conventional institutions for federal offenders who do not require secure confinement.

It is widely recognized that construction of a super highway will increase the number of persons who utilize that route. It may also decrease pressures for development of alternate means of transportation. In the matter of prisons, as well as in the matter of highways, there is reason to believe that the construction response may increase congestion rather than relieving it. At minimum, alternate approaches should be explored fully before construction is undertaken.

Recognizing that this subcommittee does not enact sentencing law nor sentencing policy, review of the justification for public expenditures sought by the executive branch requires exploration of key public policy questions. I have been aware of some public and official sentiment to

the effect that national policies have been increasingly "soft on crime" in recent years and that it is time to go back to being "tough" on those convicted of crimes. Wondering if these perceptions had a basis in fact, an NCCD staff member used the Sourcebook of Criminal Justice Statistics, 1975 and 1976, to look at what changes have occurred in the disposition of defendants in federal courts over the last 30 years. We found that there were approximately 6000 more defendants before the federal courts in 1975 than in 1945 (49,000 versus 43,000) but that there was little difference in the numbers convicted and sentenced in those years. In 1945, 36,114 persons were convicted and sentenced in federal courts and in 1975, there were 37,433, an increase of slightly more than 1300. With respect to the number of prison sentences imposed, the figures were almost identical -- 17,095 prison sentences were imposed in 1945 and 17,301 were imposed in 1975. Similarly, although fines were used more frequently relative to probation in 1945, the number of non-incarcerative sentences were within one thousand between these two dates. In 1945, 14,359 persons were sentenced to probation and 4,660 were given fines (total = 19,019). In 1975, 17,913 were sentenced to probation and 1876 were fined (total = 19,789). Where significant differences entered the comparison between 1945 and 1975 was with respect to the length of prison sentences imposed.

In 1943, the average sentence imposed on federal offenders was 16.5 months. By 1975, this average had increased to 45.5 months, almost three times as long. Scrutiny of the intervening years shows that these were not aberrant years. With slight variations, the average sentence length has increased steadily from 1945 to 1975. In 1955, the average was 21.9 months. In 1965, it was 33.5 months. (My statement includes a table with the yearly information for the record.)

Average Sentence Length for Federal Offenders (in months):*

1945 - 16.5	1960 - 29.6	1970 - 41.1
1950 - 17.5	1965 - 33.5	1975 - 45.5
1955 - 21.9		

*Sourcebook of Criminal Justice Statistics.

I have presented these statistics at such length because of the popular misconception that we are not as tough on defendants and sentencing as we used to be. In fact we seem to be using non-incarcerative sentences at about the same rate, but we have gotten very much tougher in terms of sentences we impose on those sent to prison. Given that these facts are not widely known, I doubt if such increases in severity have had much deterrent effect. My question is whether the public would be willing to pay the tab for this quiet continuing escalation in sentence lengths despite lack of evidence of reductions in crime if the facts were made known to them.

Examination of recent Bureau of Prisons Statistical Reports and census data regarding state populations resulted in a finding that federal courts in states along the Mexican border on average are sending approximately ten times as many persons per capita to federal prisons as are those courts in the states of New England. Judicial districts in the south utilize incarceration in the federal system ranging upward from five times as much as those in New England. Should the public be forced to bear the financial and social ramifications of these regional variations in the "federal system"? These questions are illustrative of those that should be addressed before more of the taxpayers' money is committed to new federal prisons.

When you are weighing the assertion that prisons must be built because the Bureau of Prisons does not control the size of its population, it is well to remember that the Bureau is a part of the U.S. Department of Justice and there are many organizations within the Justice Department whose policies have considerable influence on the prison population. I doubt that many sentences involving confinement are imposed in the absence of a recommendation by the U.S. Attorney that a prison sentence be imposed. James Bennett often related to Congress the number of offenders unnecessarily incarcerated due to sentencing practices and sentencing laws. The impact that variation in Departmental prosecution policies can have, has been vividly illustrated by the sharp drop in the number of persons confined in federal prisons for auto theft -- from 25.9% in 1966 to 7.1 in 1976, based on a shift in

policy to a preference for state prosecution on this charge. If the Department of Justice were to alter its policies in regard to Immigration and Naturalization involving fining citizens who employ illegal aliens rather than prosecuting the aliens, there would be an impact on federal prison populations.

The policies of the United States Parole Commission, also within the Justice Department, have direct implications for federal prison populations. The rate at which people are moved out of prison can have as much impact on bedspace as the rate at which they enter. Recently, for example, the Parole Commission made a policy decision to treat two offenses more severely than they had been, and thus require persons serving sentences on these offenses to spend more time in prison before release. This decision had the effect of contributing to the recent increase in the federal prison population. This policy change was a discretionary decision made in the Justice Department which was authorized but not required by existing law. It illustrates that the Justice Department can affect the size of the federal prison population. Since 1968 -- there is no Federal Comprehensive Criminal Justice Plan as is mandated for state government.

Finally, and perhaps most importantly for this analysis, the Justice Department can influence federal prison populations by determining where sentences shall be served. The Director of the Bureau of Prisons has expressed understandable reluctance to assign sentenced offenders to community treatment centers unless the sentencing judge specified such an assignment. This does not necessarily mean, on the other hand, that all offenders should be held in fortress type prisons. Some 3500 federal offenders are now held in prison camp facilities. The Director of the Bureau of Prisons estimated off-hand last week before this subcommittee that about one-third, or approximately three times that number, could be safely housed in similar low security facilities. Only 11 percent of federal court commitments were for robbery and violent crimes in 1976. With this subcommittee's approval, the Bureau of Prisons could enter into leases to utilize former hotels, military barracks, college dormitories or other existing facilities instead of building new prisons. I would imagine that federal judges would prefer to see persons they sentence

confined in such circumstances rather than in facilities which Bureau officials have described as inhumane and inadequate.

The impact of moving prisoners from conventional to alternative facilities or of decreasing the number of months served before release on parole or to halfway houses could be very dramatic. Based on the 3/6/77 population of 28,755, for example, the Bureau of Prisons could have available the equivalent of an additional 400 bed facility by reducing the time spent in a conventional institution by only 10 days per prisoner. Such a decrease in time served in conventional facilities could be achieved through re-assignment to halfway houses or to non-conventional leased facilities, as well as through parole, sentence commutation, or pardon. These alternatives could be supplied much more quickly than bedspaces could be provided through construction.

The same general considerations apply to the request for funds to construct a pre-trial detention facility in Detroit, Michigan. The Bureau of Prisons has described problems in housing federal detainees in Detroit due to injunctions against further overcrowding of local detention facilities. It is not clear how construction, which involves passage of several years before new beds are available, is a sensible response to this current problem. As Attorney General Bell pointed out when he announced the new federal policy opposing construction of more federal metropolitan correctional centers, federal pretrial detainees comprise only three percent of this country's detained population. The federal government will always have to rely on non-federal facilities. It would not be feasible to open federal facilities in all places from which federal detainees come. If the federal government is determined to assure minimum standards for detention of federal offenders, construction of a few expensive federal prisons will not achieve that objective.

The options I have outlined are all currently within the authority and control of the U.S. Department of Justice. The Congress will be considering more far ranging reforms in the criminal code and sentencing law in this session. Some federal judges are utilizing their authority to make greater use of restitution, community

service orders, and other sanctions now used only rarely.

The Congressional Budget Office estimated recently that implementation of FBOP plans to add 6750 new prison beds over the next 10 years would require a capital investment of \$285 million and would increase annual operating costs by \$38 million by 1987. The Director of the Bureau of Prisons acknowledged here last week that the Bureau's population projections have not been accurate in the past. The CBO projected that the federal prison population would increase slightly and then decline as unemployment rates decline. Given the uncertainty as to exactly what the future holds, the sound budget course is to favor the least permanent, least expensive course available. The Bureau of Prisons' constructions plans do not qualify as a sound policy course by these criteria. The Justice Department has current authority to utilize feasible, more immediately responsive means of dealing with crowding in existing institutions. The taxpayers of this country will be better served if this subcommittee disapproves the Department of Justice request for funds to support construction of new prisons and jails.

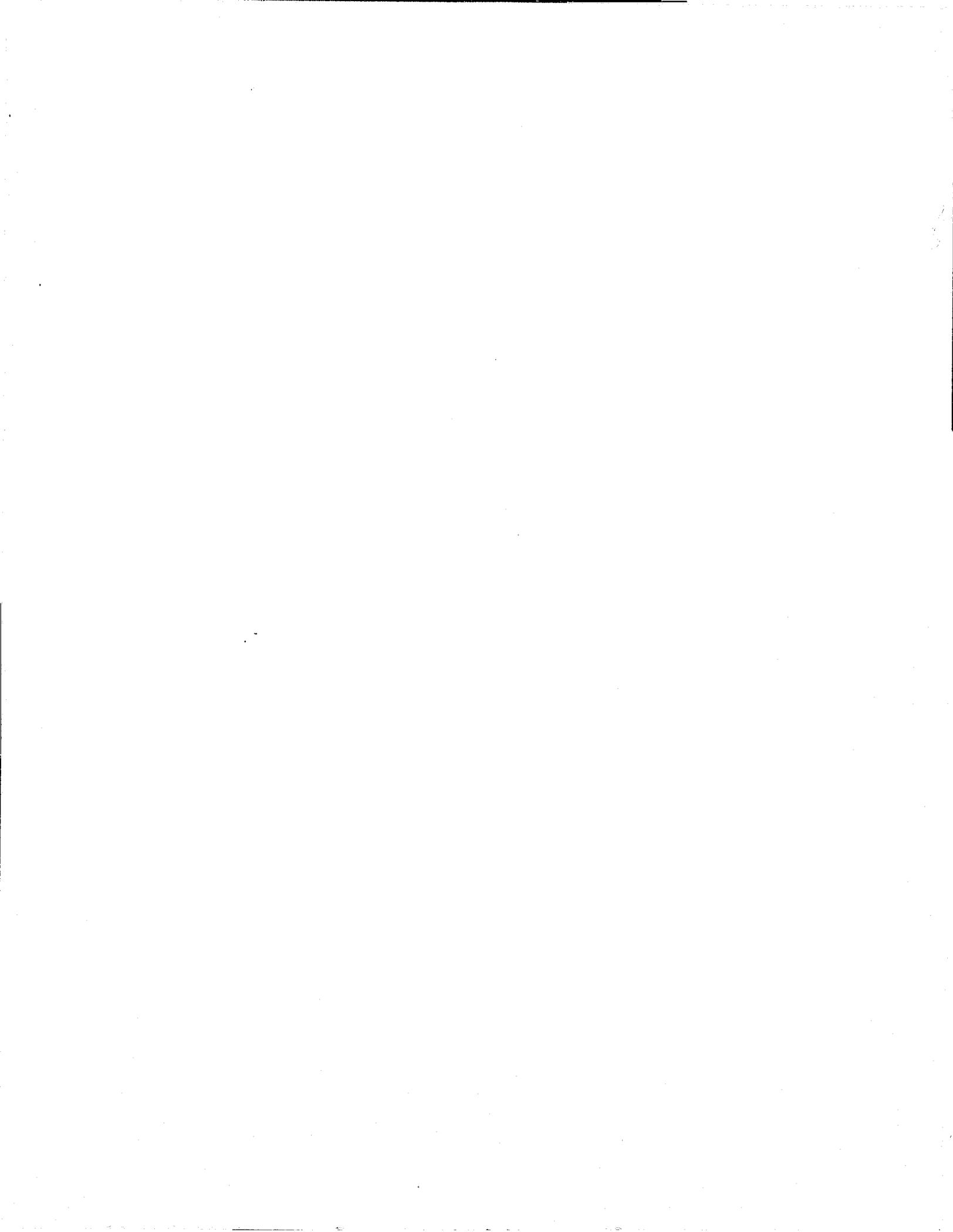
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