

## 7: Case Briefing - Reasoning

In this chapter, we are going to explore what goes into writing the most important section of your case brief: the Reasoning Section. This section goes right after the Facts section and before the Disposition section. In this section, we explain in detail the reviewing court's legal analysis.

[We will be continuing to write a case brief for the \*Miller v. Thomack\* decision from the Wisconsin Court of Appeals -- click here to open the decision.](#)

### REASONING

The reasoning section is perhaps the most important component to your understanding of the decision. While the issue and holding sections tell you what the law is, the reasoning section tells you why the law is what it is. Later on, when you write your legal research memo, you will rely heavily on the reasoning section to help you clearly define the legal rule of the case. It will also help you with your application section. The reasoning gives you the ability to use a case that is on point to make an analogy to your client's facts and predict a legal outcome for your client.

#### Finding and Understanding the Reasoning

Many reviewing courts label sections of the decision containing the legal analysis of the Issues as "Analysis" (pretty creative, right?) or sometimes, as with the *Miller v. Thomack* Court of Appeals decision, the courts use topic titles or headings to guide the reader through its analysis. Even so, during your careful and thorough rereading of the decision, it can be helpful to mark the parts of the decision where the reviewing court:

- Specifically identifies the legal standard being interpreted/applied, as well as the source of the legal standard (for example, a statute);
- Identifies the tools it used to interpret those words/phrases;
- Explains the meaning of the words or phrases in the legal authority it is interpreting/applying;
- Describes why it has concluded the words or phrases mean what it says they mean;
- Applies its interpretation of the legal authority to the facts involved in the appeal; and
- Explains the "yes" or "no" answer in its holding and reaches a conclusion.

Thinking about the reviewing court's reasoning as involving each component above will help you to write a complete and detailed Reasoning section. Let's take a closer look at each of these components in the context of the reasoning applied by the Court of Appeals in *Miller v. Thomack* to explain the holding we identified in the previous chapter:

#### ✓ Example Holding

1. Yes. A person does "procure" alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show:
  - a. The person contributed money toward a fund that the person knew would be used to purchase alcohol;
  - b. The person knew that underage persons would consume the alcohol purchased with the person's funds; and
  - c. The person knew the alcohol would be consumed by underage persons outside the presence of a parent, guardian or spouse who could legally consume alcohol.

#### The Legal Standard

We know from our previous readings of the decision that the legal standard relevant to Kimberly, Karen, and Jason is the phrase "procure for" based on the statement in the decision "In this case, we focus on the term 'procure for.'" We also know the phrase "procure for" comes from §125.07(1)(a)1., Wis. Stat. (1996), which provides, "No person may procure ... any alcohol beverages [for] any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

## Tools Used to Interpret the Legal Authority

A good first step in this part of our analysis is to determine why the interpretation is necessary. You would think that it's always clear what words or phrases really mean but that's not always true in the legal field, especially when it comes to words or phrases in legal authorities. The inherent imprecision of the written English language, coupled with the lack of opportunity to ask for clarification or meaning from the people who wrote the legal authorities, means that we need to refer to other authorities to figure out the precise and intended meaning of the words used.

When a word or phrase is not defined within the statute itself, courts use a wide variety of tools to determine precise and intended meaning of the words used. These tools include

- References to dictionaries and other secondary sources
- References to related statutes/admin rules
- History of the statute (previous language and interpretation)
- References to other case law
- The parties' arguments *if* the Court used them to further explain the interpretation

**Dictionaries/Secondary sources.** A basic rule of statutory interpretation is that words are to be given their “plain” and “ordinary” meaning. Of course, the best resource for finding a word's plain and ordinary meaning is a dictionary. The reviewing court may also refer to a secondary source such as the *Restatement of Torts* or a scholarly legal article. If the reviewing court used a dictionary, this is expressly stated in the decision.

the statute. We therefore construe the word according to its ordinary and accepted meaning, and we may consult a dictionary for that purpose. In the *Interest of Christopher D.*, 191 Wis.2d 680, 704, 530 N.W.2d 34, 43 (Ct.App.1995).

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WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976) lists the following pertinent definitions of “procure”:

1a(1) to get by possession: obtain, acquire ... especially to get possession of by particular care or effort ... and sometimes by devious means ...

2a(1) to cause to happen or be done: bring about: effect....

**Related statutes.** Most States group together statutes that relate to the same topic. For example, crimes are defined in Chapters 940-951 of the Wisconsin Statutes. Nearly every crime has some form of “intent” as one of its required elements of proof. The word “intent” is defined in a related statute, §939.23, Wis. Stat. (2024). A court needing to interpret the word “intent” as used in §943.02(1), Wis. Stat. (2024), would look to the related statute, 939.23, Wis. Stat. (2024). Again, if the reviewing court used related statutes to define a word or phrase in the statute being interpreted, this is expressly stated in the decision.

**Statutory history.** Another important tool for statutory interpretation is to look at the history of the statute to see if any of language has been changed, added, or removed. Courts are required to presume that every word in a statute was intentionally included and has important meaning. Thus, if the legislature made changes to previous statutory language, those changes were intended to change the fundamental meaning and/or application of the statutory language.

When a reviewing court looks at the history of a statute, typically a direct comparison between the previous and current language is mentioned. For example,

The predecessor of [sec. 174.02\(1\)\(b\), Stats.](#), required that the owner of the dog have “actual notice” of the first injury before the owner would be liable for multiplied damages for subsequent injuries. See secs. 174.03, 174.04 (1979-80). The current version of the statute imposes double damages “if the [dog] owner was *notified or knew*” that the dog previously bit someone, breaking the skin and causing permanent injury. (Emphasis added.) The amended version of the statute replaced the “actual notice” language with the requirement that the owner “was notified or knew” of the prior biting injury. We must presume that in amending the statute, the Legislature intended to require knowledge different from “actual knowledge.”

The reviewing court must ensure its interpretation reflects a meaningfully different interpretation and application of statutory language that has been revised, amended or repealed.

**Other case law.** As you know, the rule of *stare decisis* and precedent practically guarantee that the reviewing court will rely on previous court decisions that interpreted the statute. Typically, reviewing courts will start by summarizing the interpretation contained in the precedent, and how that interpretation was applied to the facts in the precedent. From there, the reviewing court will determine how the precedent should shape the reviewing court's interpretation and application of the statutory language to the facts in front of it.

Sometimes the discussion of precedent is lengthier, especially if there are several precedents to consider, if the interpretation/legal standard has been evolving, or if the application of the legal standard is very fact intensive. It can feel tedious to read through a long discussion of history or the discussion of several different precedents; however, it is time well spent. Knowing the history gives you a greater context for understanding why a word or phrase has been interpreted and applied a certain way in the past; this in turn can help you to understand why the court that wrote the decision you are briefing interpreted and applied that same word or phrase – or a slightly different word or phrase – the way it did. Knowing the facts of precedents that have interpreted and applied the same (or similar) legal standard gives you a better handle on which facts are legally significant, as well as which facts are most likely to result in the same or a different outcome as that contained in the precedents or in the decision you are briefing. Seeing and understanding these nuances will lead to a more accurate understanding of the legal standard, and better predictions of how the legal standard may impact your client.

When dealing with statutes, the reviewing court may go beyond precedent interpreting and applying the statutory language and include a discussion of what the law required before the statute was enacted. This can also provide valuable insight, as sometimes the legislature enacts statutes in response to a court decision. For example, in the *Miller v. Thomack* case the reviewing court felt it appropriate to discuss the common law history of “social host” liability for accidents caused by intoxicated persons:

**LIABILITY UNDER § 125.07(1)(a) 3, STATS.**

We begin with some background on the common law of civil liability for furnishing alcoholic beverages. In *Sorensen v. Jarvis*, 119 Wis.2d 627, 645, 350 N.W.2d 108, 117 (1984), the supreme court altered the common law immunity for vendors of intoxicating liquors in actions brought by someone who had been injured as a result of the purchaser's intoxication. The court held that an injured person had a cause of action against a retailer who sells alcohol beverages to someone whom the retailer knows or should know is underage, and when the underage person's consumption of alcohol is a substantial factor in causing the injury.

[1] In *Koback v. Crook*, 123 Wis.2d 259, 276, 366 N.W.2d 857, 865 (1985), the court held that a social host is liable where the host serves alcohol to an underage person, knows or should know the person is underage, knows or should know the person will drive, and where the underage person's consumption of alcohol is a substantial factor in causing a third-party injury. The rationale of *Koback* and *Sorensen* was that the negligent supplier of an intoxicant to a minor, under “... the rules of Wisconsin tort law, may be liable in the same manner and to the same extent as any person who engages in negligent conduct.” *Id.* at 273, 366 N.W.2d at 864. Conduct is negligent either because it will foreseeably cause harm, or because it violates a safety statute where the statutory purpose is to avoid or diminish the likelihood of harm that resulted; the latter case is negligence per se. *Id.* *Sorensen* and *Koback* both concerned negligence per se because the complaints alleged violations of statutes prohibiting the furnishing of alcoholic beverages to underage persons. *Id.* at 266, 366 N.W.2d at 860.

Understanding the relationship between the common law that existed prior to the enactment of the specific statutory language being interpreted is vital to understanding what the legislature intended the word or phrase in question to mean.

**The parties' arguments.** The reviewing court's responses to various arguments from the parties' lawyers as to how the legal standard should be interpreted or applied can provide insight into (more often than not) how the reviewing court believes the legal standard should *not* be interpreted or applied. When this occurs, the reviewing court will describe the party's argument and then accept or reject it. Reviewing courts will typically use language such as "we disagree" or "we are not persuaded" to See, for example, the following language in the *Miller v. Thomack* decision:

Karen and Ransom argue that cases from other jurisdictions support their position that underage persons who do nothing more than contribute to a common fund for the purchase of alcohol do not "furnish" alcohol to other underage persons. However, because the statutory language and controlling precedent in those cases differ from our own, we do not find them persuasive. The attempt to distinguish the conduct of underage persons drinking with friends from the conduct of adults is not, in our view, a viable distinction after *Kappell*. And we do not view contributing money for the purchase of the beer as somehow less significant in making the beer available than the act of handing a beer to a friend, which was the conduct found to violate the statute in *Kappell*.

Keep in mind that the reviewing court may use one of the tools discussed above or may use many of them. Even if you are briefing a case of first impression, meaning there is no controlling precedent, you will still see at least one of these interpretation tools being used.

### Interpretation of the Legal Authority

Once you have pondered all of the interpretation tools used by the reviewing court, it's time to move on to the reviewing court's actual interpretation. Most often in more recently written decisions, the reviewing court will express its interpretation based on all of the tools it used very neatly, in a paragraph that comes after its discussion of the tools themselves. Look for language such as "We conclude" or "Based on the above" or other phrases that seem to show that you're about to read the interpretation. For example:

We conclude that when an individual contributes money for the sole purpose of purchasing alcohol knowing that it will be consumed by an underage person, that individual is procuring alcohol for the underage person. Applying the first dictionary definition, that individual is obtaining alcohol for the underage person, with particular effort, and by devious means. Applying the second definition, which is perhaps even more apt, that individual is bringing about the consumption of alcohol by the underage person.

In older decisions, you may have to piece together the actual interpretation based on what the reviewing court said when it separately discussed each tool it used to interpret the legal authority. One of the best ways to do this is to write the reviewing court's statements about how it used each tool on a separate piece of paper so that you can see how they interrelate and form a detailed explanation of the reviewing court's determination of the meaning of the word or phrase being interpreted.

### Facts of the case relevant to the application of the Legal Standard

Once the reviewing court has determined the appropriate meaning/interpretation of the legal standard, it's time to apply that interpretation to the parties' facts. As you know from reading previous chapters, many times a decision will contain a section titled "Background" or "Facts." Be aware that this section in the decision will certainly contain most of the legally significant facts, but not necessarily all of them. Not only that, but a complete understanding of the legal standard and its potential impact on your client requires that you know which specific facts are legally significant to the particular word or phrase on which you've been focusing.

As mentioned in the chapter covering Issues and Holdings, these are the facts that tell us what the case is really all about, and why we are here. Frequently, when discussing the interpretation of the legal standard, the reviewing court will repeat the legally significant facts that are directly related to that legal standard. Remember, if the reviewing court repeats facts in its decision, they are probably pretty important.

In *Miller v. Thomack*, we now know that in § 125.07(1)(a)1., Wis. Stat. (1996), "procure for" includes (a) contributing money (b) for the sole purpose of purchasing alcohol (c) knowing that it will be consumed by an underage person. The reviewing court repeated the following facts directly related to the interpretation: "... it is undisputed that ... Karen, Ransom and Beattie contributed the money [to purchase the beer;] they knew Clary was going to use it to purchase beer for the persons in the car, including Thomack, and they knew Thomack was underage."

### Conclusion of the Reviewing Court

At its most basic, the reviewing court's conclusion is simply its determination as to whether and how the legal standard applies to the parties in the appeal. Were all of the requirements met? Is one of the parties liable, or guilty, or otherwise responsible? Does the legal standard apply? Keep in mind that there is often a broader question the reviewing court needs to answer, beyond the meaning of the word or phrase in the legal standard. In *Miller v. Thomack*, that broader question was whether the people who contributed money toward the purchase of beer could be held responsible for Rhonda's injuries, based on a violation of § 125.07(1)(a)1., Wis. Stat. (1996), which prohibits people procuring alcohol for underage persons to consume. Now that we know that prohibited "procuring" includes contributing money for the sole purpose of purchasing alcohol knowing that it will be consumed by an underage person, and that Karen, Ransom and Beattie did all of those things, we see why the reviewing court concluded that Karen, Ransom and Beattie violated the statute and should be held responsible for Rhonda's injuries that resulted from that violation.

### Writing the Reasoning Section.

The first thing you should do is go back and look at how you structured your Issues and Holdings (Roman numerals, capital letters, Arabic numerals), because you will want to structure your Reasoning section the same way. That means Issue 1, Holding 1, and Reasoning 1 all relate to the same legal standard.

I also recommend using a formula similar to what you see in the steps below for writing your Reasoning sections. This makes it less likely you'll forget a component of the Reasoning section. Using the same structure repeatedly also helps with writer's block, and the consistency makes your writing more predictable and easier to follow.

We'll use the Millers' appeal in the *Miller v. Thomack* Court of Appeals decision to write the Reasoning section step by step.

#### Step 1: Write the legal standard.

The best place to start is by copying the legal standard from the Issue that you are discussing. If necessary, simplify it: don't include any facts unless the sentence doesn't make sense without them. Decide whether you want to write your legal standard as a question or as a statement (and you'll want to be consistent in all of your Reasoning sections).

Here is what we wrote for our legal standard component of the Issue:

Does a person "procure" alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996)?

We'll want to revise the sentence so that it makes sense, and also so that it is not unnecessarily repetitive of other sentences we know we will write in this same Reasoning section. Because we'll be citing the statute containing the legal standard in the next sentence, it's not necessary to also cite the statute in our legal standard sentence. Here's what our first revision might look like:

Does a person "procure" alcohol to an underage person?

Obviously, this sentence needs some factual context. Adding a few facts and further revising the sentence makes it much clearer what is going to be discussed:

Has a person who contributed money toward the purchase of alcohol that the person knew would be consumed by underage persons illegally procured alcohol for underage persons?

Now we know what legal standard will be discussed, and in what context. Notice how the legal standard is narrowly stated – has a person illegally procured alcohol – rather than broadly stated (has a person violated the statute, is a person liable under the statute). Writing the legal standard narrowly keeps the discussion focused, and also makes it easier to end the discussion with a sentence that answers the question directly.

#### Step 2: Specify the portion of the statute, administrative rule or common law containing the legal standard.

Next, expressly refer to the statutory language that forms the basis for the legal standard. The easiest and most accurate way to do this is start by copying the statutory language from your Applicable Statute section (make sure you use quotation marks!), along with its correct and complete *Bluebook* citation.

"No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age." Section 125.07(1)(a)1., Wis. Stat. (1996).

Then, revise the sentence by removing any parts of the statutory language that are not part of the legal standard you are discussing.

"No person may procure ... any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age." Section 125.07(1)(a)1., Wis. Stat. (1996).

Finally, add a transitional phrase that makes your writing flow well from the first sentence containing the legal standard to this sentence. You have a couple of options here, depending on your writing style. Here are two examples:

Wisconsin Statutes provide in relevant part, "No person may procure ... any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age." Section 125.07(1)(a)1., Wis. Stat. (1996).

Section 125.07(1)(a)1., Wis. Stat. (1996), provides, in relevant part, "No person may procure ... any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

Of course, there are other ways to correctly write this sentence. The key is to make sure you include the specific language, you cite the statute involved, and you like the way the sentence sounds when you read it out loud.

### Step 3: Briefly explain why interpretation is necessary.

The reviewing court may have expressly written in its decision why interpretation is necessary. Other times, you have to extrapolate the reason(s) interpretation is necessary based on your thorough reading of the decision. The most common reasons are:

- the word or phrase that forms the basis of the legal standard is not defined in the statute or in related statutes
- the word or phrase that forms the basis of the legal standard was changed from the original language of the statute
- the legal standard is fact intensive, and this is the first time this particular fact scenario has been presented to a court

The explanation should be simple and brief – just enough to let the reader know why we’re here, and what some of the interpretation tools are likely to be. For example, in the *Miller v. Thomack* case, the word “procure” wasn’t defined in the statutes, so the reviewing court relied on a dictionary as its primary interpretation tool. Here’s an example of a very simple sentence that expresses why interpretation is necessary and provides a good segue into the interpretation tool:

The word “procure” is not defined in this statute; thus, the word is given its plain and ordinary meaning.

Here are some sentences that could be used in other circumstances:

- The word “xxx” is not defined in this statute; however, a related statute defines the word as “...” [cite the related statute]
- The word “xxx” is not defined in this statute; thus, the reviewing court looked to [other caselaw, or secondary sources, or ...] to guide its understanding of the meaning of the word.
- The previous version of this statute [did not contain this word, or contained these words]; thus, the statute’s history was examined.
- This is the first time the word “xxx” has been applied to the facts involved in the present case.

Again, there are other ways to correctly write this sentence. The key is to – at a minimum – specifically describe the reason the reviewing court needed to interpret the legal standard. It’s important to use your own words and make sure you like the way the sentence sounds when you read it out loud.

### Step 4: Describe in detail the tools used to interpret the authority.

Typically, a decision will cite numerous cases and other primary (as well as secondary) legal authorities as part of its reasoning. It is not necessary for the brief to include a listing of all of these authorities. It is the court’s *reasoning* that is important, not the specific authorities which are given in support of that reasoning. That being said, the purpose of the brief is to help you understand how the decision impacts your client’s legal question(s). If you feel you will benefit more from including citations to all of the authorities the reviewing court used to interpret the authority, then by all means, include them.

The *Miller v. Thomack* Court used a dictionary to interpret the word “procure.” Here’s how that tool might be discussed:

Webster’s Dictionary defines “procure” as follows: “To get by possession: obtain, acquire ... especially to get possession of by particular care or effort ... and sometimes by devious means ... to cause to happen or be done: bring about: effect...”

Regardless of whether you include the citations, make sure you fully discuss each type of interpretation tool before moving on to the next one. For example, if the reviewing court referred to a dictionary, statutory history, and other case law, discuss each of those three types separately. For example:

- The previous version of the statute contained the following language: “...” Because this represents a change in statutory language, the Court presumes that the current language has a meaning different from the previous language.
- Wisconsin Courts have interpreted the word “xxx” on numerous prior occasions. [Then, summarize in your own words what the decision you are briefing said about those precedents. Include facts from those precedents if it helps you make sense of the current decision]
- The Court, however, rejected the following definitions (or arguments) regarding the meaning of the word “xxx” ....

Remember, if you decide to use citations in your Reasoning section, you must use proper *Bluebook* citation form!

#### Step 5: Expressly state how the reviewing court interpreted the legal standard.

This can be as simple as writing, “Based on the above, the Court defined the word xxx as follows ....” As simple as it is, actually writing how the reviewing court defined or interpreted the legal standard is an important way to “tie up” your discussion of all of the interpretation tools.

Contributing money toward purchase of alcohol necessarily involves an effort to cause that purchase to happen so that a person can obtain or acquire alcohol. Giving the money to another person who can legally purchase the alcohol and who is willing to provide that alcohol illegally to underage persons as a way to get around statutory prohibitions, certainly appears “devious.”

It also provides a nice guide for writing the next part of your Reasoning section – an explanation of how the reviewing court applied its interpretation to the facts in the appeal.

#### Step 6: Describe in detail the legally significant facts to which the reviewing court applied the legal standard

This part of your reasoning section should be contained in its own paragraph and start with a transition to signal the reader you are done discussing the reviewing court’s interpretation of the legal standard. Again, you have a lot of options, such as “In this case” or “In this appeal” or “The Court applied its interpretation to the following facts ...” Then, using the interpretation you wrote in Step 5, detail the legally significant facts that are relevant to the legal standard and its interpretation:

In this case, Karen, Ransom and Beattie all contributed money toward the purchase of the beer. At the time they contributed the money, they all knew and intended that the beer would be consumed by underage persons – themselves, Thomack and Rhonda. They provided the money to someone who could purchase the beer legally from a liquor store, and who was willing to then give the beer to them, knowing that they were underage. This demonstrates both “particular effort” and “devious means.” As such, they caused underage persons to obtain beer illegally.

Again, use your own words, resisting the temptation to just copy and paste from the reviewing court’s decision. Make sure that all the facts you write about in your Reasoning Section are also contained in your Facts section.

#### Step 7: Write the reviewing court’s conclusion to the question contained in the legal standard.

This final step in writing the Reasoning section is simple, yet important. It’s the end of the story, like the final reveal of the murderer’s identity in a whodunnit novel. Even though we already know the end of the story, there’s a certain satisfaction in being able to say to yourself after the final reveal, “Yes! I *knew* the butler did it!” Although a case brief Reasoning section isn’t as exciting as a murder mystery, it’s still useful to end the story with the direct answer to the question raised in the first sentence of the Reasoning section. Start with a “concluding” transition (therefore, thus, hence, ergo, consequently, in conclusion), and then answer the question. For example:

Therefore, by contributing money toward the purchase of beer, knowing it would be consumed by underage persons, a person “procures” alcohol in violation of §125.07, Wis. Stat.

#### Step 8: Repeat steps 1-7 for each additional Reasoning section.

Even if the legal standards come from the same legal authority or overlap somewhat, write a separate Reasoning section for each Issue you identified in your brief. The reviewing court may use the same interpretive tools when discussing different legal standards, and the facts may overlap as well. Don’t let that tempt you to be lazy or to just copy and paste from your other Reasoning sections. Remember, the purpose of each Reasoning section is to help you see the nuanced meanings of different words, and how they are applied differently. Then, you will have a more accurate and complete understanding of the legal standard and its potential impact and be better able to make an analogy to your client’s facts and predict a legal outcome for your client.

#### Step 9: Review your Reasoning sections for consistency.

Excellent legal writing is internally consistent with respect to structure and details. Some things to check:

- Do you have the same number of Issues, Holdings, and Reasoning sections?

- Is your main numbering system consistent across all Issues, Holdings and Reasoning sections (I, II, III or 1, 2, 3, or A, B, C)?
- Does Reasoning section 1 answer the question raised in Issue 1 (and answered in Holding 1)?

Consider reading related sections out loud, in this order: Issue 1, Reasoning 1, Holding 1. Are they consistent with one another? If you had never read the decision you are briefing, would you have a complete understanding of the issue, reasoning and holding? If you can answer those questions, “Yes” you are on your way to an excellent case brief!

### Other tips for writing the Reasoning

Don’t let your paragraphs get too long. Typically, the first paragraph of your Reasoning section will be limited to the sentences containing the legal standard, the statute (or other authority) that forms the basis of the legal standard, and the reason interpretation is necessary. Whether you discuss several interpretation tools or just one interpretation tool in a single paragraph depends on how much detail you include in your discussion. Keep in mind that generally, paragraphs should contain at least two, but not more than four or five sentences.

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