



1973

Special Session Investiture of the Honorable Robert Vogel

North Dakota Supreme Court

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BENCH AND BAR
In the Supreme Court
State of North Dakota

SPECIAL SESSION
INVESTITURE
of

The Honorable Robert Vogel

Chambers of the House of Representatives
North Dakota State Capitol
Bismarck, North Dakota
Wednesday, September 5, 1973
Commencing at 4:00 p. m.

THE SUPREME COURT
of
THE STATE OF NORTH DAKOTA

THE HONORABLE RALPH J. ERICKSTAD
Chief Justice

THE HONORABLE HARVEY J. KNUDSON
Associate Justice

THE HONORABLE WILLIAM L. PAULSON
Associate Justice

THE HONORABLE OBERT C. TEIGEN
Associate Justice

THE HONORABLE ROBERT VOGEL
Associate Justice

NORTH DAKOTA LAW REVIEW
APPEARANCES

(in order of introduction)

- MR. BYRON L. EDWARDS
Attorney at Law
President, 1st District Bar Association
Grand Forks, North Dakota
- MR. JOHN C. McCLINTOCK
Attorney at Law
President, 2nd District Bar Association
Rugby, North Dakota
- MR. RONALD G. SPLITT
Attorney at Law
President, 3rd District Bar Association
LaMoure, North Dakota
- MR. ALFRED C. SCHULTZ
Attorney at Law
President, 4th District Bar Association
Bismarck, North Dakota
- MR. JOHN A. GRAHAM
Attorney at Law
Bismarck, North Dakota
- MR. PATRICK A. CONMY
Attorney at Law
Past President, State Bar Association
Bismarck, North Dakota
- MR. IRVIN B. NODLAND
Attorney at Law
Bismarck, North Dakota
- MR. ALAN B. WARCUP
Attorney at Law
President, State Bar Association
Grand Forks, North Dakota
- MR. MARSHALL T. BERGERUD
Attorney at Law
President, 6th District Bar Association
Killdeer, North Dakota
- MR. ROBERT CHESROWN
Attorney at Law
Former Chairman, The Committee on the Judiciary,
Linton, North Dakota North Dakota State Senate
- MR. HARRY M. PIPPIN
Attorney at Law
President, 5th District Bar Association
Williston, North Dakota
- THE HONORABLE C. F. KELSCH
Judge of the District Court
Mandan, North Dakota
- MR. NORLYN E. SCHULZ
Attorney at Law
Sec.-Treas., State Bar Association
Bismarck, North Dakota
- MR. WARD M. KIRBY
Attorney at Law
President elect, State Bar Association
Dickinson, North Dakota

THE HONORABLE ARTHUR LINK
Governor of North Dakota

MR. BRUCE B. BAIR
Attorney at Law
Mandan, North Dakota

MR. MALCOLM F. BROWN
Attorney at Law
Mandan, North Dakota

(The Supreme Court of the State of North Dakota met in Special Session in the Chambers of the House of Representatives in the North Dakota State Capitol, Bismarck, North Dakota, on Wednesday, September 5, 1973, commencing at 4:00 p. m. C.D.T. Proceedings were had as follows:)

THE BAILIFF:

The Honorable The Chief Justice and the Judges of the Supreme Court:
Hear ye, hear ye, hear ye, the Honorable the Supreme Court of the State of North Dakota is now open.

THE CHIEF JUSTICE:

I would like to welcome all of you who are here today for this Special Session of our Court.

Before we get under way, I would like to appoint a number of people to serve as committees to escort some of our special guests to their seats.

At this time I would like to appoint District Bar Presidents Byron L. Edwards and John C. McClintock as a committee of two to escort the Federal Judges, the Judges of the District Court, the Judges of the County Courts of increased Jurisdiction, and all retired Judges to their seats.

So that we may move this along, I would like to make some other appointments of escorts.

I would like to appoint District Bar Presidents Ronald G. Splitt and Alfred C. Schultz as a committee of two to escort the elected officials of the State of North Dakota to their seats.

I would like to appoint Mr. John Graham and Mr. Patrick A. Conny as a committee of two to escort the leaders and members of the Legislative Assembly to their seats.

I would like to appoint Mr. Irvin B. Nodland as a committee of one to escort Alan B. Warcup, President of the State Bar Association of North Dakota, to his seat.

At this time the Bailiff will recognize the members of the federal judiciary and the state judiciary and retired judges.

You may all go and be seated. Thank you.

The committee is now ready to escort the elected state officials of the State of North Dakota to their seats.

Thank you.

You may now escort the leaders of the Legislature and the members of the staff of the Legislative Council.

Thank you. I see that one of the escorts is a member of the staff of the Legislative Council.

At this time, would the committee escorting Alan B. Warcup, the President of the State Bar Association, present Mr. Warcup.

We have also appointed Mr. Marshall T. Bergerud as a committee of one to escort Senator Chesrown. If he is ready, will you escort Senator Chesrown to his seat.

Thank you.

Mr. Harry Pippin, District Bar President, will escort The Honorable C. F. Kelsch to his seat.

Thank you.

Mr. Norlyn Schulz, Secretary-Treasurer of the State Bar Association, and Mr. Ward M. Kirby, President elect of the State Bar Association, will now present the Governor of our State.

Governor Link.

Thank you, members of the committee.

Mr. Bruce B. Bair and Mr. Malcolm F. Brown, as a committee of two, will now present The Honorable Robert Vogel before our Court for the taking of the Oath of Office as a Justice of the Supreme Court of North Dakota.

Mr. Bair and Mr. Brown.

Mr. Robert Vogel, having been appointed to the Court by Governor Link, having already served us in a very fine capacity, we do at this time proceed with the ceremony of swearing you into your office.

Will you raise your right hand and repeat after me:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of North Dakota and that I will faithfully discharge the duties of the office of Justice of the Supreme Court of the State of North Dakota according to the best of my ability, so help me God.

(Justice Vogel repeated the oath after the Chief Justice.)

THE CHIEF JUSTICE:

At this time I would like to call on Mr. Warcup to present Justice Vogel with his robe and for any comments he may wish to make at this time. The rest of us may be seated.

Mr. Warcup.

(Justice Vogel was presented with a robe by Mr. Warcup.)

MR. WARCUP:

Governor and Members of the Court, particularly Justice Vogel: It is a pleasure for me to be able to par-

ticipate in these ceremonies. This is a first for the State Bar Association of North Dakota, and we are very proud and very happy to be able to do it. Thank you.

THE CHIEF JUSTICE:

Justice Vogel is a man of few, well-chosen words, but those are not his words. He will speak later on at this session. At this time we take great pleasure in calling on Senator Chesrown, who has known Justice Vogel for many years, and I believe that he will have some words to say at this time.

Senator Chesrown.

SENATOR CHESROWN:

Honorable Chief Justice, Governor Link, Judges of the Supreme Court, the State Officers, District Judges, members of the Legislature, members of the State Bar Association, and friends of Bob Vogel:

Needless to say, I am extremely happy to be here to participate in this most worthy function. Certainly I would feel much more at home across the hall in the Senate Chambers. However, when I suggested that maybe that is where it should be held, I was without any uncertain terms told that the Supreme Court had made its order, and you just don't argue with an order made like that by the Supreme Court.

I suppose my friendship with Judge Vogel commences many years ago, while both of us were privates in the ranks of the old Nonpartisan League. We were busy at that time, saving the farmers of North Dakota from the giant grain manipulators in Minneapolis and the money changers in New York. However, that organization was progressive, and I think I am safe in saying that Bob—now Justice—Vogel was as progressive at that time as I was.

Bob is a native of North Dakota, having had his elementary education at Coleharbor, and, I believe, his high school education here at Bismarck, where he graduated from public high school. He later attended the University of North Dakota and earned a degree of bachelor of science. I believe; and then he went to Minneapolis and accepted work in a bank.

Well, apparently, employment in a bank didn't meet with Bob too much, because after all, he did study law while employed in this bank, and I understand that in 1942 Bob had earned a law degree from William Mitchell College of Law and was admitted to practice in the State of Minnesota in 1942.

In 1943 he came back and took the bar exam in North Dakota, passed, was admitted to the bar here, and opened an office in Garrison. In 1949 he was elected to the office of State's Attorney in Garrison in McLean County, and that office he held until 1954, at which time he was appointed United States District Attorney under the Eisenhower administration. He held that office until 1961, at which time he was appointed Assistant United States Attorney General by the late Robert Kennedy.

By then Mr. Vogel had gained a reputation of being a very severe and expert prosecutor, and if you will recall—many of us will—Mr. Vogel prosecuted the famous Lenders Service criminal action in North Dakota. These were cases that came out of Arkansas, I believe. In fact, I understand that those criminal cases were the longest criminal cases ever tried in North Dakota. At any rate, the late Robert Kennedy saw fit to commend Mr. Vogel for his work and his manner in which he achieved a conviction in those cases.

In 1961 Mr. Vogel, Bruce Bair, and Leland Ulmer opened a practice of law in Mandan, and the partnership between Mr. Vogel and Mr. Bair existed until he was appointed to the Supreme Court by the Governor.

I have had the pleasure of being associated with Mr. Vogel and Mr. Bair in many cases over the past ten years. I have spent considerable time with Mr. Vogel in federal court and state courts, both in North Dakota and South Dakota; and you can be assured that when you associate with an individual as long as I have with Mr. Vogel, I think you learn many things about him.

And I want to tell you folks that I believe that I am qualified to advise you just why Bob Vogel ticks. I can tell you why he has been so successful in the practice of law in North Dakota.

Of course, Bob has many qualities, and they are outstanding; and I will try to list some of them in the manner I think of their importance.

Number one, Bob Vogel is a tireless worker. I have yet to see Bob in any court unprepared. By that, I mean he has done his homework, you can be assured. You may be assured that he has interviewed every available witness. He has visited the scene, if it was necessary. He has photographed any material evidence that he might be using, if it was necessary. He has taken depositions all over the country, if necessary. He has also researched every angle of the law. And in many instances I can assure you that we had to rehearse these cases—that is what Vogel called a "dry run."

Bob Vogel has always been absolutely honest with the courts, and I am sure any judge will attest to this fact. His words and oral stipulations in courts and otherwise have always been honored by him as his bond.

His ability to stay absolutely cool and collected at all times is something to observe and behold. I recall years ago we were trying a case in a federal court at Aberdeen, South Dakota, and it appeared to me, after a week or ten days of trial, the judge wasn't too impressed by the merits of our case. At any rate, I became concerned and quite vocal about it. However, Bob said, "Forget it!" And he proceeded, in his mild manner, to charm that judge and that jury; and, as a result, our client received a substantial verdict.

When I was a member of the State Senate, Bob Vogel was very helpful to me as a member of the Senate Judiciary Committee, of which I was Chairman. He often appeared before our Committee, either representing the State Bar Association or simply to be heard on some question concerning the judicial system of our State that he, himself, was interested in. I can assure you all that every member of that Judiciary Committee, regardless of political affiliation, always respected, admired, and always gave serious consideration to testimony of Mr. Vogel. Bob is the author of several articles, some of them published in law reviews and some in other periodicals.

He has given much of his time to problems confronting the North Dakota Bar Association. When given an assignment, you could be assured it would be well performed. At this time I want to publicly thank Judge Vogel for his services to our bar association.

Presently the judicial system of this country is being asked to determine the rights and powers of the various branches of our government. I would say without hesitation that as long as our judicial system has talent like Robert Vogel on the bench, we are assured of sound and strong decisions from our courts. While the legal

profession—the lawyers practicing in North Dakota—will greatly miss him. We are happy that the Supreme Court will have the benefit of his talents, hard work, and his judicial ability. We wish Judge Vogel the best in his new endeavors.

Thank you.

THE CHIEF JUSTICE:

Thank you very much, Senator Chesrown.

At this time I would like to call upon The Honorable C. F. Kelsch, one of our District Judges, who will speak from the Judicial Branch.

Judge Kelsch.

JUDGE KELSCH:

Mr. Chairman, Governor Link, Distinguished Guests, Ladies and Gentlemen:

I feel proud, honored, happy, and glad to participate in this memorable occasion. I have never spoken before such a distinguished group of citizens of this State, and you can imagine how I feel and tremble in my boots.

I believe that this occasion is memorable in the life of my fellow townsman and able lawyer, a fine gentleman, a good friend.

I am one of those who belong to the school of thought that it is wiser, better, more fitting, to commend, to honor, or to praise and congratulate men while they are living rather than to send a floral gift to their mortal remains after they have passed away; and in keeping with that thought, I too want to join the Senator that I believe that our honored guest today is a man of character and a man of discretion, a man of sound judgment, a man who—as Bob has said—has a great available experience in the legal profession, not only that he has an enviable reputation in the State for maintaining a high standard of professional conduct. He has been in my court for a considerable number of years, and I can only say that I am proud of his conduct in my presence and where he has been before me while I had the good fortune of serving with the Supreme Court.

I think all of us have heard—I don't know whether many of you will agree with me on this—orators on public occasions claim and proclaim that ours is a government of law and not of men. From my limited experience on the bench of about ten years and my knowledge of decisions—the three to four, the four to five decisions—I am satisfied and convinced that it is more accurate and more correct to believe and proclaim that ours is a government of law interpreted by men, applied by men, and enforced by men. We cannot separate the human equation—the human ideas—the values of men, be they commercial, political, social, or moral, or even the spiritual values—because in the silent chambers of the workshop of the Supreme Court of the State and of the United States, it is there where men find the freest and fullest expression of their basic convictions in life, and I am confident that the man whom we honor today is a man who can measure up to that responsibility.

I have served—had the honor of serving—a few times with the Supreme Court, and I know that the office of Justice of the Supreme Court is an office of tremendous inherent power, and that its holder is charged with grave duties and responsibility. It is not, as I have found, a spectacular or easy task to sit in a small room and work hours—days—engaged in ceaseless search for the truth and endless research of the law to determine what principles should be applied to govern the rights and responsibilities of litigants.

My hope is, and I am confident, that the man we honor here today will bring with him, and we will find in the opinions he writes, his basic faith and moral and religious values which we need so sadly today. We cannot have a judiciary that is bankrupt in moral principles and ideas and social values, and I am confident that the man we honor today will bring those basic convictions of such values with him to this high court of ours.

I want to say, in closing, I have been asked to speak for the District Judges. We only hope and wish that his years of service will be many; that they will be illustrious; that his record of service will constitute a brilliant contribution to the administration of justice in this Court.

And we hope and pray that the Good Lord will bless and keep him, that He will guide, counsel, and sustain him in the hour of trial and tribulation. And if he so abides, I know that he shall not fail.

Thank you.

THE CHIEF JUSTICE:

Thank you very much, Judge Kelsch, for those fine remarks.

At this time it is my privilege and honor to call upon the Governor of our State, Governor Arthur Link, who made this appointment, for a few words.

Governor Link.

THE GOVERNOR:

Thank you very much, Chief Justice Erickstad, his fellow members of the Supreme Court, former Justices, and others in the judiciary and legal profession:

It is, to say the least, difficult to follow the illustrious messages that we have had the privilege and honor of hearing thus far in the ceremony. I would, in layman's method, attempt to fill the attributes that I am sure all of the State and its people share with the legal profession here this afternoon; and so, to you, Bob, and your good wife, Elsa, I bring my personal congratulations and, I know, the congratulations of the people of the State of North Dakota.

And from your many friends here gathered in this ceremony, I know that the warmth and gratitude of the citizenry extend well beyond the legal profession.

Bob Vogel is a man who has impeccable credentials for this position—a man not only with appropriate legal background for such a position but also with very important human qualities so vital to the Court. He is a very human person. His legal background—his accomplishments—have already been so well outlined by former Speaker Chesrown.

In addition to his accomplishments in the legal profession, he has rendered additional outstanding service to all of us in the State. He served for several years on the State Parole Board as a member, and for a time was its

chairman. No opportunity of service requires more personal dedication than serving on a board of this nature. He is a man who, in the exercise of his official responsibilities, has found it necessary on occasion to impose the legal requirement of incarceration upon fellow members of society, and yet he is broad enough—big enough—to serve on another board that gives in some cases those same people that additional chance that we know our fellow men need as they go through life.

Bob has written a long record of fine service to the people of North Dakota. He is well known as a learned lawyer, a fair person, and a concerned human being. Judge Vogel is a leader in his profession. He is a contributing citizen of North Dakota.

It is interesting to note that his leadership has had its effect on his family. Bob and Elsa's one daughter is practicing law in New York, and one son is studying in American University Law School in Washington, D. C.

When I was considering the appointment to the North Dakota Supreme Court, I received many suggestions of fine persons within our State who would be qualified for this position. I found that no one person received more widespread support or was held in greater esteem than was Robert Vogel. I share that esteem for Judge Vogel. That is why I am so pleased to participate in this investiture ceremony today.

Bob's human attributes are best exemplified by his willingness to always be helpful. He has never been too busy to share his talents to help another fellow human being when that help was justified.

My warm congratulations and best wishes, Bob, to you and your family on behalf of the citizens of our State. I want to thank you and commend you for your continued service to the people of North Dakota in this new capacity of Judge of the Supreme Court of North Dakota.

Thank you very much.

THE CHIEF JUSTICE:

Thank you very much, Governor.

We have reached the stage in our proceedings where we will call on Justice Vogel, himself, for a few words of response. And at this time I would ask him also to recognize the members of his family who are present and anybody else that he would like to recognize.

Let's at this time, then, call on Justice Vogel.

JUDGE VOGEL:

Mr. Chief Justice, Governor Link, Judges, distinguished guests and lawyers and friends:

I can't resist saying at the outset that the unanimity of opinion that you have just heard is about to be dissipated, because I am sure at least half of the litigants who appear before the Supreme Court are not going to share it as time goes by.

Unlike most judges on similar occasions, I have had the benefit of about two months' experience—on the job training, you might say—so I can report to you a little bit of what it's like as well as what I expect it to be like, and I have found so far that many of the fears and doubts that I had when I took the position were well founded. I have missed working for some of my former clients—maybe felt that I even deserted or abandoned them—although I am sure that I wasn't indispensable, and they will get along fine with other representation. I do miss the excitement of legal combat—the victories and losses, the surprises, the challenges, and the frustrations of private practice—and also miss the greater freedom to speak my mind on any subject at any time.

But there are other satisfactions of being on the Court—a feeling that hopefully I am contributing something to the growth of the law—its opportunities for research and scholarship to a depth and extent that you seldom have time for in the rush and confusion of private practice—the opportunity to work with other judges of like mind—the challenge of deciding difficult and close cases.

Although I have sometimes felt totally inadequate and lacking in judicial temperament and other requirements, at other times—although I must admit, only when the other judges are divided two to two—I really felt infallible. But only when they divided two to two.

I also have mixed feelings about this ceremony, which has been described by various names, all the way up to "coronation." But my own feeling is that it is more like a disbarment, since I can no longer practice law.

As I leave the practice of law, whether permanently or for a short time, I do have some debts of gratitude that I would like to acknowledge:

First, to Governor Link, for taking the risk of appointing me. It is a risk involved in every appointment—I hope, no greater in my case than in others.

To lawyers like Milt Higgins—I guess I tried more cases against him than anybody else: Bill Murray and his father; Halvor Halvorson and his father; others that I see around here who helped me learn the hard way how to practice law; and others like Bob Chesrown, usually on my side, who also helped teach me how to practice law.

And to associates like Bruce Bair and Chub Ulmer; Malcom Brown; Dewey Kautzmann; Ralph Maxwell, now Judge; Bill Mills; Benny Graff; Gordon Thompson, Referee in Bankruptcy; Joe Blaisdell; and Larry Kraft, all of whom had to endure my peculiarities daily and in the same office.

To secretaries, some of whom are here today, who made my first drafts look better than they really were.

To many judges, including the four sitting here—Judge Kelsch and some others—who had to read my writings, listen to my arguments, when sometimes I took too little time on research and too much time on argument. They put up with all that.

And then to my family, who had to put up with me when physically present but totally preoccupied with lawsuits—either in progress or to come—who had to adjust their schedules to fit mine.

The Chief Justice, from whom I take orders, told me I had to acknowledge the members of my family present. I will mention that my mother is sitting here at this place; my wife Elsa; my sister-in-law Kay; and my brother Dave. None of my children could be present. One of them was on the way here from San Francisco and broke down in Salt Lake City day before yesterday and couldn't make it.

So as to the future—which is what we are all interested in, I guess—I will try to remember that I was appointed, not anointed:

That my jokes are no funnier than they were before, although I am sure lawyers will laugh at them more;

That the only way a judge is superior to a lawyer is in his impartiality;

That in this job patience is as important as learning, and hard work is more necessary than inspiration:

That even cases unimportant for general principals are supremely important to the litigants and their lawyers.

And I will sum up my hopes and my intentions by saying, I will try to live up to the description of Socrates of the qualities of a judge. He said:

"Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially."

And I thank you all for the honor you have paid me and this Court by coming here today.

THE CHIEF JUSTICE:

Thank you, Justice Vogel.

We are near the closing of this investiture session. Before we do close, I would like, on behalf of the Special Session of this Court, to recognize Judge Vogel's wife and mother, Elsa and Luella, and his brother Dave and his wife Kay.

And, in addition, I think it would be appropriate to recognize the widows of Judges George Register and Alvin Strutz, who are present. We are pleased to have them here.

We are very pleased to see all of you people who are here.

I notice that Justice Morris, who served thirty years on this Court, is here.

Dean Rushing, of the Law School, is present.

I am sure that many others whom I have not mentioned are here, and we welcome all of you.

I would like to express my personal appreciation and the appreciation of all the members of the Court to all who are in attendance for their participation in this special session. I want to recognize especially the services of some of our people—Governor Arthur Link; Alan B. Warcup, President of the State Bar Association; I see Ray McIntee is also here and members of the Executive Committee; Judge Kelsch for his fine remarks; Senator Chesrown for his fine remarks.

And then I would like to thank, on behalf of the Court, Bruce Bair, who was the chairman for the Bar Association Special Committee and served with Patrick Conmy and Irvin Nodland; Mrs. Luella Dunn and Justice Knudson, who advised that committee, for the very fine arrangements that they made.

I would like to thank Robert Schuller, Executive Secretary of the Bar Association, for his help and cooperation.

I would like to thank Becky Quanrud, who, incidentally, served with me for seven years, and who today has served as our court reporter.

I want to thank Mrs. Eveleen Klaut, secretary, for the fine help she gave.

Our reception committee, Corliss Mushik, Cecelia Green, Shirley Shaw, and Luella Dunn.

I would like to thank the members of the press, radio, and television here.

In closing, I would like to say that Justice Vogel has already, in the short time he has been on the Court, demonstrated his ability to present his views concisely and effectively in conference; his ability to analyze, summarize, and then state contending views of the parties and his views in the opinions he has written for the Court; and his ability to innovate—all of which abilities we need and we welcome on our Court.

It just may be that he has some of the talents of Justice Marshall, Justice Holmes, Justice Cardozo, Justice Frankfurter, to name a few. In any case, we welcome Justice Vogel to our Court. We hope we may enjoy the association with him for many years to come. And if we are so privileged, we know that our State and our people will be benefited along with us.

You may all meet and visit with Justice Vogel and the Vogel family in the Memorial Hall, which is just outside, at the close of this session; or shortly thereafter, you may visit with the family and his friends at the reception which will follow at the Town House Motel.

To facilitate the meeting of the Justice and his family outside of the chambers here, I would like to ask that Mr. Bair and Mr. Brown escort Justice Vogel and his family at this time, before we recess, to Memorial Hall. As they do that, may we all stand and recognize Justice Vogel and his family.

Mr. Dewald, you may now sound the close of this Special Session.

Thank you very much.

(The Special Session of the Supreme Court was adjourned at 4:55 p. m.)

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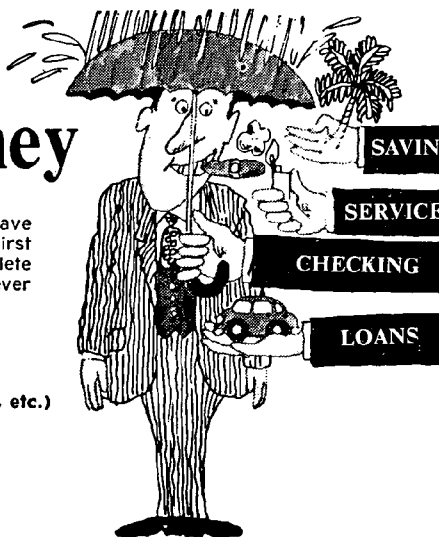
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