



CITATIONS

JUNE - TWO THOUSAND TWENTY THREE



THE HONORABLE MANUEL COVARRUBIAS

By Maureen A. Byrne and Michael Rodriguez

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PRESIDENT'S MESSAGE

by *Brian C. Israel*

Growing up, I distinctly remember my teachers telling me how important it was to master cursive handwriting because we would need to use it for college. Holy cow, did that turn out to be wrong! Looking back we were unknowingly straddling the line of a seismic shift in technology between handwriting and computer word processing programs.

Back then, I went to the computer lab and enjoyed typing class. I always hated the barometer of words typed per minute since my twin brother Alex was a master at it and continually ranked near the top of our entire grade. Though I did understand that typing and words per minute had some importance for my future, by the time college came around, cursive was pretty much useless. Sure, I still hand-wrote my notes with a quick mix of normal and cursive blobs that only I understood, but the constant sound of keys chirping was already in full effect. By law school I typed my notes and there were only a handful of students who did not take a final on their computer. As we all have experienced in our lives, I was already encountering the shift towards a technology that was evolving and pushing what we had known to the side.

So where am I leading with this? Well, it's one of, if not the hottest, topic in all industries at the moment, "Artificial Intelligence" or "A.I." for short. Programs or "chatbots" like ChatGPT, Bing Chat, and others have begun to drive the conversation about the future of life, technology, and what A.I. holds in store. While I was once worried about writing cursive in college, universities and law schools are now not only worried about whole essays being written by an artificial intelligence program, they have actually started seeing it come to fruition. No cursive or hard studying is necessary, just the right prompt.

Although most of us have some background knowledge of what A.I. is, **Alex Tron**, in the May 2023 Barrister's Corner article in CITATIONS, gave a nice definition with historical background. He wrote, "The term "Artificial Intelligence" ("AI") was described as early as 1956 by Massachusetts Institute of Technology (MIT) Professor

John McCarthy as a process with the goal of understanding and modeling the thought processes of humans and the design of machines that mimic this behavior."

In other words, A.I. begs this question: Is a computer or machine going to be able to match, come close to, or even surpass human intelligence? This isn't exactly a new idea, but it has become more prevalent with advancing technology and chatbots. Tron's article focused on A.I. and criminal expungements, and is just a small sample of recent developments in artificial intelligence and the law.

Humans have for a while now debated machines and the possibility that they someday may acquire human intelligence and possibly strike out on their own. Hollywood and its movie industry have explored the humanization of machines in several films. Attorney **Lane Lopez** reminded me of one such movie, "Deus Ex Machina" which was thought provoking. At the time, it was a film that I felt was somewhat "underground."

Attorney **Sam Mojabi** told me about a recent experience he had with friends and ChatGPT version 4. Sam was adamant about how important the right prompt was for A.I. queries. After a while of tinkering with his friends, he stated that the A.I. feedback became much more on point after tailoring the scope of their original question by adding: "Provide information relevant to California law. Where possible, cite specific California statutes, regulations, or case law that may be pertinent to the user's query. Give as detailed and accurate responses as possible, within the limits of your training and capabilities. Remember to make it clear that this information is for educational purposes and not legal advice, and that consulting with a qualified California attorney is crucial for any legal concerns."

Although ChatGPT creates its own original response, it is also clear that there is a human element in creating the best prompt. For a non-A.I. informed person like myself, it was interesting to learn more about this part of A.I., which I hadn't considered.

The topic of A.I. came up at the Appellate Justice Reception in May 2023. **Justice Arthur Gilbert** had some strong opinions about A.I. But two things really stood out. For *Pro Per* individuals, A.I. may be very useful in filling out forms. Conversely, using A.I. to help at a trial may not lead to favorable results on appeal for a *Pro Per* plaintiff. That is, how will the *pro per* individual be able to preserve the record appropriately, especially with all the nuances of appellate work amidst the backdrop of the standards of review. It seems unlikely that A.I. can adequately help on appeal to find abuse of discretion or substantial evidence in the record.

With the proliferation of A.I. there is too much to cover in how it will or already is affecting our legal industry. There are already some horror stories of attorneys using A.I., but also insights into how it can be effectively used in the legal industry. We can only wait and see what happens. In the meantime, it is important to remember that we as humans are not yet replaceable. The key is that we hold the right prompt. Lastly, I'd like to add, I personally don't think cursive is obsolete. Signing checks for utilities and correspondences in the office still have their use. But hey, I still use a record player and DVD player.



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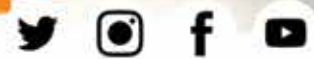
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WLVC APPELLATE JUSTICE RECEPTION RETURNS



Women Lawyers of Ventura County hosted the return of their biennial Appellate Justice Reception on May 17 at the Spanish Hills Country Club. **Wendy Lascher** moderated the event. **Presiding Justice Gilbert, Justice Yegan, Justice Baltodano** and **Justice Cody** shared their thoughts on many topics, including pro per litigants, the benefits of a diverse bench, and the influence that A.I. may have on the legal community

HAVE YOU HEARD

Eight seats on the VC Superior Court have expiring terms January 6, 2025. At least one of our judges has announced he will not be running for reelection: **Hon. Henry “Harry” Walsh**.

To run for Judge Walsh’s seat, candidates file a Declaration of Intention for Judicial Office. The filing period begins Oct. 30, 2023 and ends Nov. 8, 2023.

The seats with expiring terms are held by the following incumbents:

- Henry J. Walsh**
- Mark S. Borrell**
- Anthony J. Sabo**
- David M. Hirsch**
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THE HONORABLE MANUEL COVARRUBIAS

By Maureen A. Byrne and Michael Rodriguez





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After more than 28 years of dedicated service to the Ventura County Superior Court, the **Honorable Manuel Covarrubias** retired from the bench on April 30. Judge Covarrubias is a lifelong learner, driven to serve and inspired by family and faith. From an early age, Judge Covarrubias excelled in school and yearned to be challenged. He attended school in a segregated school system in Oxnard (*see Soria v. Oxnard School District Board of Trustees* (1974) 386 F. Supp. 539). Despite his exceptional grades, a high school counselor recommended a career working in a lumber yard. In high school he was initially placed in non-college preparatory classes, which he found too easy. Fortunately, his mother spoke with one of his teachers who advocated for him to be placed in college preparatory classes where he thrived.

As a teenager, Judge Covarrubias was introduced to a family friend and mentor, Dr. Manuel Lopez. Dr. Lopez was Oxnard's first elected Latino mayor and served on Oxnard's City Council for 26 years. He encouraged Covarrubias to go to college at a time when not many young Latinos were guided in that direction. Covarrubias earned degrees from CSU Northridge and Loyola School of Law.

At an early age Judge Covarrubias became involved in social justice. In 1968, he arranged a student trip to Delano, CA to meet Cesar Chavez and Dolores Huerta, both founders of the United Farm Workers Union (UFW). Covarrubias was a founding member of the local chapter of UMAS (United Mexican American Students) which became MEChA (Movimiento Estudiantil Chicano De Aztlan). As a student at Oxnard High School, Covarrubias and his fellow students saw their school library lacked books on Mexican-American history. UMAS student

members held fundraisers to purchase the needed history books.

At Loyola Law School Judge Covarrubias was a member of the Dean's List and a recipient of the William P. Hogoboom Award for excellence in the Juvenile Justice Clinical Program. In this program, Covarrubias worked with delinquency youth and their families. He learned the importance of addressing the youth's actions, but also addressing the "underlying issues a youth may experience and help them move forward."

Judge Covarrubias was appointed to the Ventura County Superior Court in 2002 by Governor Gray Davis, becoming Ventura County's second Latino judge. Prior to this appointment, Covarrubias served as a Superior Court Commissioner for eight years. During his tenure, Judge Covarrubias presided over criminal law, family law, small claims, traffic, child support, civil restraining orders and juvenile delinquency. He twice served as the Supervising Judge of the Family Law Department, as well as the Supervising Judge of the Juvenile Division.

As a member of the bench, he worked to improve the community's understanding of and access to the judicial system. Covarrubias was the co-chair for the Judicial Council's *Plan for Language Access in the California Courts*; served as the vice-chair of the *Language Access Plan Implementation Task Force*; a member of the *Language Access Subcommittee of the Advisory Committee on Providing Access and Fairness*; and served on the *Court Interpreters Advisory Panel*.

Judge Covarrubias has received several awards that have commended his commitment and excellence as a judge. In 2006, he received the Ventura County Trial Lawyers' Association *Judge of the Year* award.

In 2014, he was honored by the Palmer Drug Abuse Program for his respectful and supportive style of communication towards youth. In 2015, he received the highest honor given by a state court system's governing body, the California Judicial Council's *Distinguished Service Award*.

Judge Covarrubias has served two fulfilling rotations in Juvenile Court. Delinquency Court was one of his favorite assignments, yet one of the most challenging. He interacted with each youth and asked them not about what they wanted to "be" in life, but rather, what they want to "become." He tried to "plant seeds," with the youth to help them "think about life and how they wanted to lead their lives."

In retirement, Judge Covarrubias looks forward to spending time with his wife, children and grandchildren, as well as cooking fish tacos for Tuesday night family dinners.



Maureen A. Byrne is a Ventura County Supervising Deputy District Attorney with the Juvenile Unit.



Michael Rodriguez is a Ventura County Chief Deputy Public Defender.

THE SURRENDER OF ELIZABETH HOLMES: A COMPLEX AND CAUTIONARY TALE OF AMBITION TURNED DECEIT.

By Panda Kröll



Once celebrated and now vilified Elizabeth Holmes has traded her black turtleneck for an orange jumpsuit. Credit: Getty Images for TechCrunch.

On June 14, 2018, a grand jury indicted Elizabeth Holmes, age 39, and Ramesh “Sunny” Balwani, age 57, with crimes related to a scheme to promote Theranos, a health care and life sciences start-up based in Palo Alto, California, that had promised it would disrupt the consumer healthcare industry.

In 2022, Holmes and Balwani, Theranos’ CEO and COO, were convicted in separate trials of making fraudulent claims about Theranos’ ability to provide “accurate, fast, reliable, and cheap blood tests

and test results.” Holmes and Balwani also misrepresented Theranos’ financial condition and prospects, defrauding investors of hundreds of millions of dollars.

The curtain has now fallen on the final act of this true-crime story of massive fraud that captivated not only the business and biotechnology sectors but also the popular imagination. After losing her last-minute appeal to the Ninth Circuit for bail while she appeals her conviction, Holmes surrendered to authorities on May 30, to begin her eleven-year sentence

in FPC Bryan, a federal prison for women in southern Texas. Her sentence begins just months after giving birth to her second child with her current partner Billy Evans, heir to a San Diego-area chain of hotels. On April 20, Balwani, Holmes’ former romantic partner, reported to Terminal Island, a federal prison in San Pedro, California to begin his thirteen-year sentence. Former inmates at this facility include Al Capone, Charles Manson (briefly, for auto theft) and LSD evangelist Timothy Leary. Holmes and Balwani’s trials were severed after Holmes revealed her defense strategy – that she was unable to think clearly during the time of the crimes because she was the victim of Balwani’s emotional and physical abuse.

In opening statements at her federal criminal trial, the U.S. Attorney prosecuting Holmes told the jury, “This is a case about fraud, about lying and cheating to get money.” Holmes’ counsel argued in defense, “Failure is not a crime.” Unpersuaded, the jury returned a guilty verdict on four out of eleven counts of fraud. The Silicon Valley mantra, “Fake it till you make it,” does not play as well in health care as it does in other fast-moving tech start-ups.

On Nov. 18, 2022, Holmes was sentenced to 135 months in federal prison, and on Dec. 7, 2022, Balwani was sentenced to 155 months. Commenting on his harsh sentence, Judge Edward Davila of the U.S. District Court for the Northern District of California spoke of early Silicon Valley success stories such as Hewlett-Packard, which had fostered an environment of innovation and fairness. Theranos similarly had great promise, but that promise was “dashed by untruth, misrepresentations, hubris, and plain lies.” For a transcript of Judge Davila’s statement, see NPR, “Read what a judge told Elizabeth Holmes before sending her to prison for 11 years,” available at the following URL:

www.npr.org/2022/11/23/1138988456/read-what-a-judge-told-elizabeth-holmes-before-sending-her-to-prison-for-11-year.

In addition to incarceration, Holmes and Balwani were ordered jointly and severally

to pay over \$450 million in restitution to investors victimized by the fraud, who may not see a penny. Emotional scars will also be hard to remedy.

Twenty-something employees Tyler Shultz and Erika Cheung were initially fans of Holmes and her mission but faced bullying and derision after raising uncomfortable questions to Theranos' management about severe flaws in the technology. After resigning in frustration, Cheung, an entry-level lab tech, blew the whistle to a little-known but powerful federal agency, Centers for Medicare and Medicaid Services, who responded by giving Theranos ten days to fix laboratory practices that posed "immediate jeopardy to patient health and safety."

Cheung has authored a Ted Talk about her experiences speaking truth to power. Shultz was the source of the Wall Street Journal article that exposed the fraud. His summer internship at Theranos had been arranged by Theranos' most celebrated board member: Shultz's grandfather, George Shultz who formerly served as the U.S. Secretary of State, Secretary of Labor, Secretary of the Treasury, and Director of the Office of Management and Budget. George refused to believe Shultz, causing a rift in the family, and Shultz was forced to spend more than \$400,000 in legal fees after Holmes directed one of the highest-profile attorneys in America, David Boies (also a board member), to threaten him and Cheung with defamation lawsuits and accused them of leaking trade secrets.

Holmes admitted that she hired private investigators to follow former employees. Shultz, however, told the Wall Street Journal, "I refuse to allow bullying, intimidation and threat of legal action to take away my First Amendment right to speak out against wrongdoing." Shultz received the James Madison Freedom of Information Award and is mentioned approximately 200 times in Wall Street Journal reporter John Carreyrou's national best seller, "Bad Blood: Secrets and Lies in a Silicon Valley Startup." His most famous quote: "Fraud is not a trade secret."

There have been countless media accounts of Holmes' rise and still more of her fall. At age 19, Elizabeth Holmes dropped out of Stanford in 2004 to found medical technology company Theranos (a portmanteau of "therapy" and diagnosis)" and quickly became a venerated icon not only to young women in technology but also a trusted advisor to both the Clinton and Obama administrations. Her ascension ended in 2015 when the Wall Street Journal called into question the efficacy of her claims. Carreyrou's reporting resulted in investigations of Theranos by the FDA, the US Senate, and the US Securities and Exchange Commission. Media coverage of this true crime drama includes an eight-episode mini-series starring Amanda Seyfried ("The Dropout," Hulu, 2019) and a documentary ("The Inventor: Out for Blood in Silicon Valley," HBO, 2019. ABC News produced a chart-topping podcast ("The Dropout," 2019), which began as six but was later expanded to 36 episodes ("The Dropout: Elizabeth Holmes on Trial," 2021), as well as a two-hour 20/20 special ("The Dropout: The Rise and Con of Elizabeth Holmes," Hulu, 2022).

At its apex, the consumer health care company was valued at \$9 billion and secured an ill-fated partnership with Walmart to offer blood-testing services in 40 Walgreens "Wellness Centers" in Arizona. In addition to luminaries on its board of directors such as Henry Kissinger, George Shultz, James Mattis, and Betsy DeVos, former executive Vice-President of Amgen, Fabrizio Bonanni, PhD, took a board seat in 2016 after he turned down Ms. Holmes' offer to replace her as Theranos' CEO.

Holmes, initially a media darling, graced the covers of *Forbes*, *Fortune*, and *Inc.* magazines, and was lauded as the youngest and wealthiest self-made female billionaire. After the exposé by WSJ, New York Times *Style* magazine featured her in yet another cover story. This time, however, the tale was of a brilliant young woman seduced by the power of her own myth.

SIDEBAR: Preparation for my team's final Inns of Court skit spanned a four-year period, due first to the 2017 Thomas Fire and then to the 2018 pandemic shutdown. The topic – the rise and fall of Holmes – was proposed by one of our chapter's youngest members, **Samantha Koopman**, who had only recently been admitted to the bar. My team finally presented at Sterling Hills on Nov. 16, 2021. Fittingly, that was the week the prosecution rested its 11-week case against the former Theranos CEO.

The part of Holmes was initially developed by **Rabiah Rahman**, and ultimately performed with panache and a blonde wig by the **Honorable Maureen Houska**, who had yet to don her robe as the newest addition to Ventura County's Superior Court bench. **Al Vargas**, as Holmes' secret boyfriend and Theranos COO, shot copious bills out of a money gun in a boardroom scene where Holmes announces a partnership between Theranos and Walgreens: more on that later. Koopman, **Mike Morrow**, **Tim Sottile**, new IOC member **Lou Kreuzer** and I rounded out the cast.



Panda Kroll practices complex timeshare litigation in federal court and is the founder of the **Timeshare Law Library**. She is a member of **CITATIONS'** editorial board.



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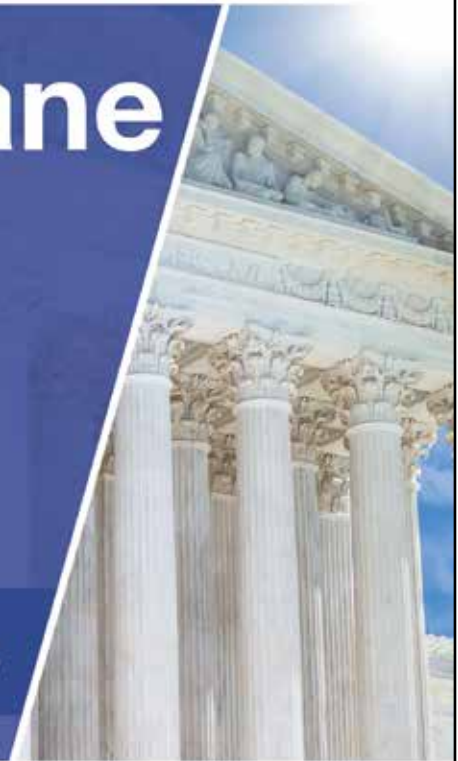
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BARRISTERS CORNER: Judge Ryan Wright, Supervising Criminal Judge

by Erin Weilbacher

Judge Ryan Wright, the current Supervising Criminal Judge, has been in Courtroom 14 for four months now – almost a fourth of the way through his two-year stint. Prior to that, he'd been in Courtroom 48 hearing motions, hearings and criminal jury trials ranging from simple batteries to kidnaps and murders. It's safe to say that the vast majority of the criminal law bar in Ventura County has practiced in front of him. This marks the fourth time Judge Wright has been the Supervising Criminal Judge, so he's familiar with the particulars. When **Presiding Judge Kevin DeNoce** asked Judge Wright to once more step into the role, however, they both knew that the court was facing new and unique issues this time around.

"We are facing two historical challenges," Judge Wright said, the first being the backlog from the pandemic, and the second the statewide court reporter shortage. Separately, less historical and more cyclical in nature, Judge Wright also spoke about the fact that we're operating with only seven of the ten judges Ventura County should have on the criminal court bench. These three issues aggravate each other, gnarling the knot Judge Wright must attempt to untangle.

To be clear, Judge Wright does enjoy the work. "I like the problem-solving, the logistics, and interacting with all the different attorneys." Nevertheless, balancing availability of courtrooms, which judges can hear which cases (availability due to mandatory trainings, vacations, callouts due to sickness or family emergency all play a role here, as does the fact that Ventura County is a small legal community so conflicts are no strange thing), how many

judicial assistants are available, and how many court reporters we have on a given day makes each day a challenge.

The pandemic itself seems to affect all our daily lives less and less – we're at more or less at a "new normal" now, but the judicial system is dealing with its own version of a long Covid: the backlog. Of the 58 California counties, Ventura County ranks fourth in total number of cases per judge. Limit that to just criminal cases per judge, and Judge Wright says we're either number 1 or number 2 in the state.

Of most concern to Judge Wright are the most serious cases, and the seriously high number of them: there were **56 homicide cases**, and a further **33 sexual assault cases with life allegations** when he took over in January—and there have been further arrests in new cases since then. Not all will go to trial, sure, but not a single one that does will be short. Each will occupy a courtroom, judge, judicial assistant and court reporter for their long duration.

The court reporter seems to be the biggest sticking issue there. The shortage is statewide. Los Angeles County has 70 positions open, and is offering a \$25,000 hiring bonus. So far no dice. San Diego County is in the same position: hiring bonuses on offer, but still no hiring happening.

Here in sunny Ventura County, we've reached a crisis. "We should have 27 court reporters. Between callouts, scheduled vacation, we have ten to twelve each day." It's a worsening problem. Just since Judge Wright took over Courtroom 14 we've lost three reporters. In discussing the logistics, though, Judge Wright continually returned to the human. "They're entitled to vacations," he said multiple times, and to breaks during the day; he can't just send a court reporter from one courtroom to the next with no break. One, that's not how employment law works, but more

importantly: that's not how **people** work. Repetitive motion strains and injuries are a real concern for our court reporters.

"People just aren't going to the court reporting schools," Judge Wright told me. Worse, "and those who are, aren't passing. Four people passed last year." In case it wasn't clear: that's four new court reporters across the entire state.

One day in early May, Judge Wright had around eight preliminary hearings announce ready. Between conflicts, time estimates and papering, he had to spread them across three separate courtrooms, but there were only two court reporters available. The attorneys, defendants, and witnesses had to wait all day—and at least one preliminary hearing started so late in the day they had to come back the next day. It's no one's fault, to be clear, just the effect of the shortage.

Because we only have seven of the ten criminal judges we should right now, Judge Wright finds himself handling the calendar court in Courtroom 14 and hearing a double homicide case at the same time. He's heard DUI cases, or other short misdemeanor cases while running calendar before, as had **Judge Gilbert Romero** when he was the Supervising Criminal Judge. But a homicide, and a double homicide at that, is a whole other kettle of fish. As to the current trial, with only seven judges, Judge Wright was left with few options. Two judges had vacations scheduled (another emphasis on the human, here: "everyone in this system are people—none of us are machines") and witness schedules couldn't be worked around that. Another judge up until more than halfway through the trial had the Unlawful Detainer calendar on Mondays, and again, that conflicted with witness schedules. A fourth already had a murder trial, and the last two also had schedule or other conflicts, leaving Judge Wright.

Is this normal? Absolutely not. Is it preferable? Again, absolutely not. Is it tenable? For now, surprisingly yes – if only just barely.

While Judge Wright could have pulled in a judge from the civil bench, for a case as serious as a double homicide he decided to take it on himself. As a direct result, the calendar has started moving at lightning speed. “I get that attorneys have lots of cases, I get that I’m not the only game in town,” he said, with the logistical issues the court is facing, he’s had to be “hyper-efficient.” Judge Wright has always pushed for more efficiency in his courtroom, but “it’s not just a personal preference anymore, it’s a necessity.” When the master calendar can’t run efficiently – when he can’t get cases out, when he can’t move court reporters and JAs to different courtrooms to hear motions, preliminary hearings, jury trials, wherever it is they’re needed – the whole courthouse slows down; the whole system slows down.

Judge Wright said the Governor is well aware of the issues we’re facing, though. Presiding Judge DeNoce has been in discussion with him, and the District Attorney and Public Defender have also been in frequent communication with the court. “Everyone wants to help,” Judge Wright said, and we do have some light on the horizon. He expects we should get another judicial officer on the bench in mid- to late-summer, which – while it won’t fix the challenges the Court is facing right now – will certainly help to alleviate some of them.



Erin Weilbacher is a Deputy District Attorney at the Ventura District Attorney's Office.



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Civility Council, a nonprofit organization dedicated to restoring civility to society. Charvonia recently co-wrote: *The Civility Mosaic: How Anyone Can Use the Principles of Freemasonry to Repair Our World*, with Brother Michael Ashley.

Charvonia served as master of Channel Islands Lodge No. 214 in 1996 and had the privilege of serving as Grand Master of Masons in California in 2014/15, serving some 50,000 members across 300+ lodges throughout the state. Russ is also a member of the Ventura County Bar Association.

If you would like more information, please contact Charvonia at russ@channelislandslg.com.

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