

ACSSA research summary

AUSTRALIAN CENTRE FOR THE STUDY OF SEXUAL ASSAULT

True or false? The contested terrain of false allegations

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A focus on trying to establish the prevalence rate of false claims of sexual assault is detracting from a deeper analysis of what the term false allegations actually means and what the implications of this are for criminal justice and social policy. Without a consistent definition and classification of what a false allegation is and without a broader consideration of the social drivers that lead to someone making an untrue allegation or someone labelling an allegation as false, there will be little chance of progress towards a true picture of false allegations. Instead, an analysis of cultural contexts, gender roles and incorrect beliefs about sexual assault, may contribute to a more useful societal response to allegations of sexual assault.

KEY MESSAGES

- There is ongoing speculation about the prevalence of false allegations of sexual assault, however, without consistency in definition and classification of what actually is a false allegation, accurate measurement of prevalence is difficult.
- Assumptions are made about the truth of allegations of sexual assault at various decision-making points in the justice response. These assumptions are based on individual and societal beliefs about gender roles and sexual assault that may not accord with the actual experiences of sexual assault.
- The perception that false allegations of sexual assault are common has negative consequences for victims of sexual assault and society more generally by perpetuating victims' fear of being disbelieved or being blamed for the assault. This reduces the likelihood of reporting.
- A more useful approach to considering false allegations of sexual assault is to undertake more contextual analysis of the factors that play into a label of false allegations.



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Introduction

The literature around false allegations highlights a paucity of critical analysis that would enable better understanding of the context around reporting sexual assault in the criminal justice system. Much discussion is focused on the continuing debate about how prevalent false allegations of sexual assault are. This focus on prevalence highlights two key issues—the first being that there are sections of society, including those in regular contact with victims of sexual assault, such as police and lawyers, who still believe that false allegations of rape and other sexual assaults are a common occurrence (Saunders, 2012). The second issue is problems with the way reports of sexual assault are classified and compared between organisations and jurisdictions. Key attrition studies that looked at sexual assault cases in the Justice system in Britain, New Zealand and Australia confirmed this.

Jan Jordan’s 2004 study of police case files in New Zealand, that reviewed police decision-making in sexual assault cases, illustrated the first point when she found that police investigating sexual assault, approached complaints in an environment of suspicion and disbelief, and within a masculine ethos of policing organisations (Jordan, 2004).

In Britain, a review of the responses of public authorities to rape complainants found there was still a belief that many allegations are false and that this could affect the way rape complaints are dealt with in the criminal justice system (Stern, 2010). Lonsway (2010) noted that myths about rape that exist in society link to judgements about sexual assault victims and determine societal responses to them. Kelly (2010) also pointed out that the debate about false allegations should not be disconnected from the way rape has been constructed in law and social dialogue. This construct favours a concept of rape that is more in line with rape myths about “real rape” than what research has shown is the actual experience of sexual assault (Larcombe, 2011). An analysis of false allegations should incorporate consideration of why there is such a focus on the believability or otherwise of those reporting sexual assault.

The focus on the prevalence of false reports in the literature ensures there is much emphasis on calculating the statistics and percentages of false allegations or on showcasing new techniques,

insights or models for detecting false claims from those that are true. This emphasis on the potential risk of false allegations limits greater consideration about the many background factors that underlie the debate, such as issues of disclosure and scepticism more generally. Despite an Australian prevalence study that indicated that 8 out of 10 women *do not* report incidents of sexual assault to police (Australian Bureau of Statistics, 2006), and an extensive research evidence base that points to a complex interplay of social, cultural and political barriers to disclosure of sexual violence, the discourse around false allegations still focuses on prevalence (Lisak, Gardinier, Nicksa, & Cote, 2010). Because there is no definitive answer to the prevalence question, the issue of just how many allegations are false remains as far from resolution as at any other time in its consideration.

Where the literature does converge is that the use of certain classifications, definitions and methodologies will affect what actually denotes a false allegation and therefore the estimates of prevalence. Various commentators reiterate that terminology and definitions should compare “apples with apples” in order to be meaningful. A standard definition of what a false allegation is will be necessary before the debate around the proportions and numbers can move forward.

Another message coming from the literature is that the discretionary phases of the justice system are influenced by the decision-maker’s perception of reliability of a victim’s account, especially at the gatekeeping point of the police, (Jordan, 2004; Page, 2008) and at the prosecution stage, which considers the likelihood of securing a conviction (Lievore, 2004). It is through this process of attrition, that those within the criminal justice system make assumptions about the beliefs of the wider community including juries. The decision-makers’ perceptions of how believable the victim is will be influenced by organisational cultures, societal and individual beliefs about women, men and knowledge about the dynamics of sexual assault. Therefore, in order to promote a deeper understanding of the realities of sexual violence, it will be important to tackle the attitudes of the broader culture around gender and violence.

This research summary aims to contribute to and clarify the debate around false allegations of sexual assault by providing a summary of recent literature, including consideration of the classifications and methods of defining a false allegation, whether there is a prevailing scepticism around allegations of sexual assault, and the motivations for falsifying reports.

What is a false allegation in the context of sexual assault?

This section summarises the debate around the prevalence of false allegations and considers what is meant by a false allegation, for the purposes of classification and recording, and some of the problems around how that classification is allocated.

Prevalence of false reports and the issue of definition

Recent literature around false reports adds little in terms of arriving at a definitive figure about just how common they are. This is despite one key analysis of 10 years of reports concluding it is a figure of between 2% and 10% (Lisak et al., 2010). There is broad agreement within the literature that the often-quoted figure of false allegations being around 2% of reported sexual assault allegations is unreliable. The commentary around the origin of this figure largely discredits it as a reliable estimation due to the lack of supporting evidence and its origins as hearsay (Greer, 2000; Rumney, 2006).

One basic reason for this is that there is a lack of consistent classification and definition about what is a false report (Kelly, 2010; Lisak et al., 2010; Rumney, 2006; Saunders, 2012). Kelly (2010)

noted that a compounding issue is the lack of transparency in the classifications and about how a report actually becomes labelled a false allegation.

While the evidence about the prevalence of false allegations is not difficult to locate, it is difficult to analyse because there is so much variation between methodologies, terms and criteria used to denote an allegation as false. Prevalence figures overall will therefore differ depending on what is being counted and the method used to do so (Lisak et al., 2010; Rumney, 2006; Saunders, 2012).

One very clear interpretation of a false allegation is when it is intentional and the complainant knows that it is false. However, the reality is not often as straightforward as this due to contextual factors that also weigh in to influence the motivations of complainants. In addition, there may be allegations that police suspect are false but are not recorded as such.

Classifying an allegation as false—Consistency as an issue

There is also an issue of differences in how particular organisations, research studies, or individuals involved determine what is a false allegation and how that report should be classified. There may be guidelines as to how this is done or it may be for particular subjective reasons. Classifications also vary between jurisdictions, making compilation of statistics and comparisons difficult. As one analysis pointed out, a classification of false allegation should only be founded on a thorough investigation that a crime did not occur (International Association of Chiefs of Police, 2005; Lisak et al., 2010). Studies of reported rapes in various jurisdictions found that such an investigation did not always happen, and that recording of data about reports of rape was not necessarily consistent (Heenan & Murray, 2006; Jordan, 2004; Kelly, Lovett, & Regan, 2005).

This lack of consistency was highlighted in a research report for the British Home Office that looked at rape attrition (Kelly et al., 2005). The researchers found that there was inconsistency in the way police categorised reports of sexual assault including where a report was considered to be false. This research, based on 3,527 cases, was the largest data-set in the UK literature on rape and sexual assault. It used qualitative and quantitative data and cases were tracked with data collected on various aspects of the case including the outcomes of those cases reported to the police. Data included analysis of victim/witness statements, interviews with sexual assault and criminal justice staff as well as police statements and forensic reports.

In this project, those considered to be false allegations were recorded under classifications that included “no crime”, “undetected” and “detected but no proceedings”. The report found that these inconsistencies occurred at the earliest stages of investigation and that cases were inconsistently classified and not in accordance with police guidelines. Therefore, there was no clear definition of when a report was considered false. The fact that there is a lack of consistency and agreement with regards to classification of false allegations is a point that is reiterated throughout the literature. Kelly et al. (2005) considered that there was an over-estimation of the scale of false allegations by both police officers and prosecutors, which fed an organisational culture of scepticism and poor communication between complainants and police. Australian attrition research that tracked 850 cases from the police database, over a 3-year period also confirms a lack of consistency and reliability in classifying reports (Heenan & Murray, 2006).

Key points about measuring false allegations

In considering classification, two important points are reiterated throughout the literature. The first is the lack of clarity and consistency around classification of sexual assault crimes that do not proceed through the criminal justice system. There are inconsistencies in data collection both in terms of *whether* the information is recorded and in terms of *how* it is recorded and

counted. This is the case across different sectors and jurisdictions, and that leads to ambiguity for the purposes of counting false allegations.

The second is that there is bias or subjectivity within the classification process, which arises from individual and cultural perceptions about gender roles, myths and beliefs about sexual assault that persist in our society. The particular context and circumstances of an allegation will influence these subjective assessments. Kelly (2002) noted that the systems, structures and institutions that set the boundaries of what is and what is not sexual violence, are constrained by gendered perspectives that are historically masculine.

Why would someone make a false allegation?

Sexual assault has particular features that make it a distinct type of crime. These include its interpersonal nature, the underlying gender and power imbalances and the social contexts in which it occurs.

Ascribing a sexual assault with a black or white label of true or false fails to understand some of the broader social issues that can create complexity around the motives for making an allegation.

Saunders (2012) noted that the term “false allegation” can in fact be attributed to a false complaint where the sexual assault didn’t occur *or* a complaint where the victim/survivor has either intentionally or unintentionally given an inaccurate version of events. In both instances, it may be necessary to look behind the various reasons and motivations for an allegation that may be false or may contain aspects of falsity. Consideration of the contextual information surrounding a report is important.

Factors affecting belief of an allegation

In assessing the truth of a claim, certain factors are likely to influence the subjective judgement of whether the complainant’s story is believable. Across the literature, there was similarity and repetition in the features that led to decreased belief in an allegation. This indicates that the same factors in different jurisdictions seem to be influencing decision-making about victims’ stories. Many of these align with “rape myths” about what is “real rape” and what is not. These rape myths include the presence of violence, that the offender is a stranger, and if there is injury sustained (Larcombe, 2011). These factors however, are contrary to the more typical experience of sexual assault, which is often perpetrated by a known offender.

Delay in reporting

In her research analysing police files, Jordan (2004) noted some of the factors that tended to decrease belief in the truth of the complainant’s story. She found 86% of complainants who had delayed reporting were viewed suspiciously. The reality is that there are often delays in reporting sexual assault for many reasons including the trauma of reliving the event, shame and embarrassment, fear of retribution from the perpetrator or others, fear of social consequences and some victim/survivors not being certain that what has happened to them in the process of social and sexual interactions actually constitutes criminality. In other words, a delay in reporting, even if it is of several years, is not unusual in the context of sexual assaults (Lievore, 2003).

Consistency and/or concealment of facts

Consistency of story was another trigger that raised suspicions in believing the complainant (Jordan, 2004; Lievore, 2004). This can include whether a complainant changes her story or conceals facts. A complainant may be considered by police to have lied by omission in that they do not reveal the full account of their experience (Kelly, 2010).

There are many reasons however why reports of sexual assault may contain inconsistencies or concealments. Some of these go to the victim's own sense of factors that may make her story less credible, for example having previous interactions with the perpetrator, or alcohol or drug consumption. Many of these factors indicate the bigger picture about gender roles in our society—for example, in Jordan's (2004) study, one case of changed story involved concealing the victim's role as a sex-worker. Similar contexts may include where the complainant was underage in a bar, or taking illegal drugs. In such instances it may be a choice between two negatives—lying or revealing information that may be detrimental to the victim's story or personal respectability.

Mental illness and intellectual disability

A pervading theme of complainants with mental health issues not being believed or their complaints not prosecuted is reiterated throughout the literature, particularly where complaints were not progressed past police or prosecution stage (Heenan & Murray, 2006; Jordan, 2004; Lievore, 2004; Lonsway, 2010; Stern, 2010).

The UK Stern review found a recurring story of vulnerability among many victims reporting rape. This was particularly in relation to revictimisation where rape and sexual assault occurred multiple times and often in conjunction with mental health problems or learning disabilities (Stern, 2010). Having been sexually assaulted is a known risk factor for further victimisation (Classen, Palesh, & Aggarwal, 2005) and there are various mental health issues, such as complex trauma that can result from long-term and chronic abuse (Briere & Spinazzola, 2005). It is paradoxical that the identification of a mental illness or intellectual disability is identified as a factor in reducing credibility when these are also factors linked to predisposing a person to sexual victimisation (Keel, 2005).

Consumption of drugs and alcohol

Heenan and Murray (2006) found that a high attrition rate in cases where victim/survivors were influenced by alcohol and/or other drugs. The use of drugs and alcohol may have impacted on a reliable recollection of events (Lievore, 2004) but also can go to underlying judgements about a victim's responsibility for the sexual assault by engaging in behaviours that made them vulnerable rather than the perpetrator being considered responsible for taking advantage (Jordan, 2004). One study, involving focus groups of students, found that there was a belief among students that while intercourse when drunk to the point of incapacity may amount to an unpleasant experience, these students didn't actually consider it to be rape (Gunby, Carline, & Beynon, 2013)

Known offender

Where an offender is known to the victim/survivor, this is more likely to raise suspicion about the allegation (Jordan, 2004; Larcombe, 2011). Part of this goes to misconceptions about sexual assault and the idea that "stranger" rape is somehow true rape. But there is a concept that somehow a need for consent is negated where a woman has previously agreed to a sexual relationship with the perpetrator. It extends to the framing of sexual assault as merely a

miscommunication in the social process of negotiating sex within a relationship (Hester, Kelly, & Radford, 2002). Victims may also have a desire to protect a perpetrator (Lonsway, Archambault, & Lisak, 2009).

Victim demeanour

A study of prosecutors' beliefs in credibility of sexual assault victims found that victim demeanour is very important for convincing juries of the facts. This includes being confident and relaxed, not aggressive, showing some distress but not withdrawn or numbed, and where there is a prior relationship, not showing animosity to an extent that goes to motivation to lie (Lievore, 2004). Memory, articulation and communication were also important. However, as Jordan (2004) noted, the effects of rape and its accompanying trauma are the very things that can produce unconvincing allegations.

Rape myths and stereotypes

Many of the above factors that raise suspicion align with the existence of “rape myths”. This is a term that has been given to describe the prejudicial and stereotyped views about rape and sexual assault that perpetuate and flourish in a culture and are acquired and spread in much the same way other cultural beliefs are—through media, peers, learning environments and other communications (Baugher, Elhai, Monroe, & Gray, 2010).

Common perceptions about the motivations for making a false allegation

Assessing an allegation of sexual assault occurs at various points in the criminal justice system but the assessment at the point of police report is probably the one where belief is most crucial. Jordan (2004), in her analysis of reports of sexual assault filed with the New Zealand police, observed that variation between police officer responses is in line with the variation of complainants and the characteristics of each case. She also observed that police are trained to be suspicious and this may impact on their approach to reports (Jordan, 2004).

In a study by Levitt and the Crown Prosecution Service (2013) in the UK that reviewed cases of false allegations of rape and domestic violence, the service drew attention to the need to consider contextual factors and social pressures on the people making intentionally false claims and the reasons for doing so. In one case study, a man who has been having sex with another man claimed it was rape because he felt “guilt, shame and depression” about his sexuality.

Revenge or other malicious intent

The assumption that women would frequently concoct stories of rape for a vindictive purpose is a long-held one. Sir Matthew Hale's now infamous words to a jury in 1847 demonstrate the attitudes behind this when he commented that accusations of rape were easily made, hard to prove and even harder to defend (Lisak et al., 2010). One writer on the topic indicated that there is “ample evidence that adults lie about virtually anything, including grave matters that have serious consequences for others” (Gross, 2008, p. 46).

In the UK study, Kelly et al. (2005) found that the terms “revenge” and “cover-up” do not adequately describe the complexity of the circumstances involved in many of these cases. For example, in this study for the British Home Office, a young Asian woman made a false allegation to prevent her family taking her overseas to an arranged marriage, another was an attempt to reconcile with her mother after being thrown out of home.

An issue that seems little analysed in the literature, is the fact that reporting a sexual assault complaint is not an easy matter. There is a reason that sexual assault is a largely unreported crime—some of the barriers to reporting it include shame, embarrassment, fear of not being believed, and hostility and fear of the legal system (Lievore, 2003). To continue an allegation through the justice system and expose oneself to the requirements of giving evidence and all else that is entailed, is not something that could be taken lightly (Belknap, 2010; Gunby et al., 2013). Therefore there are not just consequences for others but also for the complainant, including the stress of court cases, police scrutiny and witness testimony.

Cover story or alibi

When considering the “cover-up” story, it is interesting to see how the broader social picture around gender roles and expectations play into the perceptions of the complainant and the police about false rape allegations.

The alibi motive refers to instances where the complainant lies to cover up something that may either implicate their own behaviour or they think will bring on judgement about their actions. It was sometimes found in the context of the complainant being pressured into reporting or someone else reporting on their behalf (Jordan, 2004). The examples of this motivation in the literature included, younger people who didn't want their parents to know that sex had been consensual, or had been engaged in some other illegal activity they didn't want known such as taking illegal substances, or had been in a situation where they were aiming to cover up for having consensual sex outside a current relationship (Heenan & Murray, 2006; Jordan, 2004).

Levitt and the Crown Prosecution Service (2013) made similar findings and cited an example of a 14-year-old who had sex with her 17-year-old boyfriend and told her father it was forced because she was afraid of his reaction when he found out. Her father made the allegation to the police.

Saunders (2012) noted that it may be very difficult to identify exact motivations behind a false complaint. Any combination of contextual and personal factors may interact to create such motivations. These can include the fear of consequences for engaging in particular behaviour or a history of vulnerability that indicates a need for assistance rather than aiming to be malicious.

Retraction of allegations of sexual assault

The idea that women who withdraw complaints or refuse to continue with the legal process have been lying may need more nuanced consideration.

In Jordan's (2004) study, more than half of the cases where retraction occurred were reported by someone other than the complainant and in many of these, retraction was linked to a lack of clarity around the circumstances of the event or the third party's misunderstanding of events or pressure to report.

In the UK Crown Prosecution Service report, one woman retracted her statement accusing her ex-husband of rape, but later she confided to police she had been threatened and that's why she withdrew the story (Levitt & the Crown Prosecution Service, 2013).

However, retraction by complainants can be attributed to a number of factors, which can include reunion with the defendant and/or pressure or intimidation from the defendant and his supporters (Anderson, Richards, & Willis, 2013) or a lack of support from the justice system. This is acknowledged also as a dynamic in the domestic violence field and justifies an approach in which it is understood that retraction does not mean that abuse did not happen (Raphael, 2008).

Similarly, children and young people who are economically and emotionally dependent on the family environment for their ongoing wellbeing and nurturance often retract their original disclosures because of an overwhelming fear of its consequences on their whole world (Evertsz & Miller, 2010; Jensen, Gulbrandsen, Mossige, Reichelt, & Tjersland, 2005).

Although not actually retracting the claims, some complainants may simply decide they don't want to continue with the legal process. This decision can be made for a variety of reasons and should not automatically be attributed to an allegation being false.

For example, the Victorian attrition study found that some victims withdrew their complaints in response to not being able to cope with the legal process, such as fears about court or giving evidence when they just wanted to forget it happened, fears about procedures such as medical procedures, and not wanting other people to find out what happened to them. Other reasons for victims withdrawing included not wanting partners to be prosecuted and fears about social implications of others finding out, such as family and friends (Heenan & Murray, 2006).

In summary, the issues around retraction and victim withdrawal from the legal process require more contextual analysis. It requires a deeper understanding of some of the social pressures and cultural beliefs around gender roles and sexual assault, that there is shame and embarrassment for complainants, as well as fear of the formal procedures of the justice system. A withdrawal or retraction may be more of an indication of a lack of trust in the criminal justice process (Kelly, 2010) or a fear of social recriminations, such as shame due to a societal response to sexual assault.

The cultural background that allows myths and beliefs about false allegations to perpetuate

One of the key issues underpinning the controversy about false allegations is the nature of the crime of sexual assault. It has issues of gender, social roles and stereotyping tied up together in a way that few other types of crime do. Connected to this is the fact that the effects of sexual assault on victim/survivors also have particular and specific impacts on victims in ways that many other violent crimes do not (Boyd, 2011).

Kelly (2010) commented that there is a “gendered agenda” around the debate with respect to false allegations and that any discussion about the significance of the issue cannot be considered without highlighting the gendered nature of rape and analysing the cultural backdrop that has resulted in women (and children) not being believed when they do speak of sexual abuse.

Many interlinking factors create the perception that women frequently lie about sexual assault. These include social norms and stereotypes of gender roles. These are the bigger picture factors that go beyond the immediate individual's understanding or an organisational culture of scepticism. These are about the misconceptions or beliefs that a whole society may have about sexual assault, and about what is appropriate behaviour according to gender. Prosecuting decisions may be made according to these beliefs, because it could be assumed that a jury (representing society) will hold them (Lievore, 2004).

Social norms and gender role stereotypes

Jordan (2004) found that approximately three-quarters of the incidents police concluded to be false appeared to have some element of judgement on the basis of stereotypes regarding the defendant's behaviour, demeanour or motive.

Another study of prosecutorial decisions indicated that prosecutors perceive that juries take a moralistic view of victim behaviour, such as drinking or showing interest in an alleged perpetrator prior to the assault, as behaviour that could go against the victim (Lievore, 2004).

There is evidence throughout the attrition studies and other research analysis that indicates that where women have acted in a way that is contrary to that of social norms and expectations that some element of credibility is lost. For example, Heath (2005) in an outline of laws around evidence in sexual offence trials, noted that women are consistently accused of lying or making false reports and that they face extended length of questioning compared to other trials.

Anderson et al. (2013), in a review of the ACT sexual assault law reforms, noted much of the attrition rate was attributed to the difficulties in confirming evidence and made an observation that if the defendant had to prove there was consent there may be a change in the attrition rate change.

The importance of understanding sexual assault

The literature also indicates that allegations of sexual assault are more likely to be believed where the context of the alleged rape aligns to the rape myths that often surround perceptions of sexual assault (Lonsway, 2010). The paradox here, however, is that sexual assault more commonly occurs in a scenario where the offender is known to the victim.

Jordan (2004) noted that if there was more widespread understanding of the trauma sexual assault produces, then police and other decision-makers would understand victims' fear of being blamed and the impact that shame has on complainants. The importance of training for professionals in the justice system to understand the effects of sexual assault and the range of responses victims can present is a repeated conclusion on the topic of false allegations (Rumney, 2006; Williams, 2012).

Conclusion

If there is one most significant factor to draw from the research on false allegations, it is the importance of context. With regards to statistics and estimates of the prevalence of false allegations, context relates to how a report is classified and the relevance of the definitions used within a particular organisation and variation between those organisations. What is being counted must be analysed in the context of where it comes from and what it means.

Context is also important in considering the factors that are used by decision-makers within the criminal justice system to attribute falsity to a report. There will always be an inherent tension between the rights of the accused and the needs of victim/survivors. Context impacts in considering the facts of each case reported. The judgements made by decision-makers will reflect the views of society and the individuals making those decisions, the circumstances which surround a particular sexual assault will impact on those judgements, for example, did the complainant behave in a particular way, did the assault occur in a family violence context, were facts concealed by the victim, and so on. Nested within a broader, cultural context of particular gender roles and societal beliefs about sexual assault, these decisions will be influenced by factors that are difficult to change, such as the rape myths described earlier. Narratives of sexual assault often reflect the way in which sexual assault offending occurs in situations that are deeply embedded into ordinary, everyday contexts. These contexts include interpersonal relationships, physical circumstances of the interactions and socio-cultural contexts that inform behaviour (Clark & Quadara, 2010). Judgements about the right or wrong behaviour within these contexts may be so ingrained into social beliefs that it is difficult to see their influence. Law reform may reflect a desire to change but can't be relied upon to enforce compliance

(Page, 2008). Addressing attitudes of broader culture as well as individual and organisational understanding of sexual assault will be necessary in order to change the perpetuation of “rape myths” that do not accord with actual experiences of sexual assault. The stereotype of the “common” false allegation and the rape myths that contribute to incorrect beliefs about sexual assault, have negative consequences for victims and society in general, in that a willingness to report sexual assault is hampered for fear of being disbelieved or of being blamed for the sexual assault. What may be more useful is to understand more deeply, the contextual factors that play into a label of false allegation.

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