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(Mis)remembering sexual assault

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Last month, Rolling Stone published a searing report on campus rape, and the story and its aftermath have dominated the media's attention and scrutiny. While the case has become a lightning rod for political debate, ripe with opinionated commentary from many angles, few have looked for what psychological science can tell us about it. In addition to understanding how memory errors can come about, it is critical to understand how real these memories can seem, to both the person remembering and the person hearing the recollection.

After inconsistencies and impossibilities in Rolling Stone's

article came to light, "Jackie's" story of gang rape has been called into question. Further investigations found that the fraternity did not have a party on the date she said she was raped, nor did they have a member who could have met the description she gave. Outrage, which had been focused on the university, shifted towards the magazine's one-sided, uncorroborated reporting. Some are now using this case as an example of how backlash against a real problem - the mishandling of rape accusations by colleges and universities - has created a new problem, where the accused are presumed guilty before due process.

Jackie's friends have since offered a different account of what happened on that night than the version she gave to Rolling Stone. The original article portrays them in a callous light, debating the social costs of going public while she stands shaken and bloody. Although they still believe their friend experienced some sort of trauma that night, they dispute the details, such as saying they did not see any visible injuries, and that it was Jackie who did not want to report the crime.

These new revelations, along with the previous inconsistencies that have been called out in numerous publications, have led to cries of "hoax" and have been treated as proof that Jackie was lying or making the whole thing up. However, decades of research on memory have shown us that telling the truth and lying are not the only two possibilities. While it now seems clear that many important details of Jackie's story cannot be accurate, remember that memory errors, and even entirely false memories, are fundamentally different from lies.

Psychological studies of memory have shown for years how people may come to believe in events that never happened and how confident they remain in the accuracy of these memories. People can be led to believe in false events both in the distant past (e.g., that they got lost in a mall as a child when that never happened) and a relatively short time ago (e.g., that they completed tasks they had only imagined doing). The

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 Facebook Inc. must face a lawsuit accusing it of scanning users' private messages for advertising purposes in violation of federal privacy laws, a judge has ruled.

people in these studies with glaring memory errors are not "making it up" in the sense they are deliberately lying, but have instead altered their memory in a way consistent with what they now believe. Jackie had been telling her story long before Rolling Stone interviewed her - any inconsistencies or false aspects may have become so ingrained as to be impossible to separate from the original truth of that night.

These false memories can be extraordinarily believable, both to the person who has created the memory and the people reacting to it. Once a false memory is implanted, it can be as real to the person as any other memory, and can be experienced with strong emotional reactions. A study that directly compared the emotional content of true memories and implanted false memories for the same event (e.g., witnessed a physical fight between your parents) showed that people's emotional reactions to the event would not be enough to distinguish between true and false memories. Other studies asking new participants to listen to the recollections from the past study showed that people were likely to rate both true and false memories as accurate, and many similar studies have shown that people cannot differentiate well between a recollection that is true and one that is false (but believed by the teller).

Given how mock-jury studies have shown that an emotional witness is perceived as more credible to mock-jurors than non-emotional witnesses (e.g., believing a rape victim who is crying more than one who tells the same story neutrally), we can see how important it is to separate the emotional content of a story from its veracity. Much like the mock jurors in these studies, the Rolling Stone reporter believed in the truth of Jackie's account, probably in part because of the real emotions Jackie displayed. While those emotions may be real, that is not enough to prove that the memory behind them is accurate.

For obvious ethical reasons, lab studies do not implant such traumatic memories as rape or assault. However, even less serious false memories can have lasting consequences, further evidence of how "real" they seem to the memory holder. Those who developed a false memory for being sick after eating a certain food in childhood showed decreased preference for that food and actively avoided eating it, long after the memory was planted in a lab study. Similar studies on alcohol preference have also shown how a false belief can cause a lasting change to preference. Lying would not be expected to create such a strong and lasting behavior change, while it is easy to see how a genuine, but false, belief might.

When it comes to evaluating claims such as Jackie's, in both the court of law and the court of public opinion, we need to remember what science can tell us about how memory errors may come about and how sincerely they may be believed. Just because someone's story is emotional and detailed does not mean it is accurate. At the same time, just because a memory turns out to be partially or completely false does not mean it was a deliberate lie. All of us would do well to remember the malleable nature of memory, that true belief may arise from memory errors, and the lasting effects of false memory, for the sake of both accusers and the accused. It would be a travesty if, in search of justice for victims of sexual assault, we only end up creating new victims in the process.

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Communications

Internet 2014: free for all, dark for some

As the year comes to a close, it's increasingly clear that the future of communications - whether business or consumer voice, data or video - will be based on the Internet. By **Anita Taff-Rice**

Intellectual Property

More can sue under Lanham Act after 2014

This year, while the Supreme Court was expanding false advertising access to the Lanham Act, the circuit courts were busy making plaintiffs prove up their so-called irreparable injuries. What happened? By **Jane Shay Wald**

Labor/Employment

More ADA lawsuit reform needed despite efforts

California has 40 percent of the nation's ADA lawsuits, but only 12 percent of the country's disabled population. By **Katherine Pettibone and Chris Micheli**

The other 2014 employment laws you need to know

Although California presents opportunity, it also presents an often unique set of employment risk propositions, which are often just one set among a constellation of others that require management. By **James M. Nelson**

Law Practice

Lawyer by trade, cowboy by heart

They say two of the biggest cowboy lies are, "I own that truck and I won that buckle." Gregory L. Dillon - a lawyer by trade and a cowboy at heart - has both of those checked off his list.