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Published Case Reports: One Woman's Account of Having Her Confidentiality Violated

Nicole S. Kluemper¹

Abstract

This is a personal story regarding one woman's experience of serving as a case study protagonist and later having a psychologist uncover her identity and retell her life story in the name of scientific investigative journalism. As a participant in a psychological case report, I believed that my confidentiality would be protected. Unfortunately, this case study participant found herself in the middle of the Memory Wars, and that turned out to be the catalyst for an unwanted inquiry into my life. A well-known memory researcher hired a private investigator to find me, gained access to a great deal of private information about me, and published this in detail without my permission. I discuss in this article how these actions affected my life in some very serious ways. I raise several issues about the meaning of my experience for further case study authors and the clients whose lives they present, as well as questions about the duties of psychologists to the subjects of their research and inquiry.

Keywords

Taus v. Loftus, case studies, ethics, confidentiality, privacy

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Imagine that you have a secret; something that makes you feel small, ashamed, and different from every other person you pass on the street. Imagine that you thought that you had the rest of your life to deal with the emotional consequences of that secret, when all of a sudden some unknown person comes along and starts telling her own version of your secret. Imagine how powerless you would feel at having the decision over when to deal with that secret stripped from your control. Imagine how it would feel if you tried to assertively ask that individual to stop and she refused. Imagine that she went to every prominent mother figure in your life and talked to them about your secret. Image that betrayal. What if the memory of your one loved parent got caught up in the new “theory” being devised by this person?

I have always known that I was interviewed by a psychiatrist when I was 5 and 6 years old, although the details surrounding those interviews were not always a part of my conscious memory. Some have hypothesized that I pushed those memories far from my own reach to protect myself from the content. Perhaps if those details had never eluded me, I would not have been the target of an investigation that changed my life. However, if my life had not been interrupted in this way, then I would not be the woman I am today.

My parents divorced when I was very young, and a custody battle ensued. Both my father and my biological mother fought for me tirelessly, and as with many custody disputes, both did things that I am sure they would not be proud of today. Somewhere along the way, I told my father that I had been sexually abused by my biological mother. I told him that she had put her fingers in my vagina while she was bathing me and asked me if it felt good. Because this allegation was made during a custody dispute, the court ordered an evaluation of all members of the immediate family, which was conducted by Dr. David Corwin, a child psychiatrist. Corwin interviewed my father, his wife, my biological mother, maternal grandmother, and me.

My father got full custody of me, probably due in large part to the recommendations made by Dr. Corwin. The videotapes of my interviews were then used, with my father’s consent and my assent, by Corwin for training about child sexual abuse. Over the years, Corwin contacted my father for consent and me for assent to continue using those tapes. I was proud to have made a small contribution toward helping other children who might have been traumatized. In fact, this is where my love for psychology started. It was from this positive association that my desire to help traumatized children grew.

My father and stepmother eventually divorced, and when I was 12 years old, my father suffered a massive stroke that left him paralyzed on the left side of his body. He would never return to our home, and it was sold by executors of the estate as I was too young to handle such affairs. He remained

in convalescent homes, and I lived in a series of placements that included friends, neighbors, group homes, and finally, a foster family. My father died as a result of a bleeding ulcer in 1994, when I was only 16 years old.

I was at school, practicing for a football game in which the junior and senior high girls played each other while the guys cheered, often called a “powder puff” game. When I got home, there was a message from the convalescent hospital where my father was staying, telling me to get there quickly. I got a ride into town and arrived at the convalescent hospital just as they were loading my dad into the ambulance. I said a couple of words to my dad, and then I turned to the emergency medical technician (EMT) and asked him if my dad was going to be ok. As he closed the doors of the ambulance, the young man looked at me solemnly and said “if only we had gotten to him sooner.” My father died within the hour.

In the following months, the woman with whom I lived brought a lawsuit in my name against the convalescent home in which my father died. I had very little to do with the decision to bring that lawsuit. Geis and Loftus (2009) commented on this briefly:

Taus’s father had since died and she, with her foster mother as guardian ad litem, had filed a wrongful death suit against the Creekside Care Convalescent Home in Vacaville, California. The suit charged the facility and some 53 persons with a basket full of “outrageous” actions and omissions (*Taus v. Creekside Care Convalescent Hospital*, 1995). Taus asked for a considerable sum as compensation and, to the best of our knowledge, received considerably less. (p. 150)

It was around the time my father died that my biological mother reappeared on the scene. With the loss of my father, I was feeling a tremendous sense that I was alone in the world, and although I wanted desperately to connect with my biological mother, I felt that I was betraying my father by doing so. I was in a great deal of pain, and I wanted desperately to know the details of my life and how I had arrived at a place in which my father was gone and I barely knew my biological mother. I did not want to be disloyal to my dad, but I did need to understand why my biological mother had not been a part of my life. It was within this same period of time that Dr. Corwin contacted me to reaffirm my assent for his showing of my interview for professional education. After agreeing with his continued use of the video, I asked him if he could send me a copy of the videotapes of myself at 5 and 6 years old. Corwin was concerned about how viewing the interviews might upset me, and he requested that I wait to see the videos until he could be there with me to ensure that I was emotionally safe and supported.

I went to watch the videos, having very little memory of the contents or the circumstances leading up to their being taken. As I sat across from Dr. Corwin, there was once again a camera recording my responses, as there had been so many years before. I sat and talked with him a little, and he asked me what I remembered about the whole situation. At first I described some other memories from that period of my life but did not say anything about the alleged sexual abuse. Then Dr. Corwin asked me directly about the concerns regarding possible sexual abuse, and although I initially indicated that I did not, I went on to recall some details of the abuse (Corwin & Olafson, 1997). I told him what I remembered as best I could. The video camera caught this event, and I went on to watch the videos of myself at 5 and 6 years old. Later I told Corwin a little about how I felt after watching the tapes. He video recorded that final part of our contact just as he did the first part of our meeting earlier that day.

Dr. Corwin later told me that my interview was the first he knew of in which a subject who had a childhood video recorded interview describing being sexually abused, then later described not being able to recall the sexual abuse experience, and then, while being video recorded, experienced a return of that memory. It would be difficult (and unethical) to try to experimentally create such a scenario. Because of its uniqueness, Dr. Corwin wanted to show the videos of me at age 17 along with my earlier disclosure, to other professionals, and I gave him my consent. This was the first time that I became aware of the debate regarding the theory of repressed memory. Eventually, he and Dr. Erna Olafson wrote an article about it, and some other mental health researchers and authorities in the field wrote commentaries in response to the Corwin and Olafson (1997) article and the videos that they had also reviewed.

It was December of 1997, and I was finishing my first semester at the University of San Diego. I was 19 years old, and my primary concern was fitting in socially, although I never fully achieved that particular goal. I was at a small gathering with my roommates, and my pager went off. It was a friend from my hometown, and she was trying to reach me to tell me that there was a private investigator snooping around town asking about me. I panicked. I had no idea why a private investigator would be looking for me. The only thing out of the ordinary that I had ever been involved in was Corwin's case report.

It did not take long to figure out that Dr. Elizabeth Loftus was the one who had hired the private investigator. I recall contacting her and requesting that she stop trying to investigate the personal aspects of my life. She did not stop. I was referred to an attorney by the name of Julian J. Hubbard, who agreed to assist me with the ethics complaint pro bono, as he wanted to ensure that justice was served. We started by contacting the Office of Scholarly Integrity at the University of Washington, where Loftus was working at the time.

My understanding is that Loftus's records regarding my case were seized by the University of Washington, and for the next 2 years, the University attempted to decide what should be done about the situation. In the end, Loftus was asked to take a remedial ethics class. I had been prepared for this outcome, and I understood that as a University of Washington "star," I could not expect them to come down on her too hard. What I did not expect was for Loftus to leave the University of Washington for the University of California at Irvine (UCI), where she apparently continued her work on a series of articles regarding the details of my life.

I remember the day that I found out about that first article as though it were yesterday. I was in flight school in Florida, learning to fly the mighty TH 37 helicopter. I was called to the operations desk over the squadron announcement system. I arrived there to find out that I had a phone call. It was Julian Hubbard, who was calling to tell me that Loftus had published an article titled "Who Abused Jane Doe?" in a magazine called the *Skeptical Inquirer*. I had actually lost touch with Julian, as I had fully intended to let the whole matter rest believing that she had recognized the harm she had caused me. I remember asking my good friend, Susan, a fellow flight student and a Marine, to come with me to the Barnes and Noble the following weekend. She stood silently behind me as I searched for the magazine and then sat with me as I read the article. Susan was speechless, as was I.

My outrage was on several levels, a few of which I will attempt to describe here and some of which are still too painful for me to discuss publicly. First, Loftus looked through juvenile court records, managing to see even those that had been sealed by the court to protect my privacy. Then, she set out to question the adults who had raised me. She had her private investigator track down my biological mother, my stepmother, and my foster mother. My foster mother reported she was invited to the private investigator's office where Loftus introduced herself as Dr. Corwin's superior. With regard to my former stepmother, Loftus hypothesized that it was actually she who had suggested the "false accusation" that led to the court ordered investigation and full custody eventually being awarded to my father.

The Loftus and Guyer (2002a) article made it clear to me that Loftus had been in contact with my biological mother, who was the perpetrator of the alleged abuse. This was a violation in and of itself, but the things that my biological mother said about my father that Loftus had the audacity to publish were another level of hurt. Loftus had taken the word of the woman who had been estranged from my father for many years and who had lost a bitter custody battle against the man, and published a one-sided account. My father had been deceased for more than 5 years by the time that article was published.

I was appalled that Elizabeth Loftus believed that she had the right to comment on my life, my father's life, or the events that supposedly took place between my father and the woman he was married to almost 16 years prior to her investigation. I was further outraged, because my half-brother's account of the situation was also published (Geis & Loftus, 2009; Loftus & Guyer, 2002a), although the authors failed to mention that "John" suffered a terrible accident during adolescence and was left with significant brain damage and memory loss. This would be evident to any individual who had any kind of contact with the man, either via telephone, in writing, or in person. Moreover, I am frustrated that misinformed reporters continue to misreport the facts of my childhood.

Loftus chose three women from my past to interview, all of whom were supposed to love and protect me. The depth of that pain is something that I still have not come to terms with. I was appalled, disgusted, heartsick, and completely overwhelmed. I felt this way both as an individual and as someone who believed (and still believes) strongly in the study and practice of psychology. I wanted her to understand that this was wrong and that she should never do such a thing again. A small part of me actually hoped that she would say that she was sorry.

A second article was published in the next edition of the *Skeptical Inquirer* (Loftus & Guyer, 2002b) as I began to work with Mr. Hubbard to file a civil suit in response to what I felt was a huge violation of my privacy. A civil suit was the only way that either Mr. Hubbard or myself could think to respond. In a civil suit, the goal is generally to obtain money damages, although I was far more concerned with getting Dr. Loftus to understand that what she had done had caused me a great deal of emotional pain. Mr. Hubbard took the case on contingency, and as such I was also interested in making sure that he was compensated for his efforts in taking on such a tremendous amount of work for no money up front. Some may disagree with my choice in taking this matter into civil court, but I truly saw no other way, as Dr. Loftus was not licensed in any state and was not a member of the American Psychological Association, an organization that publishes ethical guidelines for its members.

The suit was filed in my hometown, and the causes of action were upheld by that court. Loftus et al. appealed the decision of the Superior Court to deny their motion for dismissal. The Appellate court also allowed the case to proceed despite arguments by Loftus et al. The case finally went before the California Supreme Court and was presented by the defense as a First Amendment issue. Out of concern regarding media and its right to free speech, the court dismissed all but one of the causes of action and announced that I was to be held responsible for the legal fees accrued by the defendants as a result of the remaining causes of action.

Before the California Court ruled, I had settled with Dr. Loftus when it became clear to me that she would never concede. Loftus's insurance did pay a small amount as a result of the settlement, and the California Supreme Court did later uphold one of my causes of action against the remaining litigants. The cause of action that stood involved Loftus's having misrepresented herself as Dr. Corwin's supervisor to "foster mom." At the time of the settlement offer, I was stationed in Hawaii, and I was thousands of miles from my support system. I was exhausted, as this entire ordeal had persisted throughout more than a third of my life, and I wanted the whole thing to be over. The stream of editorials and Loftus supporters seemed never-ending, and my lawyer and I simply did not have the resources to counter the endless propaganda we were up against. I was also concerned for my future husband, and I wanted to protect him from the possible negative side effects of a bankruptcy. It was my belief at the time that the other defendants would follow suit and settle as well. I was wrong.

I was assessed almost a quarter of a million dollars in legal fees. I am not a lawyer, but I will attempt to explain how and why I was assessed these fees. In California, anti-SLAPP (Strategic Lawsuit Against Public Participation) laws are intended to prevent people from bringing frivolous lawsuits and to protect those against whom such suits are brought. I believe that the fact that the lower courts upheld many of my causes of action strongly argues against the accusation that my lawsuit was frivolous. Furthermore, my view is that the fact the California Supreme Court upheld even one cause of action validated the justness of my lawsuit.

Without any attempt to contact me to discuss payment terms, the attorneys who had defended Loftus garnished my military wages. I started to fall behind on some of my payments for the first time in my life. I was paying mortgages on two properties, and the housing market had already started to decline such that I owed more than either property was worth. I spoke to a bankruptcy attorney, who quickly agreed with my suspicion that bankruptcy was my only viable option. With almost a quarter of a million dollars in legal fees weighing down upon me, I made the difficult decision to seek protection under federal bankruptcy law.

With regard to my military career, I was also left with few options. It is very rare for a military member to have his or her wages garnished without some sort of wrongdoing also having taken place. The majority of such wage garnishments are the result of refusal to pay child support or charging more on credit cards than the individual could pay. In this case, I maintain that I had done nothing wrong, but it was very difficult to make senior supervisors and fellow officers understand how I had arrived at the situation I was in. In addition, I was told by the bankruptcy attorney that I made

too much money as a Navy Lieutenant to file for bankruptcy. I saw no other option but to give up a career as a Naval Officer and helicopter pilot and file bankruptcy.

The bankruptcy was particularly difficult for me. I lost both of the houses that I had acquired as a result of a stellar credit history. My vehicle was repossessed in front of my friends and neighbors. I cringed every time my phone rang for several months. I was embarrassed and ashamed. I had difficulty concentrating on my studies that semester, and I had difficulty in my interpersonal relationships. The foreclosure process on the two properties continued almost 2 years after the bankruptcy itself was finalized, and I eventually went through short sales on both properties.

While the bankruptcy was emotionally difficult, there were other outcomes that I continue to deal with. As a student, I constantly wondered which of my professors knew about the lawsuit and if they agreed with Loftus and would like to see me fail. When I was attempting to apply to a master's program, I had a professor whom I had considered my mentor as an undergraduate refuse to give me a letter of recommendation. Still another professor told me that Loftus had every right to do what she did, and likened my situation to that of the famous Henry Gustav Molaison, also known as H.M. (a famous memory patient with a severe long-term memory deficit who was studied from the late 1950s until his death). More than all of these though, Loftus's intrusion into my life forced me to deal with aspects of my life that I simply was not ready to face.

It was while I was stationed in Hawaii that I began to experience some emotional difficulties. I found myself having to leave my desk at work in the middle of the day to escape and find a place to cry several times per week. I started to gain weight and lost interest in everything. I had trouble getting off the couch and/or out of bed, and I had no idea how to relate to people. I eventually requested an early transfer back to San Diego due to the intensity of my emotional symptoms. I have sought counseling from no less than half a dozen different therapists since I discovered Loftus's attempts to investigate my life. Needless to say, my efforts to secure my own emotional well-being have been extensive over the past decade.

The investigation itself, along with some of Loftus's public comments, left me feeling discounted both as an individual and as a member of the U.S. Navy. I did not see how this entire ordeal was ever going to end, and in many ways I know now that it will never truly end. I have difficulty trusting people, and at times, the anger over the invasion into the most private and personal aspects of my life still overwhelms me. I believe now more than ever that psychologists must work to protect the privacy of those who entrust their inner most secrets to our care.

I made the choice to remain silent for over 10 years regarding this ordeal out of a desire to fulfill my obligation to my country and out of fear. To remain in a flying status, it was important that I limit the amount of time I spent thinking about this. I had to report my involvement in this situation to every Commanding Officer of every command that I ever flew for. It was painful and embarrassing to disclose such private aspects of my life to senior military officers who I barely knew, who were usually men and less than understanding. The emotional energy that such disclosures required was all that I could devote to this cause while still maintaining my commitment to being a Navy helicopter pilot.

My fear stemmed from my impression that Loftus had/has unlimited legal and media resources at her disposal. In her interviews over the years, she has painted herself as someone who was attacked by me. I know in my heart that this is not the case and would like to set the record straight by stating that I did not initiate this situation, and the motivation behind each of my actions has been the defense of my own emotional well-being.

Over the years, the commentary regarding this case has been plentiful. In 2002, the Orange County Register wrote the following regarding Elizabeth Loftus:

The university's action hit her hard. "They were my family," she says. "It was like I was betrayed by my kids. My work is what I'm devoted to. But I was going to give up my job if I couldn't publish my Jane Doe story." In July 2001, Loftus was officially exonerated by the University of Washington. The university never did say it was sorry. She'd racked up \$30,000 in legal fees and enough vitriol to last a lifetime. She published the story in *The Skeptical Inquirer*, and Loftus got the satisfaction of knowing that "people will be embarrassed to use Jane Doe's case in court or in papers again." (Wilson, 2002)

Elsewhere, concern was expressed that "Loftus herself could face bankruptcy" (Abramsky, 2005).

In 2004, Loftus wrote that

Guyer and I discussed the idea of talking to Jane Doe. I called the Human Subjects Office at my university (whenever you do an experiment at a college or university, you must get approval from a committee). Although we were engaging in oral history rather than experiments, I asked what they thought of our contacting Jane Doe, and was informally advised that because of the controversy of my research, I might send them a proposal with the questions I wanted to ask Jane. At the same time, Guyer went to the Human Subjects Committee at the University of Michigan, which after some deliberating, gave him a waiver in writing because this research was not in their domain, but was considered historical and journalistic (Wilson, 2002).

In 2005, *The LA Weekly* published the following:

The university promptly confiscated Loftus' files, ordered her to speak to no one about the case and investigated her conduct for nearly two years. "I was put under this horrible investigation where I was gagged from talking about this case," she said. "I had been a good-girl faculty member—I served on committees and worked hard—so I felt pretty betrayed by the institution where I had taught at that point for 27 years." The university eventually exonerated Loftus of scholarly misconduct, but two of three members of a review committee suggested she take a remedial ethics course. Freed at last to publish her research, Loftus "decided I had to get this thing out fast and try to stop it from being used against another innocent person" (Abramsky, 2005).

Although this incident occurred when I was a 19-year-old adolescent who was not then involved in the study or practice of psychology, and though I have attempted to describe my experience as an individual and not as an aspiring member of the profession, I cannot separate myself completely from my knowledge of the ethical principles that are meant to guide those who call themselves mental health professionals. It is with these ethical principles in mind that I would ask you to consider the following questions:

- What were/are my rights as a case report participant? In this day and age, anyone with the proper resources could uncover the identity of a case study participant. Currently, ethical principles provide the only protection for those of us who offer up parts of our lives in this manner. If those ethical principles are insufficient to ensure the continued future privacy of the participant, should that be noted in the informed consent?
- What does this mean for future participants in case reports? If we do find it necessary to include a warning of the possibility that confidentiality will not be honored by other members of the profession who disagree with the findings of the current study, can we realistically expect potential participants to agree to take part in the report or study?
- What negative ramifications could invasions of this kind have on psychology in the view of outsiders? While I have never chosen to seek media attention as a result of the actions described here, such a story might paint a negative image of psychology as a profession.
- What does this mean for researchers studying controversial topics? Consider a hypothetical situation in which I was conducting research on a new treatment for breast cancer. If I became aware of a case in which a woman was claiming to have been cured of breast cancer by drinking large amounts of orange juice, would I then have the right to

seek that woman out and openly discuss the private aspects of her life that might make her claim seem less plausible?

- Is a psychologist always a psychologist? Given that psychologists are often allowed access to the most private aspects of people's lives, should an individual be allowed to take information gained in their capacity as a psychologist and use it under the title of "journalist?"
- What are the duties of a mental health professional to guard the safety of the patients of another mental health professional? Consider another scenario in which I am in private practice with one other psychologist. If I find the file of one of my partner's patients lying in the hall between our two offices, do I then have the right to take that information and use it as I please? Or, do I have an obligation as a professional to safeguard that information?
- What are the risks in terms of exacerbating the effects of previous trauma? I have discussed several real consequences of the series of events initiated by one researcher on my personal life. Do we as mental health professionals have any obligation to protect those who have suffered some form of trauma from the potentially aggravating effects of being the focus of an ongoing investigation?

In addition, I would like to make a request to those who are aware of similar situations that might be occurring or could occur in the future; members of this community should reach out to those mistreated in this way. The only thing worse than going through this is going through it alone. I honestly believe that no one knew what to do for me while I was in the midst of dealing with all of this. That does not take away from the fact that I spent a great deal of time feeling as though I was taking on a tremendously powerful force with very little support.

Some have asked if I am angry at Dr. Corwin or if I see his failure to protect my confidentiality as a contributor to the negative outcomes here. I hold no ill will toward David, and in fact have found him to be a source of support throughout this ordeal. First, Dr. Corwin always asked for permission to utilize my information, and second, he had no way of knowing that anyone would actually exploit a participant in a case report in this way. I do believe that since we as a profession now have this example of such a violation that there is a responsibility to make potential participants aware of the dangers. To do otherwise would be nothing short of irresponsible.

I do not doubt that some who read this article will be left thinking that I could have handled the situation more appropriately. I respect this position, but I would pose the following question to those who believe that I could

have handled things better: How should an individual in such a situation seek redress for this kind of personal violation?

I do not see it as my place to pass judgment on anyone. I tell this story from my perspective with the goal of preventing similar injury to others. I do not believe that anyone has the right to delve into the most painful and private aspects of someone's life without their permission. If I had one wish, it would not be to go back in time and un-file my lawsuit against Loftus et al., and it would not be to refuse to be the subject of a case report; it would be that no one ever be forced to endure such a violation of confidentiality again, particularly not at the hand of a psychologist.

Although I am sure some would disagree, I think I was a pretty good kid. I graduated high school among the top 10% in my class, I qualified for the Navy Nuclear Power Training Program, and I was selected for a Navy Recruit Officer Training Corps (NROTC) scholarship while I was still in basic training. I got good enough grades in college to qualify for a slot as a Student Naval Aviator and went on to be a Helicopter Aircraft Commander, Functional Check Pilot, Night Vision Goggle Instructor, and Air Combat Training Level Three qualified Naval Aviator. I hold two master's degrees in psychology, as well as a PhD in clinical psychology. This description encompasses my life as Nicole (Taus) Kluemper, although I am also known by another name: Jane Doe.

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Nicole S. Kluemper, PhD, graduated from Alliant International University, San Diego, in August 2013 with a doctoral degree in clinical psychology. Previously, she graduated from Capella University with a master of arts in general psychology. She completed her predoctoral internship training at Pacific Clinics Child and Family Specialty Services in Pasadena, California, where she provided a variety of services to a diverse and underserved population. She has presented at conferences around the country on the topic of ethics and psychological research. She joined the Institute on Violence, Abuse, and Trauma and the forensic team at Family Violence Sexual Assault Institute in October 2013, as a postdoctoral fellow in forensic and clinical psychology.