

# Research Ethics and Case Studies in Psychology: A Commentary on *Taus v. Loftus*

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## Abstract

Loftus and Guyer have been criticized for the methods they employed in investigating an anonymous case study published by Corwin and Olafson. This article examines the ethical dimensions of their investigation. Loftus and Guyer have offered three defenses for their actions. All three of those defenses lack merit. Their investigation did not constitute oral history because it failed to comport with the basic requirements of that practice. Their investigation did not constitute ethical journalism because of the unjustified use of anonymous sources and the clear violation of basic fairness. Their investigation did not constitute justified medical research because of a failure to analyze or weigh the harms against the benefits. Their methods also violated ethical principles for psychologists, including the rule against activities that could reasonably be expected to impair the psychologist's objectivity. This case demonstrates that there is no ethical way to investigate a clinical case, without the patient's approval, that is both comprehensive enough to provide strong scholarship and yet respectful enough of privacy and medical confidentiality to honor important professional norms.

## Keywords

*Taus v. Loftus*, case studies, ethics, confidentiality, objectivity

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Nicole Taus feels violated. She was the subject of a published case study involving memory and child abuse, and she agreed to allow a videotape of two interviews of her—one conducted in 1984 when she was 6 years and the other in 1995 when she was 17 years—to be shown to educational audiences without any identifying features. Corwin and Olafson (1997) presented the case in a professional journal, where five others were invited to provide commentary. Identified in print only as Jane Doe, Taus's case became part of a lively debate over recovered memory, largely because of those two interviews. The following year, however, Taus found out that a private investigator was making inquiries about her in her hometown. She later learned that the investigator had been hired by a prominent psychology professor, Elizabeth Loftus, who also befriended Nicole Taus's estranged mother—the woman who had been found to have physically and sexually abused Nicole as a child. Loftus eventually wrote a two-part article in a popular magazine with Melvin Guyer, a psychology professor at the University of Michigan, which was titled "Who Abused Jane Doe?" and argued that the mother's side of the story called Corwin and Olafson's interpretation of the case into doubt. They asserted that Jane Doe probably had not been abused at all, and if she was, it was probably by her now-deceased father. Loftus and Guyer (2002a) did not use Taus's actual name, but it is not difficult to understand why she experienced both the article and Loftus and Guyer's investigative methods as invasive, harmful, and unfair.

The complexity of this case poses major challenges to anyone seeking to analyze it. One of those challenges is disentangling *ethical* concerns from regulatory and constitutional ones. All three exist in this case, but because there have been formal proceedings in the regulatory and legal contexts, those two frameworks have come to define the case. The regulatory issues involve the relevance and application of federal rules about human subjects research, which are overseen by institutional review boards (IRBs). IRBs might see themselves as guardians of ethics; their existence is justified in ethical terms. But the justification for IRBs is hotly contested and some have argued that they are unconstitutional infringements on free speech (Hamburger, 2005; Tierney & Corwin, 2007). There are also conflicting accounts of exactly what transpired at the IRB at Loftus and Guyer's respective institutions. Loftus appears to have avoided sanctions in connection with this case on the grounds that she was not conducting "research" as that term is defined by relevant regulations. Such a decision would not involve "exoneration," as it has often been characterized, so much as a lack of jurisdiction. It has been reported that Loftus was instructed not to contact Nicole Taus's mother again without permission from the IRB and told "she should take an ethics class" (Shea, 2003). Moreover, Tavris (2002) reported that

two of the three IRB committee members at the University of Washington recommended that Loftus be reprimanded but that a dean overturned that recommendation. What happened at the University of Michigan is also unclear because the relevant documents that would clarify that issue are confidential. Although some of those documents have been quoted selectively by Tavis (2002), none have been released by the parties who claim to have been treated unfairly, and a faculty member at Michigan who was involved in the case has taken issue with how Tavis and Guyer have characterized the matter (Berent, 2002).

The constitutional issue in the case is whether the First Amendment protects Loftus and others against civil damages related to invasion of privacy, which Taus alleged in a lawsuit that reached the California Supreme Court (and made her real name public for the first time) before it was settled. The Supreme Court's decision that the First Amendment trumped all but one of the torts alleged by Taus says nothing about the ethics of any of those actions (*Taus v. Loftus*, 2007). The First Amendment protects a vast array of objectionable and unethical behavior. It even protects dubious and biased research—against civil claims for monetary damages. That does not mean that we should celebrate such work. Moreover, it is only because of how the court interpreted the application of California's anti-SLAPP suit provisions<sup>1</sup> that Taus was put in the bizarre position of having one of her causes of action *sustained* by the California Supreme Court while being told at the same time that she had to pay several hundred thousand dollars in attorneys fees to the defendants for the ones that were dismissed. Under those conditions, Taus could not afford to keep litigating. Accordingly, she settled the single remaining cause of action, which, if litigated, would have provided direct testimony about the alleged trickery that was used to obtain information.

Two general questions motivate the analysis that follows. First, when, if ever, is it acceptable for an academic psychologist to pierce the veil of confidentiality in an anonymous case in the psychology literature for the purposes of research? Second, if such an inquiry is justified, what are the ethical issues involved in such research? Those questions will be considered after clarifying the behavior at issue and considering the justifications that Loftus and Guyer offered in their article for those actions.

## Clarifying the Behavior

Loftus and Guyer (2002b) argue in “Who Abused Jane Doe? The Hazards of the Single Case History, Part II” that critics of their investigation were challenging their right to “track down information, reassess the evidence and claims, and come to a different conclusion than Corwin's” (p. 39). But

nothing that has been written about this case challenges the reassessment of evidence and claims, or the right of others to “come to a different conclusion.” The original publication in which Jane Doe’s case appeared provided the opportunity for various commentators to do just that: reassess the evidence and claims and reach their own conclusions. The concerns raised by Nicole Taus are all related to “tracking down information.” That innocuous phrase stands in for activities that were not fully disclosed by Loftus and Guyer in their article. Instead, they were, at times, more poetic than specific in describing the nature of their inquiry. By their account, they “set out on an odyssey to learn more about the case” (Loftus & Guyer, 2002a, p. 29).

What was involved in that “odyssey”? The authors were fairly specific about the first step: “After a long and tedious search of the social security death records and newspaper obituaries, we found out who [Nicole’s father] was” (Loftus & Guyer, 2002a, p. 29). Beyond that, however, these scientists were surprisingly vague about their methods. As Loftus and Guyer (2002b) put it, “We tracked down many documents pertinent to [Nicole’s] case and met a few individuals who knew her” (p. 40). What was actually involved in “tracking down” those documents and how they came to have “met” a “few individuals” was not spelled out. Those actions are at the heart of any ethical analysis of the research methods in this case.

Two actions are particularly noteworthy in this case. First, Loftus engaged the services of two private investigators to figure out Jane Doe’s identity, to obtain court records and other documents, and to locate key people in Jane Doe’s family. How, exactly, the investigators accomplished those tasks was contested in the civil suit, and it was never resolved through a full adjudication. The California Court of Appeals thought there was sufficient reason to think that some of the court records that Loftus obtained might have been obtained through trickery that they would have allowed the suit to proceed (*Taus v. Loftus*, 2005). Even the California Supreme Court, which dismissed those counts, ruled that the allegations concerning misrepresentations by Loftus herself were *not* immunized by the First Amendment against the possibility of civil damages (*Taus v. Loftus*, 2007).

Loftus used private investigators for more than just identifying Nicole Taus and locating documents pertaining to her legal status as a child. She also used one of them as an intermediary who actually conducted an unspecified number of interviews. For scientists, of course, it is a well-accepted norm that assistants should always be appropriately credited for their work. In this case, however, the assistant’s name and occupation was not disclosed by the authors.

Second, Loftus did more than investigate this family. She intervened in a personal manner, insinuating herself into the lives of people around Nicole

Taus, particularly her estranged mother, who had been adjudicated to have been abusive years ago. Loftus has since acknowledged that she befriended the woman and that she secretly hoped she could reunite Nicole Taus and her mother.

### Three Proffered Defenses

Were the actions in this case justified in ethical terms? Loftus and Guyer have offered three different defenses of their actions, each of which is examined below.

#### *Oral History*

Through their lawyers, Loftus and Guyer argued at the California Court of Appeals that they were doing nothing more than “oral history interviewing” (Opening Brief of Appellants, *Taus v. Loftus*, 2004, p. 37). Oral history is an accepted practice and nobody questions the ethics of doing oral histories in general. But the claim that Loftus and Guyer were engaged in oral history cannot be squared with the *Principles and Best Practices for Oral History*, which clearly express that oral history

begins with an audio or video recording of a first person account made by an interviewer with an interviewee (also referred to as narrator), both of whom have the conscious intention of creating a permanent record to contribute to an understanding of the past. A verbal document, the oral history, results from this process and is preserved and made available in different forms to other users, researchers, and the public. (Oral History Association, 2009)

It is not clear which of the interviews conducted by Loftus and her private investigator were taped in the first instance, and how many of those recordings have been preserved. Carol Tavis has written that the interview with the foster mother was *not* taped (Tavis, 2002). Moreover, Loftus and Guyer have not made *any* of these interviews available to “to other users, researchers, and the public.” To the contrary, they did not even include these interviews in the references section of their article, leaving the reader without any of the markers that come with a standard academic citation.

#### *Journalism*

Loftus and Guyer have also invoked journalism as a defense. In an appellate brief, they argued that “their actions are no different from those of reporters

who use routine reporting techniques to discover information” (Opening Brief of Appellants 2004, p. 34). Similarly, Carol Tavris (2002) has cast the case in terms of Loftus and Guyer’s “right to do what good reporters do every day” (p. 41). But these claims are impossible to square with various statements of journalistic ethics. There are two significant ways in which the Loftus and Guyer’s article violated basic principles of journalistic ethics.

*Unjustified use of anonymous sources.* Journalistic codes of ethics are clear that anonymous sources are to be disfavored. “We should identify sources as completely as possible,” states the “Los Angeles Times Ethics Guidelines” (2011). Those guidelines state further that “An unnamed source should have a compelling reason for insisting on anonymity, such as fear of retaliation, and we should state those reasons when they are relevant.” The Guidelines also say, “The reporter and editor must be satisfied that the source has a sound factual basis for his or her assertions. Some sources quoted anonymously might tend to exaggerate or overreach precisely because they will not be named.”

Loftus and Guyer violated these norms repeatedly by providing anonymity to three different professionals in their article without any statement about the reasons why. Given the obvious concern that anonymous sources might have an axe to grind, one wonders why Loftus and Guyer did not identify Dr. S., the clinical psychologist who they assert was the most important person in the case. Without identifying information, the reader has no way to assess whether this psychologist might have an established bias or some history of professional misconduct that would speak to their qualifications and credibility. Loftus and Guyer also did not identify the former emergency room nurse. In neither case did the authors provide a reason for not disclosing the identity of these professionals.

The most glaring violation of journalistic norms about anonymous sources involves the private investigator whom Loftus hired. He appears to have played a critical role in the most important interview that the authors conducted—the one with the mother, who had been found to have abused Nicole in the 1980s. According to Loftus and Guyer (2002a),

When he explained why he was there, Mom welcomed him sobbing her way through his interview, saying, “I never thought this day would come.” (p. 30)

Loftus and Guyer refer to him as “our assistant.” It was revealed through *Taus v. Loftus* that the assistant was actually a private investigator named Harvey Shapiro. There are two reasons that Shapiro should have been identified by name. First, that is the only way to allow the reader to make any

independent assessment of the source. As the *New York Times' Confidential News Source Policy* explains,

When we use such sources, we accept an obligation not only to convince a reader of their reliability but also to convey what we can learn of their motivation—as much as we can supply to let a reader know whether the sources have a clear point of view on the issue under discussion. (New York Times, 2012)

Harvey Shapiro's business—which can be found through [www.theinnocenceteam.com](http://www.theinnocenceteam.com), formerly [www.accused.com](http://www.accused.com)—specializes in representing people charged with sex crimes. His business plan involves “a clear point of view” about sex crimes—he takes the defendant's view.

The other reason that Harvey Shapiro should have been identified is that he conducted perhaps the most important interview in their investigation—the first interview with the mother. He paved the way for the later interview by Loftus and Guyer. This process has not been scrutinized. Why would a statement by Shapiro that simply explained “why he was there” cause the mother to sob with joy and relief? It must have been something quite sympathetic to the woman he had not yet interviewed. This is not the only fishy thing about the role of this private investigator in this case.<sup>2</sup> Shapiro's role is also central to the one cause of action that was left in place by the Supreme Court because, according to Cantrell's declaration, he told her that Loftus worked with Corwin. Cantrell's declaration concerning the misrepresentations that induced her to allow Loftus to interview her in the first place was held sufficient to state a prima facie case for invasion of privacy, sufficient to defeat the anti-SLAPP motion. Loftus flatly denied the allegations of misrepresentation, but that is what would have been tried if the case had not settled.

*Violation of basic fairness.* Journalistic codes of ethics are also clear that it violates basic tenets of fairness to write a story about someone without providing them an opportunity to respond. For example, the “Los Angeles Times Ethics Guidelines” (2011) state as follows:

People who will be shown in an adverse light in an article must be given a meaningful opportunity to defend themselves. This means making a good-faith effort to give the subject of allegations or criticism sufficient time and information to respond substantively.

The *Associated Press Statement of News Values and Principles* also states this obligation in mandatory terms: “Whenever we portray someone in

a negative light, we must make a real effort to obtain a response from that person” (Associated Press, n.d., para. 9). There is no question that Loftus cast Nicole Taus in an adverse light, particularly by mentioning juvenile court proceedings that occurred years after the contested events in 1984.

Loftus and Guyer stated two reasons for not contacting Nicole Taus. One of those explanations contradicts the fundamental basis of journalism: seeking as much information as possible and keeping an open mind. As the “Los Angeles Times Ethics Guidelines” (2011) puts it, “Reporters should try genuinely to understand all points of view.” Further, “We seek out intelligent, articulate views from all perspectives” (“Los Angeles Times Ethics Guidelines,” 2011, Fairness section, para. 2). In dramatic contrast to that conception, Loftus and Guyer (2002b) assert that “Jane’s own account at this point might well not shed additional light” (p. 40). Professional journalists would never spurn an interview with a key subject because they guessed that the person “might well not shed additional light.”

Their second reason for not providing Nicole Taus with a voice is couched in terms of ethics. As Loftus and Guyer (2002b) put it, “We worried that such contact might be upsetting to Jane” (p. 41). Avoiding the harm that could occur by intruding into the life of someone who thought her case was anonymous might well be sufficient reason for deciding against embarking on the project. But Loftus and Guyer did not state their concern about possible “upset” in terms of deciding whether or not to investigate her life. They were already planning to publish an article filled with private information about her. Their question was apparently whether or not to give Nicole Taus the opportunity to respond, and whether the harm that they were already willing to cause would be made even worse if they contacted her. For reasons they did not articulate, they made the judgment that Taus would somehow be less upset if they did *not* provide her with a meaningful opportunity to speak than if they did. They did not, in other words, respect her privacy or her autonomy.

### *An Analogy to Medical Research*

Loftus and Guyer also reported in their article that they consulted with Thomas McCormick, a physician with expertise in medical ethics. One wonders why two prominent psychologists would not seek the advice of someone in psychology. Whatever the reason, the medical ethicist they consulted apparently offered

... a hypothetical situation in which a professional has published a case history claiming that he cured cancer using marijuana leaves and Crisco. Oncologists would naturally have many questions about this case study: Did it really work?



If the patient seems to be in better health after the “treatment,” did he or she really have cancer in the first place? Would it be ethical for a physician to talk to the “case history” and to examine the original doctor’s data? McCormick thinks so, and so do we. (Loftus & Guyer, 2002b, p. 40)

Presumably, the reader is supposed to find that hypothetical example to be so close to the case at hand that the medical ethicist’s view would carry over as well. But there are many obvious differences between that hypothetical example and the case at hand. First, the hypothetical example is about allegedly saving someone’s life with a treatment. In other words, the implications of the underlying facts of the case could have life-or-death consequences to many other people. That is not true of the case at hand. The case presented by Corwin and Olafson does not counsel any kind of treatment or standard of care for anyone. Accordingly, there was all the more reason to protect the subject’s privacy.

Second, the question in the hypothetical example is phrased, awkwardly, in terms of whether it is ethical “for a physician to talk to the ‘case history,’” which presumably includes talking to the subject of the case history. Yet, that is precisely what Loftus and Guyer did *not* do in this case. They talked to people *around* the subject of the case study, including people not mentioned in any way in the (anonymous) case. Third, the hypothetical does not involve a 11-year delay between the underlying events and the later “investigation.” It would be more relevant to ask whether it would be ethical for a physician to use a private investigator to track down family members who were never mentioned in a published but anonymous case study and contact them out of the blue with questions about intimate events that occurred more than 10 years ago. My guess is that no ethics expert in medicine or psychology would provide a simple “yes” in response.

Loftus and Guyer’s own ethics consultant is clear that “respect for autonomy of the patient” and “avoiding harm” are the first two principles in cases across a range of issues in health care ethics (McCormick, 2010, p. 1188). But Loftus and Guyer ignored Nicole Taus’s autonomy in deciding she would be less “upset” if they wrote this article without talking to her. As for avoiding harm, Loftus and Guyer (2002b) mention the concept only once in their article, when they state that the kind of inquiry they conducted is justified “as long as this can be accomplished without undue harm” (p. 40). But the authors did not follow that critical sentence up with *any* description or analysis of the harms in this case. We are left unsure whether the authors recognize that there were harms, and if they did, why they came to the conclusion that the harms were not “undue.” Nicole Taus’s essay in this issue certainly makes it clear that there *were* harms. Those were short term and immediate. There are also

important long-term harms to consider if this kind of invasion into an anonymous case is considered acceptable by the profession.

Loftus and Guyer's view seems to be that their work is so important that the harms—which are left unacknowledged—are definitely worth it. Of course, deciding whether the benefits of one's own work are worth the harm to others is tricky business. The researcher is likely to undervalue the harms and overvalue the benefits of his or her own work. And that appears to be exactly what Loftus and Guyer did. First, they did not take into account the possible harms in this case. Second, their account of the benefits gives far greater importance to this case than it had in the real world. This was hardly the first corroborated case of recovered memory. The Recovered Memory Project at Brown University contains an archive of over 100 corroborated cases of recovered memory ([www.recoveredmemory.org](http://www.recoveredmemory.org)).

Nicole Taus's case had particular power because it involved videotape, but the idea that the case was being offered as definitive proof of recovered memory is contradicted by the title of the article, "Videotaped Discovery of a Reportedly Unrecalable Memory of Child Sexual Abuse." Acknowledging that the discovery was "*reportedly* [emphasis added] unrecalable" highlights one of the inherent limits of any case study of this nature (Corwin & Olafson, 1997). The content of Corwin and Olafson's presentation also contradicts any notion that they offered the case as some kind of gold standard proof of repressed memory. Corwin and Olafson (1997) left open the following questions: "Was Jane Doe's memory truly unavailable, or was it just that she had never specifically tried to recall sexual abuse?" (pp. 110-111). Moreover, the case was published in a professional journal that included one commentary that took a completely different view of the case (Neisser, 1997). From the moment of original publication, then, this case was presented in qualified terms. That is appropriate to the presentation of case studies. These facts contradict the claim that this case was held out as some kind of ultimate proof about recovered memory.

## Respecting Confidentiality and Privacy

Returning to the two larger questions that motivated this comment: When is it acceptable for a research psychologist to pierce the veil of confidentiality in an anonymous case in the published literature for the purposes of research? Second, if such an inquiry is justified, what are the ethical issues involved in such research?

Loftus and Guyer (2002a) point out various instances in which case studies have later been seen in a very different light as a result of some kind of investigation independent of the author of the original case study. Most

famously, Freud's case studies have been reanalyzed in various ways. Similarly, Cornelia's account of Sybil has been challenged by later analyses. Also, John Money's case study of a male infant who received sex reassignment surgery was used for years as evidence that sexual identity was social, not biological. But Loftus and Guyer described these cases with a passive voice that obscures how they later came to light. For example, they describe the dramatic follow-up on Money's case as follows: "Subsequent investigation revealed that the particular boy, David Reimer, never adjusted well and reverted to life as a male" (Loftus & Guyer, 2002a, p. 25). But this case was not unmasked by someone employing a private investigator and investigating the man's life without his approval. The investigation was conducted through, and with the approval of, his treating psychiatrist. The more famous cases (Freud's patients, Wilbur's "Sybil") involve archives of clinical papers, not explorations by private investigators. None of the cases that they cited as precedent for their work involved the kind of invasion of privacy that existed in Nicole Taus's case.

## **Official Cases Versus Clinical Cases**

In assessing the question about piercing the veil of confidentiality, there is a major distinction between "cases" in official government forums and "cases" of a purely clinical nature. Obviously, some cases, including Nicole Taus's, are in both categories. But the distinction is nevertheless useful for the position that I propose: It is never acceptable for a psychologist to seek to identify and research the subject of an anonymous clinical case. If clinical materials have been archived, then those materials are obviously appropriate to examine. But seeking to identify a clinical patient to independently evaluate a published clinical case report is overly intrusive. Consider Kaplan and Manicavasagar (2001) who presented three case studies in support of "false memory syndrome." One involved a 40-year-old woman, the third of five children, who suffered from panic attacks and, through therapy, eventually came to believe that she had been sexually molested by her father. The woman eventually was referred to one of the authors (V. M.), who reported that the patient's belief that she had been sexually abused "progressively withered away" (Kaplan & Manicavasagar, 2001, p. 345). The authors cite "the closeness of the family," as attested to by the woman's sister, as one of the reasons it is unlikely that the molestations occurred (Kaplan & Manicavasagar, 2001, p. 345) This case involves the same controversial subjects as Nicole Taus's case. But that alone would not, in my view, justify engaging a private investigator to try to identify the woman and then track down other members of her family to investigate the details contained in the authors' report.

There are two basic reasons in support of this position. First, the expectation of privacy is strongest when one's case has never been in any kind of official forum. The mental health treatment relationship is built on confidentiality. That value is undercut if third-party research psychologists can ignore what first-party treating psychologists are duty-bound to protect. This standard asks more of psychologists than it does of journalists. A tabloid newspaper might be well within the protections of the First Amendment if it staked out a therapist's office and published stories that identified and embarrassed patients. But those stories would not have the voice of authority that comes with being a member of a profession unless they quoted a psychologist. In this way, the ethical psychologist is held to a higher standard than the *National Inquirer*. And that is one of the reasons why the word of the professional psychologist carries more weight.

The implication of this distinction between clinical and official cases is that archival research about cases that occurred in *official* proceedings is acceptable even if those proceedings were confidential, and even if, as in this case, the published case study is from a clinical setting. There were official records in this case from divorce proceedings and child protective service (CPS) investigations. Many of those documents were either sealed or marked confidential. But those designations should not be used to determine the ethical boundaries of scholarly inquiry. First, official designations can be overly broad. Second, what matters most is whether the *purpose* of the confidentiality is honored by the researcher. The primary reason for confidentiality in cases involving child sexual abuse is to protect the identities of children from public disclosure. It is ethically acceptable, then, to research a confidential case of that nature so long as the researcher also protects the identity of the child. To their credit, Loftus and Guyer did that in this case.

But the ethical obligations concerning confidential information go further. The researcher who accesses confidential court documents has an ethical obligation to limit any published information to relevant facts. In the case at hand, the potentially relevant documents would be those related to the years when the abuse allegations were evaluated and litigated. But Loftus and Guyer went much further. They used confidential information from Nicole Taus's juvenile court records in an apparent effort to impugn Taus's character. That had nothing to do with arguments about who abused Jane Doe years earlier. Lacking sufficient relevance to the issues in the case, publishing information that impugns someone's character but does not actually speak to the issues in the case is unethical. The same applies to Loftus and Guyer's decision to inform their readers that the stepmother, who rejects their interpretation of this case completely, had once been arrested for vandalism, although the charges were dropped (Loftus & Guyer, 2002a).

## Archival Research Versus Interviewing

While the acceptable scope of potential research in the realm of official proceedings is quite permissive, it is similarly restrictive on the issue of interviewing parties to a case that was presented anonymously. There is a world of difference between examining all of the documentary evidence available in the case and tracking down people years later and talking to them about those events. One major difference involves the nature of the intrusion into private lives that have a reasonable expectation of privacy—that is, research subjects who have been involved in research where their identity was protected well. Writing an article based on original archival research, which was *part* of Loftus and Guyer's effort, is not significantly different from writing one based solely on the materials that were available at the time. In the case of original research, the research subject would know that the researchers had figured out his or her identity in order to conduct the research. But when the research is restricted to archival research, the research process itself is completely separate from the life of the research subject. Interviews are entirely different. Interviewing people years after the fact about family dynamics in a dysfunctional family is bound to have a serious effect on contemporaneous interpersonal relationships. Psychologists are supposed to share the same imperative that doctors have to avoid doing harm above all else. That would seem to counsel against intruding in families to conduct interviews about sexual abuse allegations years after they have been resolved in the courts.

This distinction preserves the important ability to *reassess* cases in the literature. Reassessment can be accomplished with the case material alone. A good example is the commentary on Corwin's and Olafson's original presentation of the case. Reassessment might even include original research into additional documentary evidence from the case. But there is a difference between reassessing and relitigating a case. What Loftus and Guyer did went beyond reassessing existing evidence. They conducted interviews that have not been made available to others and then relied on them to reinterpret the case. By all appearances, their effort was closer to advocacy work for the defense.

The nature of Loftus's activity in this case went far beyond interviewing and advocating. Loftus admitted "befriending" Nicole Taus's biological mother (Kelleher, 2003). She did not disclose that fact in the *Skeptical Inquirer* article about the case, let alone address the conflict between her friendship and her capacity and willingness to research the case in an objective fashion. That concern is magnified by the fact that this was not just a simple friendship; it was a friendship with an agenda. Loftus told Kelleher (2003) that "she was motivated in large part by a desire to unite the mother

and daughter.” Whether a research psychologist without any clinical experience or training should ever intervene in a family with such intentions is a question worth considering. For the purposes of this commentary, however, the more important question is why Loftus did not disclose this friendship in her article about the case. The woman she “befriended” is the most important character in the claim that Corwin and Olafson’s account of the case is wrong. As Loftus’s interpretation might be the product of her friendship and other ulterior motives, this “evidence” is questionable at best. This blurring of professional and personal lines raises ethical issues involving *neutrality* and *objectivity*. Psychologists are supposed to maintain professional distance from their clients and their research subjects. This protects against results that are influenced by personal considerations. Objectivity may be lost if psychologists have social relationships with clients or research subjects. The relevance to this case has been lost in all the attention to the First Amendment, which, of course, places no restrictions on psychologists getting too close to their subjects. But the *American Psychological Association Ethical Principles of Psychologists and Code of Conduct* does. The American Psychological Association (APA, 2010) says one should refrain from activities that “could reasonably be expected to impair the psychologist’s objectivity” (Standard 3, Human Relations section, para. 1).

### **What About Medical Records?**

Loftus and Guyer’s ethical framework apparently included special considerations for confidential medical records. They state at one point, while discussing the allegations concerning burned feet, that “of course, we did not get [Nicole’s] medical records” (Loftus & Guyer, 2002b, p. 39). Loftus and Guyer do not explain why their position is so obvious. If the reason is that the documents are confidential by law, then why did not the authors apply the same logic to juvenile court records and CPS records? If the reason is that medical documents are somehow more confidential than other documents, then why did not that logic apply to the letter they quote from “Dr. S”? Loftus and Guyer (2002b) also wrote that “we learned from other sources that Jane had a fungal condition that could have been responsible for injuring her feet” (p. 38). That seems like an invasion of her medical privacy, but because they did not specify anything about the nature of these “other sources,” it is impossible to know whether to give these statements any credence. That kind of loose attribution of factual claims would not be tolerated in a peer-reviewed scientific journal. Moreover, it would not be necessary if the inquiry was restricted to documented court records. Moving beyond court records is bound to raise this problem in virtually any clinical case in psychology, as

clinical records have the same strong confidentiality provisions as medical records. There is no ethical way to study a clinical case without the patient's approval that is both comprehensive enough to provide strong scholarship and yet respectful enough of privacy and medical confidentiality to honor the laws and related professional norms.

## **Conclusion**

The novelty of what Loftus and Guyer did in this case has been lost in the broader framing of the entire case in terms of the First Amendment. Loftus has claimed that this case is about her "right to speak out on matters of grave importance" (Loftus, 2003). But none of the criticisms of her behavior in this case involve "speaking out." They involve invasions of privacy and ethical lapses. The question of whether the conduct is proper in an ethical context is not answered by the fact that it may not be actionable in a legal context. I have not been able to find any examples in any academic publications where a professor engaged private investigators to ascertain the identity of someone from an anonymous clinical case report.<sup>3</sup> The novelty of the actions in this case goes much further, including using the investigator to track down members of that person's family and question them about highly sensitive events from many years ago, all without the consent or involvement of the research subject. Those facts contradict Loftus's protestation that she has been unfairly criticized for engaging in "a reasonable quest for information on a controversial subject" (Loftus & Geis, 2009, p. 161).

What are the implications of this case for the publication of case studies in psychology and medicine? If what Loftus and Guyer did is considered acceptable, then individuals involved in potential case studies will have to be warned that their family and friends could get contacted out of the blue decades later if someone decides to devote the energy to ascertain their identity and probe into their private life. It is difficult to imagine why anyone would ever agree to participate in an anonymous case study if this is one of the risks that needs to be disclosed.

Loftus and Guyer purported to be doing a case study of a case study. But the contrast between Corwin and Olafson's case study and Loftus and Guyer's case study of a case study involves three important distinctions that have not previously been highlighted: (1) Corwin published in a professional journal that invited a range of commentary that included Ulrich Neisser, who challenged the accuracy of the memory and offered an alternative hypothesis. Loftus and Guyer published in a popular magazine that did not invite commentary from anyone who might challenge the authors' interpretation and that published claims that were so poorly sourced that they would never pass

muster in a scholarly journal. (2) Corwin qualified the case that he presented in several ways that were appropriate to a case study, but that also made his claims less than definitive. Loftus and Guyer also stated her conclusions in qualified terms, but Loftus has since made hyperbolic claims to journalists that contradicts those qualifications, stating that the mother had been “rail-roaded”<sup>4</sup> (Grossman, 2003). (3) Corwin was quite transparent about his process, making the tapes available to other scholars. Loftus and Guyer were not transparent about their use of a private investigator, nor have they been transparent with any of the fruits of those efforts. Their article does not live up to its stated promise of producing “much valuable information that should assist scholars in making their own decisions” (Loftus & Guyer, 2002a, p.29). Indeed, it does not answer the question of “who abused Jane Doe” as much as it raises the question of who abused Nicole Taus.

The meaning of case studies in psychology can and should be subject to scientific debate. Such debate should reflect the kind of analysis reflected in comments published along with Corwin and Olafson’s original publication. It can even involve additional investigation of documents that can be obtained with trickery or violations of law. But it crosses an ethical line to employ a private investigator to identify and interview family members connected to an anonymous case study. It also violates the professional norms of psychologists to engage in such activities without the knowledge or approval of those affected, with the intention of changing family dynamics.

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### **Notes**

1. SLAPP stands for strategic lawsuit against public participation. Loftus prevailed on the grounds that her activities, however objectionable, were constitutionally protected. Taus’s suit against Loftus and others does not appear to fit the traditional



definition of a SLAPP suit, largely because the lawsuit came after the publication. Taus was not seeking to prevent participation, she wanted recourse for invasion of privacy. Those legal issues are beyond the scope of this commentary.

2. An affidavit filed by Harvey Shapiro in *Taus v. Loftus* contains a strange fact that raises additional questions about information omitted by Loftus and Guyer. The foster mother, Margie Cantrell, who is the other major interview that Loftus and Guyer cite for their view of the case (and whose interview was procured through the alleged misrepresentations that *did* support a claim for invasion of privacy) already had some kind of working relationship with Harvey Shapiro. According to Shapiro's declaration, "Serendipitously, Ms. Cantrell was in my office speaking to one of my staff during my conference with professor Loftus" (Shapiro, 2003, para. 18). Why was Ms. Cantrell already working with a private investigator whose office specializes in sexual abuse defense? How did that relationship affect what she did in this case? The answers are not known.
3. There are instances of researchers using private investigators to locate known individuals. See, for example, Klonoff-Cohen (1996). But the investigators in such cases provided information to the researchers only and they did not contact those individuals. Moreover, the protocol for contacting individuals was reviewed by one or more institutional review boards. In Klonoff-Cohen's case, the protocol was modified to address concerns from bereavement groups.
4. There are differing accounts about when Loftus reached this conclusion. Tavis (2002) reported that it was after Loftus talked with Nicole Taus's mother. But Loftus told Grossman (2003) that she "felt convinced" as soon as she saw documents in the public file.

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