

December 3, 2021

Lynn Crook

[REDACTED]

United States of America v. Ghislaine Maxwell

Re: Cross-examination of Elizabeth Loftus

To: U.S. Attorney Damian Williams

Assistant U.S. Attorney [REDACTED]

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I am writing to offer my assistance as you prepare to cross-examine defense expert witness Elizabeth Loftus in the trial of Ghislaine Maxwell. I recently consulted with prosecutor John Lewin in the Robert Durst trial. I've consulted with prosecutors in the trials of ex-priest Paul Shanley, Phil Spector, Bill Cosby and Harvey Weinstein. They were all convicted despite Loftus's testimony that challenged witnesses' memories. I do this off the record.

BACKGROUND: I successfully sued my parents for damages related to childhood sexual abuse. Loftus testified for the defense in the 1994 trial. Following the trial, Loftus misrepresented my case in a media interview. I filed an ethics complaint with the APA. Loftus resigned from the APA in January 1996 claiming she wasn't aware of the complaint. Loftus has misrepresented other recovered memory cases including Eileen Franklin's in "Buried." There she failed to mention that the detectives compared Eileen's testimony to newspaper reports. They found that Eileen had mentioned evidence that was not reported in the news coverage and was corroborated by the autopsy report. So George was charged.

I reviewed my attorney's deposition of Loftus following the trial and realized her famous lost-in-a-mall study was probably going to fail. I began investigating. I document the failure of the mall study to produce any false memories in the 2019 article below. Loftus typically testifies there are better studies out there now. But those studies all tell the subjects some version of--this is what your older relative told us. I've appeared in two documentaries, and presented at more than a dozen professional conferences in the U.S, Great Britain and at the United Nations. I'm currently finishing up a book on the history of the false memory campaign.

LOFTUS - Loftus is generally considered a narcissist. She justifies her testimony for defendants with "Everyone deserves a fair trial." She presents herself as a martyr for justice, brushing away any challenges to her research by saying they're just out to get her because of her controversial work. She claims to have testified in 300 cases, or about 6-7 per year since the Bundy case, possibly an exaggeration. She's 77, divorced since 1991 when her husband left her for another woman. Several sources have said they had an open marriage. Two sources have said she overconsumes chardonnay at social gatherings. One source said her *Myth of Repressed Memory* co-author, Katherine Ketcham, says she wants nothing further to do with her. Testifying in CA v. Akiki in 1993, Loftus defined her corroboration standard for sex abuse accusations: medical

evidence, pornography, videotapes, and photographs (p. 58). To date, I haven't come across any sex abuse allegations besides her own at age 6 that she considers credible.

ITEMS THAT MIGHT PROVE USEFUL:

(1) Prosecutor Patrick Fitzgerald successfully challenged Loftus in the Libby hearing. See <http://www.nbcnews.com/id/15534713/ns/politics/t/no-memory-expert-libby-trial/#.WOOs8fnyvcs> and <https://www.washingtonpost.com/wp-dyn/content/article/2006/10/26/AR2006102601612.html> He demonstrated that the data she and others reported in the appendix of "Beyond the Ken" at <http://www.physics.smu.edu/scalise/P3333sp14/Eyewitness/EyewitnessReliability.pdf> did not support the study's conclusion that juries need education by experts.

(2) In the Sandusky appeal Loftus said she would testify on how false memories are developed, then point to examples in the case that might have led to false memories. Judge John Fedora dismissed Loftus's testimony as "Having been rendered after an uncritical review of an absurdly incomplete record carefully dissected to include only pieces of information tending to support Appellant's repressed memory theory."ⁱ

(3) Mary Knight's video, *Am I Crazy - My Journey to Determine if My Memories Are True*, shows how Loftus dodges a challenge.

Knight: In 1958 she (Marilyn vanDerbur) became Miss America and in 1964 she remembered the abuse.

Loftus: She went through a tremendous amount of all kinds of different therapy before, highly suggestive therapy before she told the story of abuse.

Knight: So, that's not what was reported in People Magazine. Is there some other way you have to, way you have to—

Loftus: I've watched lectures that she's given.

Knight: And in lectures, she's said what?

Loftus: She's talked about the massive amount of therapy.

Knight: But that was not, that was after remembering.

Loftus: I'm not sure of that. No.

Knight: Uh-huh. And then her sister of course always remembered.

Loftus: Well, we don't know exactly what the sister remembers. I've never read what the sister remembers. The sister supposedly remembers, felt there was some kind of abuse.

Knight: Sexual abuse.ⁱⁱ

CREATION OF THE FALSE MEMORY DEFENSE - In 1991, as states allowed adults molested as children to sue for damages, Loftus tossed out ideas for a defense in media interviews. In August she tried, "An overly zealous psychologist could unwittingly use his or her influence over a vulnerable patient to plant the seeds of a 'memory' that is actually a fantasy."ⁱⁱⁱ The *WaPost* dropped "fantasy" and headlined, "Delayed Lawsuits of Sexual Abuse on the Rise; Alleged Victims Base Legal Actions on Memories Critics Say May Be Implanted in Therapy"^{iv} on August 14, 1991. The rest is history.

THE LOST IN THE MALL STUDY - The mall study (Loftus & Pickrell, 1995) has been used to silence thousands of survivors of childhood sexual assault. If researchers can implant memories of getting lost at a mall, then therapists can implant memories of being raped as a child

by a family member. The media and psychology textbooks still cite the study. However, the study quietly failed by mid-1994. Twenty-four subjects received four stories. Therefore, six (6/24) of the subjects had to be convinced they were lost. The first concrete evidence of the study's failure was Loftus's final report of 2/24 in 1994 to the UW Human Subjects Review Committee. *Available on request*. The result was inflated to 5/24 for publication. In a media interview, Loftus refused to discuss the two articles below that document the mall study's actual 0/24 result.

Crook, L.S. & McEwen, L.E. (2019). Deconstructing the lost in the mall study, *Journal of Child Custody*,

<https://tandfonline.com/doi/abs/10.1080/15379418.2019.1601603><https://tandfonline.com/doi/abs/10.1080/15379418.2019.1601603>

Ruth Blizard and Morgan Shaw further describe the failure in Lost-in-the-mall: False memory or false defense? *Journal of Child Custody*,

<https://www.tandfonline.com/doi/abs/10.1080/15379418.2019.1590285?journalCode=wjcc20>

Challenges to mall study:

1. Pezdek et al. (1997)- Plausible stories of getting lost are easier to implant (3/18) than an implausible enema story (0/18).

2. Murphy et al. (2013)- The mall study's lack of a control group, small sample size and high error rate render the study unreliable under either *Frye* or *Daubert* standards depending on prevailing regulations.

3. Andrews and Brewin (2017) – Procedures claiming older relatives witnessed the incident do not apply to the therapy situation.

RESPONSE TO FALSE MEMORY CLAIMS: The false memory PR campaign disbursed \$7.75 million over 27 years. The best response to false memory claims I've heard is one by Dylan Farrow. She says in a 2021 interview, "This is something that I'm literally telling you happened to me. Who are you to say, 'No, it didn't'? I was there, you weren't. Go away."

TYPICAL TESTIMONY - Loftus reviews the case, selects incidents and speculates as to how they might have caused a false memory. Asked about the details of the charges during cross it becomes clear that she hasn't thoroughly reviewed the case.

DURST - Deputy District Attorney John Lewin's 3-day cross of Loftus is on YouTube @ Durst trial. This was Lewin's second Loftus cross, and arguably the best I know of to date. Loftus became angry and sarcastic. Lewin insisted she face him, not the jury, to answer his questions. He managed to mention more than once that she'd been doing this for 50 years. She did not like the reference to her age. Lewin [REDACTED] is open to discussing his cross-examination.

WEINSTEIN - Arguably the most relevant testimony in the Loftus cross were the repeated mentions of the gist/core of the memory vs. the details. Loftus testified, "Well then, the less stressful, the one difference is when it is more upsetting and traumatic, if it is truly traumatic, there is evidence people who remember the gist and the core and the peripheral details especially suffer." So the memory is essentially correct, but maybe not the details. Sternheim mentioned memory contamination. That was tried in the Weinstein trial. *Transcript available on request*. For the Weinstein trial I prepared a review of Loftus's "Remembering Disputed Sexual

Encounters: A New Frontier for Witness Memory Research” which suggests that if a woman accepts a drink, etc., the man assumes she wants sex. If she physically defends herself it’s because she doesn’t want to appear easy. *Available on request.*

BLASEY FORD - I collected Loftus’s media interviews on the Blasey Ford accusation. I got the sense Loftus probably spent considerable time prepping because her responses to the half-dozen reporters differed, and many were quite creative. *Available on request.* Can’t prove it, but I wondered if she was hired to respond to the press to help ensure Kavanaugh was confirmed.

Additional information:

-Jury Comment in William Ayres case “We didn’t care for her cheery and slightly condescending way of speaking that reminds us of a cooking show host.”

<http://williamayreswatch.blogspot.com/search?q=Loftus>

-In **The Myth of Repressed Memory**, (p. 211) and in interviews Loftus describes the “assault incident” that occurred during her 1991 flight back to Seattle from California. Loftus says her seatmate was heading home from Australia and New Zealand after presenting a series of lectures and workshops on surviving childhood trauma. Loftus said she introduced herself. The woman said, “You’re that woman,” and swatted her with USA Today. The story was fact-checked with psychologists in Australia, New Zealand. There was no evidence of such presentations in either country.

-Loftus, E. (1986). Ten years in the life of an expert witness. Law and Human Behavior, 10(3), p. 242.

https://www.academia.edu/23430815/Ten_years_in_the_life_of_an_expert_witness “. . . I now continue to battle against a growing horde of scalpel-wielding opponents.”

-William James Speech (2001) - http://www.tegenwicht.org/14_incest/loftus_award.htm

NOTE: Loftus gave this speech when she was gagged during the UW investigation of Nicole Taus’s ethics complaint. Loftus has personally attacked over two dozen colleagues.

“For more than a decade, as I’m sure many of you know, I have been pursued by the enemies I created by virtue of my research on memory and my efforts to discredit recovered-memory therapy, which has done so much harm to individuals and families. The public thinks this epidemic is over. But many families have never recovered, and many promulgators and victims of the recovered-memory movement remain angry and vengeful. For so many years, I have tried to understand their position, sympathize with the emotionally disturbed young women whom I regard as victims of misguided or misinformed therapists, and find common ground. Now I realize that for these people, there may be little in the way of common ground. I am their enemy--scientific evidence is their enemy--and I will not be able to persuade them otherwise, not with all the good data and good intentions in the world . . . Who, after all, benefits from my silence? Who benefits from keeping such investigations in the dark? My inquisitors. The only people who operate in the dark are thieves, assassins, and cowards.”

I very much admire the courage of the women who have come forward to testify during this trial. I welcome any further questions you might have, and wish you the best in your efforts to ensure that Maxwell is held accountable.

Sincerely,



Lynn Crook, M.Ed.

-*Selling False Memories - The shocking story of parents accused of incest who established a non-profit to promote the defense they created* (in work)

-The Power of False Memory Rhetoric. (in press). *Journal of Trauma & Dissociation*.

-The Rocky Road to False Memories – The Stories the Media Missed. (2021, August). In *Trauma and Memory - The Silence and the Silenced*. Karnac: London.

ⁱ Judge Fedora's decision at <https://www.courtlistener.com/opinion/4587530/com-v-sandusky-g/>

ⁱⁱ Interview at <https://www.youtube.com/watch?v=YVQmqjHl4QI> (@ 17M)

ⁱⁱⁱSee also *Memory* (1981) a textbook by C. Wortman, E. Loftus and M. Marshall, p. 203: "Thus, a young woman who is sexually attracted to her father may try to repress her disturbing incestuous feelings."

^{iv} WaPo story at <https://www.highbeam.com/doc/1P2-1079806.html>

^v Dylan at <https://mobile.twitter.com/ELLEmagazine/status/1359497243397677056>