

Title: Elizabeth Loftus, Cocktails and Canceled Conversations

Podcast: Half Hour of Heterodoxy

Episode: 90

Transcript and Closed Captions

* * * * *

Communication Access Realtime Translation (CART) was Provided in Order to Facilitate Communication Accessibility. CART Captioning and This File May Not Be a Totally Verbatim Record of the Proceedings.

* * * *

[Welcome to *Half Hour of Heterodoxy*, featuring conversations with scholars and authors and ideas from diverse perspectives. Here's your host Chris Martin.]

Chris Martin: Today's episode features a recording from our Cocktails and Canceled Conversations series. It's hosted by Cory Clark and I'll let Cory take it from here.

>> CORY: Hi, welcome to cocktails and conversations with Dr. Loftus and Heterodox Academy. We're a group of professors, administrators, students, seeking -- oh. I forgot write left off but let me continue. We're a nonpartisan group of administrators, students and professors looking to promote open and viewpoint diversity and constructive disagreement. We believe great minds don't always think alike.

We're welcoming Dr. Loftus with us today. She's a distinguished professor at the University of California Irvine. She's published over 20 books and 600 scientific articles and served as expert witness and consultant in many legal cases including Ted Bundy, Michael Jackson, Martha Stewart, Bill Cosby and most recently, Harvey Weinstein. Earlier this year, Dr. Loftus was scheduled to speak at New York university on the morning of February 6th, the L.A. times published an article about the role as a witness in the Weinstein trial.

She received an e-mail from NYU informing her, her talk was being cancelled. We cannot know about the publicity in the involvement in the Weinstein case led to the invitation but their loss is our gain and we hope the students interested in learning about Beth's work can do so here. Before we get started, I have a quick rundown for everyone. I'll ask Beth a few questions to get us started the first 15, to 20 minutes and after that we'll turn it over to audience Q&A.

When you submit a question, it will be received by our behind the scenes team and they'll select great questions to elevate to me to ask Beth. We have nearly 300 people in attendance and only one hour together so unfortunately we won't be able to take all questions. But our team will try to consolidate questions and elevate those that are popular among the many attendees.

As always, we welcome constructive disagreement, so if you have a question for Beth that might challenge work, put an asterisks by the question and we'll be sure to elevate a few challenging questions as well. We also seek to ask questions within the HxA way so be instructive and humble within your challenging questions.

Only the people in attendance at the webinar are able to attend questions.

Those watching on YOUTUBE, we appreciate you being here. You won't be able to ask questions but we hope it will be an educational experience for everyone watching. So without further ado, Beth, thank you so much for being here.

>> DR. LOFTUS: My pleasure, Cory.

>> CORY: Can you describe for our audience the key findings you intended to share at NYU regarding malleability of memory?

>> DR. LOFTUS: What I would have done if the lecture had taken place at NYU is go through a bit of history about my work on memory distortion and false memories. I would have talked a little bit about misinformation memories, the kind of things that happen when people get misleading information about some event that they actually did witness. You can pretty easily change somebody's memory for the for an event details they experienced in the past.

Why have shown an experience you can plant entirely false memories into the minds of otherwise healthy people. And I would have talked about some new findings, a few new findings things that were only published in 2020 or late 2019. And basically, that would have been what I was planning to talk about.

>> CORY: Will you give us a little bit of investigation about some of these recent findings? And perhaps some of the most compelling studies you've run that demonstrate the ability for people to sort of take on these false memories and below -- believe that they're true?

>> DR. LOFTUS: For that, I would have to go back a ways in time and say that we had devised this method for planting false memories, very rich false memories, in the minds of people. Usually we did it by feeding people suggestive information. If I were doing it to you, Cory, I would say, Cory I had a chance to talk to your mother. I found out things about you when you were five or 6 years old, we want to see what you remember or don't remember, and how it compares to what your mother told us about. And then I would feed you a completely false, made up memory along with some true memories your mother really told me about. And when we use that kind of procedure in our very early studies, a long time ago, we planted a false memory that people got lost in a shopping mall in a particular place with particular family members that they were frightened and crying and ultimately rescued.

Since that time, we and others have done many studies planting these rich false memories. In recent teams, we've planted false memories, and found that, you're more likely to fall for a false memory if it fits with your current biases and what you already believe. And some work we published last year with Irish collaborators, we took Irish voters and made them believe and remember that they had been exposed to fake news, that they hadn't been exposed to and they were more likely to fall for it if it fit with their political beliefs. It's just one example.

Earlier this year with dutch collaborators, we published a paper looking at the effects marijuana with which somebody may develop false memories and found people under of influence of marijuana for more susceptible to their memories being tampered with. Those are a couple of recent findings that extend the work. That I and many other scientists have been doing for quite a while.

>> CORY: That's very interesting. Can you explain how your findings relate to the criminal justice system and how you ended up such an active player in the criminal justice system because of your research?

>> DR. LOFTUS: That goes back a long time. Somebody gets on the stand and says you witnessed that robbery and I'm positive that's the guy, it's very compelling testimony, but it's not always accurate. And for a long time, primarily defense attorneys in criminal cases had difficulty dealing, especially if you're dealing with a genuine victim. And someone is very sympathetic who might honestly believe in what they're saying even if it's mistaken. How to respond to that. So what developed decades ago was a cooperation, I guess you could say.

Where defense attorneys would seek the assistance of memory scientists to talk about what we know and don't know about the workings of memory. And I would say that one of the things that we do know that was useful in many of these cases is that just because somebody tells you something, and they say it with a lot of detail and confidence and even emotion, it doesn't mean that it actually happened. Because false memories can have these same characteristics. You're muted, Cory.

>> CORY: [Laughing]. I'll get the hang of at the eventually. I promise I'm not drinking.

>> DR. LOFTUS: And I'm not because it's only 3:00 here.

>> CORY: You used research to testify in hundreds of criminal cases I wonder if you can speak to the ethics of using scientific research this way?

Particularly to help just one side in a criminal trial. In your case, usually defense and do you consider likelihood the defendant is guilty based on your personal research into the case before you decide whether you should testify? Is that relevant to the decision of whether your science is relevant?

>> DR. LOFTUS: You had a lot of questions folded into that 1:00 question, so I'll try to answer different pieces of it first of all, in many of the cases I've been involved in there's not just expert on one side. It's -- well, I have primarily testified on behalf of the defense in criminal cases. Or it might behalf and half in civil cases, cases arising out of an auto accident or some other legally relevant event.

Often, the other side has an expert witness who is testifying to something different. And, in fact, some of the things I'm often doing in these cases is not just testifying about memory distortion or false memories or eyewitness identification and its accuracy under certain conditions. But many times, I'll see opposing experts saying things in the courtroom that I believe are completely unsupported or contradicted by the scientific evidence. So I think science, you know, the public paid for it, it belongs to even, and it should be available to people who need it or interested in it. When I started many decades ago, being asked to be a consultant or expert, I guess I didn't really think about --

Well, it wasn't up to me to decide whether a person was guilty or not. I only knew one particular part of the case, the part involving memory. Their might have been other evidence in the case of some sort, forensic evidence or some other kinds but I was not necessarily aware of material other than what had to do with human memory.

So I can't make a decision as to whether somebody is guilty or not and I didn't think about it very much. As I got more advanced in my career and I had so many cases I could work on, and so little time, so I could pick and choose what I wanted to work on. I tended to prefer to work where I thought there was a decent chance the person was actually innocent or being vastly over charged by the prosecution but that's a personal preference.

>> CORY: So it's not necessarily relevant if the science should be used in

those cases, you're just one person and can't do it all.

>> DR. LOFTUS: And I don't necessarily have all the information a jury will have that has to make the decision about guilt and innocence.

>> CORY: What has it been like for you professionally to be involved in high profile criminal trials and how do you feel like your colleagues responded in your involvement?

>> DR. LOFTUS: Gosh, first of all, obviously, I've been doing this for a long time. And so given that there are some unpleasant things that have happened, in order to keep going, there's got to be some good in this. So the good in this is, you know, I do have to say I'm a bit of a true crime nut. So I get to kind of look up close and personal at these actual cases.

I get to learn background information. I get great stories to teach my students and to enliven the classes and make the students appreciate how important the study of human memory really is. I haven't liked the dirty fighting, the massive efforts to get me in trouble. The letter writing campaigns to try to get me fired from my job. The threats of lawsuits to organizations that are inviting me to speak. I hope that doesn't happen with you.

Or as I was, being sued by a person who believed that her mother had molested her when she was a child and did not appreciate the fact that I was looking into the case to see if I could find out the other side of the story. The other side of that story. So I had to contend with a lot of unpleasant litigation filed against me, and people I care about. A co-author, a friend, the magazine where I published an expose and so on, that part is not fun.

And, of course, after appearing for the defense in Harvey Weinstein's case, even though I testified only basic general memory testimony. Never even read police reports about the particular people in this case, that's not what the defense asked for, I still got a lot of nasty e-mails, voicemails. And disinvited from a big deal lecture at NYU I was really looking forward to delivering.

>> CORY: It has its positives and negatives

>> DR. LOFTUS: Yes.

>> CORY: I have one final question for you in the spirit of constructive disagreement, which is, who is the scholar doing work that challenges some of yours or disagrees with your conclusions that you admire and think is doing good research?

>> DR. LOFTUS: Gosh, that's -- well, that's a good one. That's a good one. The first person that comes to mind is -- well two people because they were Johns Hopkins university. They were challenging some of my theories about what happened after someone developed a false memory or a distorted memory, what happened in the human mind to the original memory that would have once been there had you not tampered with that witness?

And I had proposed that our memories get altered and contaminated, these two, Johns Hopkins scientists, had proposed a different theory about what was happening. We duped it out in the pages of the journal of experimental psychology, or other scientific journals. It was a very healthy debate and I have a lot of respect for both of them and it taught me there's several routes to get to a false memory. Not just my root, but there are other routes and I thought it was a very healthy debate. Now that was quite a while ago, but that was sort of ideal.

In more recent times when it comes to the much more sensitive subject of child abuse, I guess the one person I really admire for her work is Kathy Witham who is criminology, she does studies that are very sophisticated people that do experience child abuse of various kinds don't go on to perpetrate these awful things when they grow up. And I just admire her work.

>> CORY: That's great, thanks, Beth. It's final for time for the audience Q&A. You can still submit your questions. To submit you can do so by clicking the Q&A button at the bottom of the screen. The first is threefold but all related, is it possible to whether is memory is real or false, how do they differ and particularly in the case of traumatic memory, how do you determine if a traumatic memory is true?

>> DR. LOFTUS: The memory scientist have asked that question. You might think that people would be more emotional maybe about true memories than false ones. But, in fact, there are work showing that people can be just as emotional about their false memories as their true memories. So emotion is not a sign that you're dealing with an authentic memory. You might wonder whether the brain knows with neural signals.

If you could put people in an fMRI scanner, would you be able to see the difference between a true and false memory? The studies that looked at that, the overwhelming result is similarity of the neural signals. When somebody is telling something that they think is true versus when somebody is telling you something that is actually true, it's not going to be a way you can take one memory and reliably classify it according to whether it's true or false.

As I said earlier, Cory, when -- false memories can be emotional, felt with confidence and detail. And so you need independent corroboration if you're going to know for sure whether you're dealing with a genuine memory or one that is a product of some other process.

>> CORY: So it's really that you need some other party to be able to -- or some other information to be able to confirm that the memory is true?

>> DR. LOFTUS: Well, yeah. And obviously, you know, the natural response is, you don't always have that. So how are you going to decide? And we're going to have to continue to make these difficult decisions. You know, I'm just thinking right now of that woman in Central Park who called up the police, called up 911 and said, I'm being attacked by an African American who is threatening me and my dog. Listening to that story, the person who answered that 911 call is probably going to believe it because whether it's true or false, it can be delivered with the same degree of conviction. In that case, it was a deliberate lie and not one of these false memories. But thank goodness we had some corroboration in the form of a cell phone video.

>> CORY: So this was related to what you were talking about earlier with fake news. The question is, to what extent can political fake news shape viewers memory of memory distortions and what percent of political rhetoric manipulate memory reformation?

>> DR. LOFTUS: This is reminding me of a study we published a while ago in which people were presented with doctored photographs of a political nature. And so, for example, you would see a photograph of President Obama shaking the hands of the former president of Iran. And it was completely fake and he never did that. And what we found was when we presented this as if it was something from the news, the people who were more likely to accept it were people who didn't really like Obama very much in the first place.

So the conservative republicans are more likely to fall for that one than say liberal democrats. And the reverse is true with a photograph that made the former president, George Bush look bad. When we get fake news and with social media we get bombarded with true information and false information. I think we have to be aware that we're going to be more likely to accept and then probably share work that already fits with what we already believe. And that's part of the problem.

>> CORY: So we have a challenging question for you now. This one is also a two partner. But they're sort of related. Do you think women seeking justice for sexual assault are generally treated fairly in the legal system? And how do you understand your ethical responsibility in situation where is your testimony or research may be used to defend a guilty party or discredit a survivor?

>> DR. LOFTUS: Well, for the most part -- of course these days, there's been a pendulum swing. So the stories of women are generally believed, and many people are kind of suggesting that they shouldn't even be challenged. That they shouldn't be scrutinized. And I don't agree with that because I have seen so many innocent people who have been accused of things perhaps by people who genuinely are mistaken and not deliberately lying. The way the central park woman appears to have been behaving, we have to keep in mind that there's not just one victim in this collection of stories.

And when you see accused people who are innocent and all the suffering, even if -- suffering of having to be prosecuted. The suffering of having to be expelled from their university and not allowed back in for several years. There's more than one victim and both of these stories need to be listened to. But we cannot just uncritically accept every claim no matter how dubious. I don't think that's the world we want to live in.

>> CORY: Great. So we have, how do you think we should go about being clear or critical thinkers and scientists when it comes to allegations of sexual assault and -- this is related. How do we balance being supportive and understanding while exercising appropriate skepticism when wanted?

>> DR. LOFTUS: I'm not sure I know how to answer that. I think it's possible to talk to people in a way that is -- that can be comfortable to them. I've had some of these conversations with women who are trying to figure out, was I or wasn't I abused? And I think you can have a healthy conversation and help people try to figure out whether what happened to them is something that warrants this label and a next step in a process. Without looking like you're just disbelieving them off the bat.

>> CORY: You mean in cases where the woman is unsure herself and you're helping her come to figure out what might have happened?

>> DR. LOFTUS: Well, I've actually had that happen. I once had a woman talk to me about the fact she thought she was abused. I said, what makes you think so?

And she gave me some reasons. And they were funny reasons. She said, well I had an affair. I almost kind of totally wrecked my marriage. I said, well people have affairs that weren't abused so why is that evidence for you? Well then she talked to her friend who said her father had abused her.

And this woman was talking to me knew that friend and that father, and maybe the father did that to me, too. And I'm just trying to have a conversation and help her, but it was not a stressful -- it was kind of an uncomfortable conversation because I felt she was heading down a path that was going to create trouble for her and somebody else. And it wasn't necessary, but I was a shoulder she could lean on.

>> CORY: Okay. We have, have you experienced shunning or otherwise bad treatment however minor among your colleagues, students or other individuals at your home institution due to your participation in the Weinstein defense or other cases?

>> DR. LOFTUS: Well, in terms of Weinstein, I do have to say before I went to New York to testify, when it looked like I might, I told my two deans. The dean of the school where the psychology and criminology departments are and then the dean of the law school, I said I need to let you know I'm going to do this. And there may be people upset but I'm giving a heads up.

The dean of the law school, herself is a criminal defense attorney in her past life said, all I can say is if you get interviewed I want you to hold up a big sign that says, UCLA law behind your head. And I thought, well that -- to me, that's the right attitude. The first day of class, my eyewitness testimony class, which is primarily seniors, I said to them I need to let you know I may be going to New York to testify in this case.

If any of you have a problem with that and you will feel uncomfortable in this class, I want you to just let me know. You can drop the class, there's no penalty, I have a long waiting list to get in this class, so you don't have to worry about that. And nobody dropped. But once I get back to New York, I did have an unpleasant experience with a law professor who I couldn't believe this was a law professor who would yell at me at the sandwich line before a faculty meeting. Just glaring at me saying I'm done with you, how could you? And storm off. But anyhow, there was the sandwich lady.

>> CORY: It sounds like most people are fairly supportive.

>> DR. LOFTUS: Well, we don't know what they're saying to each other behind closed doors.

>> CORY: This is related question, perhaps you sort of answered it already. Who has expressed more qualms about you discussing controversial topics in the classroom as opposed to the courtroom or didn't colloquy; your students or colleagues? I guess in cases you're discussing these in your classrooms.

>> DR. LOFTUS: Again, I don't see -- I can't say one versus the other. It might be the students would be a little more edgy, I think. Even though the one bad experience I just described you to was a faculty member. This was reminding me when I was making my first discovers on how leading questions could contaminate memory by asking people how fast the cars going when they smashed into each other would lead to higher estimates of speed. Than if you asked how fast were the cars going when they hit each other?

And I would give this lecture in law school classes. Sometimes students would come up afterward and say, you know, Professor Loftus, I think you shouldn't be teaching people this stuff because they'll go out and try to ask these leading questions and distort witnesses memories. Maybe you shouldn't be telling classes about this work. But when I would give the same lecture to practicing attorneys, which I did as part of continuing legal education or some other venue, they would come up to me afterwards and say, is there some book somewhere where I can find out which words work better than which other words?

>> CORY: Depends on your motivation. Is it zealous representation of your client when you asked that question is, that going to help your client? Is that witness tampering?

>> CORY: Do you have an answer for that?

>> DR. LOFTUS: It's black, white and gray and people fall in different places.

>> CORY: Is there any research to suggest certain people may be more susceptible to false memories than others and consider -- I hope I pronounce this right -- eidetic memory which is perfect memory? Do people with perfect memory really exist and can they submit eyewitness testimony you would be comfortable relying on?

>> DR. LOFTUS: \$quite a few studies who is more isn't possible have memories contaminated? If you are somebody with a lot of lapses in memory or attention, you can't remember whether you did something or thought about doing that thing you are somewhat more susceptible. If you are low in cognitive ability, you are somewhat more susceptible. So these individual differences emerge in these studies, but the correlations are, you know, probably never higher than usually about .3 or .32 statistically significant but modest so we know some people are more than others.

The question about eidetic memory it used to refer to the idea you could look at a page and have a complete image of that and read off it, there hasn't been much substantiation in material -- in terms of that ability. But what there has been, a research on a group of people with extraordinary personal memories.

They remember just about everything they did every day of their adult life. They're called highly superior auto by biographical memory and they've been studied by my colleagues at the University of California Irvine and a lot has been learned about them. My group teamed up with them and said, what if you took these memory people and put them in false experiments and how would they look? What would their performance be?

What I loved about this project, it didn't matter how it came out, it would be interesting. Either they would be susceptible to or immune or susceptible some of the time and not others. Any result was going to be fascinating. And we found that these HSAMs, were just as susceptible to having their memories be tampered with by suggestive influences. Compared to their age, gender match controls.

>> CORY: That's interesting so they still couldn't be completely relied on to testify based on memory alone.

>> DR. LOFTUS: No, and again we've seen examples out there in the real world of people who are incredibly smart, incredibly well educated, incredibly experienced remembering things that didn't happen. It shows you education, IQ points don't protect you that's how Brian Williams can believe his helicopter was attacked by a missile or Hillary Clinton came to believe she landed under sniper fire on a trip to Bosnia. These are incredible intelligent accomplished people who developed quite rich false memories.

>> CORY: That's so fascinating. We have one now that's sort of timely. Should we be concerned about the implications of distorted memory and how protestors and the police may come away with their interactions from one another? And how common would it be protestors remembering police officers as using excessive force when they don't and conversely, police officers will remember protestors being overly aggressive when in fact they were not?

>> DR. LOFTUS: I think both those things can happen and both of those things can happen and -- people will be influenced by predispositions and their biases. And so we have to keep in mind it's not necessarily because of a big, fat lie that a police officer might remember less force or protestors might remember more force than was actually used in a particular case. That would be an easy distortion to produce. In fact, I once did a study of people who just by the way you ask questions and referring to

something as an incident versus referring to it as a fight or using a more aggressive word to label the incident. Can get people to remember it as being more extreme than it actually was.

>> CORY: And it comes back to the motivations, I suppose. There's Dan, they saw a protest I think did the protestors break the law or something? And if you wanted them to be bad protestors, you thought they did. Although who is to say that's memory or what people report, I guess.

>> DR. LOFTUS: That sounds like it's modeled after they saw a game.

>> CORY: Oh, yeah, must have been. This one is about how you apply your research. How do you make the judgment your research is sufficiently established to be used in a courtroom setting, in particular, there's always a disconnect in terms of validity between laboratory research and real world case of which you're testifying. They gave the example of how defendants are given these, your mom told us X and do you remember this thing? So how do you have the confidence or do you know this -- your research you observe in the laboratory has applications to these real world criminal trials?

>> DR. LOFTUS: First of all, in many situations, you not only have the laboratory studies to tell you about a phenomenon or mental behavior. But often, they're complimented by something that are more like field studies or a little more real world studies so I'll give you one example. There have been a number of studies done by people interested in, what happens when people experience something really, really stressful?

How is memory affected? And in the laboratory studies, you create the stress in somewhat artificial ways. Maybe you show somebody an extremely gory, disgusting film, or maybe you try to stress them by sticking their hand in ice cold water for 90 seconds. And so that may seem a little bit artificial compared to people out on the street, but we learn about the effects of stress not only from those kind of studies, but for example a study that looked at soldiers who were undergoing survival school.

They were learning what it was going to be like for them to be -- if they ever got captured as prisoners of war. And they go through an exceedingly stressful experience. And I, with the psychiatrist Charles Morgan, who has access this population, and his colleagues have studied these soldiers. And found out that these soldiers can make a lot of mistakes when the situation is particularly stressful. Or another study, this was a clever study by a British psychologist named valentine it was done in a dungeon where figures jumped out and scared you and he studied the participants attending the experience and being frightened in this way and comes to the similar conclusions. We're not jumping from a study with rats into where people are out on the street seeing a shooting, but there's a whole lot of other study news there informing these decisions about the basic processes.

>> CORY: How can we protect the integrity of our memories from misinformation, if possible?

>> DR. LOFTUS: These are all great questions, but this is a good question because it's kind of hard. Sometimes, if it's really important and you write down what happened before anyone has a chance to talk to you, before you overhear any other conversations, some banks train their tellers if there's a robbery, sit down and write everything out before you hear what anyone else has to say.

So these immediate rehearsals can sometimes help freeze the memory and protect it from subsequent contamination. That's kind of one idea. When it comes to the kind of misinformation that's being delivered through social media and fake news,

Facebook's been trying to work on this problem as have others, for a long time. And it's really difficult. Blasting a warning, this could be fake, doesn't seem to work that well down the road. People forget about the warning and just remember the fake news.

Sometimes you hear a method, here's the myth and here's the truth, oftentimes repeating the myth is not good because people get exposure to it and it helps to maintain it: So we need to work on ways of protecting people. We have a long way to go, but this is good because this means there's full employment for psychological researchers who want to work in this domain.

>> CORY: Does that mean keeping a diary is probably a good idea at least for your own personal memories?

>> DR. LOFTUS: Well, that can probably help, yeah. That can probably help.

>> CORY: All right.

>> DR. LOFTUS: If you're not lying to your die

>> CORY: Could you share one experience your defense work that's affected you the most?

>> DR. LOFTUS: Oh, gosh. I think one of my experiences that was the most, most difficult for me, it was a while ago. When I was asked to testify on behalf of a man named John, who was an American citizen accused of being the operator of the death chambers in the concentration camp during World War II. And he was identified decades later from some photographs as a person who the inmates, the prisoners, called Ivan the terrible. So he's accused of these crimes against humanity, he was on trial in Jerusalem and I was asked to work on the eyewitness aspects of the case and testify in that case.

And it was an extremely difficult decision for me because I had a 90-year-old uncle who was like a father to me. He said to me, don't let this be the last thing you do before I die. I had my own feelings about the Holocaust and what a horror it was, but I still felt the consistent thing to do would be to give the memory science.

What do we know about 35-year-old memories and eyewitness testimony from this particular set of photos. And was the photo set fair and all that? And I thought well maybe what -- maybe I could do my own research and I could figure out whether he was guilty or not. And if he was innocent, I would have to say to my uncle, I'm sorry it's something I have to do.

But I did that research, I read everything I could get my hands on, and, of course, I couldn't decide if he was guilty or innocent. I was tormented and it went on for months and months. I had coffee with a friend and said it seems like the consistent thing is to do it but I'm just so torn. And my friend said, consistency is the hobgoblin of small minds.

And it was like a light bulb went off, I was like you're right. Who cares if I'm consistent? I don't need to be consistent and I resolved that controversy by finding him an excellent expert. One of the leading memory scientist in the Netherlands who did go and testify on his behalf. And what finally happened?

The expert delivered a beautiful expert testimony, talked about the science. He even wrote a book about his experience. He was convicted anyhow and then after the fall of the Soviet Union, it was revealed that it wasn't him. It was another man named Ivan Marshenco so he was let go by Israeli legal system. The story gets complicated after that but that was the hardest case for me.

>> CORY: Is that because you think if you were to testify things would have turned out differently?

>> DR. LOFTUS: I can't say. The doctor that went to testify, I went there to watch his testimony. He did a beautiful job. I don't think I could have done anything better than he did.

>> CORY: So this is actually quite related to that, but sort of the opposite. If you knew beforehand that someone was a sexual predator, would you agree to provide evidence for the defense anyway in the spirit that everyone deserves their day in court?

Or would certain knowledge of their guilt be enough to keep you away from testifying?

>> DR. LOFTUS: Maybe I can answer that by talking about the night stalker. I believe the night stalker, which is a famous bad guy in Los Angeles, did some of the things that he was accused of and he was being charged with. But not all of them. That there were -- again, this was earlier in my career. That there were -- it was almost like people were trying to clean the books with ones he did do, but also unsolved crimes. And so sometimes it happens that somebody is guilty of some things but not necessarily all things.

I once testified in a deposition for a priest who I feel possibly may have fondled the accuser, but did not rape the accuser as the accusation morphed into. And I would have testified, so there's a person who is guilty of some kind of lesser crimes and maybe not guilty of the more serious crimes. And I have done that before. I've offered that testimony about how is it that somebody can go from saying it was a minor, uncomfortable, whatever, touch and ambiguous to something much more severe and clearly a crime.

>> CORY: This one is about whether these expert testimonies are actually sort of useful for jurors. Is there any work that systemically tests that jurors are taught about potential error in memory or false memory become more accurate or do they become more disbelieving? Do they become better at being able to tell the difference between a compelling memory and potentially questioning evidence, or does it lead to a general skepticism?

>> DR. LOFTUS: Excellent question. There have been a lot of mock jury studies about expert testimony and some of them have shown you do get more skepticism. Some of them has shown it cause causes increased skepticism during deliberation about eyewitness aspect of the case that seems like a good thing. The state you have New Jersey has come up with instructions that were designed to educate juries about memory. This would be a more efficient way to educate the juries. Not through expert testimony, but through judicial instructions a judge would give at the end of a trial. Those instructions called the Henderson instructions after the case out of which they were developed, have been shown to increase skepticism, but not to help a jury discriminate between a good eyewitness account and one that's not so good. So we may need to continue to work on those instructions if jury instructions are going to be a solution or partial solution to this problem of misconceptions that people have about memory and how to correct them.

>> CORY: So recent events have brought attention to question about the proper role of scientific experts. Some would argue scientists should produce knowledge and step back and allow society to make choices. Others argue they should use their knowledge to guide government, what do you believe is the proper role for scientists in

modern society?

>> DR. LOFTUS: I think that we -- science, it's paid for by the public, it belongs to the public. And I feel a personal kind of obligation and mission and wish to communicate science to a broader public. Other people might want to bring their science to try to change policy. Or improve procedures or do something with a science for the public and I'm all in favor. Not everyone has to do everything. Not everyone is very good at communicating science, so I would say let's find what people are good at and what they're passionate about doing, and let them use this material and help improve the world.

>> CORY: So how is your research been challenged and if people disagree with your work what do they disagree on or what do people argue against?

>> DR. LOFTUS: The Johns Hopkins scientists who were disagreeing with my work on the misinformation effect were disagreeing about what effect this suggestive information and false memory had on the fate of the original memory that may have once been stored in the mind and no longer seems to be accessible to the person. And so that is a place where we disagreed.

Right now, people are often saying, oh it's just laboratory studies not recognizing the laboratory studies are compliment the by other kinds of studies. And what else do I hear in cross-examination? Well, are you just saying this for money? You know, or some kind of hired gun. They can't attack the science, so they try to attack the person.

>> CORY: I had one following up to that which is just like presumably the majority of memories are true, right, or mostly true. So if the testimony cast doubt on all memories in general, is that going to get it wrong or right more often?

>> DR. LOFTUS: I don't know about that, but I don't think we have any idea how much fiction is sprinkled throughout the facts. Partly because we don't get caught in the memory mistakes that we made. So if I tell you that I had chicken last night instead of a hamburger, you just accept my story. You don't challenge me. I don't get caught, I don't correct the mistake. Our memories could be full of mildly distorted or severely distorted details that don't matter very much. Accept when someone's liberty is at stake, then these very little details do matter a lot.

>> CORY: This question is kind of related to that. They said, I once read that memories are like VHS tapes, the more you play them, the more you wear them out and more isn't possible distortion they become. Is this true? How would this effect a memory someone is forced to relate again and again?

>> DR. LOFTUS: I wouldn't use the VHS, the wearing it out. But the germ of that question I think is appointment sometimes when we tell the past, we do what's called audience tuning, we tell the story of the audience that's listening. So we might change the story because this particular audience is more interested in this particular aspect of the story. Or would probably like to hear it in slightly this way rather than this other way.

And so as we repeatedly tell the story, we might be telling it slightly differently depending on the audience. Sometimes there's pressure for more details. You get pressure for more details from the police or psychotherapist sometimes. And that pressure sometimes causes those gaps to be filled with guesses or hunches or inference about what might have happened or could have happened. And then those can solidify and feel like memories, and that's m. But the metaphor I like, not the VHS one, or video recorders anymore, is memory is more like a Wikipedia page, you can go in there and you can edit it,

but so can other people.

>> CORY: I like that. So how do you, as a psychologist, receive Dr. Christine Ford Blasey's testimony against Kavanaugh especially where she referenced memory psychology?

>> DR. LOFTUS: I followed that situation quite closely. I listened to her testimony. I felt myself wanting to believe her and accept everything she said, and I had to stop myself and say wait a minute, this is 35 years ago. We've got to be asking what happened in those 35 years. We've got to be asking what happened in the psycho therapy session where she produced the stories supposedly for the first time in who knows how long. There was so much we didn't know about that case, but I know what it feels like to listen to someone tell a story and just want to completely accept it and believe it. Especially when it's somebody who seems so believable but how can I when I've been for decades saying we can't accept every claim critically without investigating it? How can I not do that here now?

>> CORY: This one is sort of related to that. What are your reviews on the trend in campus sexual assault cases to adopt a trauma informed approach to investigation and even adjudication? I'm hoping you know what the trauma informed approach is because I do not.

>> DR. LOFTUS: Unfortunately, there are a lot of people who promote some theories about how memories operate differently under trauma I think are not supported by a lot of scientific evidence.

>> CORY: Do you want me to explain what that is?

>> DR. LOFTUS: This is what I used to hear in the memory wars. Somehow the memory is so traumatic, it goes into the brain and bypasses the hippocampus and years later can you do something that triggers the amygdala and out comes the pristine memory. That was the height of the memory wars that talked about an unsupported memory of what was happening. Traumatic experience experiences, yeah we can remember traumatic experiences better than more neutral ones although peripheral details can sometimes suffer. But it's also the case that traumatic experiences are subject to decay, contamination by misleading information. They follow similar laws. And so I think they -- that needs to be appreciated.

>> CORY: What was your decision making process like when decide whether to testify in the Weinstein case?

>> DR. LOFTUS: Actually, that was kind of tough for me. I should say several years before, I had been contacted by an attorney. She was Harvey Weinstein's attorney in California. This is when things were first breaking, we didn't know very much. And I had worked with this attorney before, she's absolutely excellent. So I agreed to consult with her on this case.

Well, things didn't really materialize in California, but a couple of years later they started heating up in New York. And in New York, the New York attorneys contacted me and I already kind of been involved in some of the California issues. But by this time, there was so much media coverage and so many negative horrible stories about him. And I was feeling a little uncomfortable, but I was also saying to myself, you think you're uncomfortable and you might not want to do this, but it's only because you've been seduced by the media.

And you've been yelling at people not to let this happen for decades, telling

people we cannot let the media decide who is guilt and who is innocent. So I thought to myself, maybe I'll do what I did before, I'll recommend another expert. So I did, I recommended a fantastic other expert, a colleague of mine who teaches at the University of Nevada. The defense really liked her.

She had expertise that went beyond the memory issues and could talk about sexual communications and sexual interactions, things I'm not an expert in. I thought, that's the solution, this other expert will take over. But then Harvey Weinstein talked to one of his other advisors who said, I really think you need to have Loftus come in and do the memory part.

And so there I was back in the decision making process thinking the reason I wasn't comfortable doing this is I was seduced by the media and I was worried about would it hurt me and my about to help other people in the future and those two reasons did not seem like good reasons to back out of this, and I said I will come. And it was agreed that it was basic memory testimony. No mention of any specific people. In fact, the judge wouldn't allow it. I could barely enough talk about memory for sex. And that's what I ended up doing. But that's how difficult this was.

>> CORY: Do you know why he wanted you specifically? Just because of your...

>> DR. LOFTUS: I believe because he talked to Allen and I worked for him before and he said -- he knew me and said, you want her.

>> CORY: So are going to started winding down in a few minutes but I'll take a couple more questions. Can pairs or groups of people have a shared false memory? And is this an active area of research?

>> DR. LOFTUS: A shared false memory?

>> CORY: Yes, is it possible for two people or a group of people to have a shared false memory?

>> DR. LOFTUS: Oh, absolutely. If they're exposed to the same sources of suggestion, yes, they can have a shared false memory. First of all, in some of these eye witness cases, you often see multiple people all identifying the same wrong person. Same wrong person who ends up going to prison for 20 years, and then gets freed based on DNA testing. But five people all made that same mistake, how does that happen? Through suggestion and contamination of memory.

>> CORY: We'll take one more here. Having a strong memory used to be a highly sought after skill because looking up information was fairly resource intensive. Given we have places such as reliance on Google -- we have such reliance on Google and other technology to provide us constant access to the world's information. How do you think this will impact our natural ability to remember things deeply?

>> DR. LOFTUS: Well, certainly when you know you can look something up, you don't have to remember it. And I believe there's a study out there, the authors are escaping me at the moment. I need to get into my computer or whatever, that shows that people who know they can look up the answer don't remember the information as well. But you can just experience this for yourself when you think about how many people's phone numbers do you not know now?

>> CORY: It's so true.

>> DR. LOFTUS: We used to know by heart.

>> CORY: I don't think my mom knows my number. We're going to squeeze

more in here and end on this one. Certain kinds of false memories seem to be more common during certain culture moments and give example of Satanic abuse panic years ago. Do you have fears of sexual assault becoming more culture during the #MeToo movement and culture discourse?

>> DR. LOFTUS: I do. I've been involved in some campus sexual assault cases, for example, where somebody has an ambiguous experience and then they tell a friend about it. And the friend says -- labels it that's rape. You need to report. And I think that label, and that conversation and thinking about it in that way helps to shift the memory to something that's more aggressive or inappropriate than perhaps it was.

>> CORY: Okay. I think I'm going to squeeze one last one in there from my own list. This is my privilege because I wanted to ask you based on something I read of yours recently which is, is it true that Martha Stewart has smoked salmon, caviar and vodka for lunch?

>> DR. LOFTUS: One day she had that for lunch. I don't know she always had that for lunch. But when I interviewed her about the circumstances under which she had a conversation with her stockbroker and ultimately sold her in clone stock, I was trying to find out what she was doing when she had that conversation. So that I could learn a little more about the reliability of her memory or her lack of memory for some details that the government wanted to suggest that she was remembering. She told me that she, right before the conversation, she had been on a plane, a private plane, and I said doing what?

And she said, having lunch. I said, what do you have for lunch? And she said well we had smoked salmon, we had caviar and volunteered I said how much vodka? Well, a couple of drinks. And there's a very good reason why. Maybe she didn't remember every detail of a conversation that she had after that lunch.

>> CORY: You said they ended up not using that in the testimony?

>> DR. LOFTUS: What happened was the -- I think the defense thought the case was going so well for them, they cut the defense short, very short. Hardly any witnesses at all. And ended up with a verdict that they didn't expect.

>> CORY: What could have been with the vodka defense?

>> DR. LOFTUS: The vodka defense, you never know.

>> CORY: All right. I'm afraid that's all time we have today. Beth, thank you so much for being here.

>> My pleasure, Cory, good to see you again.

>> CORY: Good to see you. Thank you everyone if submitted questions. Those were much better questions than I prepared to ask so I appreciate all the help there. We hope everybody learned something new or considered a new perspective. If you're not a member or friend of Heterodox Academy, consider becoming one by clicking, get involved on our web page.

If you like what we're doing, please consider making a donation by clicking, give, on the web page. And we encourage you to check out resources on our website that provide resources for your classroom, communities and promoting the values of viewpoint diversity, constructive disagreement and open inquiry. Thank you, everyone. Thank you, Beth.

[End of captions]

CART CAPTIONING PROVIDED BY:
ALTERNATIVE COMMUNICATION SERVICES, LLC
www.Captionfamily.Com

CHRIS: This will be our next to last episode before we go on an indefinite break. Our last episode which comes out soon features Justin Tosi and Brandon Warmke authors of Moral Grandstanding

I hope you enjoyed listening to the show over the past three years. I've enjoyed seeing your reviews on iTunes and hearing from many of over email or in person. If you want to get in touch, you can contact me at podcast@heterodoxacademy.org or tag me on Twitter @Chrismartin76.

And If you have enjoyed this podcast, please consider joining the HxA network whether as a member, affiliate, or friend - we welcome everyone. By joining, you'll receive event invitations, our weekly Bulletin email, and other special perks. Visit heterodoxacademy.org/join for more details and to apply today. If you enjoyed the show, please leave us a review on iTunes because it helps other people find out about the show. Thanks for listening.

[This podcast is produced by Heterodox Academy. Find us online at www.heterodoxacademy.org, on Twitter at @HdxAcademy and on Facebook. This podcast is for informational purposes only and doesn't represent the views of Heterodox Academy.]

[End of transcript]