



IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

CP-14-CR-2421-2011

CP-14-CR-2422-2011

v.

GERALD A. SANDUSKY,

PETITIONER.

HONORABLE JUDGE

JOHN FORADORA

2017 MAY -4 AM 10:41

WITNESS CERTIFICATION OF DR. ELIZABETH LOFTUS

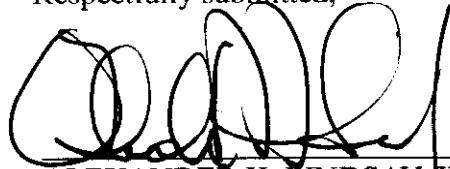
AND NOW COMES, Petitioner, Gerald A. Sandusky, by and through his counsel, Alexander H. Lindsay, Jr., Esq., and J. Andrew Salemme, Esq., and the Lindsay Law Firm, P.C., and files this Witness Certification.

Dr. Elizabeth Loftus' date of birth is October 16, 1944. Her professional address is the University of California, Irvine, California 92697, where she is a Distinguished Professor of Psychology & Social Behavior, Criminology, and Law & Society. Counsel certify that Dr. Loftus will testify consistent with her expert report submitted to the Commonwealth on April 21, 2017 and attached hereto.

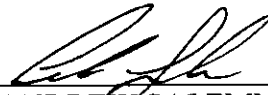
In this respect, Dr. Loftus would submit to a reasonable degree of certainty that there is no general acceptance in the scientific community that individuals forget traumatic occurrences in their lives. She would add that repressed memory therapy can create false memories. Dr. Loftus would opine that individuals, even with "extraordinarily good memories are susceptible to memory distortion from suggestion." *See Attached Report*, at 2. Dr. Loftus would submit that such individuals are not consciously lying when discussing these memories, but believe that the memories are real and the events actually have transpired. She would explain the process of how

memory works and discuss the scholarly research in the area. Dr. Loftus will testify that the manner of questioning used by Pennsylvania State Police was suggestive as well as that suggestive interviews during psychotherapy can lead to false beliefs and memories. Furthermore, Dr. Loftus will opine that Mr. Gillum used highly suggestive techniques to develop Mr. Fisher's abuse claims.

Respectfully submitted,



ALEXANDER H. LINDSAY, JR. ESQ.
Pa. Supreme Court Id. No. 15088



J. ANDREW SALEMME, ESQ.
Pa. Supreme Court Id. No. 208257

THE LINDSAY LAW FIRM
110 East Diamond Street, Suite 301
Butler, Pennsylvania 16001
Phone: 724.282.6600
Fax: 724.282.2672
Attorneys For Gerald A. Sandusky

UNIVERSITY OF CALIFORNIA
IRVINE, CALIFORNIA 92697-7080

Elizabeth F. Loftus, Ph.D.
Distinguished Professor
Psychology & Social Behavior
Criminology, Law & Society
School of Law

(949) 824-3285 (TEL)
(949) 824-3001 (FAX)
E mail: eloftus@uci.edu

April 9, 2017

To: Andrew Salemme, Attorney
The Lindsay Law Firm, 110 E. Diamond St., Suite 301, Butler, Pennsylvania 16001

From: Elizabeth Loftus, Ph.D.

Elizabeth Loftus

Re: Commonwealth v. Sandusky

I have reviewed materials in this action in order to assess the memory aspects of various individuals related to this case. These include legal documents, and portions of grand jury testimony and trial testimony. I was asked to review these materials and also to offer opinions regarding the relevance of scientific research in the area of human memory.

My opinions are based on my extensive experience in academic psychology, in both teaching and research. I hold the position of Distinguished Professor at the University of California, Irvine. My Ph.D. is in Psychology from Stanford. I am an author of more than 500 published papers, the majority of which concern the topic of human memory. I have published 22 books, at least five of which deal almost exclusively with the subject of memory, including a college textbook called *Human Memory*. I have received seven honorary doctorates for my research on memory. I was elected to the National Academy of Sciences, in recognition of my long-standing research program on human memory. I have held tenured academic positions at major universities and in that capacity I have taught courses in human cognition and memory at the university level for more than 40 years. As a result of my research and work in this area, I have been asked to consult with and present to law enforcement, including the FBI and CIA. The attached *curriculum vitae* provides a summary of my experience and qualifications in psychology more generally, and human memory in particular.

Brief Overview of Human Memory Research

The experimental study of human memory dates back more than a century to the groundbreaking work of Hermann Ebbinghaus (1913), who showed how memory fades and weakens over time. This fading has been called one of the “seven sins of memory” by Harvard psychologist Daniel Schacter (2001). Over the last century there have been thousands of studies of human memory published in peer reviewed journals and summarized in many books (including the comprehensive summary by Brainerd and Reyna (2005)).

The scientists have shown that memory does not work like a video recording device. We do not simply record events and play them back later. The process is much more complex. In fact, retrieving a memory involves a constructive or reconstructive process. That is, retrieving memory is accomplished by combing traces from an original experience with other bits and pieces of information that are acquired from other sources, after that original experience is over (See Loftus, 2005).

Research has shown that memories can be distorted, even for horrible events that have happened to people. Moreover, we can remember entire events that never occurred (See Loftus & Ketcham, 1994). For example, research subjects have been led to believe that they experienced highly traumatic events such as being attacked by an animal, or nearly drowning and being rescued by a lifeguard, or even committing a wrongdoing that was serious enough to bring police attention (see for example, Shaw & Porter, 2015). Once a false memory is formed, people can be confident and even emotional about the experience (Laney & Loftus, 2005; 2008) – even though it is completely false.

It is virtually impossible to tell the difference between a true memory and false one without independent corroboration. Moreover even people who have extraordinarily good memories are susceptible to memory distortion from suggestion (Patihis et al., 2015). This is not a matter of deliberate lying on the part of the reporting person; but is what can occur when people have been led to truly believe that something occurred to them that is false. The experimental work is supplemented by many real-life cases in which false memories have been planted in the minds of ordinary people through the process of suggestion (e.g. Loftus & Ketcham, 1994; Pendergrast, 1999).

Background Facts

A number of individuals accused Mr. Sandusky of molestation at his trial in 2012. For example, ██████████ (Alleged victim 7) testified that Mr. Sandusky would put his hands down ██████████ pants and grab his penis. But in his earlier grand jury testimony in April, 2011, he said that Mr. Sandusky struck his hand inside the waist of pants but never went the whole way down and grabbed anything. In between these two versions, ██████████ said he had had counseling and talking with others about the events of the past. Moreover, from information that ██████████ provided during an interview with journalist Mark Pendergrast, he was apparently involved in 12 to 15 weeks of group sessions with others who were accusing Mr. Sandusky. He even mentioned that this group therapy had a big impact on him. Finally, ██████████ reported that his therapist

thought he had repressed memories and that there were memories that would be aroused that he hasn't remembered yet.

Also consider trial testimony of [REDACTED] (Alleged victim 4). At trial in 2012, he testified that Mr. Sandusky molested him. But, we also learned that initially he did not report details about alleged molestation, for example to the police or to a lawyer. In between these two versions, the police told him there were others whom Mr. Sandusky had molested, and, after that strong suggestion, [REDACTED] began to report details. It is noteworthy that a recording between some of those police interviewers and a civil lawyer for [REDACTED] revealed that before [REDACTED] revealed these details, the one of the officers said he believed there was oral sex, and that other kids were saying there was. Tellingly, and most problematically, the officer told the civil attorney something like this: "it took repetition and repetition and finally we got to the point where he could tell us what happened." The officer also told the attorney that they had two individuals who had seen it happen. The suggestive interviewing tactic of this officer can also be seen in the transcript that reveals him actually insinuating to [REDACTED] that the progression followed by Mr. Sandusky leads into "more than just the touching and feeling, that there has been actual oral sex that has taken place by both parties..... we classify as a rape."

As another example, consider the testimony of Aaron Fisher (Alleged Victim 1). He too testified at trial that Mr. Sandusky had molested him. But we would learn from his book "Silent no More" that Fisher initially had only vague claims of any kind of abuse. Fisher had been in therapy with Michael Gillum for over three years by the time the book was published. Gillum appears to have convinced his patient that he had repressed his memories and was in denial, and using highly suggestive techniques, and using them frequently, Fisher's abuse claims were nurtured and developed into a detailed story.

Analysis

I am prepared to testify at trial about the workings of human memory, the effects of suggestion on memory, the mechanism of creation of false memories, and the characteristics of false memories. Moreover, I would identify some of the suggestive activities that occurred in the current case. These suggestive activities can explain how it is that a person might go from having no memory, or very minimal memory of sexual abuse, and even denying memory of abuse, to later having elaborate memories for sexual abuse, if the memories are false.

I would explain why and how, in cases like this one, suggestion may lead individuals to the construction of false memories, and how suggestion may have done so in this case. In fact, the "suggestion" explanation has ample scientific support in literature that shows that false beliefs and memories can be readily planted in the human mind through suggestion of various kinds. (Brainerd & Reyna, 2005; Loftus, 2003.) Individuals sometimes unconsciously construct false memories in an effort to explain their problems, and in this case the abuse scenario may have been an effort to explain anxiety, depression or other problems in their lives. Suggestions during psychotherapy and individual and family/group counseling are the types of suggestion that can lead to the development of false beliefs and memories. One of the major reasons why someone's memories change from one point in time to another is that they have been exposed to

suggestion, or have drawn inferences about what might have happened that are a form of self-suggestion or autosuggestion.

The notion of repressed memory

Why did the testimony given by ██████ and Fisher and others change? One possibility is that they "recovered" memories that they might try to claim had been repressed. (In fact ██████ therapist even opined that repression was actually occurring in the mind of ██████. And the Attorney General Linda Kelly gave a press conference after Mr. Sandusky's verdict in which she talked about "unearthed memories."). Given the evidence that we might be dealing with a case of "repressed memory" that was allegedly recovered, it is important to understand more fully what is known about that subject of repressed memory. Briefly, the idea that one can repress horrible brutalization into the unconscious and reliably recover the experiences later has received virtually no credible scientific support. The notion is best described as folklore that continues to be advanced by some mental health professionals who uncritically accept abuse reports, no matter how dubious, and claims of repression, no matter the lack of scientific support.

Although "repressed" and "recovered" memories are frequently depicted in popular novels, television series, and Hollywood movies, there is no general acceptance in the scientific community that this phenomenon can actually happen. Twenty five years ago, Dr. David Holmes, Professor at the University of Kansas, reviewed sixty years of efforts to find support for repression and concluded that there was no credible scientific support (Holmes, 1990).

The picture has not changed in the ensuing years. Richard McNally, a Harvard University clinical psychologist and tenured faculty member, put it this way in his meticulously researched and widely cited book "Remembering Trauma," published by Harvard University Press (2003b, p. 2):

Until the mid-1990's debates about trauma and memory were hampered by vitriolic accusations issuing from both sides and by the scarcity of clinically relevant scientific data. During the last few years, matters have improved dramatically. An outpouring of research has clarified many of the most contentious issues....

The evidence points to three conclusions. First, people remember horrific experiences all too well. Victims are seldom incapable of remembering their trauma. Second, people sometimes do not think about disturbing events for long periods of time, only to be reminded of them later. However, events that are experienced as overwhelmingly traumatic at the time of their occurrence rarely slip from awareness. Third, there is no reason to postulate a special mechanism of repression or dissociation to explain why people may not think about disturbing events for long periods. A failure to think about something does not entail an inability to remember it (amnesia.)

Some mental health professionals claim that there is a good deal of evidence for this kind of amnesia. They cite highly controversial and questionable references for their beliefs. Yet many

psychiatrists, psychologists, and memory researchers vehemently disagree that these studies prove that repression exists. These studies have been analyzed carefully and the conclusion has been reached, by me and others, that it is misleading to use them as proof of amnesia.

Dr. McNally points out common flaws inherent in those studies which are frequently used to support the concept of repressed memory, such as:

- asking subjects whether there was ever a time – duration often unspecified – when they were *unable* to remember their traumatic experience;
- misinterpreting not thinking about a trauma for a long time as being unable to remember it;
- failing to appreciate that most people have gaps in their memory for childhood and that efforts to remember result in the illusion of heightened amnesia for childhood;
- failing to realize that some molested children do not understand their experience as sexual abuse when it occurs, but later reconceptualize it as such;
- failing to verify that the trauma actually happened or merely relying on subjects' claims that corroboration is available;
- failing to distinguish between failure to report traumatic experiences and inability to remember them;
- failing to conduct follow-up interviews to determine why subjects did not mention traumatic experiences known to have occurred;

(McNally, *Remembering Trauma*, p. 227).

Most compellingly, McNally concludes: “The notion that the mind protects itself by repressing or dissociating memories of trauma, rendering them inaccessible to awareness, is a piece of psychiatric folklore devoid of convincing empirical support.” (McNally, 2003, p. 275). The evidence points to the opposite conclusion - most people who have suffered horrible traumas have the problem that they cannot forget and the memories keep intruding. Given the minimal evidence for this kind of repression of memory, and the ample evidence for the power of suggestion to create false memories, the latter explanation for this dispute deserves serious consideration.

Final Remark

Based upon my review of the facts here, it is my professional opinion that there are numerous examples of possible suggestion and influence that may be responsible for the creation of false recollections or distorted recollections in the minds of several individuals who have made accusations against Mr. Sandusky, assuming these allegations reflected sincere belief. An expert could have testified about these influences at trial, and could identified some of the many suggestive activities that went on in the lives of these accusers before they made their accusations. Moreover, the controversial notion of repression appears to have played a role in the case, and testimony about the state of knowledge and opinion about repression would have been valuable in this case.

References

- Brainerd, C.J. & Reyna, V. F. 2005. *The science of false memory*. NY: Oxford University Press.
- Ebbinghaus, H. 1913/1885. *Memory: A Contribution to Experimental Psychology*. Translated by Henry A. Ruger & Clara E. Bussenius. New York: Columbia University.
- Holmes, D. S. (1990) The evidence for repression: An examination of sixty years of research. In J.L. Singer, Ed. *Repression and Dissociation*. Chicago: University of Chicago Press.
- Laney, C. & Loftus, E.F. 2005. Traumatic memories are not necessarily accurate memories. *Canadian Journal of Psychiatry*, 50, 823-828.
- Laney, C., & Loftus, E. F. 2008. Emotional content of true and false memories. *Memory*, 16, 500-516.
- Loftus, E.F. 2003. Make-believe Memories. *American Psychologist*, 58, 864-873.
- Loftus, E. F. 2005. Planting misinformation in the human mind: A 30-year investigation of the malleability of memory. *Learning and Memory*. 12, 361-366.
- Loftus, E.F. & Ketcham, K. 1994. *The Myth of Repressed Memory*. New York: St. Martin's Press.
- McHugh, P.R., Lief, H.I., Freyd, P.P., & Fetkewicz, J.M. 2004. From Refusal to Reconciliation: Family Relationships After an Accusation Based on Recovered Memories, *Journal of Nervous and Mental Disease*, 525-531.
- McNally, R.J. 2003a. Progress and controversy in the study of posttraumatic stress disorder. *Annu. Rev. Psychol.* 54:229-52.
- McNally, R.J. 2003b. *Remembering Trauma*. Cambridge, MA: Harvard Univ. Press.
- Patihis, L., Frenda, S.J., LePort, A.K.R., Petersen, N., Nichols, R.M., Stark, C.E.L., McGaugh, J.L., & Loftus, E.F. 2013. False memories in highly superior autobiographical memory individuals. *Proceedings of the National Academy of Sciences*, 110, 20947-20952.
- Pendergrast, M. 1999. *Victims of Memory: 2nd edition*. Hinesburg, Vt: Upper Access
- Shaw, J., & Porter, S. 2015. Constructing rich false memories of committing crime. *Psychological Science*, 26, 291-301
- Schacter, D.L. 2001. *The seven sins of memory: How the mind forgets and remembers*. Boston: Houghton Mifflin.

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011
	:	
v.	:	
	:	
GERALD A. SANDUSKY,	:	
	:	HONORABLE JUDGE
PETITIONER.	:	JOHN H. FORADORA, P.J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of May, 2017 he caused an exact copy of the foregoing document to be served in the manner specified, upon the following:

Via U.S. Mail:

Assistant Attorney General Jennifer Peterson
Office of the Attorney General – Criminal Prosecutions Section
16th Floor Strawberry Square
Harrisburg, PA 17120

Centre County Court Administration
102 South Allegheny Street
Bellefonte, PA 16823

Respectfully submitted,

THE LINDSAY LAW FIRM, P.C.



ALEXANDER H. LINDSAY, JR., ESQ.

Pa. Supreme Court Id. No. 15088
110 East Diamond Street, Suite 301
Butler, Pennsylvania 16001
Phone: 724.282.6600
Fax: 724.282.2672
Attorney For Gerald A. Sandusky