



by Diane Dimond | June 17, 2012

Jerry Sandusky Trial: The Defense's Risky Psych Defense

Lawyers for the ex-coach may call a psychologist to testify that their client has a personality disorder. Diane Dimond on why the move could backfire. Plus, will Dottie take the stand?

Defending Jerry Sandusky, the former Penn State coach accused of 52 counts of sexual abuse against young boys, can't be an easy job. So it's no surprise that his lawyers have come up with a strategy that's already being mocked by opposing counsel. Is Sandusky a pedophile—or an undiagnosed victim of histrionic personality disorder?

In one of several handwritten letters from Sandusky to one of the young men now accusing him of sexual abuse—missives the witness described to the jury as “creepy love letters”—the former Penn State defensive coordinator wrote, “I have many Forrest Gump qualities. As you can imagine I cried at that movie.”

As the prosecution seems ready to rest its case and turn the floor over to defense attorney Joe Amendola, it seems that the defense's strategy will be to expand on Sandusky's vision of himself as someone who is developmentally different—but not criminal. Amendola said as much during his opening statement to the jury last week. “There are no victims in this case. Victims only come about when you 12 people decide there are victims. Mr. Sandusky has always said he is innocent.”

Late Friday afternoon, as the trial was in recess, Centre County Court Judge John Cleland issued an unusual ruling that helped clear the way for this tactic, allowing Amendola and his team to call an expert witness to testify about histrionic personality disorder, or HPD, as it's known. It is rare in Pennsylvania for expert testimony to come into a trial, because the commonwealth believes it encroaches upon the role of a jury, that they are better off using their common sense to decide a case. However, expert witnesses are approved if they are to present information not commonly known to the population. It's a safe bet that the Sandusky jury hasn't got a clue about HPD.

In its motion requesting permission to present an expert psychologist, Sandusky's team had written, “The goal of a person suffering from this disorder in writing those letters would not necessarily be to groom or sexually consummate a relationship in a criminal manner.”

The American Psychiatric Association says those suffering from the disorder are characterized by a pattern of excessive emotionality and attention-seeking, including an excessive need for approval and inappropriately seductive behavior. They are described as enthusiastic and flirtatious; they crave stimulation and may exhibit sexually provocative behavior. They often put themselves in risky situations and fail to see their own personal situation realistically. While some of those descriptions may apply to Jerry Sandusky, not helpful to his case is that HPD is most often diagnosed in women.

(The defense motion did not mention that the American Psychiatric Association's website reports that HPD is currently in the process of being eliminated as a diagnosis.)

Lawyers close to the case say the defense strategy could easily backfire, because there is an important condition attached. The judge declared that if the defense puts its expert on the stand, it will also have to make Sandusky available for psychological evaluation by an expert for the prosecution. (There are reports that the prosecution's evaluation took place on Sunday, and so would not delay the trial.)

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Several legal experts told The Daily Beast the prosecution's mental-health examiner might very well get on the stand and tell the jury they were unable to diagnose HPD but, instead, discovered a pedophilic disorder. Attorney Slade McLaughlin, who represents Victim No. 1, the accuser whose allegations first sparked this Sandusky investigation, says it's a risky tactic.

"The defense has so few cards to play here that they are now stooping to claiming a mental disorder as some justification for their client's bizarre behavior," McLaughlin said. "In my opinion, Sandusky does have a psychological disorder—one that undoubtedly will be uncovered by the attorney general's examining psychiatrist: pedophilia." McLaughlin, whose 18-year-old client appeared to be among the most physically and emotionally crippled, borders on anger when he talks about what his client has allegedly been through.

"How is it that Jerry Sandusky managed to reach the age of 68 with no diagnoses of any psychological disorder, but now that he's accused of molesting little boys, he's suddenly diagnosed, according to his attorneys, with a histrionic personality? What a joke."

Attorney Thomas Kline, who represents accuser No. 5, also told The Daily Beast the HPD defense is dangerous. But at this stage of the trial, after the shocking testimony of eight alleged victims and the eyewitness account of sexual abuse on a young boy as described by Penn State assistant coach Michael McQueary, Sandusky's team has little to lose allowing the government to examine him.

“Amendola will get a report from the prosecution and can decide whether to put on his expert,” Kline explained. “The prosecution will only be allowed a rebuttal witness if and when the defense puts on their expert. So Amendola gets to see what the prosecution has in rebuttal, and then can decide. It costs the defense nothing to play out this strategy,” says Kline.

Because of a pending gag order on the trial attorneys, the media, and the public will likely find out whether Amendola decides to present his psychological expert at the last moment.