

730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Parents:

Name: Eric Moelter (father)  
Place Seen: Encinitas office  
Dates Seen: 3/4/08

Name: Cindy Dumas (mother)  
Place Seen: N/A  
Dates Seen: N/A (mother refused to participate in evaluation process)

Children:

Name: Damon  
Birth Date: \_\_\_\_\_  
Place Seen: San Diego office  
Dates Seen: 2/2/08 (individually and together with siblings),  
2/5/08 (interviewed with Court-appointed attorney)

Name: R Moelter  
Birth Date: \_\_\_\_\_  
Place Seen: San Diego office  
Dates Seen: 2/2/08 (individually and together with siblings)

Name: E Moelter  
Birth Date: \_\_\_\_\_  
Place Seen: San Diego office  
Dates Seen: 2/2/08 (individually and together with siblings)

Date of Report: July 6, 2008  
Case No: D477012

Continued...



**730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE**

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 2

**SOURCE AND REASON FOR REFERRAL:**

The above-referenced family was referred for a 730 Family Psychological Evaluation by the Honorable Loma Alksne, Judge of the Superior Court, on a somewhat urgent basis given the circumstances of the family dynamic and the hope that some resolution could be brought to this matter as expeditiously as possible.

Allegations of sexual abuse of Damon Moelter perpetrated by the father have been ongoing since approximately February 2003. No conclusive findings were made regarding the allegations, the mother became frustrated and discouraged with the investigators and the Court's lack of protective action, and ultimately the Court was considering that full custody be awarded to the father. A day or so before the court hearing on this matter, on November 5, 2004, the mother went into hiding with the three children and did not return until sometime in January or February of 2008 - approximately three years.

The mother elected to return with the children with the understanding that a new evaluation of the matter would be conducted.

**RELEVANT HISTORY AND INFORMATION:**

The Court is well aware of the history and dynamics involved in this case. Upon the mother's return with the understanding that a new evaluation would be conducted, the Court appointed separate attorneys for the three children - Timothy Smith, Esq. for Evan Moelter, David Schulman, Esq. for Ryan Moelter, and Gary Plavnick, Esq. for Damon Moelter. The children were placed in protective custody with a family friend, with the mother having supervised visits and the father having no visits pending the outcome of the evaluation.

Apparently, the attorneys for the parents, William Henrich, Esq. for the father and Barbara Weiser, Esq. for the mother, agreed upon the undersigned to serve as the independent evaluator for this matter, whereupon the judge directly called the undersigned and asked him if he would take the case. Subsequently, the mother has released Ms. Weiser as her attorney and has been representing herself.

Continued



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE  
Date of Report: July 6, 2008  
Case No: D477012  
Continuation...Page 3

Shortly after having received this case, the undersigned met with the children together and individually, brought to the office by their guardians, Kurt and Leslie Leinbach. The undersigned then met again with the youngest child, who is the subject of the sexual abuse allegations, together with his court-appointed attorney, Gary Plavnick, Esq. The undersigned then invited the parents to participate in the evaluation process. The undersigned was able to arrange to interview the father on 3/4/08. The undersigned played "phone tag" with the mother two or three times to try and arrange a meeting, but subsequently the undersigned received a letter from her dated March 4, 2008, declining to participate in the evaluation process, accusing the undersigned of having conflicts of interest and being biased, and asking the undersigned to recuse himself from conducting the evaluation. The mother's reasons for her accusations and request were contained in her letter of March 4, 2008, which the undersigned subsequently supplied to the attorneys and to the Court.

Having given the mother's letter some thought, and considering her fixed belief that the Court, Child Protective Services, the previous attorney appointed for the children and the previous evaluator and therapist were all somehow even incompetent or biased, the undersigned submitted a letter to the Court dated March 25, 2008, suggesting that a separate sexual abuse evaluation be conducted through Children's Hospital, one of the alternative evaluators the mother had suggested. The undersigned indicated that he would remain in place as the 730 evaluator to receive the results of that evaluation and offer subsequent recommendations based on the information available.

The Court adopted the undersigned's suggestion and an evaluation of Damon Moelter was referred to Children's Hospital, the Chadwick Center, where an evaluation was conducted by Ms. Laurie Fortin, LCSW. Ms. Fortin interviewed Damon Moelter on four occasions and conducted individual interviews with the parents on one occasion. By design, once the undersigned ascertained that an evaluation would be conducted through Children's Hospital through contact with an administrator of the evaluation unit, Barbara Ryan, the undersigned had no further contact with any individual at Children's Hospital and never spoke directly or indirectly with the evaluator conducting the evaluation.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 4

Ms. Fortin, LCSW, submitted the results of her evaluation dated 5/20/08. In that evaluation, which will be addressed later in this report, she essentially indicated that she could not determine whether sexual abuse occurred or not, but indicated that it appeared that Damon believed that a sexual molest occurred and that because of this belief, forced contact with his father could be emotionally detrimental/damaging to him and if such contact were to occur, it should be within a therapeutic setting.

Given the reports that have been made previously, the undersigned does not believe it is particularly useful to go into a detailed history of this matter, but instead focus on some of the essential details of that matter with a particular focus on what is relevant at the current time. In addition to other data available, Ms. Fortin in her 5/20/08 report provides a brief outline of some of the history of this matter.

Essentially, the allegations of sexual abuse began in February 2003, when the middle child reported to the mother that something "weird" happened when the children were last visiting their father. Apparently, the middle child woke up in the middle of the night to find his father standing on his bed, part of a bunkbed system, and presumably getting up into bed with the youngest child. However, there does not appear to be information suggesting that the middle child actually saw his father get up into the top bunk, and the middle child apparently immediately fell back asleep. Questioning of the youngest child by the mother then began to point to sexual abuse, from the mother's perspective. It appears that the actual facts in this matter get rather confused from that point on as to what did or did not occur, what was "inferred" by the child, and how the facts as they emerged were interpreted. The mother tape recorded two or three subsequent interviews with the child and on advice, apparently from the marital mediator, called Child Protective Services, who conducted an investigation. The essence of the allegations were that the youngest child allegedly felt something hard and metal rub or scrape him from his lower back to his head, which the mother in particular felt or believed represented sexual abuse. The children's services worker at that time indicated that the child made some disclosures indicating inappropriate touching by the father. No disclosures of any inappropriate touching or protective

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE  
Date of Report: July 6, 2008  
Case No: D477012  
Continuation...Page 5

issues were raised by the other two children, and the CPS worker wound up recommending supervised visits for the father pending an evaluation of this matter through the Family Court. It was noted that the father reportedly showed deception on two questions of a polygraph he volunteered to take, reportedly against advice. Upon advice of his attorney, the father declined to meet with the social worker given the proceedings being referred to Family Court.

As part of the evaluation of the child during that period of time, a videotaped interview was conducted at Children's Hospital on 3/4/03. It is relevant to review the results and findings of that videotaped forensic interview of Damon at that time, given that it was conducted apparently within nine or ten days of the original allegation. In the interview, Damon reported a hard thing scraping on his back that felt like metal that he believes lasted for seven seconds and was a one-time incident. It occurred while he was in the top bunk of a metal bunkbed system where the bottom bunk pulls out from the bottom and the rails of the bunkbed are large, heavy, rounded metal rails. Ryan indicated he was sleeping on his tummy, did not see anything, only felt his father's hand on his forehead and noted that he "didn't feel him." He denied that his dad made any noise and noted when asked that he felt the metal on his skin, but he was wearing his play clothes so that he did not have to change when he woke up. He denied that any similar instance happened any other times, denied that anybody had done any touching of his body of an inappropriate nature, and when asked, indicated that if anything inappropriate were to occur, he would tell his dad if he was at his dad's house and tell his mom if he was at his mom's house. He denied that anybody had asked him to keep any secrets, denied that anyone had told him not to tell anything, and when asked if his dad ever did anything uncomfortable that he did not like, his only response was "he didn't put a jelly bean I liked in the bowl."

The father began a process of supervised visitation with the children from approximately April 2003 until approximately July or August 2003. Unsupervised visitation was then allowed and subsequently expanded in January 2004 to Tuesday and Thursday overnight visits plus three out of four weekends. Apparently, that was the

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 8

schedule that was in place until another CPS referral was made upon initiation of the mother through the school on 10/7/04. This was reported at the end of the school day where the mother apparently walked Damon into class, indicated that the child was scared to go with his father and "it may be better if he told school personnel."

Apparently, the children and mother were interviewed in person the following day while the father was not interviewed in person. The children were taken to the Polinsky Children's Center following Damon's report of sexual abuse by his father.

The results of that investigation indicate that Damon's disclosures of sexual abuse were vague, he could not articulate specifics or time periods, and the two older boys reported some concerns that they had observed in the past that were not any different from previously discussed in Family Court. At that time, Damon spoke about a "hard thing" that "stung" and was "wet." When asked to draw the hard thing, he scribbled a baseball-sized circle on a sheet of paper. He denied any touch under his clothes. Damon did indicate that he was scared of his father and did not want to go with him. The two older children reported that they believed their brother was being sexually abused and allegedly had observed part of this when the father bounced the youngest child on his lap. The middle child indicated that the year previously he remembered his father taking Damon from the bunkbed in the middle of the night and did not bring him back, but around the time of that incident, the middle child reported that he fell immediately back asleep and did not know whether the father took the child anywhere or not. In fact, Damon indicated at that time that he did not believe that he went anywhere.

CPS elected not to file a petition in this matter and determined that the statements by the youngest child "were vague and sexual abuse is inconclusive." The children were released to their mother the following day, given that she appeared to be protective.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation...Page 7

Significantly, it was noted that the mother "strongly believes that the father is molesting Damon. She has been upset and frustrated at times when CPS has tried to explain its role and that a petition would not be filed. On one occasion she was very inappropriate and she reported that a social worker told her son that she was 'doing too much'." The mother reported her belief that the therapist had a personal relationship with the father and with the father's counsel. The children reported their belief that the therapist who had been working with them, Dr. Gang, Ph.D., was on the father's side. The worker indicated "It is highly possible that the mother is coaching these boys and alienating them from the father. It is also possible that molests may have occurred, as Damon has been consistent with 'the hard thing', and the siblings express the same concerns and these issues keep resurfacing."

The matter was referred again to Family Court. Over the course of this evolving process, Dr. Raymond Murphy, Ph.D., was appointed to do a psychological evaluation of the family. Despite the mother's allegations to the contrary, Dr. Murphy indicated that he did address the issue of the molest of the children, which is one of his specialties, where he indicated there was no data to support that a molest had occurred. Dr. Murphy indicated that all the mother could talk about was the alleged molest, and while she appeared to be a very bright, nice lady, she also seemed to have a narrow band of belief that the molest occurred.

Ultimately, Dr. Murphy concluded that the mother was a potential flight risk, had coached or prompted the children in some ways, and had developed a delusional belief system that was fixed with no reassurance possible. As it turned out, the attorney appointed for the children also became increasingly concerned with the mother's fixed belief system (by report) and the mother went into hiding with all three children apparently the day before the Court was set to hear a motion granting full physical and legal custody to the father. It should be noted that the undersigned was not provided a copy of Mr. Chucas' report or findings so the undersigned does not have the benefit of knowing Mr. Chucas' thought process during that period of time or the nature of his interaction with the children and the mother.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 8

As noted, the mother was then in hiding with the children, apparently home-schooled the children during that time, and did not resurface with the children until January/February of this year when the current evaluation was initiated.

ASSESSMENT PROCEDURES:

- \* Conjoint interview with Evan, Ryan, and Damon Moelter
- \* Individual interview with Evan Moelter
- \* Individual interview with Ryan Moelter
- \* Individual interview with Damon Moelter and conjoint interview with Mr. Plavnick
- \* Individual Interview with Eric Moelter (father)
- \* Personnel telephonic contact with childrens' attorneys
- \* Personal telephone contact with Dr. Gang, previous childrens' therapist, and Dr. Raymond Murphy, previous evaluator
- \* Brief contact with Mr. and Mrs. Leinbach (guardians)
- \* Review of submitted material provided by the attorneys following the Local Rules of Court, including declarations by the parents, previous CPS reports, the videotaped interview at Children's Hospital on 3/4/03, correspondence between the parents, declarations by the children, and the recent evaluation at the Chadwick Center by Ms. Laurie Fortin, LCSW

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 9

RESULTS OF EVALUATION:

This is an extremely difficult and conflicted family dynamic where it is very unlikely that a successful resolution of the issues involved will be easily forthcoming. There appear to be two major issues to be addressed. The first is whether any resolution can be reached as to whether the youngest child was molested. The second, and perhaps even more difficult issue is what should occur in terms of any therapeutic intervention and movement towards resolution of the issues.

The available information indicates that the data available around the time of the initial disclosure was not supportive of a finding of sexual abuse of the youngest child. Four or five years after the initial disclosure makes it even more difficult to determine whether or not sexual abuse occurred. However, the disclosure back in February 2003, seems to have been the catalyst for an increasing crescendo of allegations on the part of the mother. A review of an E-mail written by the mother to the father on September 28, 2003, appears to be an angry response to the father where she refers to the father having molested Damon for two years, "devastating our family," refers to the father as being "lucky to have them unsupervised," refers to the father's "disgusting behavior," and when referring to the Court not having all the information yet. She stated "that is why cowards like you pick on little kids, because you think you won't get caught." Subsequent comments by the mother suggest her belief that the father had been molesting Damon since he was two or three years old. (Declaration by Ms. Dumas dated 1/31/08). In that same declaration, Ms. Dumas refers to a long list of behaviors that she attributes to sexual abuse by the father. Ms. Dumas asserts that a sexual abuse evaluation was never done, while apparently discounting the investigation/evaluation by Child Protective Services, Dr. Raymond Murphy, Ph.D., and, by report, the findings gathered by the previous attorney for the children, Terry Chucas. In fact, Ms. Dumas stated in her declaration that "Dr. Raymond Murphy...did not do a sexual abuse evaluation or even ask Damon about the abuse." She continues: "Minor's counsel, Terrance Chucas, was so grossly negligent and biased that there will be an entire declaration devoted to his violations." She adds: "CPS backed off and refused to help in the investigation after the respondent hired two attorneys and undoubtedly pressured them."

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 8, 2008

Case No: D477012

Continuation...Page 10

It should be noted that Dr. Murphy indicated that he did conduct an evaluation of the sexual abuse allegations, but apparently did not come up with the conclusions the mother expected or wanted. Dr. Murphy indicated that he certainly addressed the sexual abuse allegations with the youngest child. Furthermore, in a Court Order dated December 16, 2004, (after the mother went into hiding with the children) it was noted "...the Court finds insufficient evidence that Dr. Murphy acted inappropriately in this matter..."

One can only imagine the atmosphere and environment to which the children were exposed while in hiding with their mother, given the mother's belief system. The boys reported their mother having "explained the facts of life" to them and there is information available that the mother helped the youngest child put the "facts" together to realize what had happened to him, and that "it made sense" when things were explained.

It is important in evaluations such as this that the facts be gathered that are available, to look at the information available and any conclusions drawn at a time proximate to the time that an incident/abuse occurred, and then to apply a degree of common sense and logic to judge whether or not something occurred. In such situations, the question as to whether or not a sexual molest could have occurred almost invariably will be yes. However, the next question that must be asked is how likely is that to have occurred, what evidence seems to support that, and do the available facts seem to fit a pattern that makes sense.

To investigate and evaluate the available facts, one must start at the first disclosure. As noted earlier, the youngest child's reports that at time were vague, details were not forthcoming, and the findings at best were inconclusive. It appears that the mother continued to believe that the child was sexually abused, reluctantly and against her wishes allowed the Court-ordered visitation with the father to occur, and continued to ask the youngest child about events at his father's house.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation...Page 11

As noted, when the second CPS report was made and an investigation occurred in October 2004, there apparently still were no specific details of any sexual molest despite the mother's certainty that it had occurred, and reports by the mother that various people involved in her case were biased against her or somehow in collusion with conflicts of interest, etc. It is relevant that at that point, shortly before the Court was to issue an order transferring custody of the children to the father, and after approximately eight months since the original allegation, the child's comments continued to be vague and no finding of sexual abuse could be made.

Given the vagueness of the child's reports around the time frame where disclosures were originally made, it is somewhat remarkable what has evolved since that time when the boys were in hiding with their mother. When the undersigned originally met with Damon on 2/2/08, he responded to the examiner's inquiries that he thinks that he may have had a good relationship with his father up until he was approximately two years old, but that after that, their relationship was not good because the father was abusing him at that point. Damon indicated that it was his belief that the father "did it every night" while he was with him. He noted that the father would lay on his back and that "especially when I was little, it felt like my spine was going to break." He noted "he'd rub his penis up and down my back - it didn't hurt at first, then it started hurting more and more (as time went on)." He denied that his father ever asked him to touch his penis and when asked whether he had ever seen his father's penis, he stated "he must have been careful - I never saw his penis - I'm guessing it was his penis because I learned about the Birds and Bees." Damon stated that "at first I thought it was metal." He stated that his father would abuse him at night and during the day. He believes that he would molest him when he was sitting on his lap and he would do it in other places, such as in movie theaters, various places within the home, and even times when driving when a supervisor was present.

Damon indicated that his father would threaten him, "he'd threaten me, he said he would kill Mom or one time, me - one time he said he would kill my pet hamster if I told anybody about the abuse." One of Damon's stories was particularly interesting, as has previously been reported in documents, of him having been abused in the canyon

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE  
Date of Report: July 6, 2008  
Case No: D477012  
Continuation...Page 12

behind his father's home. Damon indicated that he was scared of "snakes and stuff," indicated he was barefoot, and noted that his father brought him into a clubhouse the boys had apparently found or made in the canyon. He stated that he laid down on the ground, he was naked, it was cold, and his father abused him there. Significantly, Damon indicated that his father made him take his clothes off and that he walked to the canyon without any clothes on.

Given that Damon had indicated to previous investigators that he felt wet at times, the undersigned made inquiry into this area, attempting to be a vague and nondirective as possible. The undersigned asked if Damon had ever felt damp during these alleged episodes with his father. Damon replied "sometimes he peed on me, but he might get up to go." When asked what this dampness or wetness smelled like, Damon indicated that "it smelled like pee." When asked how he would get the wetness or dampness off of him, Damon replied "I wouldn't, I just put my clothes on - it'd soak in." When asked what it felt like on him, he replied "it felt like liquid and was warm - kinda like warm water."

As indicated earlier, Damon denied that he ever saw his father's penis, even though the alleged incidents of abuse took place during the night, during the day, in the shower, in the closet, and various other places, 80 to 100 times. Damon did indicate "I think I maybe saw it one time - but I don't remember where I saw it. I remember seeing his penis because I remember it was hairy and that was weird because I didn't have hair." Damon was then asked to draw a picture of what he remembered, whereupon he drew a picture of what appears to be a penis hanging down with scribbles for hair at the base of the shaft. It is somewhat noteworthy that the picture was drawn with the penis appearing flaccid, as opposed to erect, which one might expect if the father was being sexually aroused by a reported activity with his son. He noted during the time that he was in hiding with his mother, he often would sleep with his mother, but sometimes he would sleep in his own bed with the mother sitting with him until he fell asleep. He acknowledges that "a lot of those times, I would wake up and go into her bed."

Continued...



One must inquire whether it is reasonable to believe that during scores of times that the child was reportedly molested, that he never saw his father's penis. Given that it may be reasonable to assume that Damon has not yet become sexually active or masturbated, one might assume that if he felt something wet on him. He might understandably conclude it was urine (versus semen). However, one might question this report, given that the child reported that it felt like warm water and "smelled like pee." Also, one could question that somehow Damon never saw this wetness, never wiped it off, and he supposes that it either dried up or soaked into his clothes.

One might also question whether it is reasonable to believe that regarding the canyon story, that Damon was marched down to the fort naked in his bare feet and made to lie in the dirt. Significantly, Damon reported that there were many nights where the father would lock him out of the house for hours if he did not cooperate, and several occasions where the father allegedly molested him in the pool or, at least on one occasion, threw him into the pool in a sleeping bag where he thought he would drown. What appears significant to the undersigned was that his brothers were present during almost all of the visitations he had with his father and they never heard or saw anything. Reportedly, Damon would be back in his bed in the morning, or nothing was heard or observed in the closets, in the shower, etc. The only "observations" that the older boys have about what they now believe and assert was sexual abuse was the father bouncing the child on his lap at times. Even the older child acknowledges (approximately ten years old or so at the time) that he did not recognize what was going on until his mother explained the facts of life to him. In this regard, one must also ask whether it is reasonable that during the various supervised visitations that occurred, that the supervisor never noticed or reported anything inappropriate, despite the reported many times that the alleged molest while bouncing on the father's lap occurred.

Going back to the original incident for a moment, and incorporating some of the information from the recent evaluation at Children's Hospital, it is especially noteworthy that in Ms. Fortin's Conclusions/Recommendations, #2, she stated "of most concern, is what began as a metal thing scraping his back that did not hurt on one occasion became a hard, warm, wet penis that hurt and was 'sexual abuse' as suggested by his mother." Exploring the original incident somewhat further, it appears,

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation...Page 14

as noted, that the bunkbed in which the children were sleeping was a metal framed bed with round metal rails for the top bunk. The ladder going up to the bunk is on the end of the bunkbed. As noted, the bed below pulls out or sticks out and the father indicated that he stood on this bed to try to lift Damon out of the bed to take him to the bathroom because of concerns that the parents had previously discussed that the child was wetting the bed at times. The father indicated that it was not very feasible to get the child out of bed going up over the end of the bed, and so he stood on the bottom bed in order to lift the child over. However, he reported the child was approximately 50 pounds of sleepy weight and therefore he could not lift him from that position very high. He noted that the child probably did get his back rubbed or scraped by the railing of the bed. He denies going up into the bed with the child. The middle child on the other hand has reported that the father was up in the bed with the youngest child, he has also stated that he does not remember the father bringing him back. The youngest child has stated that he does not recall ever leaving the bed and, at the time, the middle child reported that he immediately fell back asleep and did not know what went on. Additionally, the father somewhat convincingly explained that it would be extremely difficult for him to get up into the bunk from the side of the bed as alleged given its height, the rails, and that he would have to somehow swing himself up over the bed rails in order to make it up into the top bunk from that position.

Significantly, the older two children believe their brother was molested by their father and appear to use language regarding the allegations, court process and outcome that are well beyond their years. They feel empathy for their brother, having had to endure the sexual abuse as reported and note that their brother now has anxious behaviors as a result of his experiences. The middle child indicated that "he regresses a lot, acts like a baby sometimes, makes animal noises, screeching at times, and becomes very frustrated when he loses anything." Ryan continued that Damon "dissociates a lot - he's just gone - he sits there, slumps, but doesn't fall over. It lasts five seconds to about a minute or two. Most of the time we can get him out of it."

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation...Page 15

Evan is a boy approximately 15 years old at this point who talks and has a vocabulary well beyond his years and who sounds much like an attorney in terms of his discussion of the family issues and the reported molest of his brother. He noted that "from hiding, I tried to file a DVRO versus my father - I hired an attorney." He acknowledged that he had a relationship with his father that was "okay, until I found out he was abusing Damon." He noted that his father seemed to be mad about things that were "not proportionate to what happened." Evan reported that his brother Damon told him that his father had told Damon regarding the alleged abuse "it's our little secret, don't tell anyone." In other interviews, Damon denied that anybody threatened him or told him not to tell anything. In fact, as noted, he indicated during the Children's Hospital interview that if anything had happened inappropriately, he would tell his dad if he was at his dad's house.

Evan indicated in discussing the situation that "the Judge ordered supervised visits to be stopped before a hearing on the sexual abuse and before the Court adopted the evaluation. Dr. Ray Murphy was the evaluator - he didn't do a sexual abuse evaluation and didn't ask anyone about abuse - he had my father in the room with me while he was asking questions - but we did have some time alone." He stated that Dr. Murphy "told my mother he wasn't supposed to do a sexual abuse evaluation, but a custody evaluation." Evan referred to his brother Damon as having "disclosed" to his teacher in October of 2004. Evan reported that the abuse of Damon got steadily worse as Damon related that his father would take him out in the back yard "in a sock, like a sleeping bag, throw him into the pool, abuse him there, and hold him under the water." Evan indicated that he and his brother Ryan were sleeping at the time, but was told that if Damon fought, his father would have him sleep in the back yard, lock the doors, and Damon was very afraid of bugs, spiders, etc. Evan indicated that Damon did not tell anyone about what was going on until after they went into hiding. Evan offered "we've seen him recovering from the abuse - he most likely has Posttraumatic Stress Disorder." He referred to Damon having "flashbacks." Like his brother, he referred to his youngest brother as "dissociating the whole time while it was going on - not feeling things." He noted that before they left, his mother was in a doctorate program to become a psychologist and noted "it's a good thing, because she was able to help with Damon. So she used those words and I remember." Evan feels that his brother's memories "have come out as he feels safe about them."

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It might be noted that during Damon's initial interviews about the bunkbed incident, he reported that it lasted seven seconds because he counted. During his interview with the undersigned on February 5, 2008, he reported that during that incident that his father "abused me three hours or so." As referenced previously, Damon indicated that his father would abuse him in various places and noted to the undersigned that his father would pull his pants down, even in a taxi with Evan, Ryan, the supervisor, and his father.

During his interview with Mr. Plavnick present on 2/5/08, Damon indicated regarding the molest that the "hard thing" sometimes came "close to my butt, and sometimes went into my butt, but not very often." This appears to be the first indication that the undersigned can find in any material, declarations or references to suggest that the father may have engaged in any penetration. When Damon was reportedly locked out of the house at night by his father for two to three hours at a time, he indicated that sometimes he would knock on the door. However, Ryan and Evan were always asleep. When Damon was asked towards the end of the interview why he thought Mr. Chucas may have recommended that the children reside full-time with his father, he replied "I don't know, I guess Dad's attorney is his friend." Damon believes that his father must have wanted to scare him by throwing him into the pool and locking him outside at night, and noted that "every single one (time) he threatened to kill me." When asked if his dad ever struck or hurt him, he replied that his father would hit him, then lock him outside. He noted "he'd hit with his fist on my shoulder or my stomach."

#### SUMMARY AND CONCLUSIONS:

Summarily, the available evidence does not suggest that the youngest child was sexually abused by his father. This conclusion is based on the facts that not only were the child's initial disclosures rather vague and nonspecific, but they became more specific to the point of not being reasonably considered rational or even believable after the mother took the children into hiding. As noted, it may be difficult to say with 100% absolute certainty that the child was not molested, but in the end, one must make a rational, reasonable conclusion based on the data and whether the reported story makes logical sense.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 8, 2008

Case No: D477012

Continuation...Page 17

The undersigned was not able to interview or evaluate the mother as a result of her refusal to participate in the evaluation, and therefore perhaps a degree of information was lost. However, there are many declarations filed and a previous evaluation done that together with the mother's letter to the undersigned provides a reasonable view of the mother's conclusions and position on this matter.

The available evidence, which unfortunately is based on declarations, reports of other professionals, and the letter the mother sent to the undersigned (as opposed to direct evaluation of the mother by the undersigned), suggests that the mother has determined without any doubt that her youngest child was molested, that the father was the molester, and that she is not open to any other possible explanations, observations, or evaluations of anyone who does not see the situation as she does. Her position and view is not likely to change, and she has all but threatened to go to various organizations, the media, etc., if she does not get the justice she believes is appropriate. The undersigned believes that the mother most probably totally believes her child was molested, as opposed to choosing to fabricate the allegation in order to get at the father or take the children from him. However, it appears that she has entered into a closed feedback loop where she is not open to any other information, opinion, or observation that might raise any doubt as to her fixed conclusions.

Whereas the undersigned has not had the opportunity to directly evaluate the mother, the information available suggests that she will have difficulty abiding by any Court Order with which she does not agree and may remain a flight risk if the Court's ultimate conclusion grants the father time with the children and a finding that the youngest child was not molested. She is likely to retain the perception of having been victimized by the Court and the "system" and thus is likely to find it difficult to impossible to participate in any reunification effort that the children might have or be ordered to have with the father.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 18

It is nearly as traumatic with likely long-term negative emotional impact for children to believe that they or a sibling have been sexually abused by a parent if they have not, as it is if they had actually been molested. The mother, in her zeal to try and protect the children from the father's abuse as she is convinced, has created an atmosphere and belief system with the children that is likely to make it extremely difficult for the children to successfully reunify with their father. As difficult as the reunification process may have been during 2003 and 2004 before the mother went into hiding with the children, after three years in the sole custody of the mother, hiding, believing the system let their brother down, and very likely having anyone with whom they associated reinforce the idea that the youngest child was molested by the father, the reunification effort and process is likely to be much more difficult.

Summarily, the only rational conclusion that can be reached based on the data available is that a molest of the youngest child is highly doubtful, it appears very problematic that the data to support a molest conclusion was not there in the first place, and the undersigned is not aware of anyone (other than the mother or the children) who has looked at this matter having concluded that a molest occurred. The mother appears sincere in her belief that the youngest child was molested, but it also appears that she has systematically ignored any evidence that might support a different conclusion, has taken the children into hiding for three years of their lives, and one could argue that any abuse of the children that has occurred has been at the hands of the mother in what appears to be her self-righteous zeal to shield the children from the perceived evils of the father and the court system.

The next question of where do we go from here is much more difficult. The children appear to be alienated from their father and reunification, especially with the oldest child, is likely to be quite difficult. Not having directly evaluated the mother, the available evidence nevertheless suggests that it is unlikely that she will be able to participate in any reunification effort, and therefore, if the Court should determine that reunification with the father is warranted, contact with the mother, at least for a period of time, will have to be eliminated for there to be any chance of success. The undersigned does not make that conclusion as a direct criticism of the mother, but

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 19

rather as a reality that exists under the circumstances. The father may have his faults, the family dynamic appears to have had dysfunctional elements, but the undersigned feels confident in concluding that the father will have virtually zero chance of effectively reunifying with the children if the children are having ongoing contact with the mother. It is hoped that should the Court adopt the undersigned's conclusions and recommendations, that the mother could gain some insight, be willing to consider possible alternative conclusions, and if not supportive, could at least be neutral towards any reunification effort that might be initiated. That is likely to be a tall order for her, but ultimately the boys would benefit from having both parents in their lives without the acrimony, conflict, allegations, and the rather hostile environment in which they have grown up for the past four to five years.

Unfortunately, it is not likely that the boys, or the parents for that matter, will ever be the same. It will be extremely difficult for the mother to acknowledge any alternative explanations for what she has concluded, given that to do so would mean she would have to acknowledge that she may have made a grave mistake, contributed to significant damage to the boys' emotional welfare, and turned all of the children and herself into victims of a judicial and professional system that cannot be trusted. The undersigned hopes he is wrong, but it is more likely that the mother is likely to pursue a martyr role where she was simply being a good mother attempting to protect her children and was victimized by virtually all of the professional people with whom she came into contact, who were incompetent, unprofessional, negligent, biased, and somehow supportive of her youngest son being sexually abused. Ms. Dumas is likely to believe that she is the only one who knows the truth and therefore the only one who can save the children from continued abuse.

The undersigned does agree with Ms. Fortin of the Chadwick Center that Damon and his brothers believe that Damon was sexually abused by his father and that it is likely to be potentially emotionally detrimental or damaging to the children to require forced reunification with their father without a therapeutic process in place. The undersigned does not share the opinion of Ms. Fortin that Damon is cognitively and intellectually older than his chronological age of 11. In fact, he comes across in the undersigned's opinion as significantly younger and with some significant problems in his functioning as reported by his brothers and even the mother.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation...Page 20

The undersigned would like the opportunity to evaluate the mother and perhaps draw some different conclusions about her ability to potentially facilitate a therapeutic reunification process, but she appears to be a strong, determined woman and has made it clear that she has no intention in participating in the evaluation process. The undersigned can therefore only go upon the data that is available and the attitudes that she has expressed in her declarations, to the undersigned, and by report, to the Court.

The undersigned is open to any additional data that may be available that may add to the data base or even contradict the undersigned's conclusions, but it must be kept in mind that any studies that may have been done or statistics generated from this or that organization or researcher, while valid as far as they may go, do not necessarily apply to a specific case. Each case must be judged on its own merit and with the data available. While anything is possible, there are also conclusions for the same set of circumstances that are more likely, have more internal logic, and that can be based on a reasonable and rational assessment of the facts on hand.

Whereas Ms. Fortin in her evaluation paints a picture that for the most part argues against any conclusion that a molest occurred, nevertheless concludes that she is not in a position to offer an opinion regarding "if sex abuse occurred or not." She noted "...what cannot be ignored are the concerning details that Damon did provide, to include multiple incidents, in multiple, detailed locations, the punishment technique Damon indicated his father used when he would hide from him to avoid the abuse, the specific 'scariest' incident that occurred in the canyon, and his father's threat to kill him if he told." The undersigned would take issue with Ms. Fortin that if the details of these incidents are explored, as the undersigned attempted to do with Damon, the logic falls apart and some even flies in the face and is contradictory to what the child said at a different point. Sometimes it is the "details," if explored, that allow a logical conclusion to be drawn. The undersigned is of the belief that Ms. Fortin did not have the wealth of written material available to the undersigned, nor apparently did she have the opportunity of interviewing the two older boys. Like the undersigned, she also was under the disadvantage of attempting to make an evaluation four to five years after it

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation...Page 21

occurred. However, some weight must be given to those who evaluated the circumstances earlier in the process, and if one reads Ms. Fortin's report, one can see without difficulty the significant doubts that she had as to whether a molest occurred or not.

The following recommendations are made and considered to represent the best interests of the children at this time.

RECOMMENDATIONS:

1. It is recommended that the mother consider participating in the evaluation process in order to assess whether there is any additional data other than that available indicating that she would be able to participate in a positive way in a reunification effort with the father. As the Court is well aware, even if there were a determination of sexual abuse by the father, which in this case there is not, Juvenile Court would develop a reunification plan.

Until or unless the mother participates in an evaluation with the undersigned or is able to convince the court of her ability to support a reunification effort, it is recommended that she have no contact with the children.

It should also be understood that should the mother attempt through various means to communicate with the children, such as E-mails, friends' cellphones, messages or letters that are not authorized, etc., that further sanctions be imposed.

Based on past history, if the Court adopts the above recommendation, it is reasonable to believe that the mother may be a flight risk with the children.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 22

2. It is recommended that the three childrens' attorneys appointed determine an appropriate long-term (temporary) placement for the children while therapeutic reunification is pursued with the father. The undersigned is not aware if there are relatives in the area or whether the Leinbach's are willing to assume a temporary long-term guardianship of the children.
3. The children should remain in counseling with Dr. Carlson as a primary support system while a different therapist is appointed to engage in reunification work with the children. It should be kept in mind that the role of the reunification therapist is likely to be a rather thankless task that will be difficult, the individual is likely to be seen as "on the father's side," because their role is, in fact, to try to reunify the children with the father, and it therefore is important for the individual selected to be experienced, to be able to work with the strong personalities involved, and to have the full support of the Court in order to have any chance of success. It is anticipated that this individual would communicate with Dr. Carlson, who is seeing the children, as needed and that Dr. Carlson, while remaining a resource and advocate for the children, nevertheless, can be supportive of the reunification effort.
4. The third individual that would be important to any reunification plan would be a Case Manager or a Special Master of sorts who would manage the therapeutic/reunification effort, monitor the compliance of the various individuals involved, and make recommendations when necessary to move the process along and/or report to the Court when necessary of any non-cooperation or sabotage of the childrens' placement/reunification effort.

It is possible that one of the attorneys could potentially serve in that role, but the individual selected must be willing to make decisions, potentially take unpopular stands, and operate as a strategic field commander as opposed to an advocate for one child or another.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 23

Other than one of the attorneys, the potential candidates for the Case Manager/ Special Master role include: Steven Doyme, Ph.D., by Scripps Hospital in La Jolla, Steven Sparta, Ph.D., by Children's Hospital, David Green, Ph.D., Russell Gold, Ph.D., by Mercy Hospital in San Diego, and Lori Love, Ph.D., in Mission Valley.

The undersigned is aware that resources may be limited, but the undersigned is attempting to develop the plan that is likely to have success as opposed to one that is doomed to failure from the start.

In the undersigned's opinion, the roles of reunification counselor and case manager, are distinct and different. The reunification counselor cannot be expected to maintain any sense of relationship or trust with the children if they are also viewed as the person who is making final decisions about when and how much they are to see their father or their mother.

Dr. Carlson can serve as a support for the children and assist the children in adjusting to the various dynamics and stages of the reunification effort.

In the undersigned's opinion, it would be very important for the Court to make specific orders as to what is expected so that the reunification therapist is able to credibly represent their role as carrying out the orders of the Court, as opposed to being viewed as pushing the children towards something they do not want because they think it is good for them.

5. It would be helpful if the father were engaged in some type of counseling to help him with a realistic view of this situation as to what he can expect, help him with his patience in dealing with what is likely to be a very frustrating situation for him, and helping him to bear in mind the emotional loading of the children which he must have the patience and finesse to overcome.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation... Page 24

6. It is strongly recommended that the mother be expected to participate in her own counseling with a qualified, experienced therapist who is familiar with the court process and the family dynamics that are involved in a case such as this. This is likely to be a tough therapeutic effort given that the mother is not likely to be very cooperative or genuinely engage in the therapeutic effort when confrontation occurs and she is asked to look at/re-examine the positions she has held and the decisions she has made.

The mother might be helped to understand that the degree to which she is able to engage in the therapeutic process and support the orders of the Court/ reunification effort, the more likely it is that she will be able to have contact with the children sooner, rather than later.

7. It is recommended that any therapist, counselor, or professional working with any member of the family have a copy of this evaluation, as well as the evaluation by Ms. Fortin to assist in directing the therapeutic effort.

Likewise, it is recommended that the Court authorize all or any professionals involved to be able to communicate with one another when necessary or requested to assist in the family recovery plan.

8. Dr. Carlson should be permitted to bring the father into his therapy with the children when that is deemed appropriate to further the therapeutic effort and recovery of the children. At some point in the future, the mother could also be involved in the boys' therapeutic effort if it has been determined that she has made sufficient progress in her insight and can support the reunification efforts so that her meeting with the boys would be beneficial for the boys.

Obviously, the reunification counselor should be able to meet with the mother whenever he or she deems it would be therapeutically beneficial for the children in the overall therapeutic effort.

Continued...



730 PSYCHOLOGICAL EVALUATION/REVIEW OF  
MOELTER FAMILY MATTER, INCLUDING  
ALLEGATIONS OF SEXUAL ABUSE

Date of Report: July 6, 2008

Case No: D477012

Continuation...Page 25

9. It is difficult to make many other recommendations at this time before some type of feedback is provided to determine what progress is being made by the children and the parents. For example, it is difficult to determine if any holiday time would be appropriate or feasible between the father and the children, or for that matter, whether any contact with the mother could be beneficial, or at least not harmful. The above-recommended Case Manager should be in the best position to determine what happens next in terms of expansion of time for the mother or the father as the therapeutic effort unfolds.
10. It is recommended that once the Court issues its orders, whatever they may be, that the attorneys consider meeting with the children and Dr. Carlson to explain the results of the undersigned's evaluation and the orders of the Court so that the children hear it straight from their attorneys, understand what is expected of them, as well as their parents, and understand that to a degree, their ability to cooperate with the therapeutic effort will also help determine how the process unfolds.

Although work with the older boys is likely to be difficult, Dr. Carlson likely will have a significant challenge with the youngest child, who appears to have developed the role that has been reinforced: as a victim of molest, who has apparently developed symptomatology that has been accepted and tolerated given his victim status. In the undersigned's opinion, the youngest child has also developed an increasing fantasy belief system to cope with and justify his victim status, which has afforded him a great deal of secondary gain and likely reinforced some of the odd behaviors reported by his brothers and observed that, otherwise, by description, would be Tourette-like. It would appear important to reinforce his strength, reinforce his coping abilities, reinforce his independence, and reinforce the development of relationships with others.

  
William J. Dess, Ph.D.

WJD/kr