

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)

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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.

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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.

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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

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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

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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.

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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.

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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

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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."

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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.

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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

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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."

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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,

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