

3. After reviewing the material, I gave Ms. Seahorn the preliminary opinion that the methods used by CCFH appeared to fall below the accepted standards for comprehensively evaluating cases of suspected child sexual abuse. At some point Ms. Seahorn told me that the case was to be resolved by a negotiated plea, and that I would not be needed to provide a final report or to testify.

4. In December 2002, I was contacted by Attorney Mark Montgomery. Mr. Montgomery informed me that he represented Mr. Smith on his appeal from his conviction in Alamance County of having abused Tiffany there. Mr. Montgomery asked me to review again the material sent me by Ms. Seahorn. Mr. Montgomery also sent to me the testimony in Alamance County by Dr. Theodore and Ms. Potter. Based on my review of the material sent to me by Ms. Seahorn and Mr. Montgomery, my knowledge of the professional literature in the field of child sexual abuse evaluations, and my professional experience as a forensic psychologist, I have the following opinions:

5. Child sexual abuse is an event, not a disorder. There are no psychological or behavioral symptoms that can be used to determine reliably whether or not a child has been sexually abused. Unlike the symptom patterns of psychiatric disorders, symptoms of sexual abuse vary widely from child to child. This variance is based on personality differences, personal interpretations of the event, the nature of the sexual act, family stability, the presence of domestic violence at the time of the events, and the parent's response to the event, among other things.

6. Behavioral or emotional problems such as nightmares, sudden mood changes, school problems, fearfulness, disobedience, anxieties and temper tantrums are a normal part of child development, and do not distinguish abused from non-abused children. There are causes other than sexual abuse that could explain Tiffany's symptoms attributed by CCFH to sexual abuse by Mr. Smith (e.g., depression, anxiety, nightmares). This would include her family's history of domestic violence, substance abuse, mental illness and legal problems; poor emotional boundaries between Ms. Jones and Tiffany; poor physical boundaries between Tiffany and Mr. Jones; physical punishment by

Tiffany's parents; watching scary movies at night; chronic school problems and absenteeism; general neglect by the Jones'; a lengthy history of DSS involvement with the Jones'; a history of having siblings removed from the household by DSS; Tiffany's fear of also being removed from the household; and Tiffany's being placed in the middle of her parent's marital and legal conflicts. Ms. Potter's opinion that Tiffany had been abused sexually was without an adequate scientific foundation. Because there are no known or agreed upon psychological characteristics of sexually abused children, Ms. Potter's testimony that Tiffany showed symptoms (e.g., bed-wetting, nightmares, and anxiety) that are "consistent" with "generally recognized characteristics of sexually abused kids" was erroneous, misleading, and scientifically unsound.

7. Within the psychological community there are generally accepted standards for conducting a forensic evaluation of a child to determine if she had been sexually abused.

These include:

- a) objectivity and independence of the evaluator;
- b) the consideration and investigation of multiple hypotheses regarding the allegations;
- c) the review of all records pertaining to the case;
- d) a close examination of the nature of the allegation, the circumstances surrounding it, and the development of the allegation, including a consideration of any motive by the child to make a false allegation;
- e) a review of multiple data sources;
- f) a forensic (as opposed to therapeutic) interview, avoiding leading or suggestive questions, and following an interview protocol;
- g) very limited and careful use of "anatomically correct" dolls;
- h) video or audio taping of all of the sessions;
- i) tests used according to their published norms and only for their intended use;
- j) extensive collateral contacts with others involved with the child and family;
- k) a team approach.

8. The evaluation of Tiffany done by CCFH appears significantly inadequate and flawed. Specifically:

a) It does not appear that Ms. Potter was objective or unbiased. She testified that her role was to “diagnose and treat” Tiffany. This suggests a therapeutic rather than forensic role. As to the allegation of abuse by Mr. Smith, it appears that the role of CCFH was to confirm the abuse it assumed had taken place, rather than to determine what was causing Tiffany’s symptoms, and why she eventually claimed to have been abused. Ms. Potter’s lack of objectivity is further demonstrated by the fact that she accepted some of what Tiffany said in the interviews (*i.e.* the accusation of Mr. Smith in the second interview), but ignored, discounted, or minimized other pertinent information (*e.g.* her denial in the first interview, and her very concerning statements about her father, Mr. Jones). To be objective, Ms. Potter should have asked Tiffany the same sort of questions about Mr. Jones as she asked about Mr. Smith.

b) Tiffany’s symptoms could have been caused by any of a number of other stimuli. Although other factors were acknowledged (*e.g.* that Tiffany for some time had been caught in the middle of her parents' marital conflict), it does not appear that CCFH ever tested any hypotheses other than the hypothesis that Tiffany was abused by Mr. Smith.

Ms. Potter testified that she believed Tiffany’s accusation of Mr. Smith for three reasons: i) the amount of detail in Tiffany’s statement, ii) Tiffany’s symptoms (anxiety during the interview, nightmares and bed-wetting) and iii) the absence of other causes for her symptoms. However, it does not appear to me that the amount of detail leads to the singular conclusion that Tiffany’s statement is true. Second, Tiffany’s symptoms are normal for children for her age. Even if they were caused by some sort of trauma, there are numerous other documented stressors other than sexual abuse. There is a great deal of evidence in the DSS, Mental Health and school records that Tiffany was constantly exposed to domestic violence, substance abuse and mental illness in the Jones household. The psychological and behavior symptoms of a child exposed to such family dysfunction may be indistinguishable from those of a child who has been sexually abused. Yet it appears that Ms. Potter did not consider (much less eliminate) the presence of domestic

violence, substance abuse and mental illness in the family as a possible explanation for Tiffany's symptoms. There are also repeated references in the DSS records to inappropriate physical boundaries between Mr. Jones and Tiffany, such as their taking showers together. Ms. Jones also reported to CCFH that Mr. Jones had gotten into trouble for "keeping a 13 year old out all night." Yet it does not appear that Ms. Potter considered (much less eliminated) sexual abuse by Mr. Jones as a possible explanation for Tiffany's symptoms. It is well-recognized in the psychological community that wives of men who sexually abuse their daughters may attempt to deflect the accusation from their husband to another person in order to preserve the family integrity, and that children themselves sometimes allege abuse against a stranger rather than accuse a family member. It does not appear that CCFH considered the possibility that Tiffany was encouraged to accuse Mr. Smith to deflect attention from Mr. Jones as a possible abuser. There are other data in the case record that suggest other possible perpetrators besides Mr. Smith.

c) Although it appears that Ms. Potter spoke with Tiffany's mental health counselor and social worker, it does not appear that CCFH reviewed any documents on Tiffany or her family from DSS, Mental Health, or the schools.

d) It does not appear that Ms. Potter considered any dynamic relationship among the allegations of neglect against Tiffany's parents, the child sex abuse allegations against Mr. Smith and the threatened removal of Tiffany from the household. Nor did Ms. Potter have a clear idea of how the initial allegation came about. There are conflicting reports in the DSS and CCFH records about when and to whom Tiffany said anything, and what it was she said. A retrospective reconstruction of child sexual abuse allegations, from the initial "disclosure" to the most recent interview is essential to try to understand the etiology of the allegations.

e) There was no adequate review of multiple data sources. Rather, the CCFH team appeared to rely solely on their own evaluation without any apparent consideration of the history and dynamics of this family.

f) Ms. Potter's basic approach to the interview, in places, was suggestive. It was she who suggested to Tiffany that Tiffany's "sad feelings" were a purpose for the interview. Ms. Potter told Tiffany that she was trying to "help" her, suggesting that

Tiffany had been hurt and/or needed help. There were times in her recorded interview with Tiffany that Ms. Potter used highly suggestive questioning. For instance, “Does Weldon ever come [to your house] when mommy’s sleeping? You know you said [mommy] gets sick sometimes.” Further, the use of multiple interviews by several adults may itself be improperly suggestive. This is particularly true after a child has initially denied abuse. Repeated interviews in that situation may suggest to the child that the adult interviewer does not believe the denial.

g) Ms. Potter’s use of dolls to elicit allegations was possibly suggestive, given the controversy surrounding their use as a diagnostic technique.

h) It appears that one interview with Tiffany was videotaped. However, the interviewer (Ms. Potter) does not appear on the tape. It is therefore impossible to determine what effect, if any, her facial or body expressions may have had on Tiffany’s comments. The other interviews of Tiffany (by her parents, her social worker, her counselor, the detective) were apparently not recorded, nor was the initial interview by Ms. Potter, in which Tiffany denied having been abused. The lack of recordation of what was said by whom in the earlier interviews make conclusions about the accuracy of Tiffany’s allegations difficult to make.

i) Ms. Potter’s use of the Trauma Symptom Checklist for Children (TSCC) was inappropriate. It was not devised for a child of Tiffany’s age.

j) Although it appears that Ms. Potter made telephone contacts with Harriet Robinson (Mental Health) and Daren Edmonds (DSS), Ms. Potter apparently never reviewed the records on Tiffany and the Jones’ collected by other agencies. Nor does it appear that CCFH made any contact with Tiffany’s teachers or review her school records. This resulted in gaps in information. For instance, Harriet Robinson notes in her records that Tiffany had a history of lying. Yet there is nothing to suggest that Ms. Robinson shared that information with Ms. Potter. Moreover, Tiffany’s school records show that she was having significant problems in school long before her contact with Mr. Smith.

9. The opinions expressed by Ms. Potter that Tiffany was abused (or that her symptoms are “consistent with” abuse) are not based on an adequate scientific foundation. Her assessment had some significant limitations, and these limitations should have been articulated to the court.

10. I was never contacted by Attorney John Doe, who represented Mr. Smith in the Alamance County case. Had I been, I would have been willing to share with him my opinions on the case and testify to those opinions in court.

This is the _____ day of _____, 2008

J.R. Ewing, Ph.D.

Sworn to and subscribed before me this ____ day of _____, 2003

Notary Public

My Commission Expires: _____