



CENTER PIECE

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When a Parent Sues the CAC: Tips for Forensic Interviewers and Children's Advocacy Centers Facing Litigation

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Introduction

This month, a federal district court issued an opinion regarding a lawsuit against a CAC and forensic interviewer for alleged violations of the constitution.⁶ Although the federal court dismissed the lawsuit, there are at least three additional lawsuits in three different regions of the country that have been filed against Children's Advocacy Centers and investigative or forensic interviewers. One of these cases, *Greene v. Camreta*⁷, has been accepted for review by the United States Supreme Court and the final decision of the Supreme Court may have a profound impact on CACs, forensic interviewers, child protection workers, and law enforcement officers throughout the United States.

This article offers general guidance for forensic interviewers and Children's Advocacy Centers in assessing their liability and offers tips for preventing or minimizing the chance of a lawsuit. In the event a CAC or forensic interviewer is sued, this article offers suggestions for professionals in responding to the litigation.

Preventing a lawsuit

A CAC could be sued for any number of matters including embezzlement, inappropriate or unlawful use of public funds, unethical behavior of a board member, sexual harassment or other labor issues. However, this article will focus on the possibility of a lawsuit based on the manner in which a forensic interview was conducted. There are two typical scenarios that may result in a lawsuit against a CAC or a forensic interviewer.

First, an offending parent may sue the CAC and the forensic interviewer when a child makes a disclosure resulting in criminal charges or a civil child protection action. If the case

subsequently results in an acquittal or a dismissal of charges, a parent may allege one or more violations of his or her constitutional rights, defamation, or even simple negligence.⁸

Second, a CAC could also be sued if the child does not disclose abuse during the forensic interview and no action is taken. If the child is, in fact, being abused and the molestation continues, a non-offending parent may allege the CAC, through its forensic interviewer, was negligent in questioning the child and this negligence resulted in ongoing abuse.

There are at least four steps a CAC and a forensic interviewer can take to limit their liability. First, the CAC should videotape and otherwise document the forensic interview. There is a growing body of evidence that videotaping forensic interviews is best practice.⁹ Although the American Professional Society on the Abuse of Children (APSAC) acknowledges not all child protection professionals agree on a single method for documenting forensic interviews, electronic recordings are "the most comprehensive and accurate method of documentation."¹⁰ A study published in 1999 concluded:

(W)hen videotaping occurred there was a likelihood of reduced interviews for children, less likelihood that children were required to testify, an increase in perpetrators pleading guilty, and minimization of system stress to children. In addition, most children videotaped found the experience either helpful or benign.¹¹

These and other studies have documented that videotaping strengthens the government's case in criminal court and has a "deleterious impact" on those accused of abusing children.¹² Without a videotaped interview, the forensic interviewer's memory of the interview often degrades and the specifics of numerous questions and answers are lost.¹³

UP COMING conferences

Child Abuse and the Law - An Online Seminar

January 25, 2011

Registration fee: None

Registrants will have the opportunity to develop a Child Abuse and the Law course curriculum for a law school in their region; the seminar will explore the Child Abuse and the Law course that is offered at Hamline University School of Law. Up to twenty law professors, with experience prosecuting civil or criminal child abuse cases, will congregate in an online meeting.

Seminary Curriculum: When Faith Hurts

February 21, 2011

Winona, MN

Registration fee: None

Faith seminary representatives are welcome to apply and take part in a one day summit to learn the seminary curriculum already developed by NCPTC - *When Faith Hurts: The Role of the Faith Community in Recognizing and Responding to Cases of Child Abuse*. After the conference, NCPTC will continue to work with the attendees to implement the curriculum at their respective faith seminaries. Ten selected seminaries will be able to attend. Most expenses will be reimbursed to the attendees.

Please visit www.ncptc.org for more information and to register for courses. Click on **Training Conferences**.



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Just as the videotape provides compelling evidence in a criminal case that a child's statement was not contaminated by the forensic interviewer, the videotaped evidence may also be critical in defending the CAC or forensic interviewer in a civil lawsuit. Law professor John Myers contends that "(d)ocumentation is critical to risk management. An axiom among malpractice defense attorneys is 'if it isn't written down, it didn't occur.'"¹⁴ According to Myers, "thorough, accurate, ongoing documentation is convincing evidence of proper practice."¹⁵ Simply put, a CAC that videotapes its interviews will be able to claim "we record our work product because we know we are doing nothing wrong and the recording is the absolute proof we were not negligent." In contrast, a CAC choosing not to videotape may have to resort to the argument "we did nothing wrong during the forensic interview but you'll have to take our word for it."¹⁶

As an example, consider a portion of the fact pattern in *Greene v. Camreta*, the case now pending before the United States Supreme Court. In *Camreta*, there is a factual dispute between a child protection worker who conducted an investigative interview and the child who was interviewed. The child protection worker claims the interview lasted one hour and the child disclosed that an alleged offender attempted to touch her chest and buttocks and that her mother knew of this. However, the child claims the interview lasted two hours and that she finally acquiesced to the suggested abuse simply to end the interview.¹⁷ If this interview had been recorded, it would not be possible to dispute the length of the interview or what was said during the interview and the government would have had a better chance to have the lawsuit dismissed.

Not only does failing to record impair the CAC or forensic interviewer's ability to respond to a lawsuit, the failure to videotape may *on that basis alone* expose a CAC or an interviewer to liability. More

than one appellate court has ruled it is unlawful for governmental agents or prosecutors to erase, tape over or otherwise fail to preserve a videotaped forensic interview and make it available to defense counsel.¹⁸ From this line of cases, a Louisiana Law Professor has argued that not only does the government have an obligation to preserve a videotaped forensic interview but that the government has a constitutional duty to *create* a videotaped forensic interview.¹⁹ Specifically, Law Professor Lucy S. McGough writes:

Doubts about the reliability of a child's accusation can ultimately destroy confidence in any verdict and in the fundamental fairness of the trial. Consequently, whatever justification may have once existed for ignoring the special needs and fragility of child witnesses, interviewing them like adult witnesses is no longer 'good enough for government work.' If legislatures fail to impose a statutory requirement for videotaping of forensic interviews of children, courts should acknowledge the constitutional duty of the government to preserve that critical evidence.²⁰

Although no appellate court has been asked to determine whether or not failure to record a forensic interview is a violation of constitutional rights, it is predictable that this argument will eventually be made. Even if a lawsuit does not allege that failing to videotape violates the constitution, a plaintiff's attorney can nonetheless allege the failure to videotape is contrary to best practices and thus negligent.

Although some professionals continue to question the wisdom of videotaping forensic interviews²¹, CACs must realize that the widespread practice of videotaping, the growing body of research supporting its usage, and the utility if not necessity of conducting peer review of forensic interviewers will make it increasingly difficult to justify in a court of law a decision not to videotape.

Second, a CAC must provide proper supervision of its forensic interviewers and the forensic interviewing process. There is no question that an employer can be "liable for negligent hiring, retention, or supervision of employees or students."²²

A CAC that fails to meet the minimal standards established by the National Children's Alliance for conducting forensic interviews inside a CAC will certainly have these standards cited by plaintiff's attorney in alleging negligence by the CAC to

properly train or supervise its employees.²³ Accordingly, CACs simply must have interviewers who are well trained and who are regularly reviewed by peers.²⁴ As noted by Professor John Myers "(r)egular consultation and peer review decreases the likelihood of being sued. If a lawsuit or ethics complaint is filed, a written record of consultation and peer review constitutes powerful evidence of proper care."²⁵

Third, forensic interviewers need to determine the state, national or professional standards to which their work is subjected. Long before a lawsuit, every forensic interviewer should determine the standards for its profession and be able to cite the state or national standards he or she is adhering to. Adhering to state or national standards limits liability in the sense the interviewer is not simply developing his or her own criteria for work in the field. There are several national and state standards that may be of assistance. These standards include:

- *State statutes governing the work of forensic interviewers.* In some cases, state governments have determined the educational and other standards necessary to work as a forensic interviewer.²⁶ Some states have not enacted laws establishing the criteria for becoming a forensic interviewer but have regulated certain aspects - such as requiring that all forensic interviews be video and audio recorded.²⁷ Indeed, at least fourteen states have legislation pertaining to the electronic recording of forensic interviews.²⁸ At least one state requires forensic interviewers to conduct truth lie inquiries.²⁹ Many states have passed laws allowing anatomical dolls to be used not only in forensic interviews but in courts of law.³⁰ If you are in such a state, it is imperative you meet the statutory criteria for working in this field or for the tools used in this field.
- *Court decisions.* It is also important for the CAC, and forensic interviewers to pay attention to court decisions that may impact the interviewer's work. For many years, forensic interviewers have had to defend their work as part of "taint" hearings.³¹ As mentioned at the outset, the United States Supreme Court has pending before it a case which may impact, for good or ill, the work of CACs.³² There is also a lawsuit pending in federal court in which the court is being asked to set various standards for the work of forensic interviewers.³³

These and other court decisions may be binding law in a particular state or other jurisdiction and it is critical that forensic interviewers be well versed in the law governing their work. If a forensic interviewer engages in conduct that runs counter to binding case law, this can form the basis for a plaintiff's claim of negligence. Similarly, a forensic interviewer who engages in conduct permissible under applicable case law limits his or her liability.

- *The National Children's Alliance accreditation standards.* Forensic interviewers working in an accredited CAC can cite the NCA standards in support of their work. These standards require the forensic interviewer to have completed 40 hours of nationally or state recognized forensic interview training or, at the very least, to be able to document "satisfactory completion of competency-based child abuse forensic interview training that includes child development."³⁴
- *Ethical codes.* Forensic interviewers working as social workers, police officers or psychologists, should be thoroughly familiar with any ethical codes governing their work and be able to articulate that all of their work, including their work as forensic interviewers, is consistent with the ethical code or codes that govern their profession. Adherence to an ethical code limits liability. Conversely, an interviewer who fails to adhere to an applicable ethical code can have this ethical violation form the basis of a lawsuit. Forensic interviewers that are not a member of a profession such as psychology may face a different issue. For these interviewers, they are conducting their work without any applicable ethical code. Accordingly, part of a plaintiff's claim of negligence may be rooted in the fact forensic interviewers do not have a national association that, among other things, establishes an ethical code for the field. In Texas, forensic interviewers have addressed this, in part, by developing a professional association and an ethical code for its members.³⁵ Outside of Texas, forensic interviewers may wish to apply for membership with the National Association of Certified Child Forensic Interviewers and be able to cite its ethical code.³⁶ In addition, forensic interviewers may wish to apply for membership in the American Professional Society on the Abuse of Children (APSAC) and make sure their work is consistent with the APSAC guidelines for

conducting forensic interviews and that their work fits within the ethical code APSAC has established for its members.³⁷

If and when forensic interviewers choose to develop themselves as a profession, including credentialing or even licensure, this will also assist in limiting their liability. In Pennsylvania, for example, a "licensed professional" is protected from a lawsuit unless another professional holding the same license states there is a "reasonable probability" that the licensee's work product "fell outside acceptable professional standards..."³⁸ Ironically, then, an auto mechanic in Pennsylvania has more protection from a lawsuit than a forensic interviewer who is not licensed as a professional.

Fourth, CACs should have access to their own counsel to advise them on liability issues. Many CACs mistakenly assume that their local prosecutor or child protection attorney represents them or is well suited to advise them on myriad legal issues. Although prosecutors and child protection attorneys can advise the CAC on the legal standards for admitting a forensic interview in a criminal or civil child protection case or numerous other matters pertaining to a governmental response to child abuse, the prosecutor may not be permitted by rules of professional practice or be well suited to advise on limiting liability in a civil lawsuit. Simply stated, this is probably not the prosecutor's area of expertise.

Many CACs wait until a lawsuit is filed and then rely on the insurance carrier to select counsel. This is problematic, in part, because the insurance carrier attorney has probably never represented a CAC before and has no knowledge of best practices in forensic interviewing or issues that may be at the heart of the lawsuit. Accordingly, it is better for a CAC to have a contract with an attorney or law firm that periodically assists and advises the CAC on myriad legal issues. A long standing relationship with an attorney or law firm will necessarily grow the knowledge of the attorney about the work of the CAC and will better prepare him or her to assist the CAC in the event of a lawsuit.

If an individual CAC does not have the funds to retain legal counsel on an ongoing basis, two or more CACs or a state chapter may be able to work together to secure legal assistance for CACs in a particular region or state. In at least some instances, a CAC has been able to secure ongoing pro bono assistance from law firms.

Prevailing in a lawsuit

The recommendations offered above will not only reduce the chance of a lawsuit, they will also assist in prevailing should a lawsuit be filed. Working as closely as possible with your CAC counsel, the following suggestions will also help.

Refrain from contacting the parent, the other party that has filed the lawsuit, or the other party's attorney. When a suit is filed, the CAC or forensic interviewer should not contact the parent or other party that has filed the lawsuit, or the other party's attorney in an attempt to reconcile the situation. Any contact with the other party should be handled by the CAC's attorney. As noted by one expert, "(O)nce a suit is filed, your relationship with the client is supplanted by a relationship with the client's attorney, who is not interested in 'therapeutically' working out the problem with you."³⁹

Determine the legal basis of the lawsuit. The plaintiff may allege the CAC or interviewer violated his or her federal constitutional rights. If so, the lawsuit will likely be filed in federal court under the United States Code, section 1983 (allowing governmental employees to be sued for deprivation of civil rights). The plaintiff may also allege defamation or simple negligence. If so, and there is not an allegation of a violation of the United States Constitution or federal law, the action will likely be filed in state court.

Whatever the allegation, in order for the lawsuit to survive, there must be a legal basis for suing the CAC or interviewer. Determine the factual basis for and legal claims of the lawsuit and ask your attorney to explain the law to you. For example, if the plaintiff claims negligence, ask the CAC attorney to explain the meaning of this legal term so that you understand what the plaintiff has to prove and what defenses you may have. Armed with this knowledge, the CAC or forensic interviewer will be in a better position to assist the attorney in providing evidence documenting the plaintiff's allegation cannot be proved. For example, if the plaintiff alleges the CAC negligently failed to provide the supervision required of an accredited CAC,⁴⁰ you may be able to provide evidence of peer review or perhaps documents of an NCA site visit noting appropriate supervision.

Determine the actual misconduct alleged. In other words, what exactly is the plaintiff claiming the CAC or forensic interviewer did wrong? In the initial pleadings, this is likely to be stated in broad terms – the interviewer engaged in suggestive practices, was not properly trained or supervised, etc. It may be necessary for the CAC attorney to serve interrogatories or conduct other discovery to determine the specific claims made by the plaintiff. Once this conduct is determined, assist the CAC attorney in understanding the illegitimacy of the attack. For example, if the plaintiff is critical of the forensic interviewer for using anatomical dolls, the interviewer must be able to point out that the vast majority of research supports the usage of anatomical dolls.⁴¹

Determine if the forensic interviewer and/or CAC has absolute, qualified or good faith immunity. Many governmental employees have one or more forms of immunity which may protect them from a lawsuit or, if a lawsuit is filed, enable them to dismiss the lawsuit easily. A prosecutor engaged in courtroom advocacy has absolute immunity from lawsuits pertaining to his or her work as a prosecutor.⁴² A child protection worker coordinating with the prosecutor in filing a civil child protection petition may also have absolute immunity.⁴³ Law enforcement officers conducting investigations have qualified immunity. The United States Supreme Court has described qualified immunity as protecting “all but the plainly incompetent or those who knowingly violate the law.”⁴⁴ In addition to police officers, qualified immunity often extends to other governmental employees including social workers and mental health professionals.⁴⁵

If the CAC forensic interviewer is a social worker or law enforcement officer, there is a strong likelihood the employee has qualified immunity. If, however, the CAC is not a governmental agency and the forensic interviewer is a private employee, establishing immunity may be more challenging. Nonetheless, qualified immunity has extended to some private practice individuals working with the government.⁴⁶ Accordingly, it is important for CACs seeking to limit their liability to have clear documentation that the forensic interviews being conducted are being done on behalf of the government. The presence of law enforcement officers, social workers and prosecutors watching the interview at the time it is being conducted further reinforces the argument the interview is conducted at the behest of

the government – and thus immunity should be extended to the forensic interviewer.⁴⁷

When sued for an alleged violation of the United States Constitution, some CACs have taken the position that they are not actors of the state government and therefore cannot be held responsible for a violation of the Constitution.⁴⁸ Although this may help the CAC win a particular battle, it may also result in losing the war. This is because, generally speaking, there is much more protection afforded governmental employees or those working on behalf of the government. Accordingly, a CAC strongly asserting its loose connections with the government may find it harder to allege immunity in lawsuits not involving an allegation of violating the United States Constitution.

If the suit is in state court, it is important to determine if state law provides immunity for child protection professionals acting in “good faith.” Most states have such a law and apply it to social workers, police officers or others mandated to respond to an allegation of child maltreatment.⁴⁹ If your forensic interviewer is a governmental employee, these statutes will likely provide protection. If not, forensic interviewers and CACs may want to work with their state legislatures and governors to enact immunity laws pertaining to the work of CACs, particularly the work of forensic interviewers. A number of states have already done this.⁵⁰

Educate the CAC attorney: The attorney representing the CAC is likely to know very little about child abuse, and even less about conducting a forensic interview with an alleged victim. Accordingly, if the attorney is to effectively represent the CAC, it is imperative the attorney be provided with the following:

1. Research supporting your interview protocol. The forensic interviewer should provide the attorney with a bibliography, literature review⁵¹, or other research articles supporting the forensic interviewing model used in the CAC. All of the leading forensic interview training programs are rooted in research and any of these programs can assist a CAC or forensic interviewer in defending a particular model with research.
2. Case law or other information documenting your protocol and forensic interviewing practices adhere to legal standards. The NCA standards specifically require CACs to conduct “legally

defensible” forensic interviews. Accordingly, it is important to provide the CAC attorney with cases or other material documenting the protocol meets legal standards.⁵² If there is no case law upholding your protocol in a court of law, discuss the issue with an attorney to make sure the protocol or methodologies used would meet legal criteria for admission into evidence.⁵³

3. Evidence the CAC forensic interviewer has been peer reviewed. Again, evidence that the interviewer’s work has been evaluated repeatedly by peers will be critical in responding to an allegation of negligence, particularly an allegation of negligent supervision.
4. Contact information for national organizations that may be able to assist. The CAC attorney may not be aware of the National Children’s Alliance⁵⁴, the National Children’s Advocacy Center⁵⁵, the National Center for Prosecution of Child Abuse⁵⁶, the National Child Protection Training Center⁵⁷ or any number of other organizations that may be able to help. These and other organizations may be able to help the CAC attorney respond to an illegitimate attack from a plaintiff’s expert. This may include providing the CAC attorney with pertinent research, an expert witness, or helping the CAC attorney sketch out a possible cross examination of the plaintiff’s expert.⁵⁸

Conclusion

No job is more important, or more difficult, than conducting a legally defensible forensic interview of a child. Forensic interviewers working in good faith should be protected from lawsuits under state immunity statutes. If these statutes do not clearly apply to forensic interviewers not employed by the government, they should be amended to provide this protection. CACs must also be proactive in limiting their exposure to liability and aggressive in responding to illegitimate attacks on forensic interviewers.



End Notes

- ¹ Andrew Agatston is an attorney in Marietta, Georgia who has represented crime victims in civil litigation. Mr. Agatston has served on the board of directors of the Children's Advocacy Centers of Georgia. Mr. Agatston has written two books providing legal guidance to children's advocacy centers.
- ² Jason Kutulakis is an attorney in private practice in Carlisle, Pennsylvania. Mr. Kutulakis currently serves as president of the Pennsylvania Children and Youth Solicitors Association.
- ³ Thomas Leclair is the Senior Resource Attorney for the Children's Law Office, University of South Carolina.
- ⁴ Stephanie Smith is a former prosecutor from Indiana who currently serves as Southern Regional Director, National Child Protection Training Center.
- ⁵ Victor Vieth serves as Director of the National Child Protection Training Center, Winona State University. Mr. Vieth and all the authors of this article are grateful to Dave Pendle and Amanda Appelbaum for their research assistance.
- ⁶ Tracy v. Washington, 2010 U.S. Dist. LEXIS 116948 (November 2, 2010).
- ⁷ 588 F.3d 1011 (9th Cir. Or. 2009). For an analysis of this case, see Amy Russell, *Finding Equilibrium: Greene v. Camreta*, 2(1) CENTERPIECE (2010), available online at www.ncptc.org under "publications."
- ⁸ The Kentucky legislature has passed a law requiring forensic interviewers employed by a CAC to have at least three years of experience in interviewing children and to hold a master's degree or higher in a mental health field. Kentucky Statute 920 KAR 2:040, section 3(5)(a)(3). As an example of courts being asked to set standards in the field, current litigation in Georgia alleges the interviewers used intimidating and misleading questioning and that child protection professionals also defamed the plaintiff by, among things, calling her a "sexual pervert." One of the requested remedies for this alleged conduct is to have the federal court mandate or determine forensic interviewing protocols or other standards. Joy Lukachick, *Craft Files \$25 Million Lawsuit*, Chattanooga Times Free Press, May 25, 2010.
- ⁹ See generally, Amy Russell, *Electronic Recordings of Investigative Child Abuse Interviews*, 1(8) CENTERPIECE (2009) (available online at www.ncptc.org)
- ¹⁰ Am. Prof. Soc'y on the Abuse of Children, *Investigative Interviewing in Cases of Alleged Child Abuse*, PRACTICE GUIDELINES, 2002, at 3.
- ¹¹ James Henry, *Videotaping Child Disclosure Interviews: Exploratory Study of Children's Experiences and Perceptions*, 8 JOURNAL OF CHILD SEXUAL ABUSE 35, 47-48 (1999).
- ¹² Frank E. Vandervort, *Videotaping Investigative Interviews of Children in Cases of Child Sexual Abuse: One Community's Approach*, 96(4) JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 1353, 1415 (2006).
- ¹³ Amy R. Warren & Cara E. Woodall, *The Reliability of Hearsay Testimony: How Well Do Interviewers Recall Their Interviews with Children?* 5 PSYCHOLOGY, PUBLIC POLICY & LAW 355 (1999).
- ¹⁴ John E.B. Myers, *Risk Management for Professionals Working With Maltreated Children and Adult Survivors*, THE APSAC HANDBOOK ON CHILD MALTREATMENT (SECOND EDITION) 403, 416 (2002).
- ¹⁵ *Id.* at 416.
- ¹⁶ It is true, of course, that a videotaped interview of a poorly conducted interview will be at the heart of the defense attorney's case. However, if we assume the CAC and the members of the MDT would not perjure themselves and would otherwise concede the interview was poorly conducted, it is not clear what evidence the CAC would be providing that would not already be conceded.
- ¹⁷ 588 F.3d 1011 (9th Cir. Or. 2009)
- ¹⁸ See e.g. *State v. Ballard*, 855 S.W.2d 557, 560 (Tenn. 1993)

- (holding it was willful prosecutorial misconduct to destroy videotaped forensic interviews so that they would not be available to defense counsel); Woods v. State, 713 S.W.2d 173, 174-175 (Tex. App. 1986) (prosecutor had a constitutional obligation to disclose videotape to the accused).
- ¹⁹ Lucy S. McGough, *Good Enough for Government Work: The Constitutional Duty to Preserve Forensic Interviews of Child Victims*, 65 LAW AND CONTEMPORARY PROBLEMS 179 (2002).
- ²⁰ *Id.* at 208.
- ²¹ Kenneth V. Lanning, *Acquaintance Child Molesters: A Behavioral Analysis*, in COOPER, ET AL., MEDICAL, LEGAL & SOCIAL SCIENCE ASPECTS OF CHILD SEXUAL EXPLOITATION 529, 574 (2005) (noting "it is still my opinion that the disadvantages of taping generally outweigh the advantages.")
- ²² Myers, note 7, at 411.
- ²³ According to the NCA, "(q)uality interviewing involves: an appropriate, neutral setting; effective communication among MDT members; employment of legally sound interviewing techniques; and the selection, training and supervision of interviewers." NCA also requires forensic interviewers working at a CAC to successfully complete 40 hours of state or nationally recognized forensic interview training or, at the very least, that these interviewers document "satisfactory completion of competency-based child abuse forensic interview training that includes child development." See National Children's Alliance, *Standards for Accredited Members* (Revised 2008) (available online at www.nationalchildrensalliance.org)
- ²⁴ Victor Vieth, *In the Shadow of Defense Counsel: Peer Review of Forensic Interviews in an Age of Discovery*, 1(10) CENTERPIECE (2009) (available online at www.ncptc.org)
- ²⁵ Myers, note 14, at 416.
- ²⁶ As of this writing, at least one federal court is being asked to regulate the forensic interviewing protocol and practices of forensic interviewers. Joy Lukachick, *Craft Files \$25 Million Lawsuit*, Chattanooga Times Free Press, May 25, 2010.
- ²⁷ See e.g. Minn. Stat. section 595.02; section 260C.165
- ²⁸ Amy Russell, *Electronic Recordings of Investigative Child Abuse Interviews*, 1(8) CENTERPIECE (2009) (available online at www.ncptc.org by clicking on "publications.")
- ²⁹ Wisconsin statute section 908.08(3)(c)
- ³⁰ For a list of state statutes permitting the use of anatomical dolls, visit the state statute summaries section of the website of the National Center for Prosecution of Child Abuse at www.ndaa.org
- ³¹ See e.g., *Pennsylvania v. Delbridge*, 855 A.2d 27 (2003).
- ³² See note 7, and accompanying text.
- ³³ See Joy Lukachick, *Craft Files \$25 Million Lawsuit*, Chattanooga Times Free Press, May 25, 2010.
- ³⁴ See National Children's Alliance, *Standards for Accredited Members* (Revised 2008), available online at www.nca.org
- ³⁵ The "Professional Society of Forensic Interviewers" is a program of the Children's Advocacy Centers of Texas. For more information, call 1-800-255-2574.
- ³⁶ See generally, www.naccfi.com
- ³⁷ For additional information about APSAC, about its guidelines for forensic interviews and the ethical code required of its members, visit www.apsac.org
- ³⁸ Pennsylvania Rules of Civil Procedure 1042.3(a)(1)
- ³⁹ Myers, note 14, at 423 (citations omitted)
- ⁴⁰ NCA standards for forensic interviewers include "the selection, training and supervision of interviewers." See National Children's Alliance, *Standards for Accredited Members* (Revised 2008) (available online at www.nationalchildrensalliance.org).
- ⁴¹ Kathleen Coulborn Faller, *Anatomical Dolls: Their Use in Assessment of Children Who May Have Been Sexually Abused* 14(3) JOURNAL OF CHILD SEXUAL ABUSE 2, 5

- (2005) (noting the "majority of studies indicate they (anatomical dolls) can be a useful tool, but there are also a few studies which do not support their use."); Mark Everson & Barbara Boat, *Putting the Anatomical Doll Controversy in Perspective: An Examination of the Major Uses and Criticisms of the Dolls in Child Sexual Abuse Evaluations*, 18 CHILD ABUSE & NEGLECT 118 (1994) (noting that "in the proper hands, anatomical dolls are a highly efficient and effective tool for helping young children disclose and describe their sexual experiences."); see also Heather R. Hlavka, Sara D. Olinger, and Jodi Lashley, *The Use of Anatomical Dolls as a Demonstration Aid in Child Sexual Abuse Interviews: A Study of Forensic Interviewers' Perceptions*, 19 JOURNAL OF CHILD SEXUAL ABUSE 519 (2010) (noting multiple, legitimate uses for anatomical dolls in a forensic interview).
- ⁴² Myers, note 14, at 421.
- ⁴³ *Id.*
- ⁴⁴ Malley v. Briggs, 475 U.S. 335 (1986).
- ⁴⁵ Myers, note 14, at 419.
- ⁴⁶ *Id.*
- ⁴⁷ It should be noted that some have suggested that, although prosecution of child abuse should play a role in the work of the CAC, it may not be the most important, or even a critical role in the work of the CAC. See e.g. Walsh, Jones & Cross, *Children's Advocacy Centers: One Philosophy, Many Models*, 15(3) APSAC ADVISOR (Summer 2003) (noting "there is consensus that prosecutors should play a role in the response to child abuse, but there is disagreement about how important this is and the range of cases that should be prosecuted, particularly with juvenile and intrafamilial perpetrators..." emphasis added); see also, Kathleen Colburn Faller & Vincent J. Palusci, *Children's Advocacy Centers: Do They Lead to Positive Case Outcomes?*, CHILD ABUSE & NEGLECT (2007) (contending that "successful prosecution has been considered the gold standard in sexual abuse outcomes is an issue the child abuse professional community needs to address.")
- ⁴⁸ See e.g., Tracy v. Washington, 2010 U.S. Dist. LEXIS 116948 (November 2, 2010)
- ⁴⁹ See e.g. Minn. Stat. Section 626.556
- ⁵⁰ See e.g. Kentucky Statutes 920 KAR 2:040, section 3(5)(a)(m) (providing forensic interviewers immunity from "civil liability"); Oklahoma statutes 10A Okl. St. section 1-2-104C (providing good faith immunity for forensic interviewers working in a CAC accredited by the National Children's Alliance); Louisiana Statutes Article 526A, B (providing CAC forensic interviewers good faith immunity but not providing protection if they act in "bad faith" or commit "gross negligence"); Maryland Statutes section 5-712(5)(d) (providing CAC with immunity from civil liability).
- ⁵¹ See e.g., Jennifer Anderson, et al, *The CornerHouse Forensic Interview Protocol: RATAAC*, 12(2) THOMAS M. COOLEY JOURNAL OF PRACTICAL AND CLINICAL LAW (forthcoming November, 2010)
- ⁵² See generally, Victor I. Vieth, *The Forensic Interviewer at Trial: Guidelines for the Admission and Scope of Expert Witness Testimony Concerning an Investigative Interview in a Case of Child Abuse*, 36(1) WILLIAM MITCHELL LAW REVIEW 186 (2010).
- ⁵³ *Id.*
- ⁵⁴ www.nca.org
- ⁵⁵ www.nationalcac.org
- ⁵⁶ www.ndaa.org
- ⁵⁷ www.ncptc.org
- ⁵⁸ For example, NCPTC has prepared a great many materials on cross-examination of defense "experts" called to attack a forensic interview. Many of these cross examination strategies would also apply in a civil lawsuit. See generally, Victor I. Vieth, *When the Smoke Clears: Cross-Examining the Defense Expert's Attack on a Forensic Interview*, 2(4) CENTERPIECE (2010) (available online at www.ncptc.org under "publications.")

For More Information

The National Child Protection Training Center (NCPTC) at Winona State University provides training, technical assistance and publications to child protection professionals throughout the United States. In addition, NCPTC assists undergraduate and graduate programs seeking to improve the education provided to future child protection professionals. In partnership with CornerHouse, NCPTC also assists in the development and maintenance of forensic interview training programs utilizing the RATAAC® forensic interviewing protocol. For further information, contact NCPTC at 507-457-2890 or 651-714-4673. Please visit our website at www.ncptc.org.

