



# CENTER PIECE

The Official Newsletter of the National Child Protection Training Center

## When It's Time for "The Talk": Five Tips for Discussing the Credentialing of Forensic Interviewers with Your Prosecutor

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### Introduction

In the past decade, there has been a national debate as to whether or not forensic interviewers should develop themselves as a profession complete with standards, testing, and an ethical code.<sup>9</sup> As a result of this debate, the National Association of Certified Child Forensic Interviewers (NACCFI) has announced a multi-tiered credentialing system<sup>10</sup> and is accepting applications from front line forensic interviewers to be recognized as meeting one of three tiers of credentialing – basic, intermediate or advanced.<sup>11</sup> A fourth tier, diplomate status, is still being developed.

Although national organizations continue to debate whether or not multi-tiered credentialing, or any credentialing at all is a good idea, the decision will not be made at a national level, but rather by the front line forensic interviewers themselves. These are the professionals who interview the children, who testify in court, and who often have to match wits with defense "experts" who claim that forensic interviewing is not a profession, or even a clearly established skill. A recent survey of these professionals suggests strong support for credentialing and otherwise developing forensic interviewing as a profession.<sup>12</sup>

At the same time, though, forensic interviewers seeking credentialing will benefit from discussing this issue with their local prosecutor. The prosecutor must fully understand credentialing if he or she is to present this evidence in court in establishing the expertise of the forensic interviewer or in using this information in the cross examination of a defense expert who lacks any sort of forensic interviewing credential or practical experience. This article, written by current or past front line child abuse prosecutors, offers five suggestions for discussing this issue with your local prosecutor.

### 1. Initiate a conversation with the prosecutor handling child abuse cases

This may seem elementary, but it is important to dialogue with the prosecutor handling child abuse cases in your jurisdiction. The prosecutor handling narcotics cases may have some peripheral knowledge of child abuse (such as exposure of a child to methamphetamines), but will not have the specialized knowledge the prosecutor practicing in this area will have. An elected prosecutor may have a strong sense of the myriad issues facing the prosecutors in his or her office but may not have had the time to understand all the nuances of the current debates in a particular field, such as forensic interviewing. Accordingly, it is important to dialogue with the individual or individuals in the prosecutor's office who have the most experience with child abuse cases and will be in the best position to discuss this issue with you.

### 2. Assess your local prosecutor's awareness of this issue

Even if you initiate a conversation with the prosecutor handling child abuse cases, don't assume he or she is fully apprised of the issue of the credentialing of forensic interviewing. If your prosecutor has received forensic interview training, has attended national conferences where credentialing has been discussed, routinely qualifies his or her forensic interviewers as expert witnesses, and has experience in cross examining defense "experts"<sup>13</sup> on forensic interviewing, it is likely the prosecutor is fully apprised of this issue. If this is not the case, you may want to send a brief memo to the prosecutor explaining the issue, including the advantages and disadvantages as you see them, the credentialing you are pursuing, and ask him or her to review the NACCFI credentialing handbook and ethical code.<sup>14</sup>

## UP COMING conferences

### Forensic Interviewer at Trial:

This course is designed for teams of two- prosecutors and forensic interviewers. Prosecutors will be required to conduct a direct examination of forensic interviewers, and then conduct a re-direct examination after their forensic interviewers have been cross-examined. The prosecutors, working with forensic interviewers, must also respond to the critiques of their forensic interviews from a defense expert.

**Location:** Winona, Minnesota on Winona State University campus

**Tuition Fee:** Please submit \$50 payment with your registration. Make checks payable to: NCPTC. Or pay online, when you register at [www.ncptc.org](http://www.ncptc.org).

- September training session: We are accepting registration for ATTORNEYS ONLY!
- October training session: Please register in a team of two (one attorney and one forensic interviewer). Attorneys are also welcome to register without a forensic interviewer for the Oct. 11 – 13, 2010 session.

NCPTC has applied for MN POST Board credits for law enforcement professionals, for both training sessions offered.



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### 3. Explain your rationale in pursuing credentialing

Make sure the prosecutor understands that credentialing is not the same as licensure. Credentialing is a voluntary process in which recipients of the credential agree to maintain certain standards and to adhere to an ethical code.<sup>15</sup> Unlike licensure, credentialing does not exclude anyone from conducting an investigative interview. This is important for the prosecutor to understand in the event an officer or someone who is not credentialed conducts a cursory interview with a child at a crime scene or may otherwise interact with a child witness in another capacity. Credentialing does not prohibit anyone from speaking with a child or even conducting a forensic interview. Again, credentialing is a voluntary body of forensic interviewers who have established and adhere to minimal training requirements, peer review standards, testing, and whose character and work is endorsed by others in the field. In this sense, the credentialing of forensic interviewers is very similar to what many child welfare attorneys, including prosecutors handling juvenile law or civil child protection matters have done in developing a Certified Child Welfare Law Specialist credentialing process through the National Association of Counsel for Children.<sup>16</sup> Your prosecutor may also be familiar with the National Board of Legal Specialty Certification, formerly the National Board of Trial Advocacy, which tests and otherwise credentials prosecutors and other criminal trial attorneys.<sup>17</sup>

### 4. Listen to any concerns your prosecutor may raise and respond professionally

If the prosecutor is satisfied the credential meets acceptable standards for credentialing a profession or skill, he or she is likely to support your efforts to obtain the credential. Separate and apart from the most important issue – improvement of forensic interviewing in the United States – credentialing will also enhance your stature if the prosecutor seeks to qualify you as an expert witness<sup>18</sup> and may assist the prosecutor in excluding defense experts who could never meet even minimal standards. If, though, the prosecutor raises any concerns or questions about the validity of the credential, these views should be considered carefully and responded to professionally. Although credentialing is primarily designed to protect children by ensuring that children who receive a forensic interview are interviewed by someone who meets minimal standards, the prosecutor is in many respects the “end user” of the interview and thus his or her views should be considered in making your decision. If the prosecutor’s questions pertain to any aspect of the NACCFI credentialing process that you can’t answer, raise these issues directly with NACCFI and see if the answer provided satisfies the prosecutor. Although every other member of our multi-disciplinary team is a member of a profession subjected to credentialing or licensure, this is a new concept for the field of forensic interviewing and thus all of us have a responsibility to seek input from our teams and raise any legitimate concerns.

### 5. Although the view of the prosecutor is important, the final decision on credentialing should be made by forensic interviewers.

Although it is well established that child abuse investigations and prosecutions should be handled as part of a multi-disciplinary team<sup>19</sup>, it is “essential that individual roles and responsibilities of team participants be clearly delineated from the outset. . . it should be made clear that each team member retains responsibility and accountability to independently evaluate the case; authority should not be abdicated to the team.”<sup>20</sup> A prosecutor, for example, should take into account the recommendations of other team members, but the decision on charging or trial strategies remain solely in his or her discretion.

If each individual team member must be independent in considering the ultimate decision – whether or not a child has been maltreated – it is also true that each team member, in concert with others from the same profession, bears the ultimate responsibility for determining the standards in their respective fields. Some prosecutors may have had reservations when pediatricians decided to develop a board certified sub-specialty on child abuse<sup>21</sup> because this may undermine the testimony of a local pediatrician who chooses not to seek this qualification or, even worse, attempts but fails to obtain this credential. Nonetheless, the final decision was appropriately made by the pediatricians, not the prosecutors. In the same way, it is forensic interviewers, not the members of any other discipline, which needs to determine what, if any standards it will develop for its profession.

This is true, in part, because no particular discipline is always right all the time. For many decades, psychologists wrongly assumed that children fantasize about sexual relationships with their parents.<sup>22</sup> The medical community often failed to recognize clearly suspicious cases of child abuse.<sup>23</sup> In some issues facing the child protection community, history has also shown that prosecutors can err.

Two decades ago, there was a robust debate in the child protection field on whether or not to videotape forensic interviews. On this issue, child abuse prosecutors did not speak with one voice.





Although some prosecutors argued the benefits of videotaping these interviews,<sup>24</sup> others argued videotaping was helpful only if the interviewers were well trained.<sup>25</sup> Other prosecutors strongly opposed videotaping forensic interviews, going so far as to call the practice “dangerous.”<sup>26</sup> Although we are unaware of any study that conclusively determines how many prosecutors actually opposed videotaping, some scholars concluded that the “primary opposition” to videotaping came from prosecutors.<sup>27</sup>

Although we realize that some prosecutors still have reservations about videotaping, and we are not suggesting that all concerns about videotaping have been fully addressed, there is a growing body of research to support the value of videotaping. Research has documented that failing to record often results in the loss of important evidence<sup>28</sup> and that the overall impact of videotaping is beneficial to the government. 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.<sup>29</sup>

In stark contrast to fears expressed by some prosecutors, the *actual* experience

of videotaping forensic interviews has generally strengthened the prosecutor’s case and proved harmful to the defense case. By 2006, law professor Frank E. Vandervort was able to note:

Our findings suggest that, at least when used as part of a carefully thought-out investigative protocol, videotaping has a deleterious impact upon defendants’ interests and a very positive impact on prosecutors’ efforts to successfully prosecute child sexual abuse cases.<sup>30</sup>

As the debate on videotaping reminds us, prosecutors, just like other child protection professionals, can and do disagree with one another on various issues facing the field. It is possible that one side or the other in a particular debate is correct. It is also possible that *both* sides are correct. For example, some prosecutors supported videotaping because they had clear statutory or case rules allowing forensic interviews to be admitted as substantive evidence. Other prosecutors opposed videotaping because their state laws would severely limit the government’s ability to use the videotapes as evidence but would freely allow the defense counsel to use the tapes. In scenarios such as these, *both* sides may have been right based on the unique circumstances of their jurisdictions.

Although many child abuse prosecutors, including the current and former prosecutors who have authored this article, support a national, voluntary credentialing system for forensic interviewers, we also recognize and respect prosecutors and others who have differing views. This division in the field reflects a deep commitment to serving children. In all likelihood, MDTs will make different decisions on credentialing – just as happened in the case of videotaping. It is possible there will eventually be a clear consensus on credentialing, one way or the other, as appears to be happening on the issue of videotaping. It is also possible that what makes sense for one jurisdiction, may not make sense for another. For example, a prosecutor who routinely qualifies his or her forensic interviewers as expert witnesses and who routinely deals with defense experts from outside the field of forensic interviewing is very likely to support credentialing. A prosecutor who is limited by case law or legal rules in using his forensic interviewers in this way may see fewer advantages. It is possible that both prosecutors are correct and that their views make sense for the children they are seeking to protect in their communities.

## Conclusion

Now that the ten year debate over credentialing has resulted in a fledgling credentialing process through the National Association of Certified Child Forensic Interviewers (NACCFI), it is important for front line forensic interviewers to consult with their individual team members, including local child abuse prosecutors. Nonetheless, the final decision of whether or not to develop forensic interviewing as a profession, including minimal standards, testing and an ethical code rests with forensic interviewers themselves.

## End Notes

<sup>1</sup> Joseph Del Russo is the Chief Assistant Prosecutor for the Special Victims Unit of Passaic County, New Jersey and a Visiting Professor in Montclair State University’s Center for Child Advocacy.

<sup>2</sup> Sonia J. Leerkamp is currently serving her fourth term as the elected prosecuting attorney serving Hamilton County, Indiana. Ms. Leerkamp remains an active, frontline prosecutor of child abuse cases. She serves on the Board of Directors for the Association of Prosecuting Attorneys in Indiana and on the Indiana Law Enforcement Training Board. Ms. Leerkamp is a member of the Indiana Bar Association Criminal Justice Section as well as a member of the Advisory Board for the School of Forensic Sciences for Purdue University, Indianapolis.

<sup>3</sup> Laurie Pollard is an assistant district attorney in McCurtain County, Oklahoma, and currently handles the sexual assault and child abuse cases in her three county district. Prior to becoming a prosecutor, she served in family court as court appointed counsel for children and as mediator for twelve years.

<sup>4</sup> Alice Robinson-Bond is an Assistant Prosecutor for Licking County, Ohio. She is a member of APSAC, and a Past President of its Ohio Chapter. She previously served with the Ohio Attorney General’s Office as the Assistant Chief of the Crime Victim Section and lead that Office’s statewide child abuse response team.

<sup>5</sup> Steve Sedensky is the State’s Attorney for the Judicial District of Danbury in Connecticut, an active child abuse prosecutor and is board certified in Criminal Trial Advocacy. He is also a member of APSAC, the NDAA and is a former senior attorney for the American Prosecutors Research Institute.

<sup>6</sup> Doug Storey is the elected county attorney for Cottonwood County, Minnesota. Mr. Storey has served as an elected county attorney for 20 years and as a prosecutor for 28 years. Mr. Storey helped develop a protocol in Cottonwood County that required social workers, law enforcement officers and prosecutors handling cases of child abuse to complete at least five days of forensic interview training. Mr. Storey himself is a 1995 graduate of the CornerHouse five day forensic interview training program.

<sup>7</sup> Stephanie Smith is the Southern Regional Director, National Child Protection Training Center. Ms. Smith is a former deputy prosecutor from Hamilton County, Indiana.

<sup>8</sup> Victor Vieth is the Director of the National Child Protection Training Center. He previously served as Director of the National District Attorneys Association’s National Center for the Prosecution of Child Abuse. Prior to that, he worked as a prosecutor in rural Minnesota.

<sup>9</sup> See generally, Mike Haney, Ph.D, Victor I. Vieth, JD, & Hector M. Campos, MSW, LCSW, *Setting Course: The Case for the Credentialing of Forensic Interviewers*, 2(2) CENTERPIECE (2010) (available on line at [www.ncptc.org](http://www.ncptc.org) under “publications”).

<sup>10</sup> See NACCFI Multi-Tiered Credentialing Standards, available online at [www.nacffi.com](http://www.nacffi.com)

<sup>11</sup> See NACCFI Application Procedures and Processing Fees, available online at [www.nacffi.com](http://www.nacffi.com)

<sup>12</sup> More than 630 child protection professionals, primarily forensic interviewers, completed the survey and 81% expressed support for a multi-tiered credentialing process. For additional information about the survey, contact NACCFI at [www.nacffi.com](http://www.nacffi.com)

<sup>13</sup> 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](http://www.ncptc.org) under "publications").

<sup>14</sup> See NACCFI Code of Practice Principles, Standards and Ethical Conduct, available online at [www.nacffi.com](http://www.nacffi.com); and NACCFI Applicant's Handbook, available online at [www.nacffi.com](http://www.nacffi.com)

<sup>15</sup> See generally, INSTITUTE FOR CREDENTIALING EXCELLENCE HANDBOOK 2ND EDITION (2009)

<sup>16</sup> NACC certifies prosecutors or other child welfare attorneys as Child Welfare Law Specialists if they have "substantial involvement in the practice of child welfare law for three years", meet continuing legal education requirements for child welfare law, demonstrate peer review of their competence including one judge, submit a satisfactory writing example and pass a child welfare law exam. These and other details can be accessed at: <http://www.nacchillaw.org/?page=certification> (last visited August 17, 2010)

<sup>17</sup> See National Board of Legal Speciality Certification, [www.nblsc.us](http://www.nblsc.us) (last visited August 17, 2010).

<sup>18</sup> See generally, Victor I. Vieth, *The Forensic Interviewer at Trial: Guidelines for the Admission and Scope of Testimony Concerning an Investigative Interview in a Case of Child Abuse*, 36(1) WILLIAM MITCHELL LAW REVIEW 186 (2009)

<sup>19</sup> National Center for Prosecution of Child Abuse, INVESTIGATION AND PROSECUTION OF CHILD

ABUSE THIRD EDITION page xxxviii (2004)

<sup>20</sup> *Id.*

<sup>21</sup> Emily Berry, *New Specialty Certification for Child Abuse Pediatrics*, HEALTH LEADERS MEDIA (November 6, 2009 available online at [www.healthleadersmedia.com](http://www.healthleadersmedia.com)) (Dr. Ann S. Botash, professor of pediatrics at SUNY Upstate Medical University argues board certification will not only assist pediatricians when testifying in court but will be helpful in working with family practitioners and other pediatricians who are good practitioners but may not have the same experience in child maltreatment cases that a board certified child abuse specialist may have).

<sup>22</sup> See ANNA SALTER, PREDATORS, PEDOPHILES, RAPISTS AND OTHER SEX OFFENDERS: WHO THEY ARE, HOW THEY OPERATE, AND HOW WE CAN PROTECT OURSELVES AND OUR CHILDREN 57 (2003) (Noting the "history of psychology in the past 100 years has been filled with theories that deny sexual abuse occurs, that discounts the responsibility of the offender, that blame the mother and/or child when it does occur, and that minimize the impact. It constitutes a sorry history of psychology, but it is not only shameful, it is also puzzling. Hostility toward child victims and adult women leaks through this literature like poison.")

<sup>23</sup> Prior to the 1970's, "legal, mental health, and medical literatures contributed to a legacy of skepticism about allegations of rape and sexual abuse." JOHN E.B. MYERS ET AL, *Prosecution of Child Sexual Abuse in the United States in: CRITICAL ISSUES IN CHILD SEXUAL ABUSE: HISTORICAL, LEGAL AND PSYCHOLOGICAL PERSPECTIVES* 27, 41 (J. CONTE ED. 2002). See generally, DAVID L. CHADWICK, MD, *THE CHILD ABUSE DOCTORS* (forthcoming 2010) (noting the progress the medical community has made in recent decades in improving the medical community's response to cases of child maltreatment).

<sup>24</sup> See e.g. Catherine Stephenson, *Videotaping and How it Works Well in San Diego*, 7 J. INTERPERSONAL VIOLENCE 284, 285-88 (1992)

<sup>25</sup> Victor I. Vieth, *When Cameras Roll: The Danger of Videotaping Child Abuse Victims Before the Legal System is Competent to Assess Children's Statements*, 7 JOURNAL OF CHILD SEXUAL ABUSE 113 (1999).

<sup>26</sup> Paul Stern, *Videotaping Child Interviews: A Detriment to an Accurate Determination of Guilt*, 7 J. INTERPERSONAL VIOLENCE 278 (1992). In this article, Mr. Stern argued:

Routinely videotaping investigative interviews with children suspected of being victims of sexual abuse does not promote an accurate determination of guilt, is not in the best interests of the child, is counterproductive to prosecution, and is unnecessary. That is the reality. *Id.*

<sup>27</sup> Frank E. Vandervort, *Videotaping Investigative Interviews of Children in Cases of Child Sexual Abuse: One Community's Approach*, 96(4) THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 1353, 1355 (2006).

<sup>28</sup> 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) (finding that interviewers' memories degraded following interviews with children and they had difficulty recalling with specificity the questions asked of children and the responses children provided during interviews).

<sup>29</sup> James Henry, *Videotaping Child Disclosure Interviews: Exploratory Study of Children's Experiences and Perceptions*, 8 JOURNAL OF CHILD SEXUAL ABUSE 35, 47-48 (1999)

<sup>30</sup> 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).

## 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 RATA<sup>C</sup>® forensic interviewing protocol. For further information, contact NCPTC at 507-457-2890 or 651-714-4673. Please visit our website at [www.ncptc.org](http://www.ncptc.org).

