

# **Preparing for Forensic Interviewers & Psychologists in Child Sex Cases**

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# But first...

Anyone else seeing an increase in prosecutors attempting to Motion in Limine “conduct” and broaden 27-404 or 27-608, requesting hearings “outside the presence of the jury” under the guise of eliciting your case strategy?

# How Should you Respond?

- “I will follow the rules of evidence”
- “I will not disclose my case strategy”
- Request State to provide information re: ALL “extrinsic” conduct it is aware of, per *Brady*, and then let the Court decide
  - Force a privilege log State → Judge

# Bases for That Response

*Neb. Rev. Stat. §27-608(2)* does not prohibit inquiry into specific instances of a witness' conduct; **it only prohibits proof of that conduct by extrinsic evidence.** *State v. Baker*, 280 Neb. 752, 789 N.W.2d 702 (2010). Conduct of the alleged victim during the timeframe of alleged abuse as set forth in the State's Second Amended Information is not extrinsic evidence.

The application of *Neb. Rev. Stat. §27-608(2)* to exclude extrinsic evidence of a witness' conduct is **limited to instances where the evidence is introduced to show a witness' general character for truthfulness.** Evidence relevant to a material issue is not rendered inadmissible because it happens to include references to specific bad acts of a witness, and such evidence should be admitted where it is introduced to disprove a specific fact material to the case. **Subsection (2) of this section does not bar evidence introduced to contradict**—and which the jury might find to disprove—a witness's **testimony as to a material issue of the case.** *Sturzenegger v. Father Flanagan's Boys' Home*, 276 Neb. 327, 754 N.W.2d 406 (2008).

*Neb. Rev. Stat. §27-404(3)* **Prosecution (not Defense)** is required to make showing outside presence of jury

# **In short...**

Conduct during relevant timeframe, or  
conduct tending to show motive to  
falsify or behavior inconsistent with  
allegation of abuse **IS ALWAYS  
RELEVANT AND ADMISSIBLE!**

i digress

# Forensic Interviews



# Forensic Interview National Protocols





# Forensic Interview

## National Protocols



- ✓ Truth v. Lie
- ✓ If you don't know the answer
- ✓ Open-Ended Questions
- ✓ \*\*\*Don't repeat a question if child says no to try and get disclosure
- ✓ Explore Alternate Hypotheses

# Forensic Interview

## Truth v. Lie

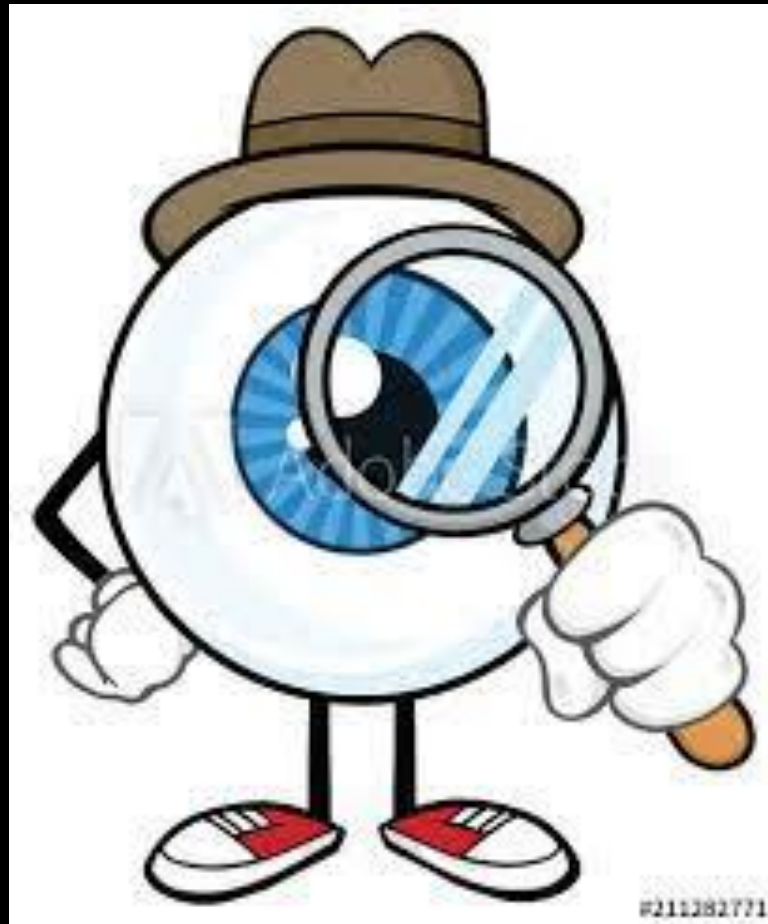
**Children < 5 years old**



- Inability to Understand Moral Responsibility and Consequences of Truth v. Lie
- Beware of age during timeframe of alleged abuse
- Child Development Pediatrician  
→ Dr. Needelman (Children's)

# Forensic Interview

Explore Alternate Hypotheses



# **Forensic Interview**

## **Multiple Statements**

**SHOULD BE COMPLETED BY A TRAINED  
FORENSIC INTERVIEWER...**

**... IF NOT, MAKE THE ORIGINAL FORENSIC  
INTERVIEWER YOUR FRIEND AND HAMMER  
THE STATE AS BIASED**

# Forensic Interview

## Analyzing the Quality of it

→ Dr. Drew Barzman

→ 29-1926 (Ex Parte Order to Release)

→ *State v. Reynolds* - Not an opinion on ultimate issue/credibility; opinion on quality of interview



# Forensic Interviewer

## To Depose or Not?



- Get the interview transcribed (29-1926)
- Offer it as an exhibit at either child victim deposition or forensic interviewer deposition
- Make the forensic interviewer your friend? A few basic questions, and offer transcript as exhibit

# Psychologists



# Psychologists

- Delayed Disclosure, Incremental Disclosure, Additional Details, Grooming, etc.
- Always consult your own
- No report required (in Nebraska State court)
- Taking out the sting: “You can’t really help us, can you?”





# Psychologists & Psychiatrists for the Defense

- **Dr. Kirk Newring** (Papillion)
- **Dr. Mario Scalora** (Lincoln)
- **Dr. Jason Dickinson** (Manhattan)
- **Dr. Drew Barzman** (Cincinnati)  
→ Psychiatrist for reviewing quality