COUNTY COURT
NASSAU COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK,

-v- Ind. 67104, 67430, 69783

JESSE FRIEDMAN,
Defendant.
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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO OVERTURN HIS CONVICTIONS AND DISMISS THE CHARGES ON THE GROUNDS OF ACTUAL INNOCENCE AND UNLAWFULLY COERCED, FALSE TESTIMONY BEFORE THE GRAND JURY, AND TO OVERTURN HIS PLEA OF GUILTY BASED UPON UNLAWFUL COERCION.

Introduction

I have now read the post-conviction application submitted by counsel for Jesse Friedman, and have had the opportunity to review some of the evidence on which those claims are based. The defense raises very specific claims that there are a number of serious substantive errors in the Rice Report. The parties to this litigation have drawn starkly different conclusions about the credibility of witnesses who did come forward.

I believe it would be desirable for the court and the parties, utilizing whatever procedural mechanisms the court deems suitable, to review materials not available to the Advisory Panel, such as grand jury minutes, the original case file, and the results of the re-investigation to aid in finally resolving, to the extent it is possible, the issue of Jesse Friedman's guilt or innocence.

> *I believe public confidence in the fair resolution of this matter would be greatly enhanced if the court could find a way to resolve these issues, including crucial issues of witness credibility, using appropriate safeguards. Accordingly, I urge the court to accord Mr. Friedman a full evidentiary hearing on the merits of his claims.*
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> Affirmation of Professor Barry C. Scheck, June 20, 2014, at paras. 6-8, former member of DA Rice's Advisory Panel to Investigate the Friedman Conviction.

In the late 80s, in the midst of a national hysteria surrounding false allegations of mass sexual abuse of children in day care centers and schools (epitomized by the McMartin Pre-School Case), Long Island teacher Arnold Friedman and his teenage son Jesse (and later another teenager named Ross Goldstein) were charged with hundreds of counts of violent sexual abuse of children. Friedman, assisted by Jesse, had offered popular after-school computer classes to neighborhood children at their Great Neck, Long Island home. They also provided computer classes to adults in the same classroom. Though the classes had been offered for five years without incident, Arnold Friedman came to the attention of law enforcement when Postal Inspectors learned he had ordered some commercially manufactured sex magazines from the Netherlands depicting underage teenagers. During a search of Friedman's home, they noted the presence of the computer classes. The case was referred to Nassau County Police, who came to the conclusion that Arnold had been sexually abusing his students.

But the pornography charge was only the beginning of the prosecution. Police and the Nassau County District Attorney accused Arnold, his son Jesse, and Ross Goldstein of a series of bizarre crimes featuring "naked group sex games" such as "Leapfrog" in which police alleged that groups of children were lined up and serially sodomized by Arnold, Jesse, and multiple other adults "leaping" from one child to the next. Though such violent, repeated rape of children would inevitably yield physical and medical evidence, no such evidence was ever reported. In fact, no child or parent had ever complained nor raised any concern prior to these police interrogations. Parents picked up their children after class for years, often arriving unannounced, and dozens of children re-enrolled for more advanced classes. To make matters stranger, police also charged that the Friedmans had photographed and videotaped hundreds of alleged incidents of abuse, though no such photos or videotapes were ever found.

Today, Friedman case Detectives admit that they had entered interviews with the seven to twelve-year-old children with the assumption that every child had in fact been abused, and they had refused to accept the children's denials. Though the police produced elaborate statements allegedly transcribed from the children's own words, in fact the statements were composed by the detectives themselves and contained decidedly adult language. Children and their parents reported that police made many visits to their homes, with some such "interviews" lasting as long as

seven hours at a sitting, and used a host of improper questioning techniques now known to cause false accusations and false memories.

In stark contrast to typical accusations of child sexual abuse, which report abuse occurring in a private setting in which a single adult has access to a single child, the charges against the Friedmans stated that all the children were violently abused *in plain view* of the entire class. Police statements show that virtually every child who made accusations reported (a) having been abused by multiple adults, and (b) having seen multiple other children being abused. However *all the other children* who sat alongside the complainants in the very same classes directly contradicted the complainants' claims. In bringing the indictments, police accepted the children's stories as true, assisted in the embellishment of these stories, and simply ignored the dozens of demonstrably false claims the very same children had made. They withheld this and all other exculpatory information from Jesse Friedman's defense.

In 1988, after interviewing more than 100 students, the Nassau County District Attorney convened a Grand Jury with fourteen boys testifying against Jesse.[1] This testimony was equally suspect. In the words of the Judge's law

[1] These fourteen complaining witnesses were all provided "Doe" names by the prosecution in 1988. Their true names were provided to the defense by letter from ADA Joseph Onorato on November 30, 1988. Out of deference to their desire not to be publicly affiliated with this case, even among those who categorically insist they were never abused, the defense continues to use the "Doe" names publicly. With the permission of the Court, a copy of the November 30, 1988 letter will be submitted under seal.

secretary: **"**The grand jury testimony of child witnesses, largely elicited with leading questions by the prosecutor, demanding 'yes or no' responses, provided absolutely no detail**."** (Aug. 18, 2013 letter from attorney Scott Banks to Justice F. Dana Winslow, attached as Exhibit A to the accompanying Affirmation of Ronald Kuby ("Kuby Aff.")).

Jesse Friedman, who seeks here to have his conviction overturned, has stated that the volume of charges, coupled with the community hysteria surrounding the case, threats of a 50-year sentence by the presiding Judge, pornography possession charges against Jesse's father, and other circumstances left him with no real choice but to plead guilty to crimes that never occurred. Though Friedman could not have known it at the time, the McMartin case and more than 70 similar cases would, after destroying countless careers and lives, unravel within a few years.

Nearly two decades later, after Jesse Friedman and his father Arnold had been imprisoned for years (Arnold died there), and Goldstein had served a shorter prison term, the case became the subject of the Academy Award-nominated documentary film, *Capturing the Friedmans,* which raised doubts about the validity of the prosecution. In the film, police officers freely admit to having used a host of coercive interviewing techniques now widely known to elicit false accusations, complainants recant their accusations, the prosecutor reveals a total absence of any physical or medical evidence to support the accusations, and the

Judge admits she "never had a doubt" about the Friedmans' guilt despite never having seen any evidence at trial.

At 18, Jesse Friedman was a well-educated suburban freshman at SUNY Purchase studying music and psychology, with a beautiful girlfriend and a bright future. By 19 and for the next 13 years, he was a resident of the New York State prison system, serving his time in severe institutions like Dannemora and Cocksackie, and denied parole at every hearing because of his refusal to "accept" and restate his guilt.

Since completing his sentence with good behavior, Friedman has been fighting to clear his name, as he is still classified as a "Level 3, Violent Sexual Predator," barred from many basic activities. He and his wife Elisabeth have despite model behavior been denied access to four religious congregations, have been evicted from multiple apartments when landlords learned of his legal status, and are for practical purposes prevented from having a child of their own due to the restrictions of Megan's Law.

After a series of efforts to have Jesse Friedman's conviction reconsidered were opposed -- first by Denis Dillon, the Nassau County District Attorney who had overseen the prosecution, and later by Dillon's successor DA Kathleen Rice -- the United States Court of Appeals for the Second Circuit agreed to hear the case, and issued an extraordinary opinion. Friedman v. Rehal, 618 F.3d 142 (2d Cir.

2010). After a thorough review of all the evidence then available to it, including all submissions made by the prosecution, the majority concluded that there was a "reasonable likelihood Jesse Friedman was wrongfully convicted," and set forth their reasons:

> "The quality of the evidence was extraordinarily suspect."
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> "Police, prosecutors, and the judge did everything they could to coerce a guilty plea and avoid a trial."
>
> "Detectives generally entered an interview with a presumption that a child had been abused and refused to accept denials of abuse."
>
> "This strategy was designed to force children to agree with the detectives' story."
>
> "The allegations also grew increasingly bizarre, sadistic, and even logistically implausible."
>
> "Prosecutors had no physical evidence and relied entirely on allegations made by computer students after being questioned by Nassau County detectives. No student had ever complained of abuse, nor had any parent ever observed suspicious behavior prior to the investigation. Indeed, Assistant District Attorney Onorato acknowledged, 'there was a dearth of physical evidence.'"
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> "Aggressive investigation techniques like those employed in [Friedman's] case can induce false reports."
>
> "The tactics were so aggressive that several former students admit that they responded to them by falsely alleging instances of abuse."
>
> "Prosecutors have an obligation to curb police overzealousness. In this case, instead of acting to neutralize the moral panic, the prosecution allowed itself to get swept up in it."

Id. at 158, 146-148, and 160.

The Second Circuit suggested that judicial recourse was still open to Mr. Friedman to pursue his claim of wrongful conviction. The Friedman Court noted the possible existence of a free-standing claim of actual innocence and stated "New York cases suggest that relief on this basis may be available pursuant to N.Y.Crim P. § 440.10(1)(h) . . . and "[c]onsidering that facts of the case and the circumstances that caused him to plead guilty, this case may be particularly sympathetic to a proceeding seeking such relief." Id. at 159. Since that time, the Appellate Division, Second Department has confirmed that convicting the actually innocent does give rise to a claim under § 440.10(1)(h). People v. Hamilton, __ A.D.3d __, 2014 NY Slip Op 00238, at *1-2 ("a freestanding claim of actual innocence may be addressed pursuant to CPL 440.10(1)(h)"). Accordingly, Mr. Friedman's petition raises his claim of actual innocence and requests an evidentiary hearing, where, for the first time, witnesses will be examined and cross-examined. This claim is also made pursuant to the Due Process clause of the Fourteenth Amendment.

The Friedman Court, in addressing the circumstances that coerced Jesse Friedman's plea of guilty, suggested another, independent judicial basis for relief:

> Indeed, passing over all of the pressures described above that were brought to bear on petitioner, the threat Judge Boklan made to petitioner's counsel, Peter Panaro, that "if Jesse were to go to trial, she intended to sentence him to consecutive terms of imprisonment for each count if he is convicted" . . .would be sufficient by itself to sustain a challenge to the plea if Panaro's affidavit is credited.

Friedman, 618 F.3d at 159. The prosecution has not submitted an affidavit from Judge Boklan, or any other source, that contradicts Mr. Panaro's clear, sworn recollection of this statement. Accordingly, Jesse Friedman moves to vacate his judgment of conviction pursuant to both the Constitutions of the State of New York and the United States on the ground that he was coerced into his plea of guilty.

Last, newly-discovered and newly-available evidence demonstrates that the testimony of the children who appeared before the grand jury was false -- the result of police coercion, orchestrated by Detective Fran Galasso, the newly-appointed head sex crimes unit of the Nassau County Police Department. As DA Rice herself admitted in the Friedman case, "Police used tactics on children that were "unprofessional, unfair, and cruel." June 24, 2013 Conviction Integrity Report (hereinafter, the "Rice Report"), Kuby Aff. Ex. B, at 72. Accordingly, Friedman moves to dismiss the indictment under both the Constitutions of the State of New York and the United States.

Procedural History

A. Prior Post-Conviction Efforts Culminating In The Second Circuit's Decision

Jesse Friedman filed a motion under CPL § 440.10 in January of 2004 for failure to disclose evidence pursuant to Brady v. Maryland, 373 U.S. 83 (1963). The prosecution opposed, and his motion was denied on January 6, 2006 without a hearing. Decision and Order, People v. Friedman, Crim. Term Part IV, Motion Cal. C-11, indictment nos. 67104, 67430, 69783 (Jan. 6, 2006) Lapera, J. After leave to appeal was denied, Friedman then took his case to the United States District Court for the Eastern District of New York, seeking *habeas corpus* relief. Judge Seybert denied relief on January 4, 2008, for timeliness, claiming that Friedman had waited too long after the new evidence (collected by the filmmakers) had been discovered to bring his appeal. Judge Seybert granted a Certificate of Appealability.

Friedman then appealed that decision to the United States Court of Appeals for the Second Circuit, and that case was argued on July 8, 2009. A supplemental motion for an actual innocence petition was filed twelve days later. The Second Circuit affirmed Judge Seybert's ruling but, in its words, refused to "become an accomplice to what may be an injustice." Friedman, 618 F.3d at 161. Despite ruling the claim procedurally barred, the Friedman Court reviewed the evidence and found a "reasonable likelihood that Jesse Friedman was wrongfully

convicted." Id. at 160. The Friedman Court was deeply skeptical of the validity of Jesse Friedman's guilty plea, noting:

> [W]ith the number of counts in the indictments and Judge Boklan's threat to impose the highest conceivable sentence for each charge, petitioner faced a virtually certain life sentence if he was convicted at trial. And the likelihood that any jury pool would be tainted seemed to ensure that petitioner would be convicted if he went to trial, regardless of his guilt or innocence. Nor could he have reasonably expected to receive a fair trial from Judge Boklan, the former head of the Nassau County District Attorney's Sex Crime Unit, who admitted that she never had any doubt of the defendant's guilt even before she heard any of the evidence or the means by which it was obtained. Even if innocent, petitioner may well have pled guilty.

Id. at 158. The Court was also troubled by the basis of the testimony, noting the "consensus within the social science community" that "suggestive recovery tactics can create false memories" and that "aggressive investigation techniques like those employed in (Friedman's) case can induce false reports." Friedman, 618 F.3d at 160. It concluded that the evidence against Friedman was "extraordinarily suspect." Id. at 161.

Lacking a legal basis to act, it encouraged the Nassau County District Attorney to do so, noting her obligations under New York Rule of Professional Conduct 3.8. It quoted comment 6B that states that when a "prosecutor comes to know of new and material evidence creating a reasonable likelihood that a person was wrongly convicted" that prosecutor must "examine the evidence and undertake such further inquiry or investigation as may be necessary to determine whether the

conviction was wrongful." Id. at 159-160, citing Professional Rule 3.8, comment 6B.

B. The "Re-investigation" And The Rice Report

> *Ordinarily, following best practices in a Conviction Integrity Review it is desirable to have substantial disclosure of the prosecution's file and grand jury minutes…. the District Attorney [in this conviction integrity review] made the decision not to release such materials to the defense. Members of the Advisory Panel did not interview witnesses, except, under limited circumstances Ross Goldstein and Jesse Friedman, nor did we personally review grand jury minutes, or the District Attorney's file. The Advisory Panel did not make credibility determinations. Such determinations were the exclusive province of the District Attorney.*
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> Scheck Affirmation, June 20, 2014, paras. 4-5.

Following the Second Circuit's decision, the prosecution could have chosen a path that would have reduced or eliminated the institutional bias inherent in a District Attorney reviewing a highly visible case once prosecuted in the same office. She could have allowed the facts and circumstances to be developed at a hearing, as the Second Circuit recommended, but she refused. Another possibility would have been for the prosecution to empower an outside panel with the authority to review the case, and to insist they observe the best practices of conviction review. She did not do so. She could also have referred the case to the New York State Attorney General's Office, which implemented its own conviction review board during the pendency of this review. She declined.

Instead, the DA chose the opposite of transparency and impartiality. She chose to have her own prosecutors handle a "re-investigation," allowing her to maintain the secrecy that has this case since 1987. She selected Madeline Singas, a career sex-crimes prosecutor without experience in conviction review, to lead the effort. Finally, she appointed an "Advisory Panel," without authority or access to the key evidence (except as filtered through the DA's staff) to provide the illusion of impartiality.

There is some history nationally of such in-house reviews, notably in Dallas, Texas and New York City. See Barry Scheck, Professional and Conviction Integrity Programs: Why We Need Them, Why They Will Work, and Models for Creating Them, 31 Cardozo L. Rev. 6, 2215, 2248 (2010). Observers have been skeptical of the possibility of a prosecutor's office fairly reviewing a conviction, given the "natural unwillingness" to do so. Jonathan Kirshbaum, Actual Innocence after Friedman v. Rehal, 31 Pace L. Rev. 627, 649-654 (2011). The concern is that even a well-meaning prosecutor will perform a purely illusory investigation that is neither thorough nor meaningful. Id.

To alleviate those concerns, there are "best practices" that ensure actual reviews, not "illusory" rejustifications that Kirshbaum cautions against. In summary, best practices should include these elements: 1) if a "plausible claim of innocence" is presented, the entire criminal file, "including work product" is made

available. Scheck, 31 Cardozo L. Rev. at 2250. 2) the unit that makes up the conviction integrity program must be "willing to investigate leads proposed by the party claiming innocence." Id. 3) The unit must be willing to allow lawyers for those presenting the claim to "investigate leads they are uniquely situated to pursue." Id. 4) They must have a "close working relationship with the Public Defender's office that permits a free exchange of information and joint investigations." Id. And 5), the unit should be led by a well-respected attorney who has experience in criminal defense. Id. at 2250-51.

Despite the astounding two-and-a-half-year duration of the DA's review, the prosecution's review was exactly the illusory process of which Kirshbaum warned. As noted by Barry C. Scheck, Friedman's team was denied access to every document in the criminal file; even those documents that would have been provided in normal course had he gone to trial. Scheck Affirmation, June 20, 2014, at para. 4. The actual investigating unit, hand-picked members of the DA's office led by a prosecutor with no experience in criminal defense or conviction review, consistently refused to employ the most basic technique of investigation: interviewing non-complaining witnesses who were present in the classes to determine whether they corroborate or refute the complainants' florid accounts of violent, loud, public abuse allegedly witnessed by the entire class.

The "Advisory Panel[2]" meant to "oversee" the review, did not conduct its own independent analysis, relying primarily on summary information created by the DA's "Review Team," who withheld from them all the evidence except a small amount that the prosecution selected. (Kuby Aff. Ex. C at 10:19-18:11). What little evidence the Advisory Panel did see was filtered through the very institution that had originally brought the malicious and troubled investigation in the 80s, and had then prevented any relief in the courts for a quarter century. The prosecution arrogated to itself the exclusive power to determine the credibility of witnesses, credibility they assigned exclusively to those witness statements, no matter how old or discredited, which supported their belief in Friedman's guilt. These deficiencies reduced the Advisory Panel to a rubber stamp for the DA's conclusions.

On June 24, 2013, the Review Team published the Rice Report, reaffirming the original conviction in an error-riddled document filled with absurd and tautological reasoning (such as the conclusion that adults who repudiate the statements police coerced from them when they were children are "self-serving" and "unreliable" (Kuby Aff. Ex. B at 108) because those

[2] There are two relevant groups within the review of Friedman's conviction, which are herein referred to as the "Advisory Panel" and the "Review Team." The Advisory Panel was made up of four experts outside the District Attorney's office and announced by DA Rice. The Review Team, who actually had access to evidence and witnesses was comprised of assistant district attorneys within Nassau County. Transcript of Hearing, Friedman v. Rice, No. 4015-13 (Sup. Ct. Nassau Cty June 28, 2013), 10:19-18:11, Kuby Aff. Ex. C).

statements now "stand in marked contrast" to the original accusations elicited by police). The Report contains dozens of false and mean-spirited attacks on Jesse Friedman's character, employing scores of epithets to describe him such as "psychopath," "pansexual," and "deviant." The Report persistently relies on the contents of documents it refused to disclose, and grossly mischaracterizes evidence.

For example, DA Rice was challenged to explain why police in the 80s, and again during her Conviction Review, have been unable to get dozens of non-complainant computer students -- who had sat alongside the complainants *in the very same classes* in which hundreds of episodes of violent sexual abuse were alleged – to corroborate the implausible claims of a handful of students. Her response was that "a reliable [class] roster has never existed" (Id. at 62) that would allow police or prosecutors to identify which students attended class together, and therefore reconstructing the classes would be too difficult. Id. at 134. In fact, as DA Rice is well aware, such class rosters did exist: they were seized by the Nassau County Police in 1987 and kept secret. In addition, as the Rice Report reveals, a questionnaire police used to interview the children specifically asked them to provide names of other students who attended class alongside them, and the DA is in possession of the interview notes the questionnaires yielded.

Even if the DA chooses to discount the class rosters and interview notes she admits are in her files, she need not discount the entire idea of using class rosters to corroborate or discount claims made by complainants in those particular classes. In the Friedman case, all the charges emerged from approximately 14 classes, so having a comprehensive roster of all the classes would be superfluous. Reliable data on children who attended classes together is sufficient to sustain an investigation into the charges police attributed to some boys in classes where other boys clearly state they witnessed no such abuse. And since the police alleged that the abuse took place in plain view of the rest of the class – rather than in secret or behind closed doors – the recollections of these witnesses are essential to evaluating the charges.

In addition to withholding from the Advisory Panel virtually all the relevant documents in the DA's file, the DA also prevented witnesses from having contact with the Advisory Panel, except in a few cases in which witnesses refused to meet otherwise. DA Rice also chose *not* to record or transcribe interviews with witnesses, foreclosing any opportunity to evaluate the accuracy of their briefings to the Advisory Panel, or the final Report. This policy resulted in the omission and mischaracterization of essential witness statements, as starkly illustrated in their interview of Scott Banks, law secretary to Judge Boklan in 1988. Banks -- a

talented attorney and one of the very few people who reviewed the original grand jury testimony in the case -- met with the DA's Review Team in person, and expressed tremendous doubts about the fairness of the Friedman prosecution. As summarized in a letter he later wrote to Nassau County Supreme Court Justice F. Dana Winslow to support Jesse Friedman's FOIL effort (described below) to get access to the case documents, Banks described his recollections of the case, as he had to the DA's Review Team when he was interviewed:

> The grand jury testimony of child witnesses, largely elicited with leading questions by the prosecutor, demanding "yes or no" responses, provided absolutely no detail…I recalled being troubled by the complete lack of medical testimony or medical evidence substantiating the allegations of extreme violent sexual abuse…the prosecution did not disclose witness statements, statements of children who denied being abused by Jesse Friedman, the children were subjected to 'counseling' arranged by law enforcement or the District Attorney's Office during the investigation of Friedman case, and some children may actually have been pressured by police investigators to get statements against Mr. Friedman. These questionable tactics, never presented to the court by the District Attorney's Office, are troubling to me, as they were to the Second Circuit, and raise substantial questions regarding the fairness of the proceedings…

(Kuby Aff. Ex. A). One would imagine such substantial doubts volunteered by the Judge's law secretary would be material evidence that should be shared with the Advisory Panel and the public, however they appear nowhere in the Rice Report. In fact, Banks's thorough interview by the DA's Review Team was reduced to a tiny misleading passage: "Judge Boklan's own law secretary, Scott Banks, a former public defender, confirmed that nothing in the lead-up to Jesse Friedman's

plea bargain offended his sense of fairness." (Kuby Aff. Ex. B at 86). This "summary" – like many false interpretations the DA's hopelessly biased Review Team presented to the Advisory Panel, and eventually in the body of the Rice Report, made it appear as though Banks were agreeing with the DA's position, and endorsing her finding, rather than conveying his long-held doubts about its fairness.

Just as Attorney Banks had felt compelled to write to Judge Winslow in an effort to correct the misrepresentation of his views in the Rice Report, Arline Epstein -- the only person to take contemporaneous notes throughout the original Friedman investigation, and who was originally convinced by police that her son had been molested by the Friedmans -- was so disturbed by the Review Team's mischaracterization of her interview with them, and of the documents she provided, that she composed and submitted to Judge Winslow a lengthy rebuttal detailing the errors. Here is an excerpt:

> The DA's Report ignores, discounts, and mischaracterizes much of my evidence. In fact, only one-fifth of my notes are included. Many of the missing notes contain information that weakens or undermines the Report's arguments.

(Aug. 19, 2013 letter from Arline Epstein to Justice F. Dana Winslow, Kuby Aff. Ex. D).

Another remarkable illustration of the DA's mischaracterization of evidence in the Rice Report comes from Barry Doe, whose grand jury testimony resulted in

ten charges against Friedman, including some to which he pled guilty. Doe's recantation was definitive:

> As God is my witness, and on my two children's lives, I was never raped or sodomized…I remember the cops coming to my house, and the cops being aggressive, and people wanting you to say almost what they wanted to hear. And, and I, I'll tell you I never said I was sodomized or, you know, I was never raped or, you know, molested. And I can't honestly tell you what other things I might have said….I never saw a kid get sodomized or molested. I was never sodomized or molested. And if I said it, it was not because it happened. It was because someone else put those words in my mouth.

(May 21, 2012 Interview Statements of Barry Doe, Kuby Aff. Ex. E, at 4). The blanket recantation of a key complainant would have been essential for the Advisory Panel and the public to see, *yet it appears nowhere in the Rice Report*, replaced by the following false statement: "[Complainant Barry Doe] actually believes that Jesse Friedman is guilty." (Kuby Aff. Ex. B at 109).

One of the DA's specious accusations against Jesse Friedman reveals her willingness to smear Jesse Friedman with false claims, in an effort to further damage his reputation by making him appear to be a pervert. The Rice Report claimed that Jesse Friedman "wrote," "possessed," and "distributed" repugnant pornography involving incest, bestiality, and child rape while in prison, and was punished for it. (Kuby Aff. Ex. B at 50-51). The DA's office did not merely include this false claim in the Report, but highlighted it in press releases to sway public opinion against Jesse Friedman. Within a few days of releasing the report,

the DA's publicity officer John Byrne distributed copies of pornographic stories he alleged had been created by Friedman, to newspapers including the New York Post, causing sensational headlines. When asked by the press to substantiate the false claim that Jesse Friedman had anything to do with such stories, Byrne skirted the issue: "It's telling that Friedman's principal defense to a 155-page report documenting the integrity of his conviction is his quibbling over a few paragraphs concerning the degree of his involvement in possessing this material." (June 28, 2013 email from John Byrne, Kuby Aff. Ex. F). Even when caught in a lie, Byrne's response restates the DA's demonstrably false claim that Jesse had some "involvement in possessing this material." Id. But Byrne's minimization of the importance of the false claims – describing Friedman's objection as a mere "quibble" -- is belied by the fact that the DA and Byrne himself thought the claims were powerful enough to (a) include them as a key talking point in the Rice Report and in press releases, (b) speak to the press extensively about them, and (c) email the stories directly to tabloid journalists, attributing them to Jesse Friedman. As a professional public information officer, Mr. Byrne was well aware of the impact it would have on Jesse's ability to have his case fairly reviewed, for the DA to tell the public that Jesse, who is trying to prove his absolute innocence, actually wrote pornography in prison that celebrates the very kinds of sexual crimes of which he was accused.

When challenged on the statement in a later court hearing, rather than admit the mistake, the DA's representative Robert Schwartz accused Friedman's counsel of forging the documents that disproved it. (Kuby Aff. Ex. C at 43:4-6). After finally investigating the claim, the DA's office later apologized for the accusation, and conceded that Friedman did not possess the pornography, could not possibly have penned the pornography, and was never punished for it in prison. (Transcript of Hearing, Friedman v. Rice, Index No. 40015-13 (Sup. Ct. Nassau Cty. Aug. 22, 2013) at 23:5-8, Kuby Aff. Ex. G). Of course the DA did not inform the press that her claims had turned out to be false, and no retraction was printed for the salacious stories, which had by then been reproduced dozens of times in other publications.

Judge Winslow, presiding over the related FOIL hearing described below, was appropriately outraged by these deceptions, admonishing the DA in court:

> We can't, we can't function in the judicial system in this fashion. This is a country that at this point has no – and I emphasize that – has no feeling of credibility towards its institutions. That starts with the lowest and goes to the highest. We don't trust our institutions. You have to show, you have to prove, and that's what the country is saying.

(Kuby Aff. Ex. G at 25:1-9).

C. FOIL Request And The Article 78

After the DA's office rebuffed Friedman's efforts to review the materials being reviewed by the prosecution, and two years after the conviction review

began, Friedman filed a Freedom of Information Law ("FOIL") request for the documents being reviewed. That was denied. Friedman appealed to the DA's appeals officer, who similarly denied the request. Friedman then challenged that determination under Article 78 of the Civil Procedure Law and Rules, New York Civil Rights Law 50b, and Criminal Procedure Law § 190. Justice F. Dana Winslow of the Nassau County Supreme Court requested from the District Attorney the case documents at issue, never before revealed to Friedman or to the Second Circuit. His findings echoed and emphasized concerns about the reliability of all of the statements given by the children:

> The Court, after reading numerous witnesses' statements, none of which were written by the witness him or herself, all of which were written by someone else, finds that even the people -- and they are people, no longer children -- who took the position that they did not want their name disclosed, had some glaring discrepancies in parts of the statements given. Most particularly what comes to mind is a statement given at one point in time and then -- to one detective and then later given to another detective thereafter. There was a rather substantial difference.

(Kuby Aff. Ex. G at 31:17-32:2).

After reviewing the documents and holding multiple hearings on the issue, Justice Winslow conveyed his grave concerns about the exculpatory nature of the materials withheld from Friedman, and ordered the disclosure of "every piece of paper" with Friedman's name on it. (Kuby Aff. Ex. G at 36:21). That decision is

pending the prosecution's appeal at the Second Department of the New York Appellate Division.

Statement of Facts in Support of Jesse Friedman's Innocence

Given the absence of any physical or medical evidence, or any prior complaints, the case against Jesse Friedman hinged entirely on the statements of (1) child witnesses as reported by police, (2) Ross Goldstein, and (3) Jesse Friedman. The evidence indicates all three of these were coerced.

THE COERCION OF THE CHILD "WITNESSES"

A. The Second Circuit's Findings Have Been Confirmed By Subsequent Investigation

In its 2010 decision, the Second Circuit noted that students and parents "recall with great consistency that detectives employed aggressive and suggestive questioning techniques to gain statements from children who attended Arnold Friedman's computer classes." Friedman, 618 F.3d at 146. Detectives "generally entered an interview with a presumption that a child had been abused and refused to accept denials." Id. It found troubling that when a child denied being abused, detectives would "visit the child repeatedly for follow-up interviews, each lasting as long as four hours, until the child admitted abuse." Id. The Second Circuit was similarly concerned that detectives "often insisted that they knew that the child

they were interviewing had been abused." Id. at 146-147. They quoted recanting complainant Steven Doe (Brian Tilker[3]) who recalled:

> I remember that they made specific suggestions to me about things that they believed happened in the computer classes, and that they told me repeatedly that other students in my class had already told them that they had been abused, and that they were certain that in fact I had also been abused and that I should tell them so.

Id. at 147; Dec. 23, 2003 Affidavit of Brian Tilker (Kuby Aff. Ex. H) at para 5. These inappropriate techniques expanded further, including "taunting the children for failing to offer the desired answers"…rewarding "cooperative children with pizza parties and police badges"…all, as the Second Circuit saw it, as a "strategy…designed to force children to agree with the detectives' story." Friedman, 618 F.3d at 147.

These techniques weren't merely cruel to the children – they were designed to "assist children in recalling abuse" which "an extensive body of research suggests can induce false reports." Id. at 156. The Second Circuit viewed the techniques used in this case in the context of research into large scale child abuse investigations, which tend to rely on five separate techniques that are known to induce false reports, and were cited in the Second Circuit Decision. Friedman, 618 F.3d at 156. Those are:

(1) "Suggestive Questioning,"

[3] Actual name used with permission.

(2) "Other People" (telling the child that the interviewer has already received information from other people regarding the topics of the interview),

(3) "Positive and Negative Consequences" (responding positively to accusations of abuse and negatively to denials of abuse),

(4) "Asked and Answered" (re-asking a child a question he or she has already unambiguously answered), and

(5) "Inviting Speculation."

Id. at 157. All five of these methods cited by the court as scientifically demonstrated to create false reports are in the Court's words "remarkably similar" to those used to elicit false testimony in this case.

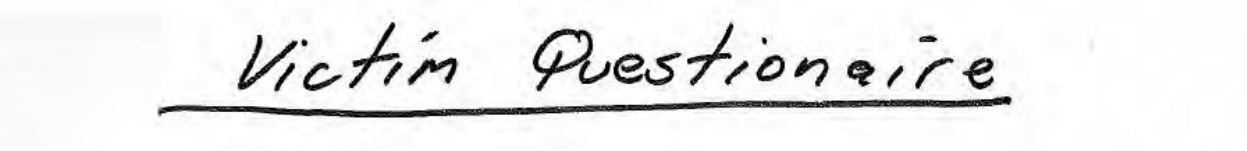
Such methods are deemed unreliable precisely because they can induce the sort of false reports at issue here. For example, research shows that "children often change their answer when asked the same question more than once during an interview, either because they assume that the first answer was incorrect or because they would like to please the adult interviewer." Id. at 157. That process is only amplified when the techniques are used in combination. The Second Circuit noted that children exposed to the "package of techniques falsely alleged wrongdoing over three times as often" as children who were not. Id. Ultimately, the Second Circuit concluded that there is "substantial evidence that flawed interviewing techniques were used to produce a flood of allegations…" Id. at 158.

The Rice Report, combined with other evidence obtained by the defense since the filing of Friedman's original § 440.10 motion, proves that all of the

improper techniques cited by the Second Circuit were universally employed by the police and investigators to coerce statements from the children.

1. Suggestive Questioning

In the Rice Report, the prosecution revealed for the first time that Detective Sergeant Frances Galasso, the head of the 1988 investigation, compiled a list of questions and distributed it to detectives to assist them in gathering statements. The very title of the document, "Victim Questionnaire," instantly suggests to the interviewer, parents, and the child that every child interviewed is a "victim."



Here is a sampling of the dozens of suggestive questions offered in Galasso's questionnaire:

- Did Mr. Friedman ever take you to the bathroom or come into the bathroom while you were there?
- Did anyone ever see Mr. Friedman not fully clothed?
- Have you ever seen anyone else in the class being touched?
- Has anyone read any books to you showing pictures of naked people?
- Ask about the couch in the other room. Is it open a lot like a bed?

Victim Questionnaire, Rice Report Appendix Doc 21, Kuby Aff. Ex. I. The DA's belated admission that this questionnaire and its raft of suggestive questions were

used does not come close to adequately describing the full range of abusive and improper interrogation methods used by the police, nor their disastrous results.

Detective Squeglia acknowledged that when he questioned the alleged Friedman victims, he not only suggested the answers, he gave the children no option but to agree with them:

> If you talk to a lot of children, you don't give them an option, really. You just-- you-- you be pretty honest with them. You have to tell them pretty honestly that "We know you went to Mr. Friedman's class. We know how many times you've been to the class." We-- we-- you know-- we go through the whole routine. "We know that there was a good chance that he touched you or Jesse touched you or somebody in that family touched you in a very inappropriate way."

(Kuby Aff. Ex. B at 65). The Rice Report admits the use of a related, highly-suggestive tactic:

> When faced with a child who would "totally ignore you," Detective Squeglia explained that he would appeal to the child's trust in authority ("we'll deputize you and you know— I like cops— do you like cops?"), and leave, asking the child to "think about it."

(Kuby Aff. Ex. B at 66). Of course, this limits a child's ability to choose any option other than "I like cops." Barry Doe confirmed the police "wanting you to say almost what they wanted to hear." (Kuby Aff. Ex. E).

2. Other People

The Friedman case detectives acknowledge having used this technique, which involves telling a child what other children have supposedly already said. It is well established in social science that this creates tremendous bias in how

children respond during interviews. (Ceci, Stephen J.; Bruck, Maggie. 1995. Jeopardy in the courtroom: A scientific analysis of children's testimony, Washington, D.C.: American Psychological Association). An admission made by Friedman Detectives in the Rice Report shows this is precisely what occurred:

> …neither [Officer Durkin], nor her partner Detective Merriweather, would confront the child with what other witnesses had said—though they might have said something along the lines of, 'Jimmy said Arnold was not nice,' a strategy that in some cases produced results.

(Kuby Aff. Ex. B at 87).

Another statement, from recanting complainant Steven Doe (Brian Tilker) confirms the use of "other people" as a coercive tool:

> I remember that they made specific suggestions to me about things that they believed happened in the computer classes, and that they told me repeatedly that other students in my class had already told them that they had been abused, and that they were certain that in fact I had also been abused and that I should tell them so.

(Kuby Aff. Ex. H, at para. 5). Detective Squeglia also admits to using the technique described by the Second Circuit as "other people" in his interviews with children:

> So you don't really give them too much of an edge to say, 'Well we're here to find out about… We already know about… We want to hear what you have to say about it. And we know he probably didn't touch you. He probably touched somebody else.' You see? And then once they realize that other people have come forward, it's not easy but it does work.

(Interview statements of Detective Anthony Squeglia, Kuby Aff. Ex. J).

3. Positive and Negative Consequences

Using this technique, the detective responds positively to accusations of abuse and negatively to denials. He praises and rewards boys for saying what he wants them to say and reprimands them when they contradict his views. The detective indicates that ***positive consequences*** or ***negative consequences*** are forthcoming depending on the child's response. There is much evidence that this technique was used in the Friedman case. Most recently and notably, the evidence appears in the Rice Report itself, where the prosecution admits what it had long denied:

> Police used tactics on children that were "unprofessional, unfair, and cruel."
>
> Boys were told that failure to disclose would affect their future sexuality, cause them to be homosexual, or to become abusers themselves.
>
> Police warned children they would "suffer lasting psychological consequences later in life if they do not disclose abuse."

(Kuby Aff. Ex. B at 66, 71-72). It is hard to imagine a technique better designed to coerce a false statement from a young boy in 1987 than the police telling him that the failure to "disclose" will result in him becoming a homosexual and a child abuser when he grows up.

Police also provided "positive consequences" by offering rewards to cooperative students. Detective Squeglia admitted he would befriend children and even offer to "deputize" them to induce them to make allegations. (Ex. B (Rice

Report) at 66). Student Michael Epstein says he saw complainant Barry Doe at school with "a fake police badge, like junior police or something like that, that the, that the police had given him, or the DA or somebody, as a result of having testified." (Transcript of Recorded Interviews of Michael Epstein, Kuby Aff. Ex. K, at 9). The Rice Report concedes this tactic completely as well, noting: "Police gave some boys rewards to gain their cooperation, including police badges as rewards for cooperation." (Kuby Aff. Ex. B at 71-72).

4. Asked and Answered

Here, a questioner repeatedly asks a child the same question the child has already unambiguously answered, indicating his previous answers to the question were unacceptable, and encouraging the child to try new answers in the hope of satisfying the questioner. The intensity of the questioning increases until an acceptable answer is produced. Research shows that "children often change their answer when asked the same question more than once during an interview, either because they assume the first answer was incorrect, or because they would like to please the adult interviewer." Friedman, 618 F.3d at 157. While many of the Friedman computer students and their parents had clear recollections of detectives repeatedly asking the same questions, the best example of ***"Asked and Answered"*** comes from Friedman case Detective Wallene Jones in her interview with attorney David Kuhn:

> Jones described one instance in which it took fifteen visits to a child's home before he declared that he had been abused. In interview sessions that lasted as long as four hours, the boy repeatedly denied being the victim of abuse. Jones added, "for a long time he had nothing to say, but we knew." On one occasion the boy jumped up and down, screaming, 'I have nothing to tell you! Nothing happened!' But by then, we already knew," Jones said, "so we kept coming back after that until he told us**.**

(Jan. 6, 2004 Affirmation of David Kuhn, Kuby Aff. Ex. L, at para. 9). Jones's unfiltered description of the anxiety felt by the child at the detective's refusal to accept his denial in the face of her certainty provides stark insight into how children can be traumatized by such aggressive interview techniques.

Detective Jones herself explains why she subjected children to this kind of pressure: "we assumed all of the children had been sexually abused there." (Id. at para. 5). Detective Jones explains that the parents of three of the boys she interviewed had refused to allow their children to sign the statements she had written for them, calling into question the veracity of all the statements detectives drafted. Id. at para. 8; see also Kuby Aff. Ex. B (Rice Report) at 68.

The devastating effects of such relentless police questioning is attested to by Friedman complainant "Kenneth Doe," today a vice president at an investment management firm. Kenneth Doe came forward in 2013, when Friedman's attorneys (at the prosecution's insistence), served him with Friedman's Article 78 petition. He avers that none of the accusations made by him were true, and that he knew this at the time. But under intense police pressure, he "just folded:"

> I recall clearly that police investigators came to my home repeatedly to question me about what had happened in the computer classes. The police repeatedly told me that they knew something had happened, and they would not leave me alone until I told them. As a result, I guess I just folded so they would leave me alone.

(Confidential May 20, 2013 letter from Kenneth Doe to the Friedman Case Review Panel, Kuby Aff. Ex. M, at 1-2).

Complainant Barry Doe, whose recantation is described earlier, is today a surgeon with a thriving private practice. In repudiating the statements police attributed to him in 1987, he specifically explained how police use of the "Asked and Answered" technique escalated into simply "putting words in [his] mouth."

> I never saw a kid get sodomized or molested. I was never sodomized or molested. And if I said it, it was not because it happened. It was because someone else put those words in my mouth.

(Kuby Aff. Ex. E at 6; see also Kuby Aff. Ex. G (Aug. 22, 2013 hearing transcript in Friedman v. Rice) at 4:9-10).

5. Inviting Speculation

Jesse Aviram, a former Friedman computer student who witnessed no abuse, described to the DA Rice's Review Team how police invited speculation about his experiences in the Friedman computer classes. Detectives asked if Arnold Friedman put his penis on Aviram's back. When Aviram said that he did not, the officers asked if he might not have been aware of it when it happened." (Kuby Aff. Ex. B (Rice Report) at 71). Asking a child if something might have occurred

without his knowledge is a textbook example of "inviting speculation" and cannot have any probative value. It also increases the pressure on the child to say what the detectives want him to say by offering him no choice but to admit that anything a detective asserts or asks *could* have happened.

Though Jesse Aviram is one of many former Friedman computer students who insist that no abuse took place in the Friedman classes, in one way he is absolutely unique. Though the DA refers to Mr. Aviram only as a "Nassau County Employee," what the DA withholds from the reader is that the young man is actually an *Assistant District Attorney in the Nassau County DA's office, reporting to DA Kathleen Rice.* ADA Aviram's statements about "forceful and leading" questions used by the police were not the statements of a civilian unfamiliar with police tactics – they were the statements of a trained prosecutor who was using these terms as terms of art, well aware of the unreliability and impropriety of interrogating children in this manner.

THE USE OF THE COERCIVE TECHNIQUES PRODUCED INCREASINGLY INCREDIBLE CHARGES TO WHICH FRIEDMAN PLED GUILTY.

A. The "Bizarre, Sadistic, and Logistically Implausible"

The Second Circuit characterized the charges against Friedman as increasingly "bizarre, sadistic, and even logistically implausible." Friedman, 618

F.3d at 147-148. Yet at the end of DA Rice's "reinvestigation," she asks us to accept the following as "realistic:"

- "Daniel Doe'" was abused more frequently than once every 15 minutes
    - Computer student Daniel Doe alleged that during his 10-week course (Basic I Spring 1986) he was violently abused multiple times in each session. Alleging that an average of six crimes were perpetrated against this one boy in each session, implies that a crime was occurring *every 15 minutes.*
    - Daniel Doe's allegations are completely uncorroborated by eight classmates in the Basic I, Spring 1986 Class, and two fellow students in that class unequivocally state that no abuse took place.
    - The DA explains the fact that these direct witnesses to the computer classes state no abuse took place, by saying that "make-up sessions were given due to absences, and, as such, some students may not have been present when abuse is alleged to have occurred." (Kuby Aff. Ex. B (Rice Report) at xii).
    - If Daniel Doe's abuse occurred only during infrequent "make-up sessions," crimes against Daniel Doe would have to have occurred *much more frequently* than every 15 minutes.
    - In the wake of these attacks, Daniel re-enrolled for the advanced class, where he said he was abused 68 times.
    - On 11 occasions the indictments indicate it was ten year-old Daniel Doe who anally sodomized Jesse Friedman and Ross Goldstein.
- As many as 14 people crowded into the small computer room to engage in violent "naked group games" for years without detection**.**
    - Games included versions of "Simon Says," "Leapfrog," and "Nude Limbo" in which all members of the class were naked and many were repeatedly sodomized in plain view of the others.
    - In one game, "adults would jump off a couch, and attempt to anally sodomize children" upon landing. (Kuby Aff. Ex. B (Rice Report) at 26).

The following figures, which are scale and true representations of the small room in which the Friedman computer classes occurred, demonstrate the absurdity of these claims.

Figure 1: Computer classroom in the Friedman home

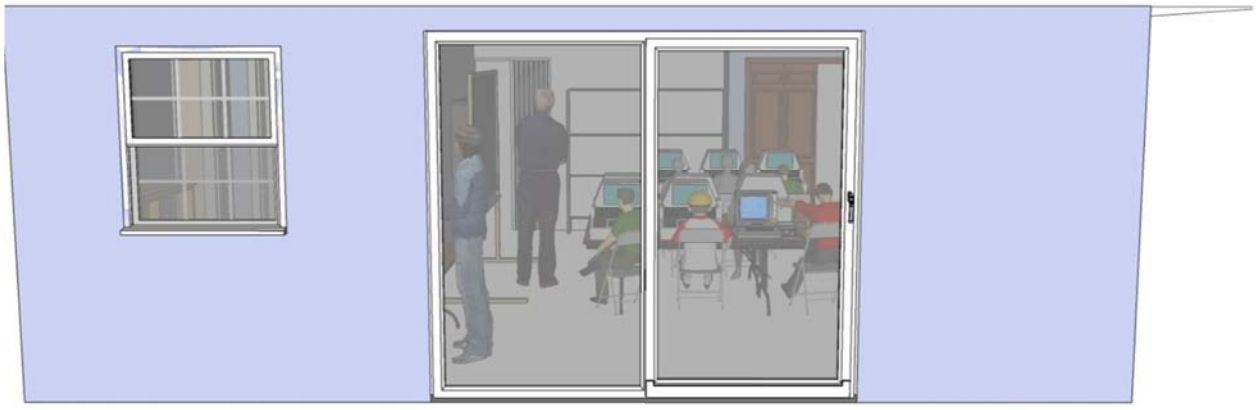


Figure 2: View from outside classroom

(Gavin de Becker and Emily Horowitz, "Destruction of Innocence, The Friedman Case: How Coerced Testimony & Confessions Harm Children, Families & Communities for Decades After the Wrongful Convictions Occur", National Center for Reason and Justice (May 2013), Kuby Aff. Ex. N, at 7).

The single small room, cluttered with nine computer terminals, multiple disk drives, printers, desks, and instructional equipment, render the People's claims unrealistic. When asked about the plausibility of the claims of sexual games, computer student Michael Epstein stated:

> It's not plausible at all. It was a crowded room. There were aisles but it was a pretty crowded space. And it was messy. Just disks and printouts and stuff. I never thought those games sounded at all plausible. Even as a kid….The games always sounded completely impossible.

(Kuby Aff. Ex. K at 11).

The proximity of the neighbor's house to the Friedmans' home, Kuby Aff. Ex. O, illustrates that if one stands in the back yard of the neighbor's house, one can see directly into the computer classroom. There were never reports from any adult who claimed to observe anything improper in the computer classroom. On the contrary, there are numerous accounts of parents freely entering the computer classes, such as these:

- **Arline Epstein:** "In dozens of pickups at the Friedman house, I never witnessed or heard the slightest evidence of anything untoward."

- **Joan Blaha:** "I can't remember if it was religion or hockey. But whatever it was, I had to pick him up a little early from class…And take him to wherever the next event was. So I would go into Friedman's house and pick him up…"

  Q: "So you didn't see anything untoward or strange?"

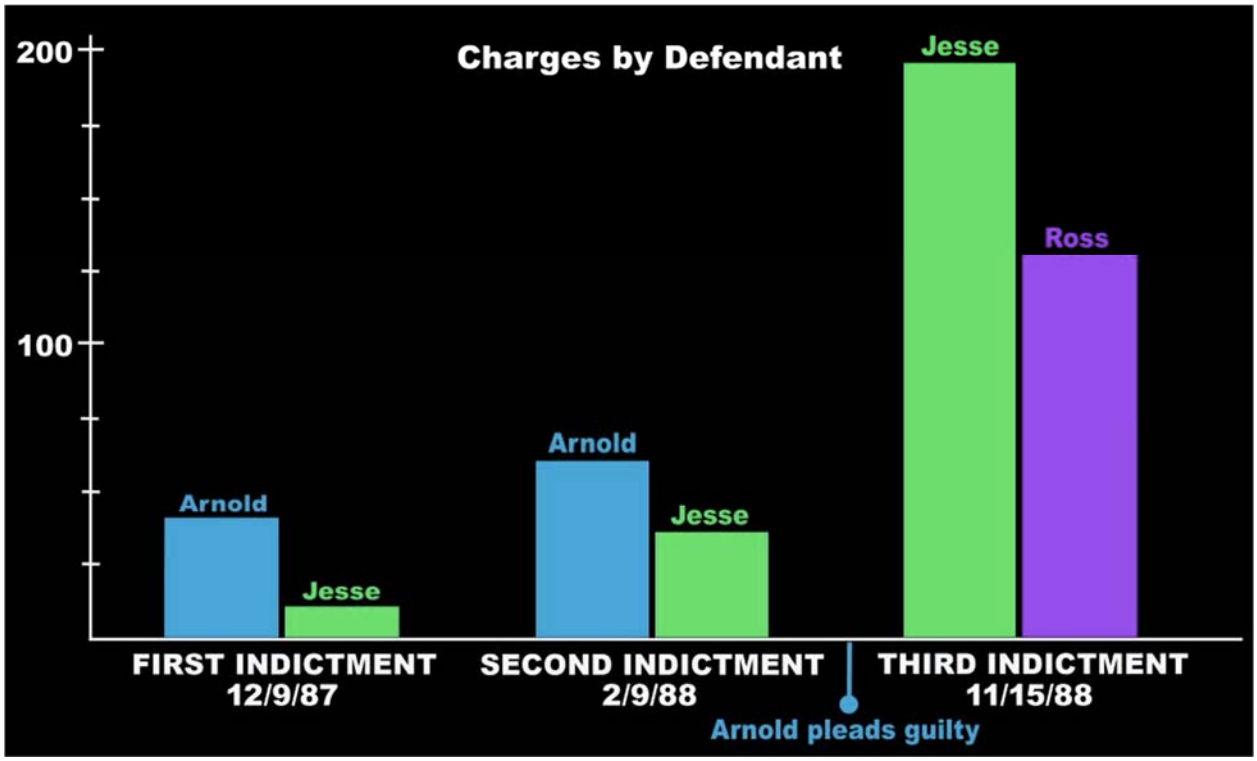
  Joan: "Absolutely not. I didn't see anything."

- **Richard Tilker:** "If these boys had been violently abused during each computer class, I would have seen some evidence of their behavior on any of the many occasions on which I pick my son and his friends up at the classes."

(Recorded Interview Statements of Arline Epstein, Kuby Aff. Ex. P; Recorded Interview Statements of Joan Blaha, Kuby Aff. Ex. Q; Dec. 9, 2003 Affidavit of Richard Tilker, Kuby Aff. Ex. R, at para. 11).

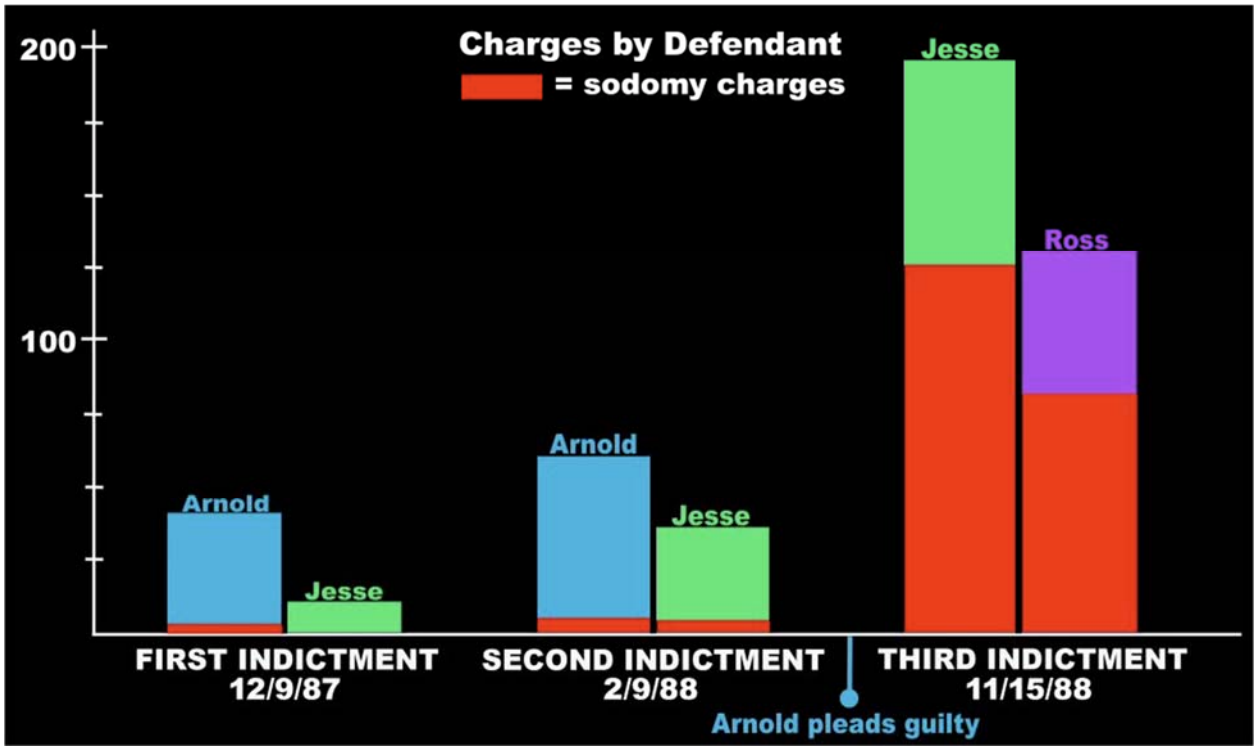
B. To Increase Pressure On Jesse, Police Returned To The Same Children For Follow Up Interrogations, Until Abuse Claims Had Escalated Into The Hundreds

As the case wore on, and Friedman's attorney indicated that he was preparing for trial, police increased pressure for a guilty plea by adding a second and third indictment. Abuse claims multiplied, and became more fantastic, as many of the same children participated in successive police interviews. The graph below illustrates the increasing number of charges by indictment.



Most striking was the increase in the allegations of sodomy. When students included in the first two indictments were revisited by police months later, police alleged that they spontaneously recalled *four times as many incidents of abuse and 36 times as many sodomies* as they had months earlier.

In the first indictment, Jesse was not charged with any counts of sodomy, and Ross Goldstein was not charged at all. By the time of the third indictment, sodomy counts made up the majority of the charges against both young men:



(Nassau County 1988 Indictment Nos. 67104, 67430, 69783, Kuby Aff. Ex. S).

Former FBI Special Agent Kenneth Lanning, a leading expert in the field of "child sex rings"[4] has investigated hundreds of such cases. He describes the tendency for allegations to inexplicably grow in number and severity, as hallmarks of "false cases" of child abuse. (Aug. 4, 2013 Affidavit of Kenneth Lanning, Kuby Aff. Ex. T, at para. 19). He states that as a rule, "valid cases tend to get *better* and

[4] Lanning was a special agent with the Federal Bureau of Investigation for more than 30 years until he retired in 2000. He consulted on or evaluated thousands of cases involving the sexual victimization of children during that time, and for 20 years conducted training, research, and case consultation concerning the sexual victimization of children. He is the 1990 recipient of the Jefferson Award for Research from the University of Virginia, the 1996 recipient of the Outstanding Professional Award from APSAC, the 1997 recipient of the FBI Director's Annual Award for Special Achievement for his career accomplishments in connection with missing and exploited children, and the 2009 recipient of the Lifetime Achievement Award for Outstanding Service from the National Children's Advocacy Center. (Aug. 4, 2013 Affidavit of Kenneth Lanning, Kuby Aff. Ex. T, at para.'s 1-7).

false cases tend to get *worse* with investigation." Id. He becomes "concerned when as an investigation progresses, the number of alleged offenders keeps growing and the allegations get increasingly more bizarre and atypical." Id. The Friedman case epitomizes this phenomenon.

C. The Evolving Charges Of Fred Doe.

In reviewing original statements attributes to the complainants, the first person outside of the DA's office ever to have done so, Nassau County Supreme Court Judge Winslow found that all of the statements were written by someone other than the children themselves, and that there were an alarming number of discrepancies. (Kuby Aff. Ex. G (Aug. 22, 2013 hearing) at 31:17-32:2). The Rice Report further corroborates this by providing evidence that the children did not compose their own statements; every assertion in this case emerged from an unrecorded interview, and was composed into statement-form by detectives. The prosecution has withheld all of these statements from Jesse's defense (and from the Advisory Panel) except one, given to Jesse's lawyer in 1988. The statement was composed by Detective Merriweather on behalf of complainant Fred Doe, and is particularly revealing.

Though the police described the statement as a single, comprehensive story, the boy was visited *five* times over a period of weeks and his charges evolved over that time. In early interviews, police wrote that Fred Doe claimed Arnold gave

him "bad hugs" that hurt, and that Arnold would hug him from behind and rest his head on his back, and also reported seeing a Polaroid camera in the Friedman home, in a big room with a couch. (Kuby Aff. Ex. B (Rice Report) at 12-13, 18, 24, 26). It wasn't until two weeks later that Merriweather drafted a written statement in which Fred Doe allegedly recalled being anally raped by Arnold and Jesse Friedman. Thereafter, he testified before the grand jury. After Jesse refused to plead guilty, police brought Fred Doe forward to make a brand new series of charges.

Five months after Merriweather drafted Fred Doe's original written statement, Merriweather submitted a new statement on behalf of Fred Doe, in which the boy recalled having seen both men anally sodomize other children during the class. Id. at 24.

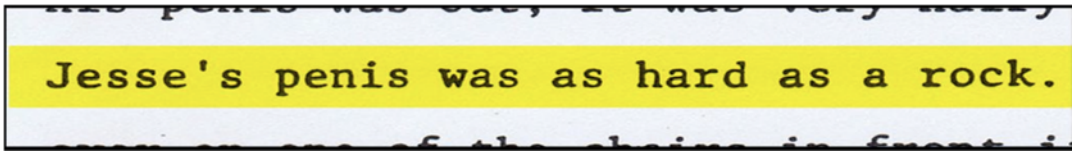
Five weeks later, Merriweather and Squeglia submitted yet another claim on the boy's behalf: *that three of Jesse's friends, also present in the class, had held him down while Jesse sodomized him.* Id. at 26. When Fred Doe was later taken to a police line-up containing a single suspect (alongside others who had nothing to do with the case), the boy identified *two* young men in the line-up: Ross Goldstein and another boy who inexplicably was never charged. There is no explanation for why Doe's false identification of a second assailant did not undermine the DA's confidence in the boy's identification of Ross Goldstein.

In addition to the manner in which the statement was procured, the content of Doe's statement is equally suspect. Here is just one example in which he describes being threatened by Jesse: "Jesse had told me if I didn't take my pants down that I would never be allowed to come back again to computer class." (Dec. 1987 Statement of Fred Doe, Kuby Aff. Ex. U). Expert Lanning points out that it is illogical that a child victim of violent and repeated rape would be motivated to remain silent *because of a threat of not being allowed to return to the very computer class in which the rapes were occurring.* (Kuby Aff. Ex. T at para. 16). Because DA Rice elected not to utilize a single expert witness in its conviction review, Lanning was the first and only expert in mass child sexual abuse to review any of the record in the Friedman case.

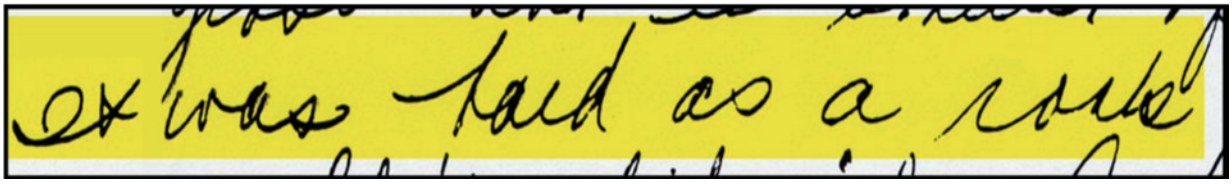
Last, portions of Fred Doe's statement appear to have been not only drafted by Detective Merriweather, but also conceived by him, and in his own language. A year after the Friedman prosecution, a strikingly similar case was investigated by the Friedman Detectives, under the direction of the same head of sex crimes, Sergeant Frances Galasso. After that case was resolved with a guilty plea, a civil jury found the defendant bus driver Robert Izzo innocent, citing coercive questioning by the same Detectives who had questioned the Friedman students, and the prosecution was required to make the witness statements available. The wording of statements taken by Detective Merriweather in the Izzo case is

strikingly similar to the wording of those he and his partner procured in the Friedman case. Below is a comparison of one such element:

Statement from eight-year-old Fred Doe to Detective Merriweather in Friedman Case



Statement from seven year old girl to Detective Merriweather and his partner in Izzo Case



(Kuby Aff. Ex. U (Fred Doe statement); Oct. 16, 1989 Witness Statement recorded by Det. Merriweather in Izzo case, Kuby Aff. Ex. V). Experts point out it is highly unlikely a seven or eight year old would use the decidedly adult phrase "_____'s penis was as hard as a rock." It is an almost impossible coincidence two children of that age would volunteer the phrase, and to the same detective.[5]

D. "Other Abusers" Including A Fictional Movie Character, Begin To Appear In The Police Narrative.

Amid the police and prosecutorial frenzy to "find" more "victims," and to obtain more charges from existing complainants, even the police themselves must

[5] As discussed at greater length at p. 120, *infra*, none of Fred Doe's classmates, two of whom were complainants who have since recanted, corroborate any of the alleged abuse reflected in Fred Doe's written statements.

have entertained doubts about the reliability of their evidence, as children began to describe a plethora of other "helpers," which included a fictional character from a popular movie.

Complainant Richard Doe, whose testimony resulted in six charges, including some to which Jesse Friedman pled guilty, disclosed to the police an additional "helper" in the Friedman class. According to Richard Doe, this person was named "Snake" and was a tattooed, menacing man who also abused children including Michael Epstein. Presentation of Notes of Arline Epstein to Friedman Case Review Panel, Kuby Aff. Ex. W, at A-17-20. Though police enlisted parents – including Arline Epstein -- to canvass the area for Snake, no such person was ever found. However, Ms. Epstein later discovered that a tattooed, menacing man named "Snake," is actually a fictional character played by Kurt Russell in the then-popular movie *Escape from New York*. It is telling that the Rice Reports excludes the Snake story; to include it would undermine the credibility of complainant Richard Doe (the DA's "Witness 13") whom the DA cites 18 times in the Report as one of the only three complainants who "stand by their allegations of abuse."

It is not clear why the police and prosecution chose to accept as true Richard Doe's accusations against Jesse Friedman, but to ignore his obviously fictional accusations about "Snake." When a witness simultaneously makes an accusation the prosecution knows to be false or phantasmagorical in conjunction with one she

believes to be true, it obviously calls into question the witness's credibility for any purpose.

The Rice Report reveals, for the first time, that the testimony of alleged victims was riddled with false allegations, with multiple alleged victims claiming an ever-increasing number of different assailants who allegedly participated in or observed the attacks. The Rice Report, commencing on page 28, under the subheading "Police Identify Three Potential Accomplices," notes that after repeated interrogations, four students in one week, named two additional rapists who participated in the abuse. (Kuby Aff. Ex. B at 28). Various children then allegedly selected these and possibly additional attackers from photo arrays, yearbooks, and lineups. Id. at 28-30. The Rice Report unhelpfully explains that these individuals were not prosecuted due to "insufficient evidence," Id. at 30, and the source document cited in the Appendix is equally non-illuminating. (Feb. 15, 1989 Interdepartmental Memo from Barry Grennan to Fran Galasso, Kuby Aff. Ex. X).

But the nature of the evidence against these other accused-but-uncharged rapists -- multiple victim accounts elicited after intense and repeated interrogation -- does not appear to differ in any material respect from the nature of the evidence used to indict Friedman and obtain his guilty plea. There must be specific factual reasons why the accusations against other suspects were discounted and deemed

insufficient, yet the same type of allegations made by the same alleged victims against the Friedmans were fully credited -- then and now. It is likely the actual witness statements, in their various iterations, will explain this otherwise baffling discounting of the false statements of alleged victims.

Returning to Fred Doe (identified as "Witness 17" in the Rice Report), the boy was interrogated at least five times over five months by Detective Merriweather. It was only in the *fifth* round of questioning that Merriweather elicited a new and important admission: that Fred Doe had neglected to mention in four prior interviews the presence of *three additional violent teenage assailants* in the room, (previously unmentioned friends of Jesse's), including Ross Goldstein. (Kuby Aff. Ex. B at 26). These additional two alleged child rapists were never prosecuted, even though Fred Doe was said to have identified them in a police lineup. Id. at 31.

Similarly, the Rice Report reveals that James Doe (identified as "Witness 11" in the Report), one of the three alleged victims who apparently still claim Jesse Friedman abused them, was untruthful with investigators when questioned in 1988. The DA's report explains that there was "an additional individual he had specifically named as an abuser in 1988." Id. at 104. That individual is Ross Goldstein. When speaking to the Review Team today, however, James Doe claimed that he was abused by the Friedmans only, withdrawing his claims about

Goldstein. Id. While the Report mentions this as a small factual detail, it is actually exceedingly important: it confirms that James Doe either lied to police about the crimes he alleged, or that his interrogator did not accurately record the boy's statements. Either way, it is a major inconsistency that undermines the veracity of one of only three alleged victims cited in the Rice Report as maintaining their belief that they were abused by Jesse Friedman. This inconsistency requires examination, as do the numerous additional witness statements in which child rapists appear to inexplicably pop in and out of existence.

NUMEROUS THERAPISTS, USING NOW DISCREDITED TECHNIQUES, WORKED IN CONCERT WITH LAW ENFORCEMENT TO HELP THE CHILDREN "RECALL" ABUSE.

As noted by the Second Circuit:

> [Mass sex abuse] prosecutions were largely based on memories that alleged victims 'recovered' through suggestive memory recovery tactics, including those (Friedman) claims were used in this case. Indeed, the dramatic increase in conspiratorial charges of child sexual abuse has been traced to a relatively small group of clinical psychologists who supported the psychoanalytical notion of 'repressed memories' and encourages patients to employ extensive 'memory recovery procedures' to 'break through the barrier of repression and bring memories into conscious awareness.' Popular memory recovery procedures included hypnosis, age regression, dream interpretation, guided abuse-related imagery, use of photographs to trigger memories, journaling, and interpretation of symptoms as implicit memories. ***These procedures and others commonly employed have great potential to induce false memories.***

> Hypnosis, for example, has been shown to produce bizarre and impossible memories, including memories of ritualistic satanic abuse, memories from early infancy, memories from past lives, and memories from the future. ***The prevailing view is that the vast majority of traumatic memories that are recovered through the use of suggestive recovery procedures are false, and that almost all-if not all-of the recovered memories of horrific abuse from the late-1980s and early-1990s were false.***

Friedman, 618 F.3d at 156 (emphases added). The Friedman Court continued: "[w]hen viewed in its proper historical context, (Friedman's) case appears as merely one example of what was then a significant national trend." Id. at 158.

The evidence strongly supports the Second Circuit's analysis. The Nassau County DA and the Review Team have repeatedly argued that no therapy was provided to the alleged victims in the Friedman case until after the case had been adjudicated, and therefore the collaboration between police and therapists had no impact on the children's memories. This is not true. Documents show that police and parents began to arrange therapy for the alleged victims *within four days of Jesse Friedman's arrest, months before the vast majority of grand jury testimony.* (Boccella, Kathy, "Parents Seek Therapy for Abuse Victims," Newsday, November 29, 1987, pg. 6, Kuby Aff. Ex. Y). One sex abuse "expert" publicly warned that what happened to the children in the Friedman class was "probably the most devastating, all pervasive combination of trauma outside of a Holocaust situation that a kid could go through." The therapeutic community, based entirely on police-provided news accounts of the arrests of Jesse and Arnold Friedman,

expressed no skepticism about the reliability of the accounts provided by the police and dutifully entered the case in the hope of helping the children. Id.

Arline Epstein recalls that:

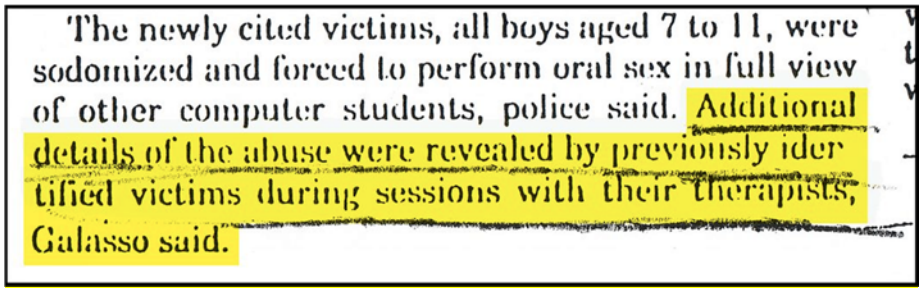
> The parents did not wait to give their children therapy. Many parents sought out individual therapists at the time that this, this occurred, or soon thereafter. So they felt that it doesn't, if group therapy is coming up fine, we'll participate in that. But in the meanwhile we want our children to have the benefits of therapy.

(Kuby Aff. Ex. P).

Detective Squeglia freely admitted that therapists were involved with law enforcement from the start:

> During, during the parents' meetings, we, we recruited a therapist. She got on board. She was there for all the family meetings, and offered free counseling, and you know talked, just to talk to. And we found ourselves being counselors. We find that a lot.
>
> The therapist was Sandra Kaplan. Yeah. She was good. She was up from that area, if I'm not mistaken. She, she popped up quite often. Very, very vocal. Very, very, I found her to be very good.

(*Capturing the Friedmans*, Tr. Pg's 29-30, 31, Kuby Aff. Ex. Z). Detective Sergeant Galasso even confirmed at the time (a) that police worked hand in hand with therapists, (b) that this occurred prior to the third indictment, and that (c) the charges in the third indictment were based on statements made by children "during sessions with their therapists." (Van Haintze, Bill and Bessent, Alvin, "New Arrest in Child-Sex Case", Newsday, June 23, 1988, pg. 21, Kuby Aff. Ex. AA).



The newly cited victims, all boys aged 7 to 11, were sodomized and forced to perform oral sex in full view of other computer students, police said. Additional details of the abuse were revealed by previously identified victims during sessions with their therapists, Galasso said.

Galasso also publicly urged the students to seek therapy for abuse, stating: "[e]very child that set foot through that door was a victim in one way or another, and it's vitally important that every parent who hasn't does get their child help." ("Help for Victims of Sex Abuse Stressed in Temple Program," Great Neck Record, Nov. 24, 1988, Kuby Aff. Ex. BB).

Dr. Sandra Kaplan, the therapist mentioned by Detective Squeglia, who was director of the Division of Child and Adolescent Psychology at North Shore University Hospital, led the therapists. She traveled across the country with Detective Galasso and other North Shore therapists, giving presentations about the Friedman case and the importance of using memory recovery techniques on the children. Arline Epstein recalls meetings at which the therapists and police discussed the use of these techniques on alleged Friedman victims:

> The psychologists at these meetings discussed the, the fact that children who don't remember are probably repressing – or I guess they used the word 'dissociating' – so that the memories, the memories need to be brought up, or brought forward. And that therapy would help with this process. And that it was furthermore a very healthy process for a child to discuss what they assumed, the therapists assumed, would, have happened, and to then be able to heal.

(Kuby Aff. Ex. P).

Complainant Dennis Doe had a similar recollection:

> When I was going to therapy, the therapists would explain to me how the human mind is so strong that traumatic incidents like this, the mind blocks out, it's like a …it's like a…she called it a defensive mechanism, yeah? So any recollection of what was going on there, I barely have.

(Aug. 6, 2001 recorded interview of Dennis Doe, Kuby Aff. Ex. CC, at 12). Dr. Kaplan and Det. Sgt. Galasso even admitted in one of their presentations that many of the "children had no memories of being victimized" but by having "all group members draw pictures of the room where they were victimized and speak about their memories" they were able to help two remember some of their abuse in detail, and two more to have "vague" recollections of abuse. (Presentation abstract, "Child Pornography and Extrafamilial Child Sex Abuse" January 1990, Kuby Aff. Ex. DD). Michael Epstein was one of the children who "couldn't recall his abuse." He describes the therapy this way:

> 'Do you remember anything?' That was the term we would use – 'Do you remember?' Not 'did it happen?' but 'do you remember it happening?' Because I think we had been told or convinced that it certainly had happened, and you either remembered it or didn't, which I always thought was, was bullshit. I thought that that was total crap – that if I had been abused, I would have remembered it.

(Kuby Aff. Ex. K, at 9).

The abstract from that presentation also discussed the use of "hypnosis" in the treatment of dissociation. (Kuby Aff. Ex. DD). In a tape recording of the

presentation that the sponsors redacted heavily, Dr. Kaplan herself mentioned it, as did other psychologists and employees of the hospital where the treatment occurred:

> We have two more speakers. We're going to have a talk about the group treatment that's needed for parents when a case like this occurs in a community. And then we're also going to talk about dissociation and the use of hypnosis to help children remember.

(Dr. Sandra Kaplan, Presentation audio recording transcript, Kuby Aff. Ex. EE, at 6).

> As Detective Galasso has said, that hundreds of children were alleged to have been abused by the computer teacher, his son, and his son's teenage friends. However only a token amount allowed their children to be interviewed by the police or to make statements before the Grand Jury. I mean, this is really quite remarkable. We're talking about, I mean, less than two dozen children that have been seen in the clinic out of a possible 400 children in the community.

Id. at p. 8.

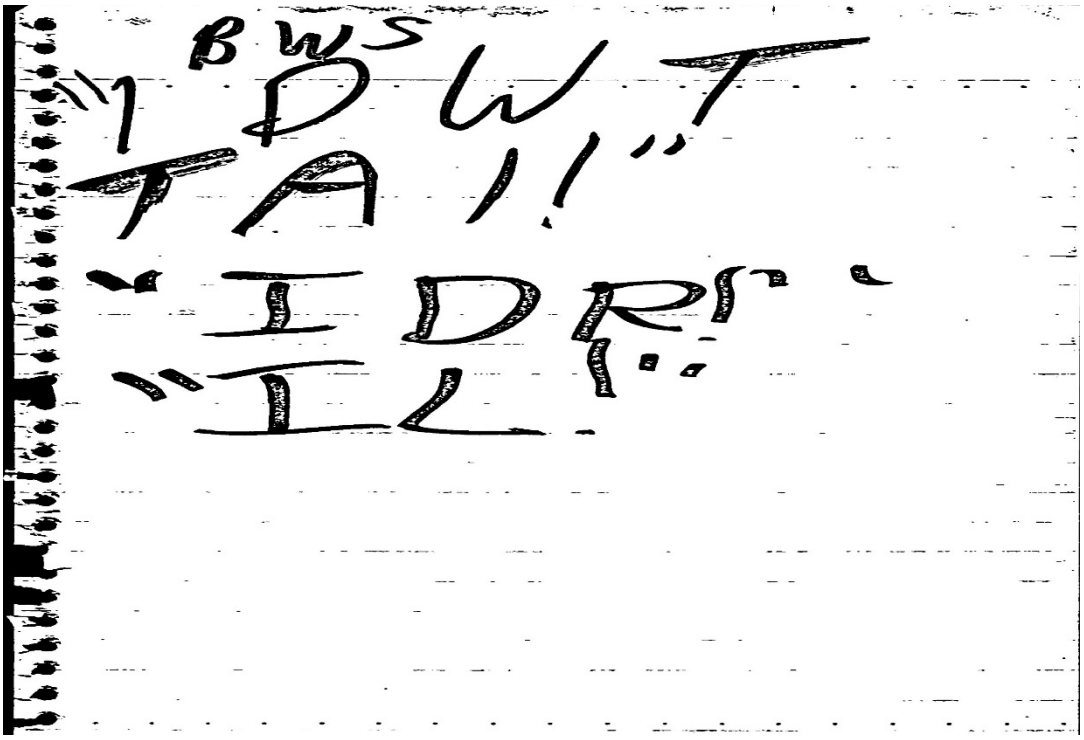
Even after the prosecution ended and the Friedmans were imprisoned, children remained in therapy. Dr. Pelcovitz, who saw many children, treated Michael Epstein for years after the events in 1988. Epstein reports:

> For the first several years, I insisted that nothing happened. And I didn't think he believed me. And I think that he looked at it more as trying to get me to remember. Because I think he was, I thought he was totally convinced, and trying to get me to remember and, or admit that these things had happened. And you know there was a lot of talk about specific activities that kids had said may have happened…It was always clear that the reason I was there was because of the allegations against the Friedmans, and because I had not said that anything happened.

(Kuby Aff. Ex. K at 5). Eventually, exhausted by the therapist's refusal to accept his denials, Epstein decided to lie.

> And so eventually I just consciously decided to, to lie, and say that I had been abused, and repeat these crazy things I'd heard from other kids, or in the therapy or from the police. You know, the leap frog, which doesn't even make sense. The, you know, saying that there had been kids raped in the classroom, and kids raped in the bedroom, and kids raped in the bathroom, and kids raped…I don't know, in the backyard. I mean, it's…not the backyard. But all these, every, basically I just regurgitated everything I'd heard from other people. Because that was the only way to make it stop. And I did that. I told my mom. I told Dr. Pelcovitz. And I guess pretty soon after that it did stop, and we were able to stop rehashing it over and over and over again. And they asked me if I wanted to testify, and I said 'No, I don't.' Because I knew I was lying.

Id. Later, Arline Epstein would find a piece of paper in her notebook of notes of the events. Michael had written a series of letters that were unintelligible to her at the time: "IDWTTAI. IDR! IL!."



(Kuby Aff. Ex. W at A-35). In her words:

> At the time, if I saw it, I had no idea what it meant. And, a month ago I found this, and I was just dumbfounded. I thought, and instantly I knew what it meant: 'I don't want to talk about it! I don't remember! I lied! And it was just some kind of combination of shocking and poignant to realize that this nine year old was writing this message to me, to me, cryptically, and I never got the message except in hindsight.

(Kuby Aff. Ex. P).

Epstein's doctor, David Pelcovitz, urged him to try hypnosis. (Kuby Aff. Ex. K at 24). He was not the only one. Gregory Doe reported not having any memory of abuse before the treatment:

> They put me in hypnosis and tried to recall facts that I had buried and that's how I first came out and started talking about it. Just through them being hypnotized and everything. I recalled things that I would bury and was able to talk through them.

> I just remember that I went through hypnosis, came out, and it was in my mind. And then I started to talk about it. I know they put me into a deep trance and then I went through hypnosis and that was it.

(Kuby Aff. Ex. Z (*Capturing the Friedmans* transcript) at 23). He recalls being put in therapy "right away." Id.

In the beginning, prior to the introduction of therapy, police interviewed a relatively small number of students, and procured statements far milder than the wild accusations that would come later. For example, in Detective Hatch's affidavit seeking a warrant, he reported two boys having stated they had seen nude photos, and that Arnold had touched their buttocks. (Nov. 24, 1987 Affidavit of Detective William Hatch, Kuby Aff. Ex. FF). But their father, who declined to press charges, later described the police interrogation of his son:

> The fact of the matter is they were particularly aggressive….The way the questions were asked by the investigators, they were suggesting answers to the kids and you gotta be careful with that. These guys were…they were so aggressive, in other words, the kids wouldn't – the kids might not say anything that was particularly offensive but in walks and investigator and would say 'show me where below your belt you were touched.' The kids never said that.
>
> What we saw here was overzealousness. They (were) suggesting answers, looking down where they wanted children to point themselves…they wanted to talk to the kids without adults present….We certainly tried to protect our children from the police. And if they had other things to go on, let them go in that direction for themselves.

(2001 recorded interview of Larry Solotoff, Kuby Aff. Ex. GG at 5). It is after the therapy sessions that the second and third indictments were obtained, with charges increasing in number and implausibility.

DA Rice today refuses to acknowledge the collaboration between police and therapists. However, her predecessor who presided over the Friedman case, Nassau County DA Denis Dillon, was already aware it was a practice known to lead to false memories, and one that would undermine cases. In the nearly contemporary Izzo case mentioned earlier, Dillon wrote a letter admonishing the very same members of the Nassau County Police Department for engaging psychologists to help kids "remember:"

> Law enforcement investigations into matters of child sexual abuse must remain free from any appearance that law enforcement officials are utilizing the services of psychological agencies and medical professionals in their criminal investigations…. although psychologists, based on their training are extremely useful in enabling children to discuss instances of sexual abuse, their lack of training in the legal system and the evidentiary limitations placed upon child interviews by the courts make the use of such professionals in criminal investigation or association with law enforcement personnel during a pending prosecution, extremely unwise.

(March 26, 1990 Letter from District Attorney Dillon to Inspector Olsen, Kuby Aff. Ex. HH).

Contrary to the assertions in the Rice Report that this inappropriate collaboration between Friedman detectives and police didn't occur until late in the case, the Rice Report itself reveals that police had worked hand in hand with

therapists during the formative early stages of the case:

> A 'commendation letter' sent by Detective Sergeant Fran Galasso states that her investigators "cooperated with teams of psychiatrists and psychologists involved in the treatment of victims.

(Kuby Aff. Ex. B at 81). That was dated in May of 1988, well before the third and most significant indictment.

A letter from a parent to North Shore hospital in the Izzo case further proves that these prosecutors and investigators actively used these same therapists as a means of enhancing evidence in sex abuse cases:

North Shore University Hospital
400 Community Drive
Manhasset, NY 11030

Ms. Sandra Kaplan,

Enclosed please find a copy of a final bill just received also please find a notice received from Susan Rothman, Nassau County D A Office. This notice states that we receive 6 free sessions from your office. Mrs. Rothman strongly suggested that we accept these free sessions and urged us to make an appointment, even though J[redacted] was already under Drs. care..

We only came to one session and then decided not to return and use any other free sessions.

This matter of $300.00 unpaid is being turned over to my attorney Paul Burlant, 1565 Franklin Ave, Mineola, NY 11501 #516 742-0700. I am also filing a compliant with Assistant District Attorney Maureen Riordon.

We should not be held responsible for a supposedly free visit that we were mistakingly told would help our criminal case.

Thank You,

(Undated letter to Dr. Sandra Kaplan, Kuby Aff. Ex. II). The above letter reveals two important facts: First, that the DA was so accustomed to collaborating with Dr. Kaplan and her team at North Shore, that the DA's office was actively urging these parents to visit a therapist at North Shore, *even though the child was already under the care of another therapist.* Second, that the DA specifically told these parents that visiting the therapist recommended by the DA's office would "help [their] criminal case." Simply put, the DA's office encouraged parents to bring their children to North Shore therapists, known for their ability to use "recovered memory" techniques to assist the children in generating charges, as a way to help their criminal prosecution. This is precisely the kind of collaboration between prosecutors and therapists that DA Rice assures us did not take place in the Friedman case.

Finally, Arline Epstein's notes, interviews with therapists, and Detective Squeglia, all confirm therapists were involved throughout the case, appearing at school, community, and parent meetings side by side with representatives of the Nassau County Police Department and the Nassau County District Attorney. (See generally Kuby Aff. Ex. W).

THE COERCION OF ROSS GOLDSTEIN

In 1988, with Jesse Friedman refusing to plead guilty and preparing for trial,

the case posed a significant challenge for the DA because in the absence of any other evidence, the case would rest entirely on the testimony of small children who had already – according to the recollections of Scott Banks (Judge Boklan's law secretary who read the grand jury testimony, see, Kuby Aff. Ex. A) – proven to be unreliable witnesses who required detailed prompting in order to answer "yes or no" questions and ever-changing memories. Late in the process, after an exhaustive search for an adult witness to corroborate the charges (police repeatedly interrogated at least two other acquaintances of Jesse's), police arrested a 17-year-old classmate of Jesse's named Ross Goldstein, stating that children had pointed him out in a school yearbook. Goldstein would have been as young as 15 when many of the crimes were alleged to have occurred.

Though no physical evidence linked Goldstein to the computer classes, and Goldstein strongly denied any involvement, he was indicted and charged with 118 counts of abuse, substantially more than the alleged ringleader Arnold Friedman himself. Seventy-nine of the counts against Goldstein were sodomy charges, ten times the number leveled against Arnold Friedman. The prosecution exercised tremendous pressure on Goldstein to plead guilty and testify against Jesse. Judge Boklan's law secretary, Scott Banks, stated: "[Assistant DA] Joe Onorato's determination to offer a plea of guilty, a plea to Ross Goldstein was basically done to put some pressure on Jesse. . . " (March 21, 2001 Interview of Scott Banks,

Kuby Aff. Ex. JJ). Eventually, weighing the DA's offer of six months in county jail and Youthful Offender status against the 50-year sentence Judge Boklan threatened for Jesse, Goldstein agreed to provide the testimony sought by the DA. The DA has never explained the logic behind offering Goldstein 1/100th of the prison term they proposed for Jesse, even though Goldstein had allegedly sodomized young boys over 70 times, but it at the very least indicates the urgency of the DA's need to find an adult witness to testify against Jesse.

Since that time, Goldstein had never spoken publicly about the case. But, in 2013, sacrificing 25 years of anonymity afforded by his Youthful Offender status (reinstated on appeal), Goldstein provided the DA Rice with a shocking nine-page recantation, including a detailed description of how in 1988 under relentless pressure, he had been "coached, rehearsed, and directed" by Assistant District Attorney Joseph Onorato and Detective William Hatch to make false statements implicating Jesse Friedman. Then, at the request of Advisory Panel member Barry Scheck, Goldstein appeared for three hours in front of the Review Team and Advisory Panel, and confirmed that he "did not witness Jesse or anyone else commit any crime in the Friedman home with any computer student."

Here is a portion of Goldstein's statement:

> I did not witness Jesse or anyone else commit any crimes in the Friedman home with any computer student. My testimony before the grand jury was a result of tremendous and unrelenting pressure and intimidation by the police and district attorneys' office in which I was

eventually coerced to lie about crimes taking place in order to try to save myself and be granted the YO status deal that was being offered to me.

In addition to being ostracized in my personal life, in the legal system I was being made to stand trial as Jesse's co-defendant. Not knowing what he had done or not done made it impossible to feel confident about going to trial with him. I felt very scared that a jury would believe the testimony of the young kids over us.

When [Judge] Boklan promised to televise the trial, this added even more pressure on me to eventually cooperate and say things that the prosecutor and the police wanted me to say to make their case against Jesse Friedman. At a certain point during this process, I became locked into cooperating with the prosecution, and from that point on, I did whatever I had to in order to avoid the possibility of a long jail sentence.

In the weeks leading up to my grand jury appearance, I was coached, rehearsed and directed by the prosecutor and Detective William Hatch for hours on end. I was told that it was my role to confirm what the complainants had said when they testified about had happened to them during the computer classes.

According to them, this was how the police and the prosecutors built up evidence that would 'stick at a trial.' I was going to have to take the stand and testify against Jesse at the trial because the prosecutor and the police believed there was a good chance that none of the younger kids would be willing to take the stand at trial.

I could not and would not confirm any allegation or admit doing something or seeing Jesse doing something to any complainant, because I truly had no knowledge or participation or witnessed anything of the sort. The prosecutor would then threaten me by placing the YO status off the table. This happened repeatedly. This was like being tortured and treated like a puppet. Just imagine the trauma of having actual memory stamped out and erased from history, and replaced by new, violent images of incidents that never took place.

(March 8, 2013 Letter from Ross Goldstein to the Review Team, Kuby Aff. Ex. KK).

THE COERCION OF JESSE FRIEDMAN

A. Judge Boklan's Threats and Misconduct

"There was never a doubt in my mind as to [Jesse Friedman's] guilt."

-Hon. Abigail Boklan, *Capturing the Friedmans*

Judge Boklan exhibited bias against Jesse from the start of the case. She believed that Jesse was guilty and stated her commitment to imposing the maximum penalty should he be convicted after trial. The affirmation of Peter Panaro, Jesse's former attorney, reveals that prior to the entry of Jesse's guilty plea, she informed him that she would sentence Jesse to consecutive terms on every count (50 years total) if he were convicted after trial. (Affirmation of Peter Panaro at para. 11, Kuby Aff. Ex. LL).

There has never been an evidentiary hearing on the accuracy of the Panaro Affirmation because the Nassau County District Attorney has consistently and successfully opposed a hearing and discovery from the time Friedman filed his §440.10 motion in 2004, through the Second Circuit's decision in 2010. But there is a more than sufficient basis to conclude that this threat was made. Attorney Panaro made his statement under oath at a time when he could be prosecuted for perjury, and is prepared to reiterate it, again under oath, at an evidentiary hearing.

Judge Boklan has never submitted a sworn statement contradicting Panaro. In the course of the prosecution's review process, they had unfettered access to the now-deceased Judge Boklan, but they too failed to submit any sworn statement by her denying the threat was made.

Such a judicial threat would be completely consistent with Judge Boklan's behavior, both on and off the record. From the beginning of the proceedings against Friedman until her death in 2013, Judge Boklan engaged in a persistent pattern of conduct and commentary demonstrating that she had prejudged Friedman's guilt *ab initio*, and nothing adduced in the intervening years caused her to question her original prejudice. Despite knowing that she would be the Judge to preside over his SORA (Sex Offender Registration Act) hearing when he was released from prison, Judge Boklan agreed to appear in the film *Capturing the Friedmans* and gave a multi-hour interview in which she made numerous prejudicial statements about the case, disparaged Jesse's character, and expressed her personal views about his guilt. As documented in the film, Boklan, who was a sitting judge at the time she was interviewed, states, "There was never a doubt in my mind as to [his] guilt." (Kuby Aff. Ex. Z at 32). On February 23, 2004, she reiterated this position, as quoted in the San Antonio Express-News: "there was never an issue as to whether they were guilty or not." (Marina Pisano, "Abuse Experts Assail Movie," San Antonio Express-News, Feb. 23, 2004, Kuby Aff. Ex.

MM). She expressed her confidence in Jesse's guilt despite the fact that there was never a trial, and that more than a year elapsed between Jesse's arrest (when he pled not guilty) and his eventual guilty plea, with three intervening indictments. Like Judge Boklan's close friend Detective Fran Galasso, Judge Boklan used her successful prosecution of the Friedman case as an opportunity to gain attention; she went on a tour of national television shows to discuss Jesse's case, repeatedly volunteering her opinion that he was guilty. Her appearances include: *The Today Show* (Dec. 3, 2003); *Dateline* NBC (January 27, 2004); CNN -- *Now with Paula Zahn* (Feb. 18, 2004); and *Nitebeat,* hosted by Barry Nolan (Feb. 26, 2004). (Collected Transcripts, 2003-2004 Judge Boklan television appearances, Kuby Aff. Ex. NN).

On *Now with Paula Zahn*, Judge Boklan claimed to cite psychiatric reports on Jesse from his childhood. She stated, "When he was in ninth grade, he was incorrigible. He had rages that were uncontrolled and he was placed in a special school. In that special school, he started on drugs. He was stoned every day on marijuana and LSD during the years that this abuse took place."[6]

Her inaccurate and inappropriate lobbying campaign against Friedman

[6] These statements are inaccurate. Similar to statements Detective. Galasso would make, that there were "literally foot-high stacks" of child pornography in "plain view" (Kuby Aff. Ex. Z at 36) allegedly found all over the living room of the Friedman home (also completely unfounded and untrue), Boklan's statements became wilder and more divorced from reality with every repetition.

continued in January 2004, when two "anonymous letters" from complainants were posted on a website for the activist group "The Leadership Council" (www.leadershipcouncil.org), accompanied by a statement from Judge Boklan:

> The following E-mail was received by me in January of 2004 from one of the thirteen victims of Jesse Friedman. Although there were more victims, these thirteen were acknowledged by Jessie Friedman in his guilty plea of December 20, 1988. The victim had been working on the E-mail for weeks before he sent it to me. I have his permission to distribute it as I see fit to anyone or any organization including the media as long as his identity is kept confidential and the statement is distributed in its entirety.

(Feb. 12, 2004 statement by Hon. Abbey L. Boklan, at "www.leadershipcouncil.org/1/ctf/vict.html#Doe", Kuby Aff. Ex. OO).

After a screening of *Capturing the Friedmans* in Great Neck, New York on May 30, 2003, Judge Boklan stood up from the audience to address attendees and television and print reporters and state that she "does not want this [film] to become a crusade to free Jesse Friedman."

Given the mass-sex abuse hysteria on Long Island (as well as elsewhere in the country), Friedman had to take seriously Judge Boklan's threats to impose the maximum sentence upon conviction. During the pendency of Jesse's case, Nassau County had convicted school bus driver Robert Izzo after trial and sentenced him to sixty years. Richard Taus had been convicted in Nassau County and received ninety years. More important was Judge Boklan's handling of the Ross Goldstein sentencing, where she read portions of his Grand Jury testimony into the public

record, and then violated the plea agreement by imposing a two to six year sentence and rescinding his Youthful Offender status, later vacated on appeal.

Judge Boklan engaged in a damaging pattern of disparaging Jesse in public and in the press, making repeated statements to the media affirming Jesse's guilt and taking a blatantly partisan view. She admitted on film that she was convinced of his guilt from the very start, before ever seeing a single piece of trial evidence. Judge Boklan pursued this campaign in collaboration with her good friend, Fran Galasso (retired head of sex crimes unit, Nassau County Police), whose husband is a judge who sits on the same court in which Jesse's original 440.10 motion was decided. Detective Galasso was also repeatedly quoted in the press making similarly inappropriate statements affirming her belief in Jesse's guilt. As former head of the Sex Crimes Unit of the Nassau County Police Department, Detective Galasso was the chief investigator in Jesse's case, and her misconduct was egregious.

Last, Judge Boklan inexplicably decided to make the Friedman case the first in the history of Nassau County in which television cameras were allowed in the courtroom. Any potential jury pool was certainly tainted by massive pre-trial publicity and community hysteria. It was universally known that Arnold Friedman had pled guilty to a pornography charge, and that he pled guilty to the state sexual abuse charges which Jesse Friedman was indicted for having "aided and abetted."

The community was in an uproar: the Great Neck P.T.A. organized letter writing campaigns, organized car pool events for court appearances, prepared announcements in all the local schools encouraging students to seek counseling/guidance staff to talk about the Friedman case, and organized community meetings with local clergy, police staff, and therapeutic counseling staff.

B. The Moral Panic

Jesse was condemned in the press and vilified by a community hungry for retribution based on allegations of terrible offenses. The judge told Jesse he would be sentenced to the maximum time if convicted; the media attention and community uproar, in conjunction with the court's denial of Jesse's motion for a change in venue, ensured that Jesse would not receive a fair trial if he did go before a jury, and was doomed to be tried before a judge who predetermined his guilt and sentence.

Thus, the evidence fully supports the Second Circuit's conclusion:

> [W]ith the number of counts in the indictments and Judge Boklan's threat to impose the highest conceivable sentence for each charge, petitioner faced a virtually certain life sentence if he was convicted at trial. And the likelihood that any jury pool would be tainted seemed to ensure that petitioner would be convicted if he went to trial, regardless of his guilt or innocence. Nor could he have reasonably expected to receive a fair trial from Judge Boklan, the former head of the Nassau County District Attorney's Sex Crime Unit, who admitted that she never had any doubt of the defendant's guilt even before she heard any

> of the evidence or the means by which it was obtained. Even if innocent, petitioner may well have pled guilty.

Friedman, 618 F.3d at 158. For these reasons alone, there is far more than a "reasonable belief" that Friedman's guilty plea was obtained in violation of his basic Sixth and Fourteenth Amendment rights.

The Second Circuit articulated that the Friedman prosecution occurred in the midst of a moral panic that led to more than seventy false convictions with strikingly similar characteristics to the Friedman case, epitomized by the famous McMartin Pre-school case:

> The magnitude of the allegations against [Jesse Friedman] must be viewed in the context of the late-1980's and early-1990's, a period in which allegations of outrageously bizarre and often ritualistic child abuse spread like wildfire across the country and garnered world-wide media attention. Vast moral panic fueled a series of highly-questionable child sex abuse prosecutions. Overall, at least seventy-two individuals were convicted in nearly a dozen major child sex abuse and satanic ritual prosecutions between 1984 and 1995, although almost all the convictions have since been reversed. Some defendants, fearing trial, pled guilty or "no contest" to impossible acts of ritualistic abuse, and in some cases they provided detailed confessions in exchange for immunity or generous plea bargains.

Friedman, 618 F.3d at 156.

Jesse Friedman, who in 1987 was a freshman at SUNY Purchase college, was arrested on the day before Thanksgiving. He had called home from Manhattan, and been told by a stranger answering the phone that his parents had been arrested. Confused, he raced home to find his street lined with police and

press. When he entered his home, police questioned him, and told the bewildered teenager that he too was under arrest. He was handcuffed and led out the front door before the gathered neighbors and press. Friedman was taken to a cell that held his father, and the two spent the night in Nassau County jail where they were attacked by other prisoners. The next morning prosecutors began to pressure him to "confess" to his crimes and plead guilty. He was offered a five-to-fifteen year prison sentence for unnamed crimes about which he knew nothing.

A few days earlier, his father had confessed to him and his brothers for the first time that federal agents had searched his house and confiscated pornographic magazines from the Netherlands, and that he was going to be arrested for it. Jesse Friedman assumed that his own arrest was a mistake. It wasn't until sometime during the reciting of the charges against Arnold Friedman the following morning that Jesse realized for the first time that he and his father were being charged with molesting children.

Friedman spent the next two weeks in jail before being granted bail. Soon after, he was indicted a second time, #67430, on February 1, 1988. This time he was charged with thirty-five counts of child sexual abuse. The day before he was arraigned, on February 8, 1988, Arnold Friedman also pled guilty to the federal pornography charges. At the Nassau County arraignment, Jesse was filmed by News 12 television cameras. The frenzy in Great Neck was reaching fever pitch

and Jesse Friedman was at its center. Police and the DA's office made outlandish accusations, resulting in headlines such as "100 Kids Linked to Teacher in Sex Attack Case", "Suspect in Child Pornography Called a Damager, Denied Bail", "DA Orders AIDS Test for Dad and Son in Sex-Abuse Case for Deadly Virus", and so on.

Those articles, and statements to the press by Detective Fran Galasso, Assistant DA Joe Onorato, and others, captured the public's interest, and obscured the fundamental flaw in the prosecution: that no physical evidence of abuse had ever been found, and no hint of complaint had ever been made before the police began their investigation.

While the Rice Report downplays the moral panic that gripped Great Neck, Carol Frank, a long-time writer for local newspaper the *Great Neck Record* and community resident, was present at the time:

> The unfolding of the accusations began in 1987 right around Thanksgiving. It was an indelible memory for those of us who were parents in Great Neck at the time. …[News] coverage was constant bringing new revelations on a regular basis. I was interviewed very briefly by a roving TV news team in a supermarket parking lot. …There was a veil of secrecy with whispers about the boys "who had been violated." Meanwhile, there were at least 2 public meetings with panels of experts including police and psychologists who spoke of the abuse with such certainty, that I do not recall anyone questioning the intense police interviews with a wide net of children or questioning the presumption of guilt. One such meeting was held at Beth El Temple and the other was at Baker Elementary School. I attended the one at Baker. The climate was one of moral outrage, fueled by fear and guilt that not one parent had recognized the "signs of abuse" that we were now being schooled in... that none of us had protected our children adequately. As some

> of the fantastical stories of group orgies began to leak out, the fear and outrage grew. To say that we were not swept up in a moral panic in Great Neck at the time reflects a total ignorance of the community. You had to be here.

(Letter of Carol Frank, to be submitted as Exhibit KKK to the Kuby Affirmation)

C. Arnold's Guilty Plea Adds To The Pressure On Jesse

While Jesse's situation was dire, his father Arnold had another element to consider. Knowing that he would have to plead guilty to the pornography charge, Arnold was afraid that if he fought the sexual abuse charge, and went to trial with Jesse, his pornography charge would reflect badly on them both, and likely cause Jesse to be treated more harshly. Taking a plea and exiting the case to leave Jesse to fight on his own seemed the lesser of two evils. Jesse's then defense attorney, Peter Panaro has stated that his goal had been to separate father and son in the eyes of the law, so that Jesse Friedman would not be forced to stand trial alongside Arnold. But in reality it did two things: (1) it cemented the perception in the public's mind that the wild accusations were completely true, and (2) it allowed the police to now use a "close-out" statement Arnold had provided as part of his guilty plea, to pressure even more witnesses to make allegations against Jesse.

D. Arnold's Closeout Statement Was Used To Coerce Jesse To Plead Guilty

On March 25, 1988, Arnold Friedman pleaded guilty to every count with which he was charged on the first two state indictments, in exchange for a sentence of ten to thirty years, to run concurrently with his federal sentence. In order to

approve the plea agreement, Arnold Friedman was forced to give a lengthy "Closeout Statement" in which he admitted guilt and the "truth" of every outlandish allegation in the indictments. But because the indictments alleged every action he took was part of a "common scheme and plan" with Jesse, the State had effectively caused Arnold Friedman to implicate his son. Though detectives had told Arnold the Closeout Statement would be confidential, and not be used to implicate Jesse, detectives immediately began using it to try and elicit further charges against Jesse. For example, Detective Galasso returned to the Georgalis home with the Closeout Statement in hand, and told Mrs. Georgalis that Arnold had "admitted" that her son Ron was his "favorite." (Nov. 15, 2012 transcript of recorded interview with Margalith Georgalis, Kuby Aff. Ex. ZZ). As she states in her interview with Andrew Jarecki, she later realized that police had used the Closeout Statement with other families too, to "really enrage us against Jesse and try and come up with something against him." (Id.). Arline Epstein describes a similar experience, contemporaneously recorded in her notes, in which Detective Sergeant Galasso told her that she was "getting the task force back together" because they "want to go back out & re-interview kids to be sure of the case against Jesse." Ms. Galasso referred repeatedly to the Closeout Statement during the call, telling her that in it Arnold Friedman had "named hundreds of kids." Similarly, complainant Dennis Doe recalled the detectives bringing a "huge

book" to his house, labeled "Confession from Arnold Friedman." (Aug. 6, 2001 recorded interview of Dennis Doe, Kuby Aff. Ex. CC). Whatever advice he received that indicated this could help his son was misplaced.

E. Ross Goldstein Is Used To Bring Further Pressure On Jesse

By June, without any physical or medical evidence, and without an adult witness to testify against Jesse, prosecutors knew their case would rest solely on the testimony of unreliable child witnesses. It was at that time that they arrested Ross Goldstein.

While Jesse and his lawyer Peter Panaro prepared his defense, Panaro told him repeatedly that they could probably convince some members of a twelve-person jury from the area that many charges were exaggerated, but they would never be able to convince a jury that nothing happened at all. Panaro also told him about Judge Boklan's threat that if Jesse were convicted of any of the charges, she would implement consecutive sentencing. Jesse quickly realized that even with just the 84 charges pending at the time, the potential sentence would amount to over three hundred years.

Compounding the difficulty of his defense was the repeated denial by the People of the existence of *any* exculpatory evidence. His attorneys formally requested all evidence available under Brady v. Maryland, but their demands were

rebuffed.[7] (Demand for Discovery, April 11, 1988, Kuby Aff. Ex. PP; April 18, 1988 Letter from ADA Joseph Onorato, Kuby Aff. Ex. QQ). But despite ADA Onorato's empty claims, he was hiding a wealth of exculpatory evidence. We know from the Rice Report that the police interviewed more than one hundred students, of which only 14 became complainants against Jesse. The vast majority of these students told the DA they had never been abused or seen anyone abused. This evidence was never provided to Jesse's defense attorneys.

At the time, it was not even clear whether that evidence would be useful to Jesse. He was aware of the prosecution of Kelly Michaels, a teacher in New Jersey. Like Friedman, she was accused of bizarre ritualistic sexual abuse of children in her care, including sodomizing them with forks and knives. Like Friedman, there was no physical evidence, no unsolicited complaint of abuse, and no damage to any child despite the wild accusations. Her forty-seven year sentence only bolstered Friedman's fears. He could not know that five years later Kelly Michaels would be exonerated by the New Jersey Superior Court Appellate Division, a decision upheld by the New Jersey Supreme Court, who would condemn the investigation, noting the "interviews of the children were improper

[7] Later on appeal, the issue of when Friedman first had a right to Brady material would arise. Regardless of whether it is at this stage or only at pre-trial, ADA Onorato did not assert that Friedman had no *right* to the material, he asserted that no such material *existed*. See Kuby Aff. Ex. QQ at para. 34.

and employed coercive and unduly suggestive methods." State v. Michaels, 136 N.J. 299, 315 (1994).

In the summer of 1988, the same summer in which Ross Goldstein was arrested, and Kelly Michaels was tried and sentenced, Jesse learned of the two other friends of Ross Goldstein who had been arrested at the same time. He discovered that police had been playing the three teenagers off each other, threatening that if each didn't cooperate, the others would testify that the non-cooperating teenager was part of the "Friedman child molestation ring." By September, Panaro called Jesse to tell him that Ross Goldstein had entered into a cooperation agreement with the prosecutors.

Throughout this period the headlines continued. It was 1988, and no one could even imagine that the McMartin case, and over 70 other "mass sexual abuse" cases would completely unravel within a few years, proven to be the result of hysteria. No one imagined that it was possible that in these cases – which often involved dozens of alleged victims and hundreds of charges – it was going to turn out that *all* the charges were fabricated – the product of a community twisted by fear and anger over perceived attacks on its children.

When the third indictment, -- #69783 – was returned, things got even worse. This indictment showed an exponential increase in the number and seriousness of the charges against Jesse, to 243 counts of child sexual abuse. The charges became

so bizarre they were nearly impossible to comprehend. The third indictment alleged that the Friedmans were operating a "sex ring" in which multiple adults violently abused groups of children, not individually or in secret, but *en masse and in plain view of the entire class*. The same children who had already been interviewed multiple times, were re-interviewed as long as eight months after their initial interviews, and suddenly recalled far more sexual abuse than they had ever recalled before, introducing more brand new teenage abusers they had neglected to mention in any of their prior interviews. The third indictment alleged the Friedmans organized group sex abuse "games" in which every child in a class was forced to participate.

But the third indictment brought more than just additional wild charges. It brought a set of charges against Ross Goldstein, a teenage friend of Jesse's, who police said had participated in the alleged abuse and might become the first adult witness against Jesse. If Goldstein – who had never even been an assistant in the Friedman computer classes -- could be frightened into pleading guilty and implicating Jesse, Jesse's fate would be sealed.

Jesse had maintained his innocence through more than eleven months of terrible accusations, but when his lawyer heard from Ross Goldstein's lawyer that Ross had decided to plead guilty in return for a massively reduced sentence, Jesse lost hope. Ross's decision to plead guilty and implicate Jesse would change the

game for Jesse, who now realized the only chance he had at ever leaving prison would be to plead guilty.

And on December 20, 1988, he did. For each count he read word-for-word from the indictments, then was returned to jail. He waited in jail for six weeks for sentencing. Though he was placed in solitary confinement, he was repeatedly assaulted and abused by prisoners and prison guards alike. Finally he appeared again before Judge Boklan who, before the news cameras, officially recommended to future parole boards that he be considered a "menace to society," and be kept in prison for the full eighteen years of his agreed to sentence. When they returned Jesse to his cell, prison guards left his door open to allow prisoners to intermittently beat him. Later, a group of prison guards with their name tags removed attacked him as a group. The attack only ended when the guards learned Jesse's mother had arrived to visit. Finally, he was sent upstate to begin serving his sentence.

JESSE FRIEDMAN'S ACTUAL, FACTUAL INNOCENCE OF ALL THE CHARGES.

A. Summary

Notwithstanding the institutional failures that have infected a quarter-century of proceedings against Jesse Friedman, the record is now clear: Of the

fourteen complainants, the defense has spoken with to ten. Four (Kenneth Doe, Barry Doe, Keith Doe, and Steven Doe) have completely repudiated the statements ascribed to them as children. A fifth, Dennis Doe, does not recall any sexual abuse taking place. A sixth, Gregory Doe, had no recollection of abuse prior to therapy, and his account has changed so many times that the prosecution has warned he is "unreliable," "perilous to rely upon," and his account is "fraught with inconsistencies." (Kuby Aff. Ex. B (Rice Report) at v, 79). Four more -- Lawrence Doe, Daniel Doe, Fred Doe, and Richard Doe -- refused to reconfirm their childhood accounts.

The defense has also spoken with twelve other students who did not become complainants, attended classes in which abuse allegedly occurred, who were (in many cases) alleged to have been abused by others, all in the plain view of the small classroom. (See, Feb. 21, 2001 Interview Statements of Fran Galasso, Kuby Aff. Ex. UU). All of these witnesses -- including Nassau County Assistant District Attorney Jesse Aviram -- deny they witnessed any abuse. ***One or more of these students was present in each class in which abuse was alleged by others and each states that he did not witness any abuse.***

The prosecution claims three of the complainants adhere to their testimony, but this is not accurate. The first, Gregory Doe is plainly delusional, radically altering his story from one moment to the next, and even "borrowing" specific

incidents of abuse from charges attributed to *other* complainants. The second, James Doe, inexplicably recanted all of his grand jury testimony against Ross Goldstein during the prosecution's re-investigation of the case, a fact to which the prosecution ascribes no significance. (Kuby Aff. Ex. B (Rice Report), at 104). The third complainant, Richard Doe, insisted that he was abused by Jesse with the assistance of the Kurt Russell character *Snake*, a fact the prosecution does not mention. (Kuby Aff. Ex. W at A-17-20). And the claims of all three of these witnesses are belied by a plethora of other children who were in the same classes at the same time, and insist no abuse took place. As set forth more fully below, there is nothing left of the prosecution's case.

B. Twelve Former Computer Students Who Were Not Complainants Insist That No Abuse Occurred – Including At Least One Student Who Attended Every Class In Which Abuse Was Claimed.

Kenneth Lanning describes corroboration as the essential tool in investigation of mass sexual abuse claims:

> It is not the job of law-enforcement officers to believe a child or any other victim or witness. The child victim should be carefully interviewed. The information obtained should be assessed and evaluated, and appropriate investigation should be conducted to corroborate any and all aspects of a victim's statement.

(Kuby Aff. Ex. T at para. 34). If a child alleges bizarre and sadistic abuse that took place in full view of a classroom of children, speaking to those other children would tend to corroborate or contradict the claimed victim's statement. In the

original Friedman investigation, despite the use of extensive pressure and improperly coercive techniques, a substantial number of computer students continued to deny that any abuse took place.[8] For example, at a November 24, 1987 meeting between parents and detectives, the detectives announced that "no child out of 30+ interviewed had been sodomized." (Kuby Aff. Ex. D,Aug. 19, 2013 letter from Arline Epstein, attachment at 1). The Detectives did not credit these denials, as they were convinced that, as stated by Detective Galasso: any child who "set foot through the door, that child was a victim." (Nov. 16, 1988 Notes of Meeting at Temple Beth-El, Theodore O'Neill, Kuby Aff. Ex. RR; see also, Ex. W).

Detective Wallene Jones was similarly insistent that denying children were nonetheless abused:

> …in [15] interview sessions that lasted as long as four hours, the boy repeatedly denied being the victim of abuse. Jones added, "for a long time he had nothing to say, but we knew." "On one occasion the boy jumped up and down, screaming 'I have nothing to tell you! Nothing happened!' But by then, we already knew," Jones said, "so we kept coming back after that until he told us."

(Kuby Aff. Ex. L (Kuhn Aff.) at para. 9).

Thus, following the therapeutic model they helped to devise, the Detectives assumed that the children who denied being abused were simply in deep denial,

[8] Because the prosecution refuses to supply any of the original case materials, it is impossible for the defense to know the actual number of computer students who were interrogated but continued to insist that nothing took place. Justice Winslow's order, which required the prosecution to provide these documents, is stayed pending appeal by the prosecution.

and that the more they denied it, the more help they needed to "disclose" it. For its part, the prosecution did not consider this "Brady" material, and has never shared it with the defense.

During DA Rice's conviction review, the Review Team completely abandoned even the idea of reviewing class rosters and interviewing the vast body of former students who made no complaints of sexual abuse and denied that any such abuse took place. Friedman's defense team, however, has spoken with twelve former computer students, including at least one who was present in each class in which abuse was alleged. All of the former students confirm that no abuse took place. Below is a detailed summary of the statements of each of these former student eyewitnesses.

1. Former Computer Student Dan Aibel

Dan Aibel is a Harvard graduate and award-winning playwright. He was editor-in-chief of his school newspaper, varsity team captain, and school valedictorian. His mother was president of the high school PTA. When a friend told him last year about the Friedman Case Review, Aibel voluntarily reached out to the DA's Office.

In a telephone conversation, Aibel described to Chief Assistant Singas that he was visited repeatedly by detectives at the start of the investigation (before the case had even become public), and subjected (along with his mother) to leading

and coercive interview techniques. These statements are important not only because they were exculpatory, but also because like recanting complainant Kenneth Doe, Aibel undermines the DA's foundational argument that police did not employ "aggressive techniques" early in the investigation. June 27, 2013 Affidavit of Dan Aibel at 6-9; 17-20, Kuby Aff. Ex. SS. Of the sexual abuse, Aibel insists: "I don't know of anything that happened. Nothing certainly happened while I was around." Id.

2. Former Computer Student Jesse Aviram

New evidence indicates that the friend who put computer student Dan Aible (mentioned above) in touch with Chief Assitant Singas in the context of the DA's review of the Friedman case, was computer student Jesse Aviram, who is currently an Assistant DA in Nassau County District Attorney's Office reporting to DA Kathleen Rice. Aviram, who was a student in the Friedman computer classes, told the Review Team that no abuse occurred, and confirmed that police interviews were "forceful and leading," even well before the third indictment. (Kuby Aff. Ex. B at 71). ADA Aviram highlighted the police's use of "Inviting Speculation" in his questioning, noting that Detectives asked if Arnold Friedman put his penis on Aviram's back. When he said that he did not, the officers asked if he might not have been aware of it when it happened." Id. at 90.

3. Former Computer Student Chris Blaha, U.S. Army, Major (Ret.)

Major Blaha is a decorated veteran of the United States Army, and a former student of the Friedmans. He today recalls no sort of abuse, and "can't even fathom logistically how that would be possible." (Interview Statements of Christopher Blaha, Kuby Aff. Ex. TT). His mother, Joan Blaha, remembers vividly the suggestive questioning and the techniques of "Asked and Answered" to which the detectives subjected her son Chris:

> They just went at him and at him about what went on, what was in the bathroom, did people stand behind him, and on and on and on and on. And I just thought it was so – it was so leading and so strong about it, and I thought – at first, Chris would say, "Well I guess something happened," but he never did because nothing happened. But I just felt like they were pushing him in that direction very, very hard. And I was thinking if Chris was not a strong person he could have caved on some of this stuff. I really felt that way. And after the whole thing was over, I told my friends, my husband, and anybody who would listen, that I no longer believed half the stuff that was in the newspaper.

(Kuby Aff. Ex. Q, at 3). Detectives would ask him the same question as many as five or ten times. Id. She characterized it as "totally aggressive", and when her son would say no "they would just rephrase it and ask him again." Id., (see also Kuby Aff. Ex. TT,Chris Blaha interview). Neither her son Chris, nor her other son Jack ever became complainants in the case. But their insistence that no such abuse occurred gave detectives no pause in pursuing classmates' accusations.

4. Former Computer Student Michael Epstein

Michael Epstein is today a high level engineer at a major software company, with an impeccable educational and professional record. He attended multiple computer classes at the Friedman home over a number of years. He is emphatic that "I never saw anything abusive…there was nothing inappropriate. There was nothing suggestive. There was nothing sexual about it." (Kuby Aff. Ex. K at 7).

The Detectives first used the technique of "Other People" to get him to corroborate abuse claimed by two other key complainants. When that failed, police pressured him to admit having been abused. Though he declined to make charges, he describes how he later lied to his mother and his therapist about the abuse.

> Eventually I just consciously decided to lie and say that I had been abused, and repeat these crazy things I had heard from other kids or in the therapy or from the police. You know, the leap frog, which doesn't even make sense… I just regurgitated everything I'd heard from other people, because that was the only way to make it stop.

Id. at 15.

Indeed, the saga of Michael Epstein shows just how thoroughly police misconduct was able to coerce false statements. He took dozens of classes in the Friedman home and was aggressively interviewed more than once by police. He confirms their use of leading questions and bullying tactics including threatening that he "would incline towards homosexuality if he failed to [disclose abuse]."

The prosecution, in the Rice Report, confirms that this took place. (Kuby Aff. Ex. B at 127).

Although he was able to withstand the direct police pressures, the totality of police misconduct created pressure on others, including his mother, that forced him to make false accusations. Epstein was falsely named by two complainants (who themselves have since repudiated their testimony) as a victim of abuse. Ultimately he was persuaded by his own therapist and his mother to "lie" and disclose abuse that had never occurred just to "end the questioning." Id.

Today, Michael Epstein avers that he was not abused in any way, and that he sat alongside major complainants in the very classes in which abuse was alleged and saw no such abuse. He states that the complainants were never abused in his presence despite their claims that such abuse took place in plain view of the rest of the class. He sat alongside non-complainants whom the complainants also falsely named as victims.

Michael Epstein's mother Arline -- a Great Neck resident and computer programmer for Chase Bank at the time -- believed police and ADA Onorato, when they told her that her son had been molested by Jesse and Arnold Friedman. Shocked and saddened by what she was told, she vigorously assisted the police and the prosecution in their investigation, speaking with other parents of alleged victims, and organizing a community response to the terrible crimes she was told

had unquestionably occurred. During the course of the investigation, she appears to have been the only person to have taken extensive contemporaneous notes of the progress and findings of the investigation, and for 25 years retained them in her personal files.

In 2013, Ms. Epstein and her husband Joel were on vacation in Asia when their son Michael sent her an email entitled "Attempting closure." In it, Michael told his mother for the first time that he had lied to her decades earlier in order to stop the relentless police pressure. He felt he had to admit to crimes that had never happened. He told her that he had never been abused and that he had never seen any other child being abused. (Kuby Aff. Ex. W at A-34). Michael had recently spoken to the DA's office in the course of their conviction review, and felt that he had to tell his mother immediately. She described his coming forward with the truth as a "huge relief" Id. at A-35.

For all the years prior to this, including the times in which she took all of her contemporaneous notes, Ms. Epstein fully believed the police stories about Jesse Friedman's guilt and had no reason to cast the police conduct in anything other than a laudatory light. In one note, the mother of complainant Barry Doe told Arline Epstein on or about November 30, 1987 that when Detective Merriweather arrived for an interview with her son, he mentioned another very long interview he had just conducted. The note reads: ***"Merriweather had been w/ a kid 7 hour[s] /***

[the] kid wouldn't open up." In addition, page A-3 of Epstein's notes states that ***police interviewed complainant Barry Doe for five hours***. (Kuby Aff. Ex. W at A-3). Pages A-17 to A-20 show that police interviewed Barry Doe five times. Id. at A-17-A-20. They planned to return in order for Barry to identify three alleged friends of Jesse whom police said were also involved in the abuse.

Detectives also relied on Arnold Friedman's "Closeout Statement" to persuade her to continue to try to get Michael to "disclose" his abuse. In late March 1988, immediately following Arnold Friedman's plea and Closeout Statement, Detective Galasso called Ms. Epstein and stated that the Sex Crimes Squad is "getting [the] task force back together" because they "want to go back out & re- interview kids *to be sure of [the] case against Jesse."* She also says "they [the detectives] want to speak to Mike again... police need their help." Id. at A-16. This conversation was contemporaneously documented in Ms. Epstein's notes.

Arline Epstein's notes also reveal that Detective Galasso knowingly lied to Epstein in this telephone call, telling her that in his Closeout Statement "*Friedman named hundred[s] of kids."* Galasso similarly lied in *Capturing the Friedmans* when she falsely stated that she had seen "foot high stacks" of child pornography "in plain view." (Kuby Aff. Ex. Z at 36). Galasso repeated the lie to parents with whom she spoke. Ms. Epstein recalls when she inquired in November of 1987,Galasso told her they found "stacks of pornographic materials." She also told

Ms. Epstein that none of the children had reported any incidents of sodomy, but "you usually have to go back to children and speak to them more than once." Id. at A-4. Based on her experience with her son Michael, and hearing from other parents, she knew that police stayed with small children for many hours at a sitting to try to get them to "disclose" having been abused. Id. at A-11-A-12. At one group meeting, police told an assembled group of concerned parents that they had over 100 names of children who had been abused by the Friedmans, and that one student had made a ten-page statement over five hours of questioning. Id. at A-3. At a later parent meeting in January, 1988, therapists described difficulty in getting through to the children in this case, since they "have no symptoms" of abuse. Id. at A-11-A-12.

At parent meetings, police stated they were convinced of the abuse and attempted to persuade parents that their children had been abused. Id. at A-9. They falsely told parents that they had found a "devastating amount of evidence" of abuse, and that the Friedmans had also photographed their abuse of the students. Id. at A-10, A-29. Ms. Epstein wasn't present for the police interviews with her son, but remembers that the police were convinced of Jesse Friedman's guilt, and "stressed that it would be so much healthier for the kids if they were able to acknowledge what had happened to them." Id.

5. Former Computer Student James Forest:

Jamie Forest, today an audio engineer avers that "I recall with absolute certainty that, (1) I had a great time in those classes; and (2) Jesse and Mr. Friedman never did anything inappropriate to me or my brother." (Dec. 29, 2003 Affidavit of James Forrest, Kuby Aff. Ex. VV).

6. Former Computer Student Ron Georgalis

Ron Georgalis, an educator at Florida State University, was enrolled in multiple Friedman classes in the 1980s, an experience he recalls as "overwhelmingly positive." (Dec. 30, 2003 Affidavit of Ron Georgalis, Kuby Aff. Ex. WW at para. 3). He calls the games that the DA alleges occurred in the classroom, such as "leap frog," "patently ridiculous." He "never witnessed Jesse touching any of the children, inappropriately or otherwise." Id. at para. 4. He has no recollection of ever meeting or seeing Ross Goldstein. He also "can state without reservation that [he] did not experience any form of abuse, sexual or otherwise, during the Friedman's computer classes, nor did I witness any other children being abused." Id. at para. 5.

But the Detectives insisted otherwise, using the "Other People" tactic that was effective elsewhere. He vividly remembers Detective Galasso coming to his house, and hearing her tell his parents "authoritatively that [he] had been both sodomized and forced to engage in oral sex with Arnold and that he had admitted

in a jailhouse confession that [Ron] was his personal favorite." Id. His father, Ralph Georgalis, confirms that story, and describes the questioning as having been designed with the "clear intent … to convince us that Ron had been molested and that several other children had already admitted that they, also had been abused." (Dec. 30, 2003 Affidavit of Ralph Georgalis, Kuby Aff. Ex. XX at para. 3-4).

Ron's mother Margalith Georgalis was also pressured by the police after her son failed to provide the answers the Friedman detectives demanded. She too was shown Arnold's Closeout Statement as proof that her son had indeed been molested:

> When Sgt. Galasso and somebody else back a second time. That was after they already had convicted Arnold. And we sat in the kitchen and they told me 'we interviewed Arnold in prison and he told us that Ron was his favorite.' Which was a surprise, but later on I thought of it and I thought they probably told it to other families too. And I felt that they were trying to do it to make us mad- really enrage us against Jesse and try and come up with something against him.

(Dec. 30, 2003 Affidavit of Margalith Georgalis, Kuby Aff. Ex. YY; Nov. 15, 2012 transcript of recorded interview with Margalith Georgalis, Kuby Aff. Ex. ZZ).

7. Former Computer Student Michael Kanefsky

Michael Kanefsky, also present in many computer classes, stated in a recorded interview that he "took two classes taught by Arnold Friedman. I recall nothing happened. Police came to my house two to four times. I told them I saw

nothing and they kept coming back. I took two private one on one classes with Arnold Friedman. Nothing happened." 2012 recorded interview transcript of (Michael Kanefsky, Kuby Aff. Ex. AAA).

8. Former Computer Student Rafe Lieber

Rafe Lieber, today an executive vice president at a title insurance company, and a student in several classes, recalls the police being "very intimidating." (June 4, 2012 recorded interview statements of Rafe Lieber, Kuby Aff. Ex. BBB, at 2). He noted specifically a detective raising his pant leg to make his pistol visible to the young boy. Id. Lieber was insistent that nothing happened to him, but in a classic example of the "Asked and Answered" technique, "that never seemed to be good enough as a response." Id. at 3. Lieber states:

> I was very insistent that nothing ever happened to me. And that never seemed to be good enough as a response. Nothing ever happened to me and I don't have any memories of any of that stuff. To tell you the truth, if you take all the stuff that happened afterwards out of it, I remember the class fondly.

Id.

9. Former Computer Student Shahar Lushe

Shahar Lushe, a former computer student, stated in a recorded interview:

> I honestly believe that if something happened, you know, if it really stood out as something that I didn't think was right, I would remember it. I'd like to believe that. But you know, I can't think of anything like that.

(Recorded interview statements of Shahar Lushe, Kuby Aff. Ex. CCC, at 5).

10. Former Computer Student Gary Meyers

Gary Meyers, today the Chief Financial Officer of a university institute, recalls an amplified form of the "Positive and Negative consequences" technique being used against him. During a long interview (recorded on tape and transcribed by Friedman's lawyer Peter Panaro) with Gary Meyers, who repeatedly insists that he has not been abused, Detective Hatch warns the boy in a manner by turns abusive and coercive:

> Most [people] who abuse children have been abused themselves. It's a monster created within you, this little monster inside you, this little voice. And every now and then it rears its ugly head unless the victim knows enough about the problem to get himself straightened out.

(Transcript of 1988 interview of Gary Meyers by Detective Hatch, Kuby Aff. Ex. DDD). The detective's partner added: "You'd have to be an idiot not to see this." Id. When the questioning finally ended, the detective called the boy's mother into the room and said, "Gary was a wise guy, and I didn't like his answers." Id. Gary Meyers insists now: "I took years of classes with them. I was always enthusiastic about going back….It was never something that was uncomfortable at all, or, you know, awkward." (Transcript of May 23, 2012 recorded interview of Gary Meyers, Kuby Aff. Ex. EEE, at 4).

11. Former Computer Student Jeff Meyers

Gary Meyers' younger brother, Jeff, today a schoolteacher in Florida, also refutes all allegations of sexual abuse:

> I was not sexually abused, molested, or sodomized during the computer classes. I am fully aware that there is no way that any sexual abuse or anything else other than computer lessons could have happened in those classes. Nothing inappropriate ever happened during any of the classes I attended, and I attended many of Arnold Friedman's classes.

(June 20, 2013 Affidavit of Jeffrey Leff, Kuby Aff. Ex. FFF, at para. 3).

12. Former Computer Student David Zarrin

David Zarrin, an employee at his family's business, makes perhaps the tersest refutation of any of the original alleged victims: "[f]rom what I remember, there was nothing odd going on at all in the classes." (July 27, 2001 Transcript of Recorded Interview of David Zarrin, Kuby Aff. Ex. GGG, at 3).

To summarize, ***twelve students who attended the same computer classes as the original complaining witnesses clearly and unequivocally assert that no sexual abuse took place.***

C. All Of The Allegations Made By Each And Every Complaining Witness Have Been Completely And Conclusively Refuted By Evidence Obtained Through A Decade Of Investigation.

The grand jury testimony of every complaining witness is thoroughly undermined by clear and credible evidence, often in multiple forms and from multiple sources. Seven main elements undermine the grand jury testimony of the

complainants: 1) the complainant has completely repudiated the testimony he provided when he was a child, explaining that it was a product of coercion, 2) other eyewitnesses who were in the same classroom as the complainant assert that no abuse took place, 3) The complainant lied in material respects, claiming he witnessed sexual abuse against others that did not take place, 4) the complainant lied in material respects by falsely claiming that other perpetrators sexually abused him, 5) the complainant radically altered his testimony in material respects, 6) the complainant made assertions that were so implausible and contradicted by the physical evidence, or obviously fantastic that they cannot be credited, and 7) the complainant's accounts of sexual abuse dramatically expanded after each round of police interrogation.

An examination of every charge by every complaining witness described below, leaves no doubt that Jesse Friedman was wrongfully convicted:

1. Kenneth Doe

Kenneth Doe has completely repudiated his testimony in a letter to the District Attorney, stating that his false testimony was the result of high pressure police techniques. Three eyewitnesses who attended the same computer class with him also state that no abuse took place.

Kenneth Doe took several classes at the Friedman home, but all of the charges related to him emerge from the "Basic 2" class in the Spring of 1987. Four

charges relate to Jesse Friedman, numbers 1004[9], 1005, 1015, and 1016 on indictment #67104. The charges allege that on two occasions between April 1, 1987 and May 15, 1987 "Jesse Friedman photographed (the) victim while Arnold Friedman did contact the victim's anus with his penis." Jesse Friedman was also charged with two counts of sexual abuse, accused of touching the victim's penis. On May 20, 2013, Kenneth Doe submitted a letter to the DA in which he completely repudiates the testimony he gave as a child::

> None of the events allegedly described by or attributed to Kenneth Doe ever took place. Arnold Friedman did not contact my anus with his penis, I was not witness to Jesse Friedman taking any photographs of anything, I engaged in no sexual performances, neither Arnold nor Jesse ever touched my penis…During the time that I was present in computer classes, I did not observe Arnold or Jesse Friedman engage in anything even remotely akin to sexual conduct, and I have no reason to believe such events occurred.

(Kuby Aff. Ex. M). Kenneth Doe's account of how those allegations came to be, mirrors myriad other accounts from the investigations, particularly with the aggressive police use of "asked and answered":

> I recall clearly that police investigators came to my home repeatedly to question me about what had happened in the computer classes. The police repeatedly told me that they knew something had happened, and they would not leave until I told them. As a result, I guess I just folded so they would leave me alone. I recall being taken somewhere and being videotaped while I repeated these untruthful statements.

[9] All indictment counts are referenced herein with a leading digit of 1, 2 or 3, representing respectively indictments #67104, 67430, and 69430 (the first, second and third indictments against Jesse Friedman). The following three digits represent the charge count number within each respective indictment.

> After the film *Capturing the Friedmans* came out, I went to see it with my wife…The descriptions given about the police tactics used to extract statements rang true for me.

Id.

Kenneth Doe's current statements are widely confirmed by the eyewitness testimony of three other students who attended this class with him and assert that no sexual abuse took place; Barry Doe, Michael Epstein, and Michael Kanefsky. Barry Doe is insistent that "I never saw a kid get sodomized or molested. I was never sodomized or molested. And if I said it, it was not because it happened. It was because somebody put those words in my mouth." (Kuby Aff. Ex. E, at 4). Michael Epstein is similarly insistent: "I never saw anything abusive….Jesse was… completely appropriate in every way." (Kuby Aff. Ex. K at 7). And lest there be any confusion about whether any abuse could occur without another student noticing: "during these classes, kids were walking around...I can't imagine that anything untoward was happening on the other side of the room that I didn't notice." (Id. at 7). Last, Michael Kanefsky, who was questioned two to four times by the police, told them as a child, and repeats as an adult, that "nothing happened." (Kuby Aff. Ex. AAA).

2. Barry Doe

> *Barry Doe has completely repudiated his testimony against both Arnold and Jesse Friedman, stating "I swear on my two children's lives that I was never raped or sodomized " and that "if I said so at the time," it was only "because someone else put those words in my mouth." His lawyer*

> *confirmed this in open court. In addition, three witnesses who took classes alongside him state that no abuse took place.*

In the Winter 1987 class, he alleged that Jesse Friedman touched his penis, and showed his penis to him at some point between January 2, 1987 and March 13, 1987. Those are charge numbers 1008 and 1025. In a tape made in May, 2012, Barry Doe is unequivocal in his repudiation:

> As God is my witness, and on my two children's lives, I was never raped or sodomized… I remember the cops coming to my house, and the cops being aggressive, and people wanting you to say almost what they wanted to hear. And, and I, I'll tell you I never said I was sodomized or, you know, I was never raped or, you know, molested. And I can't honestly tell you what other things I might have said… I never saw a kid get sodomized or molested. I was never sodomized or molested. And if I said it, it was not because it happened. It was because someone else put those words in my mouth.

(Kuby Aff. Ex. E, at 4). Barry Doe described the intense police questioning, especially the use of "asked and answered," that coerced his false statements: "I remember the cops coming to my house, and the cops being aggressive, and people wanting you to say almost what they wanted to hear." Id.

During the August 22, 2013 hearing on Mr. Friedman's Article 78 petition, Barry Doe was one of only three complainants to file objections to the requested file disclosure. He appeared through counsel, Brian Schoer, to object to disclosure, but ***not*** on the ground that the statements attributed to him as a child were correct, or that his repudiation of them was untrue. In fact, to emphasize this, in a colloquy between counsel, Barry Doe's lawyer reiterated Freidman's innocence:

> Mr. Kuby: Barry Doe is not alleging that Jesse Friedman committed a criminal act against him. That is something Mr. Schoer told me on behalf of his client. I put that in papers. I just want to confirm that Mr. Schoer stands by the statement that he made to me informally.
>
> Mr. Schoer: My client's memory would support that statement.

(Kuby Aff. Ex. G (Transcript of Hearing), at 4:1-10).

Barry Doe's admission through counsel is fully corroborated by the statements of Kenneth Doe, Michael Epstein, and Michael Kanefsky, all of whom were in computer classes with Barry Doe and assert that no sexual abuse took place.

3. Keith Doe

> *Keith Doe has completely repudiated his testimony and describes the police use of "inviting speculation" to manipulate what he did tell the police. Two other eyewitnesses who attended the same classes confirm that no sexual abuse took place.*

Keith Doe is the complaining witness in ten separate charges against Jesse Friedman, which include: Two counts of sexual abuse, alleging Jesse had "touched his penis to the victim's back" (charge numbers 2034 and 2033); and eight counts of "endangering the welfare of a minor" in which Jesse is alleged to have variously hit Keith Doe (charge number 2084), hit another boy (charge number 2085), shown his penis to minors (charge numbers 2086 and 2088), or been touched on the penis by several boys (charge numbers 2087 and 2089). The remaining two endangering charges (2090 and 2091) are "summary charges" of the other acts. Those acts

allegedly occurred over the course of two separate classes, 1986 Fall Basic 2, between September and December, 1986, and a second unnamed class from sometime in the Winter of 1987. The date ranges for the second set of charges (numbers 2033, 2088, 2089, and 2091) do not match any class given at the Friedman home

In his recorded interview with filmmaker Jarecki, in which Jarecki showed him, for the first time ever, the actual indictment charges attributed to him by police, he expressed amazement that his testimony was used to indict Jesse Friedman:

> Jarecki: …This says 'from or about the last, the first day of January '87, to the first day of March, 31st day of March '87, Jesse Friedman subjected Keith Doe, a person less than 11 years old, to sexual contact. The defendant did touch his penis to the victim's back.' Do you remember that happening?
>
> Keith Doe: … I don't think so. I think they asked me was did he ever come into close contact with me. And I think I probably told them that he did. Because he needs to lean over you to type on the keyboard. So that's probably what I told them.

Nov. 13, 2012 taped interview with Keith Doe, Kuby Aff. Ex. HHH at 2-3. He also now states that he has no recollection of ever seeing Jesse Friedman hit any students, of Jesse Friedman ever exposing his penis, or any sort of sexual abuse. Id. at 4-5.

Keith Doe himself believes he can account for how the charges of sexual abuse came about. He recalls being asked whether Jesse Friedman was ever in

contact with him. Keith Doe told investigators that Jesse Friedman had to lean over students to type on the keyboard. Id. at 2-3. He characterizes the charges that stemmed from his statement of Jesse Friedman leaning over him as a "manipulation" and an "exaggeration." Id. at 2. Keith Doe's account of how the police distorted the innocuous action by Arnold Friedman of leaning over a student to provide keyboard instruction is remarkably similar to the description of the interrogation provided by now ADA Aviram. (Kuby Aff. Ex. B (Rice Report) at 71).

His recollections today are completely supported by those of Steven Doe, who was in the Fall 1986 class with Keith Doe, and now swears "I did not witness anything inappropriate in the computer classes at any time." (Kuby Aff. Ex. H at 4). They are similarly supported by David Zarrin, who was in class with Keith Doe and states unequivocally "there was nothing odd going on in the classes at all." (Kuby Aff. Ex. GGG at 3).

4. Steven Doe (Brian Tilker)

Steven Doe/Brian Tilker has completely repudiated his testimony. According to him and his father, the police used asked and answered," "other people," and "positive and negative consequences" to coerce statements. His father was responsible for the computer school carpool, saw the children regularly going to and from class, and never noticed anything irregular.

Brian, whose false testimony accounted for one charge against Jesse Friedman in which he observed Jesse Friedman hit several boys (charge number

2067), is now a successful attorney in Hawaii. His original allegation was said to have occurred in Fall Basic 2, a class with multiple complainants. He has long since recanted that charge, and his explanation of it echoes many others, particularly with suggestive questioning techniques, "Asked and Answered," and "Other People": In his words:

> I remember the police questioning me on two occasions. On each occasion, I told them I had never been abused by Arnold Friedman or anyone else, and that I did not witness anything inappropriate in the computer classes at any time. I recall that this did not end their questioning and that I felt that they would be unsatisfied with any response other than my concurring with their view that sex abuse had taken place in the Friedman computer classes.
>
> I remember that they made specific suggestions to me about things that they believed happened in the computer classes, and that they told me repeatedly that other students had already told them that they had been abused, and that they were certain that in fact I had also been abused and that I should tell them so…After many sessions in which the police appeared unsatisfied by my negative responses, I became frustrated at the persistent questioning….I remember finally telling the police officers that I had seen Jesse chase after a kid and hit him. I remember saying that not because it was true, but instead because I thought it would get them off my back.

(Kuby Aff. Ex. H at 4-5, 8). In contrast to the portrait painted by the prosecution of Fall Basic 2 class as a sadistic Saturnalia of vicious abuse, Brian's memory is clear:

> *My own recollection of the computer classes was a perfectly pleasant and uneventful one. The classes lasted about 90 minutes and we would be given rudimentary computer programs to create…I can state without reservation that nothing untoward ever happened to me and*

> *that I never witnessed anything untoward happening to anyone else in the classes that I attended.*

(Id. at 12).

Richard Tilker, Brian's father, described the police's insistence that Brian had been abused. "They didn't' say 'we believe', they said 'we know.'" (Kuby Aff. Ex. R, at 4). Though he wasn't permitted to be present during the question, he eavesdropped and remembers it clearly:

> I was shocked by the aggressive manner in which they questioned this young boy. It was clear to me that the detectives had already formed their opinion of what had happened in the computer classes and that they were just trying to get Brian to agree with their story. It got to a point where it wasn't asking him what happened, it was more of telling him what happened, and when they didn't like what he had to say they kept repeating they know what happened and that he should tell.
>
> I recall that the questioning just got to be too much. The police wouldn't take no for an answer. Frustrated Brian finally told them that one time he saw Jesse chase after and hit a child, though he later told us that that was not true and that the only reason he had said that was to end the questioning because they wouldn't leave him alone.

Id. at 5-6. Brian's father also remembers "many different approaches in trying to persuade the children to answer their questions in the way they wished them to." Id. at 8. He specifically remembers other parents describing pizza parties and making cooperating witnesses "junior detectives" and giving them badges. Id. Parents pressured him and his wife as well, telling them how important it was for their son to acknowledge the abuse, and that they and he were in denial. Id. But he remained skeptical, in part because he was in charge of the carpool to drop off

and pick up children at the computer classes, including one who became a major complainant. Id. at 11. He "never even once noticed my son or any of the other children disturbed or distressed in any way." Id.

5. Daniel Doe

Daniel Doe's childhood assertion that he was sexually abused dozens of times, is undermined by the fact that four eyewitnesses who were in the same classes assert that no abuse took place. In addition, the fact that after completing his first class, he chose to re-enroll in a more advanced class in which he was allegedly sexually abused at the rate of three times per hour, makes his claims of abuse implausible. As an adult, Daniel Doe has refused to repeat these allegations to either the DA or to Friedman's defense team.

Complainant Daniel Doe is responsible for 56 separate charges against Jesse Friedman over two classes. In the Spring Basic 1 Class, between March 1, 1986 and July 1, 1986, Daniel Doe alleged seven counts of sodomy in which the defendant allegedly contacted the victim's anus with his penis (charge numbers 3049-3055); eight counts of sodomy whereby the defendant engaged in deviant sexual intercourse by forcible compulsion (charge numbers 3056-3059 and 3064-3067); eight counts of oral sodomy (charge numbers 3060-3063 and 3068-3071); and one count of endangering a minor, wherein Daniel Doe observed sexual abuse by Jesse Friedman of others (charge number 3297). According to the prosecution, he was allegedly abused 23 times, more than twice per hour, then he reenrolled in Fall Basic 2 in 1986. From that class he was responsible for another fifteen counts of anal sodomy (charge numbers 3072-3086); eight more counts of sodomy

whereby the defendant engaged in deviant sexual intercourse by forcible compulsion (charge numbers 3087-3090 and 3095-3098); eight more counts of oral sodomy (charge numbers 3091-3094 and 3099-3102); and another count of endangering a minor, wherein Daniel Doe observed Jesse Friedman sexually abuse others (charge number 3297). In that class, according to the People, he was abused more than three times per hour over the course of the weekly classes by Jesse alone.

All of these charges were first alleged in the *third* indictment against Jesse Friedman, more than a year after questioning began, well after the first rounds of questioning of all the students, and well after the above-described group therapy sessions began. It appears that Daniel Doe never mentioned a word about Jesse Friedman or any new allegations until at least June of 1988, seven months after he was first questioned. (Kuby Aff. Ex. B (Rice Report) at 26). In his first statement, November 30 1987, he alleged that Arnold Friedman had touched his penis to his and other students' backs, a charge that very closely resembles the charges attributed to Keith Doe, which the police arrived to from the fact that the instructors leaned over students to type on the keyboards. Id. That was the second time he was questioned by police. Id.

In October of 1988, eleven months after the first rounds of questioning, Detectives were able to improve Daniel Doe's recollections. He detailed games

called “Leap Frog,” “Simon Says,” and “Superhero” in which all of the children in the class were ritualistically sodomized. Id. at 27. Witness accounts conclusively refute Daniel Doe’s charges. Keith Doe was also in that class, and when asked whether he witnessed any abuse he replied “I don’t think so…I’m surprised to see that.” (Kuby Aff. Ex. HHH at 5). So too was Steven Doe (Brian Tilker), who stated “I don’t remember any bad experiences except for maybe not liking computers, you know?” He can “state without reservation that nothing untoward ever happened to me and that I never witnessed anything untoward happening to anyone else in the classes that I attended.” (Kuby Aff. Ex. H at 13). David Zarrin, another eyewitness to classes with Daniel Doe, agrees that no abuse ever took place. (Kuby Aff. Ex. GGG at 3). Ross Goldstein echoes both of their sentiments. (Kuby Aff. Ex. KK).

6. Dennis Doe

Dennis Doe has no recollection that any abuse took place. He recalls that the police put so much pressure on him that he began to make statements he knew were false. Dennis Doe also falsely accused another person of participating in the alleged abuse. His original allegations are contradicted by the statements of four eyewitnesses, including Assistant DA Jesse Aviram, who attended the same classes and insist that no such abuse took place

Dennis Doe, today an administrator in the tech industry, whose false testimony led to 29 of the charges, recalls:

> What I do remember is the detectives putting on me a lot of pressure to speak up. And at some point, I kind of broke down, I started

> crying. And when I started to tell them things, I was telling myself that it's not true. Like I was telling myself just say this to them in order to get them off your back.

(Kuby Aff. Ex. CC at 17). Based on the best information available, Dennis Doe took four separate classes with the Friedmans. He was in the 1986 Winter Basic 1 class, the 1986 Spring Basic 2 class, the 1986 Fall Basic 3 class, and the 1987 extended Winter Basic class. He alleged at the time one count of anal sodomy (charge number 2007) in 1986 Winter Basic class, one count of sexual abuse (touching the victim's penis, charge number 2031), and one count of aiding and abetting sexual abuse (charge number 2064), in which Jesse Friedman allegedly held down a boy that Arnold Friedman abused. In the next class, Spring Basic 2 1986, he alleged one more count of sodomy (charge number 2008) and one more count of sexual abuse (charge number 2032). All of those charges appeared in the second indictment.

In the third indictment, like Daniel Doe's, the charges grew. In the 1986 Fall Basic 3 class, Dennis Doe alleged that Friedman aided and abetted sodomy four times (charge numbers 3009-3013), sodomized Dennis Doe four times (charge numbers 3015-3018), photographed Dennis Doe being abused by others four times (charge numbers 3201-3204), and sexually abused Dennis Doe by touching his penis three times (charge numbers 3210-3212). Dennis Doe alleged six more instances of sodomy in Winter Extended Basic 1987, and two more counts of

sexual abuse. (Charge numbers 3019-3024 and 3215-3216). In the course of those instances of abuse, it is alleged that multiple other adults or teenagers, notably teenage suspect "Wayne Roe" and Ross Goldstein also abused Dennis Doe.

Dennis Doe also described another activity called "Extravaganza" in which children watched while adults in the classroom performed sex acts on each other. (Kuby Aff., Exhibit B, Rice Report at 27). According to Dennis Doe, all of these activities were videotaped and photographed. As noted, none of these alleged photographs and video tapes were ever found, and none of these alleged other perpetrators were ever charged.

Dennis Doe's memory of the classes is, regarding certain lessons, particularly detailed. He recalls precisely that they used Commodore 64 computers, he recalls the process of punching a hole in floppy disks to be able to record data on them, and how that worked, and other parts of the class. Id. at 20. However he has no recollection of abuse. His vague recollections appear absolutely intertwined with his extended therapy sessions, and police questioning. He recalls much more firmly the police questioning, attending police lineups, even other students in his class, but not abuse.

Dennis Doe's alleged childhood allegations, of which he has no current memory, are contradicted by eyewitnesses who saw no abuse, and the implausibility of the orchestrated massive group games he alleged. For example

ADA Aviram, who attended class with Dennis Doe in the Winter and Spring of 1986 confirmed to the Review Team that he witnessed no such abuse. (Kuby Aff. Ex. B at 70). The best information available suggests that Keith Doe and Chris Blaha were also in later classes with Dennis Doe, and neither witnessed any such abuse. See Kuby Aff. Ex. HHH; TT. Ross Goldstein's statement also confirms those eyewitnesses memory of the classes, as well as Dennis Doe's. (Kuby Aff. Ex. KK).

In the case of Dennis Doe, the overwhelming conclusion of the evidence is that a child with no recollection of abuse was convinced by zealous detectives, therapists and prosecutors that he had been abused when he had not been.

7. Richard Doe

Interviews with seven witnesses who attended class alongside Richard Doe directly contradict Doe's recollections. In addition, he falsely accused an imaginary character named "Snake" of sexually abusing him and falsely claimed to have lasting physical harm for the alleged sexual abuse.

Richard Doe, one of the three complainants whom the prosecution contends adhere to the original account they allegedly provided to the grand jury, was present in four separate classes, though his charges only stem from two. They are the 1986 Fall Basic 2 class, in which he alleges that Jesse attempted to sexually abuse him by touching the victim's anus (charge number 2037), and the 1987 Fall Basic 4 class, in which he alleges that he observed Arnold Friedman place his

mouth on Jesse Friedman's penis (charge number 2066). His larger allegations though involve many group sex games such as "Simon Says", though that testimony only came in November of 1988, more than a year after the initial questioning during which he did not recall any violent sexual games. (Kuby Aff. Ex. B at 27). He has since claimed that he had physical harm from abuse, but even the prosecution refutes this, noting that he had no medical damage or irregularity. (Kuby Aff. Ex. B at 103). Later on, Richard Doe would describe in group sessions abuse by a man named Snake (as described earlier, a fictional character played by Kurt Russell in the then-popular movie *Escape from New York*). (Kuby Aff. Ex. W (Epstein notes) at A-17-A-20). According to child sex ring expert Kenneth Lanning, alleged victims in these kinds of cases may begin to pull in characters or scenes from popular culture to build upon their testimony. (Kuby Aff. Ex. T at para. 19).

Richard Doe, according to the best information available, shared a classroom with Keith Doe, Chris Blaha, Barry Doe, Michael Epstein, Kenneth Doe, Steven Doe, and David Zarrin. All of those witnesses report that they never saw any sort of abuse, and especially not of the nature of the massive public sex games he recounts. With respect to the Fall 1987 Basic class, in which Richard Doe alleges that he observed Arnold Friedman place his mouth on Jesse Friedman's penis

(charge number 2066), Jesse was away at college, no longer living at home, and no longer assisting with the computer classes in the Fall of 1987.

8. Patrick Doe

Patrick Doe's allegations continued to expand with repeated police questioning. His allegations of sexual abuse stem from one class and four eyewitnesses who attended that class assert that no such abuse took place.

Patrick Doe accused Jesse of six counts of sodomy (oral and engaging in deviant sexual intercourse by forcible compulsion; charge numbers 3031-34 and 3155-3155); one count of sexual abuse (charge number 3219), and two counts of endangering the welfare of a minor (charge numbers 3301-3302). All of those counts are from the 1987 Winter Basic class. Like many of the other complainants, Patrick Doe made allegations against Jesse Friedman for the first time in the third indictment. Also like many other complainants, his counts are contradicted by numerous eyewitnesses who never saw any such abuse. They are Kenneth Doe, Michael Epstein, Michael Kanefsky, and Barry Doe. Moreover, Michael Epstein's mother, Arline Epstein, can confirm that parents freely entered the classroom without ever seeing any sort of sign of abuse. (Kuby Aff. Ex. P). There is no plausible basis to maintain the charges from Patrick Doe.

9. James Doe

James Doe recanted his testimony in at least one material respect; asserting, decades later, that Ross Goldstein did not sexually abuse him. James Doe made no allegations against Jesse Friedman until the third indictment, after multiple interrogations by the police. James Doe falsely stated that he witnessed other students be abused; those students deny any abuse. Three eyewitnesses who attended classes with James Doe assert that no such abuse took place.

James Doe, one of the three complainants the prosecution contends adheres to the account he allegedly presented to the grand jury, was responsible for twenty-nine separate charges against Jesse Friedman. Like many others, he only alleged any charges against Jesse Friedman in the third indictment, and didn't give his first statement alleging any sort of abuse until June, 1988, seven months after the first round of interviews. (Kuby Aff. Ex. B (Rice Report) at 104). He accused Jesse of one count of sodomy, in which Jesse is alleged to have engaged in forcible sexual intercourse by forcible compulsion (charge number 3041); two counts of use of a child in a sexual performance in which Jesse Friedman is alleged to have photographed James Doe while James Doe was abused by Ross Goldstein (charge numbers 3194-3195); one count of sodomy in the second degree in which the defendant compelled other children to contact their penises to the anus of James Doe (charge number 3220); and twenty-four counts of endangering the welfare of a minor, in which James Doe observed numerous sexual acts (charge numbers 3255-

3278). They include numerous instances of various adults abusing other children, and many of the sex games alleged to have occurred during the classes.

Those instances of abuse are all alleged to have occurred in the classroom, in full view of everyone. But, like the others, there are eyewitnesses to those classes who directly contradict the charges. The charges themselves are odd, since they mostly involve witnessing the abuse of others, but they are not corroborated by any students claiming to be abused in a way to support them. Rafe Lieber, a student in multiple classes, was in the Spring Gamemaker 1986 class, and reports "nothing ever happened." (Kuby Aff. Ex. BBB). So too was Gary Meyers, who reports that he took "years of classes with the Friedmans" and was "always enthusiastic about going back." (Kuby Aff. Ex. DDD). He recalls being "pressed and pressed," by Detectives repeatedly asking "was there any time that you were uncomfortable?" He is certain that no abuse ever took place while he was in the classroom. Ross Goldstein too confirms that no such abuse ever took place. (Kuby Aff. Ex. KK).

Somewhat buried within the Rice Report, the prosecution admits that James Doe recently changed some of his testimony, recanting all his charges against Ross Goldstein. (Kuby Aff. Ex. B at 104). The prosecution appears to credit this recantation. The prosecution concedes then, in some sense, that some of the charges attributed to James Doe were mere inventions, but offers no explanation as

to how or why James Doe could wrongfully accuse Ross Goldstein but should be credited with respect to equally fantastic allegations against Jesse Friedman.

The last three charges attributed to James Doe involved video games. Throughout the investigation, investigators noted what they called explicit or pornographic video games. They have attempted to assert that these were part of some sort of sophisticated grooming process orchestrated by Arnold Friedman. (Kuby Aff. Ex. B at132). While the majority of those charges are leveled against Arnold Friedman, a few exist against Jesse Friedman and are worthy of addressing. First, it must be remembered that "explicit sexual video games" as they existed in the mid-1980s are a very different proposition from the sort available today. The Commodore 64s in the classroom had extremely basic graphical displays compared even to the computers of the 1990s, featuring 160x200 pixel displays. The processors were far less powerful than even cellular telephones today. They were not capable of displaying explicit sexual images in the manner one might imagine in 2014. Second, there is direct evidence of their source, and it was not Arnold or Jesse Friedman, but rather Jesse Friedman's friend, Judd Maltin. In his words, he possessed all of those games, which were extremely common in Great Neck and other communities, and gave his entire collection of software to Arnold Friedman. (Dec. 15, 2003 Affidavit of Judd Maltin, Kuby Aff. Ex. III at 6). He never heard any mention of the games from Arnold or Jesse Friedman (who he describes as his

"constant companion"), and doubts they were ever aware of them. Id. Jesse Friedman himself can confirm that there were probably more than a hundred disks, each of which could have held ten or more games. Only the police are likely to have ever known what was on all of them. Maltin also recalls observing several classes, and reports never witnessing anything inappropriate in the home. Id.

Students also remember the games, but do not remember them being introduced by Arnold or Jesse Friedman. For example, Chris Blaha remembers the games, but remembers it as something the students were "sneaking" into class and elsewhere. It was, in his words "definitely not a part of the computer class." (Kuby Aff. Ex. TT at 2). Keith Doe also recalls such games, but not explicitly as part of the class. Rather, he recalls seeing them later. They may, according to his memory, have been in the class as well, but didn't recognize them as sexual in nature at the time. He recalls difficulty figuring out what the pictures were. (Kuby Aff. Ex. HHH at 3-5).

10. Lawrence Doe

Lawrence Doe made no allegations against Jesse Freidman until the third indictment, after multiple interrogations by the police. Four eyewitnesses who attended classes with him assert that no sexual abuse took place.

Lawrence Doe, like many others, alleged crimes by Jesse Friedman for the first time in the third indictment. He alleges three counts of sodomy (charges 3043-3045), two counts of sexual abuse (charge numbers 3208-3209); and five

counts of endangering the welfare of a minor (charge numbers 3293-3296). All of the alleged incidents occurred between January 1, 1987 and April 1, 1987. Numerous other students in that class are unanimous in their observations that no such conduct ever occurred. Michael Epstein, Kenneth Doe, Barry Doe, and Michael Kanefsky were all in the class with Lawrence Doe, and none ever witnessed anything of the sort. Kenneth Doe specifically denies ever being shown pictures of nude people, within the same class that Lawrence Doe alleges they were displayed. (Kuby Aff. Ex. M). All are sure, they never were sexually abused in that class themselves, and they never witnessed any sort of abuse. And Michael Epstein explains: "I really can't imagine that anything untoward was happening on the other side of the room that I didn't notice." (Kuby Aff. Ex. K at 6).

The remaining charges by Lawrence Doe (numbers 3294-3296) regard the same video games described above relating to James Doe, and are similarly baseless as they relate to Jesse Friedman.

11. Edward Doe

Edward Doe's claims are blatantly implausible, including the claim that every child in one of the classes was sodomized in plain view of the class; His claims are also contradicted by three eyewitnesses who assert that no sexual abuse took place.

Edward Doe attended three classes in the Friedman home, but all but one of his charges are attributed to a single class, the 1986 Fall Basic 2 class. In that class he alleged nine separate charges. He alleged two counts of aiding and abetting

abuse, in which Jesse Friedman is alleged to have held Edward Doe while Arnold Friedman abused him (charge numbers 2026 and 2027); one count of sexual abuse (charge number 2028) in which Jesse Friedman is alleged to have touched Edward Doe's penis (charge number 2028); one count of endangering the welfare of a minor in which Jesse Friedman is accused of hitting the victim (charge number 2051); one count of aiding and abetting an endangering, in which Jesse Friedman is accused of touching his penis to another boy's buttocks on the orders of Arnold Friedman (charge number 2055); another count of endangering a minor in which Jesse Friedman allegedly touched his penis to a boy's back (charge number 2056); one count of endangering a minor in which Jesse Friedman allegedly struck another boy (charge number 2057); and a summary endangering charge encompassing the prior endangering the welfare of a minor charges (charge number 2058). The only charge from the 1987 Winter Extended Basic class is endangering the welfare of a minor, in which Jesse is alleged to have touched his penis to another boy's back (charge number 2059).

The first class, which accounts for most of the charges, is the same class in which Daniel Doe alleges he was sodomized multiple times each session, and in which the games "Leapfrog" and "Simon Says" were commonly played. Edward Doe alleges isolated incidents of differing abuse, but nothing like those kinds of allegations. Even his reduced allegations, however, stand in stark contrast to

multiple witnesses who saw nothing of the sort. Keith Doe was in this class, and doesn't recall seeing anyone abused. (Kuby Aff. Ex. HHH at 5). So too was Steven Doe, who "did not witness anything inappropriate in the computer classes at any time." (Kuby Aff. Ex. H at 12). Ross Goldstein has also been variously accused of being present in this class and is adamant that he never saw any sort of abuse. (Kuby Aff. Ex. KK).

The charges of Edward Doe are riddled with the sort of internal inconsistencies that fatally plague the indictments. Daniel Doe alleges in this class widespread constant sodomy of every student in the class. Edward Doe also alleges serious crimes, but mostly isolated incidents of bizarre sexual acts or violence. Keith Doe originally alleged more minor acts, but today concedes that those allegations were manipulations by the investigating officers. In the same vein Steven Doe alleged crimes inconsistent with those alleged by the others, and now admits he only stated those things under tremendous police pressure. (Kuby Aff. Ex. H).

12. Fred Doe

Under repeated and extensive questioning over a period of months, Fred Doe's allegations grew from a claim that Arnold Friedman gave him "bad hugs" to assertions that he was anally raped by Arnold and Jesse while three of Jesse's friends held him down. He falsely identified one of these "helpers." His statement, composed by Detective Merriweather contained the "penis was as hard a rock" language, identical to the language Detective Merriweather used in an unrelated case with a different complainant. Fred Doe's claim

that he submitted to sexual abuse only because he was told he would never be allowed to come back again to computer class is obviously fantastical. Fred Doe's claims are refuted by three eyewitnesses who assert that no sexual abuse took place.

Fred Doe is the complaining witness in seven counts, five of which are in the same Fall 1986 class also attended by Daniel Doe, Edward Doe, Keith Doe, and Steven Doe. His charges too differ from the others. He alleges two counts of sodomy (charge numbers 2003 and 2004); two counts of aiding and abetting sodomy (charge number 2001); one count of sexual abuse (charge number 2023); and one charge of endangering the welfare of a minor for observing Jesse Friedman hit several boys (charge number 2044). In a later class, allegedly taking place between December 1986 and March 1987, he alleges one count of sexual abuse for touching the victim's penis (charge number 2024) and one count of aiding and abetting for telling Fred Doe to be quiet while Arnold Friedman abused him (charge number 2002). There was no such class between December 1986 and March, 1987 so it is difficult to match precisely when these crimes allegedly would have occurred.

The process by which Fred Doe was coerced into making statements that changed from alleging "bad hugs" by Arnold Friedman to being anally raped by both Arnold and Jesse Friedman while three of Jesse's friends held him down is detailed at *supra*, pp. 41-45, and will not be repeated here. As also detailed in that section, another "helper" whom Fred Doe falsely identified from a line-up; was

never charged. Detective Merriweather, who composed Fred Doe's statements, wrote that Fred Doe said "Jesse's penis was as hard as a rock," which was the identical language Detective Merriweather attributed to a seven-year-old girl in the Izzo case. Fred Doe's assertion that he acquiesced to one act of sexual abuse because "Jesse had told me if I didn't take my pants down I would never be allowed to come back again to computer class" was found to be implausible by mass-child sexual abuse expert Kenneth Lanning. Finally, multiple eye-witnesses deny such abuse ever took place, notably Steven Doe, Keith Doe, and Ross Goldstein.

13. William Doe

Under repeated police interrogation, William Doe's claims changed, from assertions of innocuous conduct to wildly implausible allegations of mass rape of students, adults sodomizing each other, and bizarre rape "games." All of his claims are refuted by four eyewitnesses who were in the same computer classes and assert that no sexual abuse occurred.

William Doe is responsible for thirty-nine separate counts against Jesse Friedman. Following a familiar pattern, only five were in the first indictment, and thirty-four more came in the third. It appears from the Rice Report that he was first interviewed on November 17, 1987 and gave a fairly reserved statement of having seen "adult games" while in the class, and that he once saw Arnold Friedman in his bathrobe. (Kuby Aff. Ex. B at 12). In his second interview, a week later, he also alleged that Arnold Friedman had touched his penis to his back,

and had instructed him to retrieve a disk from a location near dirty magazines. (Id. at 13). The first indictment demonstrates the tameness of those allegations, in which Jesse Friedman is accused only of summary endangering a minor charges (charge numbers 1052-1053, 1045-1046, and 1049).

In June, 1988, William Doe met again with officers, and gave increasingly wild and bizarre statements. Those included sex games "Simon Says" among others and described graphic incidents of sodomy and began to involve Jesse Friedman. The third indictment alleges that in the 1986 Spring Gamemaker class Jesse aided and abetted sodomy (charge numbers 3001-3003) by multiple adults; three counts of sodomy (3035-3037); three counts of the use of a child in a sexual performance (charges 3191-3193); one count of sexual abuse (charge number 3207); and eighteen counts of endangering the welfare of a minor (charge numbers 3222-3239 and 3254). In a later class (1986 Fall Music) he alleged four counts of Friedman aiding and abetting sodomy (charge numbers 3005-3008). The endangering the welfare of a minor charges mostly involve observing widespread abuse in the class, including the game "simon says", "super hero", "hora bora alice", and witnessing sexual contact between adults. The reserved and tame charges grew over the months to increasingly fantastical allegations in precisely the same way Kenneth Lanning warns that "false cases" develop.

Nearly all of these charges involve multiple students and class-wide sexual games. Yet in the Spring 1986 Gamemaker class William Doe was one of just two complaining witnesses. More damningly, the best information available shows that Rafe Lieber and Gary Meyers were also present in this class among other non-complaining student witnesses. Gary Meyers had this to say: "nothing odd or inappropriate happened at all." Rafe Lieber stated: "nothing ever happened." William Doe is the only complaining witness to bring charges at all in the Fall 1986 Music class, raising immediate doubts about whether the public sexual acts describes could possibly have occurred. Beyond such concerns, he shared the class with Rafe Lieber and Gary Meyers, who, as previously stated, did not corroborate the charges. The earlier, first indictment charges were from the Spring 1985 class. William Doe shared that class with Ron Georgalis, who has been adamant about the lack of abuse, and Dan Aibel, who wonders "what could have gone on there that I should have known about?"…and witnessed no such abuse. (Kuby Aff. Ex. SS). Rafe Lieber too was in that class, along with numerous other students who refused to disclose abuse.

All of the charges brought by William Doe are uncorroborated, refuted by eye witness testimony, and must be dismissed.

14. Gregory Doe

Gregory Doe appears to be delusional. He claims to have no recollection of abuse until he was hypnotized. He made no

allegations of abuse until the third indictment, when he alleged that he was sodomized more than twice per class in one ten week winter class. His allegations have grown wilder since the 1980s, including an assertion that Arnold Friedman ejaculated onto chewing gum and into orange juice and forced him to consume it. The DA has deemed him "unreliable" and "perilous to rely on," and his accounts are refuted by four eyewitness.

Gregory Doe, the final complaining witness the prosecution claims stands by his allegations before the grand jury, is the complaining witness on thirty-four counts of sodomy (charge numbers 3156-3190), oral and anal, over two separate classes, 1987 Winter Basic 1 and 1987 Spring Basic 2. All of those allegations, like most of the more outlandish accusations, were only raised months after the investigation began and the first interviews occurred, in the third indictment.

Gregory Doe described having no memory of abuse until he was hypnotized: "I was told I was abused. I didn't remember anything. Then all of a sudden, in a trance, all of a sudden, I started to remember things." (Kuby Aff. Ex. Z at 97). He made no allegations of abuse in the first indictments, then suddenly claimed in time for the third indictment twenty-four counts of sodomy in one ten week winter class (more than two incidents per session); then reenrolled in the advanced class that Spring where he alleged he was sodomized another eleven times. He appeared in *Capturing the Friedmans*, where he made even further allegations, in some places apparently "borrowing" charges that had been attributed to other complainants For example, he now claims to recall games such as "Leapfrog" and

"Simon Says", and makes new claims regarding Arnold Friedman ejaculating onto chewing gum and into orange juice and forcing him to consume it. He also claims that Arnold Friedman waved a knife at the children, threatening to kill them and their families. The prosecution recently acknowledged his plainly delusional nature by admitting noting that he is "unreliable", "fraught with inconsistencies" and even "perilous to rely on." (Kuby Aff. Ex. B at 79).

Regardless of the ever broadening charges by Gregory Doe, eye witnesses to both classes in which he was a student conclusively establish that no such conduct occurred. Kenneth Doe, Michael Epstein, Barry Doe, and Michael Kanefsky, all quoted above, were all in the Winter Basic 1 class in 1987 and the Spring 1987 Basic 2 class, and all confirm that neither the events described in his original affidavit, nor the events he would later claim happened took place. Gregory Doe's testimony, by the People's own admission is unreliable, the product of debunked-psychology, completely uncorroborated, and refuted by eye witness testimony. .

In summary, the case that was constructed by overzealous detectives and prosecutors, using a panoply of coercive and improper techniques, has been thoroughly and completely demolished over the past decade. Each and every count to which Jesse Friedman was forced to plead guilty has been refuted by clear and

credible evidence. Nassau County's most shocking and notorious case of mass sexual abuse of children simply never happened.

Argument

This motion seeks a full evidentiary hearing on Friedman's conviction based on actual innocence, pursuant to N.Y. C.P.L §440.10(h), and his right to due process of law under the Fourteenth Amendment to the Constitution of the United States. U.S. Const. Amend. 14; Schlup v. Delo, 513 U.S. 298, 314-315 (1995). A motion that makes a sufficient showing of merit demands a full hearing. People v. Hamilton, 2014 N.Y. Slip Op 00238 (2d Dep't 2014). CPL section 440.10(h) protects those whose rights under the New York Constitution's Due Process clause have been violated. This motion seeks vindication for three violations. First, Jesse Friedman was convicted as an actually innocent person. Convicting the actually innocent violated the Due Process Clause of the Constitution of the State of New York. People v. Hamilton, 2014 N.Y. Slip Op 00238 (2d Dep't 2014). Convicting the actually innocent is also a violation of the Due Process Clause of the Fourteenth Amendment, although the federal courts have differed as to whether such a claim can be "free-standing" or simply a "gateway" to address other, defaulted, constitutional claims. Jesse Friedman meets the criteria for relief on both bases. Second, the indictments upon which Friedman was convicted were procured with evidence that was coerced, unreliable and untrue, and no prosecutor

may permit a proceeding to continue on an indictment which he knows rested on false or insufficient evidence. People v. Pelchat, 62 N.Y. 97, 107 (1984). This misconduct deprived Jesse Friedman of his rights under Art. I, §§ 1,2, and 6 of the Constitution of the State of New York, and his Due Process rights to a fair grand jury proceeding and his right to a trial, in violation of the Sixth and Fourteenth Amendments to the Constitution. Third, the misconduct by the trial judge, as noted by the Second Circuit, coerced Jesse Friedman's plea of guilty in violation of his rights under Art. I, §§ 1 and 2 of the Constitution of the State of New York, and the Sixth and Fourteenth Amendments to the Constitution of the United States.

I. THE OVERWHELMING EVIDENCE DEMONSTRATES THAT JESSE FRIEDMAN IS ACTUALLY INNOCENT

Jesse Friedman, an actually innocent person wrongfully convicted of crimes decades ago may at any time prove his innocence under CPL 440.10(h), since his punishment and ongoing status as a sexual offender violates New York's Due Process clause. Hamilton, 2014 N.Y. Slip Op 00238 at *11, *14; see also People v. LaValle, 3 N.Y.3d 88 (2004) (Due Process protections by New York Constitution greater than those guaranteed by U.S. Constitution). In asserting a claim of actual innocence, if the petitioner raises a *prima facie* case for his innocence, then a full hearing of the evidence is justified. Hamilton, 2014 N.Y.

Slip Op 00238 at *14. At the hearing, petitioner's conviction will be set aside if he can show by clear and convincing evidence that he is innocent. Id.

The bar for mandating a hearing is not particularly high, and is obviously met here. In the mere months since Hamilton, the Second Department has reversed a denial of a hearing where the defendant presented affidavits from alibi witnesses. People v. Jones, __A.D.3d __ (2d Dep't Mar. 26, 2014). Here, Friedman has presented more than twenty-five eye witnesses to the classes, eye-witness testimony on the unreliable and unethical manner in which the accusatory testimony was gathered, expert testimony on the nature of child testimony and its unreliability in such conditions, evidence on the literal impossibility of the charges alleged, and admissions on the absence of any corroborating evidence of the crimes alleged.

All reliable evidence, including evidence that would not be admissible normally at trial due to a procedural bar, must be admitted and considered at that hearing. People v. Cole, 1 Misc. 3d 531, 543 (Sup. Ct. 2003); Schlup v. Delo, 513 U.S. at 328. No legal barriers apply to actual innocence claims. That is, prior adverse court determinations, procedural bars, evidentiary bars, etc. are set aside to consider rigorously whether the petitioner is in fact innocent of the claims of which he was convicted. People v. Bermudez, 25 Misc. 3d 1226 (Cty. Ct. 2009).

Setting aside all bars to the introduction of any evidence, or the availability of certain prongs of CPLR440.10, Friedman's actual innocence affords him the right to a hearing on that claim. Hamilton at *11. Between December 1987 and November 1988, Friedman was indicted three separate times, on hundreds of separate counts. Though scores and scores of children came through the Friedman computer classes, fewer than twenty alleged any misconduct by Jesse Friedman. After examination of the complaining witnesses' accounts, and the evidence in support and against them, it becomes clear not merely that reasonable doubt exists as to all of them, but all are implausible, impossible, or overwhelmingly contradicted by sworn testimony.

II. THE INDICTMENTS AGAINST FRIEDMAN WERE PROCURED ON LEGALLY INSUFFICIENT EVIDENCE, THEY MUST BE DISMISSED AND THE CONVICTIONS OVERTURNED

The evidence used to obtain the indictments against Jesse Friedman was coerced, unreliable and untrue, and no prosecutor may permit a proceeding to continue on an indictment which he knows rested on false evidence. No person may be "held to answer for an infamous crime unless upon indictment of the Grand Jury." Pelchat, 62 N.Y.2d at 104, N.Y. Const. art I, §6. There is no doubt that Friedman was held to answer upon an indictment, but when that indictment is obtained by knowingly false evidence, or insufficient evidence, or evidence

unworthy of belief, the court lacks jurisdiction and must dismiss the indictment. Id. at 107. That is the case here.

That a prosecutor is both an advocate and a public officer is a well-known and established principle of our criminal justice system. Pelchat, 62 N.Y.2d at 105. In the same way that a prosecutor may not permit a jury trial on "evidence known to be false, he also may not permit a proceeding to continue on an indictment which he knew rested solely upon false evidence." Id. at 107. It is not relevant whether the prosecutor knew *at the time* of presenting that it was false, New York law is clear that a prosecutor must *correct* the issuance by dismissing it and seeking a new indictment or abandoning the prosecution. Id. at 104 (dismissing the indictment while accepting "the finding of the courts below that the record does not support any claim that the prosecutor knew of the deficiency in the evidence…").

That the police and prosecution knowingly engaged in misconduct is best illustrated by the statements of Ross Goldstein:

> In the weeks leading up to my grand jury appearance, I was coached, rehearsed and directed by the prosecutor and Detective William Hatch for hours on end. I was told that it was my role to confirm what the complainants had said when they testified about had happened to them during the computer classes.
>
> According to them, this was how the police and the prosecutors built up evidence that would 'stick at a trial.' I was going to have to take the stand and testify against Jesse at the trial because the prosecutor

> and the police believed there was a good chance that none of the younger kids would be willing to take the stand at trial.
>
> I could not and would not confirm any allegation or admit doing something or seeing Jesse doing something to any complainant, because I truly had no knowledge or participation or witnessed anything of the sort. The prosecutor would then threaten me by placing the YO status off the table. This happened repeatedly. This was like being tortured and treated like a puppet. Just imagine the trauma of having actual memory stamped out and erased from history, and replaced by new, violent images of incidents that never took place.

(Kuby Aff. Ex. KK). Prosecutors in this instance put evidence they knew to be false in front of the Grand Jury. That, in itself, is sufficient to dismiss the indictment. Pelchat, 62 N.Y. at 106, citing United States v. Basurto, 497 F.2d 781 (9th Cir. 1974). Beyond that, however, they conceded in doing so that they could not convict Jesse Friedman without it, that the evidence against Friedman was legally insufficient without Goldstein's perjurious and coerced testimony.

The same could be said for all of the other testimony that was coerced and unreliable. The nature of the coercion needs no repeating, and its unreliability is well established. Importantly, before the plea agreement, ADA Onorato was explicitly informed of the nature of the interviews by Peter Panaro, who showed the ADA the transcript of the interview of Gary Meyers. (Kuby Aff. Ex. LL at para. 18). Beyond the coercion, however, the children told stories of mass abuse, in front of ever increasing numbers of adults and every other student in the classrooms. In addition to the lack of *any* physical evidence of abuse, the ADAs

knew that the overwhelming testimony of the other students contradicted those accounts. They knew that the children who did report abuse told wildly different stories from the other students they were supposedly abused alongside. They knew that they could not corroborate *any* of the individual accounts of abuse reliably. In short, they knew that *none* of what they presented was "worthy of belief." And when there is no evidence so worthy in front of a grand jury, the indictment is "fatally defective." Pelchat, 62 N.Y. at 107.

Moreover, it is apparent the third indictment was obtained merely to ratchet up the pressure on Friedman to plead guilty. When an indictment is obtained for improper motives, it must be dismissed. Id.; citing United States v. Demarco, 401 F.Supp. 505 (U.S. Dist. Calif. 1975), aff'd 550 F.2d 1224; People v. Tyler, 46 N.Y.2d 251 (1978).

These are not merely procedural defects in the prosecution, they are violations of fundamental constitutional rights. Therefore, Friedman retains the right to raise such violations, regardless of his guilty plea, of the time since passed, or any other barrier that might be raised. Pelchat, 62 N.Y. at 108; citing People v. Peetz, 7 N.Y.2d 147. The indictments should be dismissed, and his conviction overturned.

III. FRIEDMAN'S PLEA WAS UNLAWFULLY COERCED BY JUDGE BOKLAN IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO A FAIR TRIAL

Unquestionably, Judge Boklan pre-judged the Friedman's guilt, a fact she has never denied, going so far as to publicly and repeatedly state that "there was never an issue as to whether they were guilty or not." Marina Pisano, *Abuse Experts Assail Movie*, San Antonio Express-News, Feb. 23, 2004. Beyond that, she told Peter Panaro, Jesse's attorney, that "if Jesse were to go to trial she intended to sentence him to consecutive terms of imprisonment for each count that he was convicted on." (Kuby Aff. Ex. LL at 11).

Jesse Friedman had good cause to believe Judge Boklan. During the Ross Goldstein sentencing, she read portions of his (now completely retracted) Grand Jury testimony into the record, then reneged on the deal the DA had offered Goldstein, sentencing him to two to six years in state prison, and withdrawing his Youthful Offender status. By the time Judge Boklan was reversed on appeal and Goldstein was released, he had spent 13 months in prison and been diagnosed with cancer.

Judge Boklan also recklessly contributed to the media and public hysteria surrounding the case by making the Friedman case the first one in the history of Nassau County to permit television cameras in the courtroom. She permitted filming of all of the pre-trial appearances, and permitted one Long Island news

station to cover the trial from inside the courtroom. She thus tainted any potential jury pool. She was candid about lack of concern for the defendants' right to a fair trial: "I wasn't that concerned about protecting the defendants. Their pictures, their names, were all over the—the newspapers. So [laughter] their reputation at that point was not too good." Transcript of 2001 Interview of Judge Abby Boklan, Kuby Aff. Ex. JJJ, at 14. By the time the case was to be tried, it was widely known that Arnold Friedman possessed illegal pornography, had pled guilty to the federal pornography charges, and had also pled guilty to the state sexual abuse charges for which Jesse Friedman was indicted as having "aided and abetted." As the Second Circuit found,

> With the number of counts in the indictments, Judge Boklan's threat to impose the highest conceivable sentence for each charge, petitioner faced a virtually certain life sentence if he was convicted at trial. And the likelihood that any jury pool would be tainted seemed to ensure that petitioner would be convicted if he went to trial, regardless of his guilt or innocence. Nor could he have reasonably expected to receive a fair trial from Judge Boklan, the former head of Nassau County District Attorney's Sex Crime Unit, who admitted that she never had any doubt of the defendant's guilt even before she heard any of the evidence or the means by which it was obtained. Even if innocent, petitioner may well have plead guilty.

Friedman, 618 F.3d at 158.

New York law prohibits such conduct, and courts have found even less explicit language to be impermissibly coercive. A guilty plea is invalid unless it is "knowing, voluntary, and intelligent." People v. Santiago, 71 A.D.3d 703 (2d Dept.

2010); People v. Fisher, 70 A.D.3d 114, 117 (1st Dept. 2009), lv denied 17 N.Y.3d 816 (2011); People v. Stevens, 298 A.D.2d 267 (1st Dept. 2002); People v. Flinn, 60 A.D.3d 1304 (4th Dept. 2009). Moreover, "the right to challenge . . . the voluntariness of a plea is never waived." Ross, 182 A.D.2d at 1023, citing People v. Seaberg, 74 N.Y.2d 1, 10-11 (1989); People v. Moissett, 154 A.D.2d 786, 787 (2d Dep't 1989), affd, 76 N.Y.2d 909; People v. Bennett, 152 A.D.2d 886, 887 (3d Dep't 1989), lv denied, 74 N.Y.2d 845.

New York courts have consistently held that it is impermissibly coercive for a trial court to threaten or promise to impose a maximum sentence in the event of a trial and guilty verdict. Such conduct alone is enough to vacate a defendant's plea as involuntary. In Fisher, for example, the trial court made the following statement the defendant's Sandoval hearing:

> [L]et me start off by saying on the record that it is my hope that Mr. Fisher gets a fair trial because frankly I believe in giving everybody a fair trial and *I also believe that when somebody commits a crime of this nature that if they are convicted that they should get the maximum sentence allowable by law* and so the last thing in the world I want to create is reversible error and I'm very careful about that and I have a record of getting reversed very few times so we're going to give him a fair trial. If he's acquitted, he is acquitted but *if he's convicted he will be a very old man when he gets out of jail because whatever is the maximum sentence allowable by law he will get it.*

Fisher, 70 A.D.3d at 116-117 (emphasis in original). The court further announced that the sentence range was 8 to 25 years, but that the defendant was

"guarantee[d]" to get 20 to 25 years. Id. at 117. Days later, the defendant pled guilty with an agreement of a 17 year prison sentence. He was sentenced in accordance with the agreement, and subsequently appealed on the ground that his plea was involuntary. The First Department reversed the conviction and vacated the plea, holding:

> It is well settled that a threat to impose a maximum sentence if the defendant is convicted goes beyond a description of the possible sentencing exposure and has consistently been held impermissibly coercive. A defendant's exercise of his right to trial is wrongly burdened when a court expresses its intent to impose the maximum sentence after trial, but a significantly shorter sentence if he accepts a plea. Further, though allegations of coercion made off the record normally warrant an evidentiary hearing, where the coercive threat is in the record the defendant is entitled to withdraw his guilty plea.

Id. at 117 (internal citations omitted).

In People v. Richards, 17 A.D.3d 136 (1st Dep't 2005), the defendant moved to withdraw his plea alleging, through his attorney's affirmation, that "in an off-the-record conference, the judge had threatened to impose a maximum sentence of 15 years if defendant were convicted after trial." The First Department held that "[s]uch a threat, which goes beyond a description of the possible sentencing exposure, has repeatedly been held impermissibly coercive. . . . ." Id. at 137 (citations omitted). Of equal importance, the First Department found that, since the plea allocution did not disprove defendant's allegations, and counsel provided a sworn assertion regarding the threat, no hearing was required. Id.

Every court to consider this question is in accord. See, e.g., Santiago, 71 A.D.3d at 704 (court's remarks regarding its sentencing intentions if defendant proceeded to trial, in addition to its bias against the defendant "created a coercive environment which rendered the defendant's plea involuntary"); Flinn, 60 A.D.3d at 1305 (court's statement that defendant would get a "substantially longer" sentence if convicted after trial "do not amount to a description of a range of the potential sentences but, rather, they constitute impermissible coercion, 'rendering the plea involuntary and requiring its vacatur.'"); Stevens, 298 A.D.2d at 268 (plea invalid due to court's statement to defendant that "[i]f you're convicted after trial, given the circumstances of this case under which you were apprehended and the nature of your record, 25 to life, that's what you're going to get"); People v. Min, 249 A.D.2d 130, 132 (1st Dep't 1998) (A court wrongly burdens the defendant's exercise of his right to trial when it indicates he will receive the maximum sentence, or maximum consecutive sentences, after trial, but a significantly lighter sentence after a plea). When the trial court coerces a guilty plea, a defendant is deprived of his fundamental Sixth Amendment right to a fair trial.

Conclusion

To understand how both Friedman investigations – the original in 1988 and the Conviction Review in 2010-2013 – went awry, it is instructive to go back to the language of the Second Circuit's decision in Friedman:

> When viewed in its proper historical context, petitioner's case appears as merely one example of what was then a significant national trend. This was a "heater case"—the type of "high profile case" in which "tremendous emotion is generated by the public." Bandes, supra, at 310. In heater cases, the criminal process often fails:
>
> Emotions like fear, outrage, anger and disgust, in situations like these, are entirely human. The question is what the legal system can do to correct for the excesses to which they lead. The crux of the moral panic dynamic is that the legal system, in such cases, does not correct for them. It gets swept up in them instead.
>
> The record in this case suggests this is precisely the moral panic that swept up Nassau County law enforcement officers. Perhaps because they were certain of Arnold Friedman and petitioner's guilt, they were unfazed by the lack of physical evidence, and they may have felt comfortable cutting corners in their investigation. After all, "[t]horoughness is a frequent casualty of such cases."

Friedman, 168 F.3d at 158, citing Susan Bandes, the Lessons of Capturing the Friedmans: Moral Panic, Institutional Denial and Due Process, 3 Law Culture & Human, 293, 301 (2007). Twenty-five years after the fact, DA Rice had the unique opportunity to follow the Second Circuit's direction to learn from and improve upon the past. Had she designed a review that made good on her promise of transparency and impartiality, not been distracted by the distasteful elements of these kinds of accusations, and availed herself of the real investigative tools at her disposal, she might have done more than embrace the tunnel vision and bias that infected her office in 1988.

A quarter century has passed since Great Neck found itself in the throes of a witch hunt that propelled the demonization, prosecution, and imprisonment of a

bright, articulate, suburban teenager for crimes that today appear so absurd witnesses describe them as "logistically impossible," or "like some sort of grotesque fantasy."

We have gained perspective in the intervening years: We now recognize the unique phenomenon of fictional, panic-driven mass sex abuse allegations; we accept a new body of knowledge in social science that teaches of the risks of improper witness questioning especially of children, and the prevalence of false confession, especially by young defendants; we benefit from the cooperation of scores of Friedman case participants finally unafraid to come forward; we recognize the danger posed by investigators driven by community pressure to use assumption over inquiry, the incentive for prosecutors to pursue conviction over justice, and the power of the media in vilifying the innocent.

One thing that has not changed in 25 years is the fact that no one outside of the District Attorney's office has been permitted to review more than snippets of the extensive collection of documents in the District Attorney's Friedman case files withheld even from the members of DA Rice's hand-picked Advisory Panel. Commencing with the filing of Mr. Friedman's motion pursuant to § 440.10 on January 7, 2004, and concluding with the Second Circuit's decision on August 16, 2010, Mr. Friedman repeatedly sought both discovery and an evidentiary hearing, both of which were adamantly and successfully opposed by the District Attorney.

The Second Circuit, in regretfully denying relief on Mr. Friedman's Brady claim, lamented the refusal of the current District Attorney to consent:

> …We too would have preferred if the facts and circumstances were developed at a hearing. Nevertheless, we could not order a hearing over the objection of the District Attorney, who declined to waive the defense of the statute of limitations and permit such a hearing to be held.

Id. at 161.

Three highly respected people outside the DA's office who have had the opportunity to review some of this material – the law secretary for the original Judge in the case, Nassau County Supreme Court Justice Winslow, and the most distinguished member of the DA's Advisory Panel charged with overseeing the Friedman conviction review – and each has independently expressed strong support for Jesse Friedman's effort to seek the transparency that has for so long been absent from this case.

For over a quarter century, Nassau County District Attorneys have done everything possible to usurp the role of the court as the fundamental arbiter of justice. From coercing Jesse Friedman's guilty plea, to opposing an evidentiary hearing on technicalities, to manufacturing a specious Conviction "Integrity" Report, the DAs have arrogated to themselves the power to determine guilt and have consistently tried to close the Friedman case by claiming it is resolved. But the most prestigious member of DA Rice's hand-picked Advisory Panel, Barry

Scheck, disagrees and calls upon the court "to aid in finally resolving, to the extent possible, the issue of Jesse Friedman's guilt or innocence." Scheck Affirmation, June 20, 2014, at para. 7. He continues: "I believe public confidence in the fair resolution of this matter would be greatly enhanced if the court could find a way to resolve these issues . . . Accordingly, I urge the court to accord Mr. Friedman a full evidentiary hearing on the merits of his claims." Id. at para. 8.

Respectfully submitted,

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