



## THE FRIEDMANS

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IN AUGUST 2010, the United States Court of Appeals for the Second Circuit affirmed a lower court's ruling not to overturn the conviction of Jesse Friedman. In 1982, Jesse's father, Arnold Friedman, began teaching computer classes in the basement of their Long Island home. Jesse began to help out in 1984. He was 15 years old, the youngest of three brothers. In 1987, Arnold Friedman was arrested by the Nassau County police for possession and distribution of child pornography. The police opened an investigation into Arnold's conduct with the children in his computer classes, and they soon came to believe that Arnold and Jesse had both subjected current and former students to bizarre and violent sexual abuse. By November 1988, the district attorney's office had charged Jesse with 243 counts of sexual abuse.

Jesse pled guilty. He spent thirteen years in prison, he was paroled as a Level 3 sex offender, and then he filed an appeal to vacate his conviction. He said he was innocent, that he had only submitted the guilty plea because of the impossibility of receiving a fair trial. A lower court had rejected this appeal, and on the second page of its ruling, the circuit court concurred. "We affirm the judgment of the United States Court for the Eastern District of New York," the judges wrote, "because we conclude that the grounds asserted in the petition would not justify habeas corpus relief." Jesse had waited too long to file his appeal.

On the eighteenth page of their ruling, however, the judges began to explain that they believed Jesse Friedman was innocent. "While the law may require us to deny relief in this case," they wrote, "it does not compel us to do so without voicing some concern regarding the process

by which the petitioner's conviction was obtained." In the pages that follow, the judges describe the Friedman case as the product of a "vast moral panic" that "fueled a series of highly questionable child sex abuse prosecutions." The judges note that the 1980s were a decade during which "allegations of outrageously bizarre and often ritualistic child sex abuse spread like wildfire across the country," and that "the media sensationalized these allegations, generating a national perception that sex rings were widespread and had infiltrated average communities." They further note that "at least seventy-two individuals were convicted in nearly a dozen major child sex abuse and satanic ritual prosecutions between 1984 and 1995," and that nearly all these convictions have since been overturned. The ruling strongly advised that the Nassau County prosecutor's office take a long, careful look at the circumstances under which it had imprisoned a retired schoolteacher and his son. The court said it was "not obligated to become a silent accomplice to what may be an injustice."

It is not clear that the judges meant to be ironic when they used the word *silent* in that last sentence, but it does read ironically. Silent is what Arnold Friedman's computer students were said to have been for months or even years before the police came to ask whether anything had happened in the basement. When the children finally broke their silence, they said that Arnold had patted them on the back and left his arm lingering around their shoulders. They said he had shown them pornographic computer games and magazines, and that Arnold and Jesse had also made them take off their clothes, that Jesse would sometimes take a single student off to another room, and that they would hear sobs and screams coming through the wall. They said they were made to line up in a row on the floor, and that Arnold and Jesse would proceed to play "leapfrog," hopping over and sodomizing each student in turn.

It was these more elaborate allegations, and the methods that had elicited them, that made the circuit court so uncomfortable, and that prompted Nassau County to undertake a complete reconstruction and reinvestigation of Jesse Friedman's case. This kind of reinvestigation is not quite a common occurrence, but it is no longer a particularly rare one, either. Organizations like the Innocence Project have drawn a lot of public attention to the wrongly convicted, and some states and cities, hoping to stay ahead of the curve, have organized internally run

Conviction Integrity Units. In the wake of the circuit court's strong recommendation, and with oversight provided by a panel of experts that included Barry Scheck, a former member of O. J. Simpson's defense team and now the director of the Innocence Project, Nassau County District Attorney Kathleen M. Rice put together a team of investigators to reinterview many of the case's key participants, review evidence and documents, and analyze the actions of the detectives who interviewed the children. Rice published her "Conviction Integrity Review: *People v. Jesse Friedman*" in June 2013. Her conclusions rebuffed the circuit court judges entirely:

After this exhaustive investigation, the District Attorney concludes that Jesse Friedman was not wrongfully convicted. The four principal concerns raised by the Second Circuit are not substantiated by the evidence. Further arguments for exoneration offered by advocates for Jesse lack the merit or weight required to overturn this conviction. In fact, by any impartial analysis, the reinvestigation process prompted by Jesse Friedman, his advocates, and the Second Circuit, has only increased confidence in the integrity of Jesse Friedman's guilty plea and adjudication as a sex offender.

After the review was released, the *New York Times* ran a piece describing the review, with angry, pointed reactions from Friedman's lawyer and supporters, but with an emphasis on the distinguished panel of experts who provided oversight. The *Daily News* was less circumspect. JESSE FRIEDMAN IS 100% GUILTY OF SEXUALLY ABUSING CHILDREN, read the headline, citing a "172-page report."

The review's length is, in fact, one of its distinguishing features. The circuit court's ruling takes up thirty-one pages. The Conviction Integrity Review is nearly six times as long. Its goal is not so much to respond to the circuit court judges' concerns as to make the circuit court judges feel embarrassed for having raised them in the first place. It walks through four separate issues raised by the circuit court, and it finds that the available evidence renders all of them not just insufficient for overturning the convictions, but absolutely baseless. It has four appendices, containing letters, interview transcripts, trial orders, and other documents—they total nearly one thousand pages. Somewhat incredibly, it admits of no significant prosecutorial, judicial, or law enforcement wrongdoing, except for a brief acknowledgment that

claims by police that as many as five hundred children may have been abused were “overstated.” It also implies that Jesse Friedman’s attorney, Ron Kuby, behaved dishonestly and unprofessionally over the course of Nassau County’s reinvestigation. It makes a show of thoughtfully acknowledging that interviews conducted twenty-five years after the fact are liable to produce fuzzy or inaccurate recollections of events, and then it accepts any statements that support the prosecutorial view at face value. It explains away any statement suggesting Jesse Friedman’s innocence. Some of these are refuted at length and in convincing detail, but others are simply dismissed as “not credible.”

Kathleen Rice did not prosecute Arnold and Jesse Friedman in the 1980s, and nobody involved with the Conviction Integrity Review had anything to do with the prosecutor’s office at the time. In fact, Rice only took office by defeating the man who did prosecute the Friedmans, and the campaign was a bitter one. On its own, institutional loyalty seems inadequate to explain the obsessive and angry quality of the Conviction Integrity Review’s structure and prose. What ultimately makes this quality intelligible—it was also the impetus, in many ways, for the strong wording of the circuit court’s decision—is a third document, one that has done more than any other to draw post-conviction attention to the Friedman case. This is Andrew Jarecki’s documentary film *Capturing the Friedmans*, released in 2003, which over the last ten years has forced a number of impossible problems on the legal apparatus that is trying, and failing, to bring the Friedman case to some kind of a conclusion. The thorniest of these problems, the one that neither Friedman’s legal advocates nor the employees of the Nassau County prosecutor’s office seem able to confront, has to do with an observation that the film indirectly makes over the course of its 107 minutes. The observation is that pedophilia and hysteria over pedophilia are not mutually exclusive.

**I**N 2005, ARNOLD FRIEDMAN committed suicide in prison. He really was a pedophile. The circuit court ruling, the Conviction Integrity Review, and *Capturing the Friedmans* all agree on that point. Today it is probably impossible to know for sure when and where Arnold’s sexual troubles began. Maybe in childhood, maybe in adolescence; maybe it had something to do with his younger brother, Howard. What is known is that his legal problems began in 1984, when postal inspectors intercepted a package containing child pornography, sent from

the Netherlands and addressed to Arnold Friedman's home in Great Neck. "What we would do then," says a postal inspector in *Capturing the Friedmans*, "is initiate a correspondence with Arnold so that we can determine whether he is in fact willing to violate the statute." It took three years of cajoling letters, but the government, posing as a fellow pedophile in search of magazines, finally got Arnold to send a package containing child porn (the note he enclosed read, "Enjoy!"). Then the Feds arrived at the Friedman home with a search warrant. They found a stack of magazines behind the piano in the basement.

They also found a partial list of students who attended his computer classes. Once the police realized that Friedman had groups of children in his basement almost every night of the week, they decided they were dealing with a different kind of investigation. They brought in a detective named Fran Galasso, then working as the head of the Nassau County Police Department's Sex Crimes Unit, to organize a group of detectives to interview Friedman's current and former students.

In *Capturing the Friedmans* and in the circuit court's ruling, the interviews went something like this: detectives swept across Great Neck, interviewed bewildered 8-, 9-, and 10-year-old children, and harassed them until they began to fabricate stories of abuse. "They came in and they said, 'We know something happened to [your son],'" one father recalls in *Capturing the Friedmans*. "They didn't say, 'Believe.' They said, 'Know.'" Ron Georgalis, who attended Arnold's computer classes and insists that nothing criminal took place, remembers the police interviews as frightening. "I remember them talking to my parents about this within earshot of me," he said. "I remember actually eavesdropping on what they said [happened]. And what they said made my heart race." The circuit court ruling, citing a sworn affidavit, reports that if detectives failed to get the kinds of stories they wanted during their first visit, they returned again and again until they did. "In one case," the judges write, "detectives visited a child fifteen times and assured the child's mother before the final visit that they were going to stay 'as long as it takes.'"

During interviews, detectives often told children exactly what it was they thought had happened and encouraged the children to agree. "They told me repeatedly that other students in my class had already told them that they had been abused," one former student said, "and that they were certain that in fact I had also been abused and that I should

tell them so.” Eventually, students began to realize what was going on: the police would not stop returning for more interviews until they heard that abuse had taken place. *Capturing the Friedmans* includes an audio interview with a student who vividly remembers telling the police what he knew were lies: “I remember telling myself, ‘It’s not true—just say this to them in order to get them off your back.’” This student’s testimony, as the film points out, eventually led to sixteen counts of sodomy. Most damning, however, is a filmed interview with Anthony Squeglia, one of the detectives who interviewed children as part of Fran Galasso’s team of investigators:

If you talk to a lot of children you don’t give them an option really. You just 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 been to the class. 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.

The Nassau County detectives never produced any transcripts of their child interviews, nor did they make audio or video recordings. They didn’t even keep official records of how many times they visited particular children, or when. The notes that survive only provide detailed documentation of those interviews in which children eventually alleged abuse in Arnold Friedman’s basement. Reports produced after interviews in which children said that nothing happened often had just a single word: “Negative.”

The Conviction Integrity Review sees the interviewing process differently. About one third of the way in, the report’s authors pause to mention the various difficulties they encountered in reinvestigating Jesse Friedman’s conviction; one, in particular, stands out. “Lastly,” they write, “the difficulty of the Review Team’s task was further compounded by the release of *Capturing the Friedmans*, and the actions of the film’s producers.” On multiple occasions, the Review Team implies that the circuit court was unreasonably swayed by Jarecki’s “provocative and entertaining movie,” and that without *Capturing the Friedmans*, the circuit court never would have bothered with such immature grandstanding. Nowhere is this resentment more keenly felt than in the Conviction Integrity Review’s account of the police interviews. They accuse the

circuit court of “relying almost exclusively on *Capturing the Friedmans*.” Likewise, Jesse Friedman’s whole defense “relies on little more than the film.” The Review Team says it has examined the “material” itself.

The Review Team examined transcripts of the interviews Jarecki conducted with the Nassau County police officers. They note that although the transcript of the interview with Detective Anthony Squeglia “runs more than fifty pages,” Jarecki’s film “excerpt only a single short clip.” That, of course, is the clip that contains the damning quotation about not giving children “options” when you interview them. They say that quotation does not represent Squeglia’s general point, which is that children are to be questioned gently and in an open-ended manner. “Elsewhere in the *unedited* transcript,” the Review Team writes, as though it is somehow suspect for filmmakers to edit the materials they use, “Detective Squeglia explains that ‘you don’t want to revictimize the victim.’” Then they cite this exchange in its entirety:

Q: If they were having trouble getting to a sort of confession point—did you find it useful to say to them, you know—you know, “We spoke to Jimmy and he said—”

DET. SQUEGLIA: No, we—we wouldn’t use that. No. I wouldn’t use that anyway. My—my technique was that they would ask me, “what—what—what do you know about him?” And I’d say, “I know things. But I can’t tell you what I know because you know things that I don’t know.” . . . “So, well do you know what happened to me?” “No, I don’t know what happened to you. But I know something happened to you, so I want you to tell me—if you can. If you can’t, we’ll come back another day.”

This doesn’t help Detective Squeglia or the Review Team at all. In the very passage cited as proof of responsible police behavior, Squeglia describes himself doing three irresponsible things. He assures the child that he knows that “things” happened. Then, he tells the child that he knows that things happened *to that child* specifically. Finally, he says that if the child is unwilling to provide accounts of abuse in this particular interview, he will just come back some other time. The detective is very careful to make sure the child feels comfortable saying anything at all, except for one thing—that he was not abused. Elsewhere in the transcript, Squeglia says that sometimes he would run into a child who

persistently refused to disclose abuse, who would, in his words, “just never give it up.” In those cases, there was nothing else to do but leave.

The Review Team admits that “the method of questioning that the detective describes is not consistent with best practices,” but they excuse these mistakes on the grounds that police didn’t know any better in the 1980s. They also raise the issue of Squeglia’s reliability, writing that Jarecki interviewed him “informally, on the detective’s front lawn,” fifteen years after the investigation concluded. But they have no such reservations about their own interviews, conducted with other detectives twenty-five years after the investigation concluded: “All officers spoken to by the Review Team reject the claim that victims were told what to say.”

On March 25, 1988, Arnold Friedman pled guilty to a limited set of charges, and by the middle of May he had been sentenced to ten to thirty years in prison. The District Attorney had already filed a second, thirty-seven-count indictment against Jesse, and within six months of his father’s guilty plea Jesse would be facing an additional 302 counts of sexual abuse.

In the years since the release of *Capturing the Friedmans*, a number of people who alleged that Arnold and Jesse Friedman abused them have come forward to recant their accusations, and the Conviction Integrity Review has dealt with each of these people in turn. One example illustrates the Review Team’s approach. Toward the end of the reinvestigation, Jesse Friedman’s lawyer, Ron Kuby, contacted the Review Team to say that a former complainant, referred to as Witness 10, wanted to recant his allegations. This is especially significant because Witness 10 was the first child to say that Arnold Friedman sodomized him, as well as the first child to allege any kind of wrongdoing whatsoever by Jesse. Witness 10 is also mentioned as a victim of abuse by a number of the other children who attended Arnold’s classes. If Arnold and Jesse did commit crimes in anything like the manner described by prosecutors, Witness 10 had to have been right in the middle. The letter he wrote to the Review Team reads, in part:

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, Arnold did not show me magazines containing pictures of naked people, and I never showed

my penis to Arnold or Jesse Friedman. 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.

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 I [sic] result, I guess I just folded so they would leave me alone.

The Conviction Integrity Review says it is “unlikely” that Witness 10 could actually have been visited by the police on multiple occasions, and they criticize Witness 10 for failing to provide any “facts” to support his conclusion that repeat interviews caused his false allegations. Citing the circumstances that apparently prompted him to revisit his testimony (his employer accidentally opened a letter indicating his involvement in the famous case), the Review says that “it is difficult to credit a recantation made under these circumstances.” It is apparently difficult for the Review Team to credit a recantation made under any circumstances. They refer to the “inherent unreliability” of recantation testimony on two separate occasions, and in a third instance they put gratuitous quotation marks around the word *recantation* in “recantation testimony.” Elsewhere, they quote an unrelated New York judicial opinion that says, “There is no form of proof so unreliable as recanting testimony.” Twenty-eight pages later, they repeat the quotation.

The Conviction Integrity Review is engrossing in a way that feels sordid or emotionally inappropriate, and this has to do with the type of conflict the Review Team got itself wrapped up in. The Review Team’s ostensible goal was to end debate about the Friedman case, to analyze the facts from a disinterested standpoint, and to reveal Jesse Friedman’s advocates, especially Andrew Jarecki, as wrong and emotionally overheated. But the Review Team cannot really have wanted what it thinks it wanted, since what it actually did was draw Jesse Friedman, his family, his attorney, and Andrew Jarecki as close as possible, then lock them all in an angry embrace. The Review Team constantly repeats itself. It takes cheap shots at Jesse and his attorney. It taunts Jesse by criticizing him for prejudicial readings of the evidence and then immediately launching into prejudicial readings of its own. The Conviction Integrity Review is

almost three times as long as it should be, and I had to read the whole thing twice, getting oddly upset as I went along, before I managed to place the nagging familiarity of its tone.

In many criminal investigations, the passage of time is clarifying. The opposite happened with the Friedman case. What began as a routine child pornography bust quickly fractured into many competing and completely irreconcilable accounts, and these fractures have only grown and multiplied over the last quarter century. The testimony gathered by and presented to the Review Team is an impossible tangle. Ross Goldstein, a friend and schoolmate of Jesse Friedman's who was allegedly present for some of the abuse, and who eventually implicated himself and the Friedmans in exchange for a shorter sentence (he spent a little more than a year in prison), but who had not participated in *Capturing the Friedmans* or otherwise commented on the case since his release, testified at length before the Review Team. He said that as far as he knew, no abuse had ever taken place, that his confession had been coerced by the police under threat of a significant prison term, and that he had not (as was alleged at the trial) been sodomized by an 8-year-old in Arnold Friedman's basement. Witness 10's recantation was just as unambiguous. On the other hand, the Review Team also talked to Arnold Friedman's younger brother, Howard. In a letter written from prison, Arnold had admitted to abusing Howard when they were children, but Howard told Andrew Jarecki that he remembered no such thing. "There's nothing there!" he said in a memorable scene from *Capturing the Friedmans*, eyes wide, touching his palm to the top of his forehead. Speaking to the Review Team, however, Howard said that he had in fact been molested and, what's more, that Arnold had confessed to him, before going to prison, that he and Jesse had "misbehaved" in the basement with the children. "A huge rock has been lifted off my chest," he told the Review Team at the end of their conversation.

What exactly was the Review Team to do with all this information? Some of the accusers had recanted their testimony in the strongest possible terms; others had reaffirmed it. This is a daunting set of claims, but it is not clear that the contradictory character of the available testimony should have actually made the Review Team's task more difficult. Rice did not have to reinvestigate Jesse Friedman's actual innocence or guilt. Rather, her primary job was to reinvestigate the police investigation that resulted in Jesse's guilty plea, as a means of assessing whether, in the

Review Team's own words, "there existed a 'reasonable probability' that Jesse was wrongfully convicted." This would have made the conflicting statements of family members and witnesses easier, not harder, to incorporate into a coherent account of what happened in Nassau County in the late 1980s. The Review Team could have concluded that the police department's wild investigation was largely responsible for producing such a confused state of affairs in the first place, accepted the unknowability of certain facts twenty-five years on, and found that there did exist a reasonable probability that Jesse Friedman was wrongfully convicted. But rather than arrive at this conclusion, the Review Team decided that all the available evidence pointed to Jesse's guilt. By simplifying the case in this false way, District Attorney Rice has actually made everything more complicated. Prosecutor, filmmaker, and convict now have grievances that go years back, even through multiple generations of prosecutors, in the manner of a long-standing family argument. The report speaks not with the voice of legal objectivity but with the voice of an aggrieved relative, one for whom feelings of anger and betrayal didn't so much erode familial love as swallow it up and take on its roles and responsibilities.

**B**EFORE HE BECAME a filmmaker, Andrew Jarecki founded the website "Moviefone" and became very wealthy. He was led to the Friedman story by an accidental chain of events. His initial plan had been to make a lighthearted documentary, titled *Funny and Silly*, about Arnold's oldest son, David, who was then and remains today one of Manhattan's pre-eminent birthday clowns. It took Jarecki a while to catch on to the fact that David had more going on in his life than Upper East Side birthday parties. (He isn't the only one to have missed the story. In 1994, Susan Orlean wrote a long *New Yorker* profile of David called "Seriously Silly.") It took a little longer still for Jarecki to learn that David had a closet full of home movies—a couple dozen hours' worth—that he had made during the police investigation. David showed the home movies to Jarecki, who then changed his plans and made a very different documentary.

Before he became a schoolteacher, Arnold Friedman made a brief go at a career in music, playing Latin jazz at resorts in the Catskills under the name "Arnito Rey." He passed on his love of performance and theatricality to his three children. Throughout childhood, David, Seth, and Jesse would film one another's skits, spontaneous man-on-the-street

interviews, and musical variety shows. These videos were the connective tissue of their relationships with one another and with their father, and this makes it both easy and absolutely impossible to understand why, once Arnold and Jesse Friedman were arrested, they kept the video cameras on. The most important scenes in *Capturing the Friedmans* are all taken from video shot by David, documenting the family's awful disintegration and collapse. The camera follows Arnold Friedman's wife, Elaine, as she retreats down hallways, with David and his brothers screaming from behind. It sits on the mantle over the course of a Passover Seder and watches everyone fight, except for Arnold, who sits mostly in silence at the head of the table, all but invisible. And in the midst of the investigation, as Arnold is trying to figure out whether a guilty plea will improve or harm Jesse's chances of acquittal, it watches the three boys try to cheer up their dad by outfitting him in a balloon animal costume. They've made him look like a pterodactyl, and then Arnold says, "It's a *Jewish* pterodactyl," and he ingeniously elaborates the joke by squawking out, "Schmuck! Schmuck! Schmuck!" while flapping his wings. His sons dissolve into laughter. These home movies are almost impossible to watch. They should have been destroyed once the investigation ended. They should never have been made at all.

Elaine Friedman did not understand her sons or her husband, and in turn she was not understood by them. Throughout *Capturing the Friedmans*, she gives the impression of not entirely knowing what is going on. When the police first arrived to search the house for child pornography, Elaine recalls, "I thought they were searching for marijuana or something," and her tone goes up at the end, as though she is asking a question. "I didn't know what they were searching for, to tell you the truth." Along with his videos of family quarrels, David Friedman kept a private video diary, and in one entry, from after Arnold's guilty plea, he makes the family alliances, and the speed with which they are collapsing, clear:

I don't care about my parents. I wish it was just my brothers. Oh fuck, I don't care about my mother, that's for sure. My brothers were OK and my mother can go to fucking hell. . . . When the guilty verdict comes in on Jesse, my father is gonna kill himself, Jesse's gonna go away to jail for the rest of his life, Seth is gonna move West.

Although David and his brothers had all the normal filial reasons to resent and criticize their mother, their specific grievance during this period had to do with Elaine's persistent belief that Arnold should plead guilty. She thought it would help Jesse, who could then stand trial without his pedophile father standing there next to him, making the jury wonder about the "cycle of abuse." But the home movies suggest that she also wanted Arnold to plead guilty because she was justifiably furious at him, and her sons hated what they perceived as the influence Elaine's anger exercised over their father. "My mother is crazy," David said in an interview, "and my mother has control over my father. Some relationships have that, where the woman controls the man. It's called being pussy-whipped. My father and mother are not the only two people in the world who have that relationship." *Capturing the Friedmans* makes it difficult to gauge the accuracy of David's claim, because the home movies record almost no interactions between Arnold and Elaine. Instead, they talk past and at one another through their sons. "He's my husband! He doesn't belong to you," Elaine yells at Jesse in a home audio recording, and Jesse yells back, "He's my father, he doesn't belong to you!" Then Elaine pauses and says, her voice falling and softening, "Well, he doesn't belong to anybody now." This, very simply, is the truth; but by this point the sons' idolization of their father has linked up with their belief in his legal innocence, and Elaine cannot reach them at all. "You're so *fucking stupid*," Seth says.

Arnold Friedman should never have pled guilty, at least not to the charges Nassau County levied against him. In other child-care sex panic cases around the country—in Manhattan Beach, California; Maplewood, New Jersey; Jordan, Minnesota; and elsewhere—the fact that the defendants maintained a stance of outraged innocence helped them during the trial and during the appeals process. The last night Arnold spent at home, he and his sons did what they loved to do most: they improvised a little performance and put it on video. One clip included in *Capturing the Friedmans* is extraordinarily tender and brief. The scene is made up of about two dozen shots, each less than half a second long. It begins with Arnold and Jesse in profile, standing still and facing each other from across the living room. In the next shot, each one, still stationary, has moved in by about six inches. This repeats until they are just slightly apart, nose to nose, and then they circle one another, and once they have rotated 180 degrees, changing positions as though in

a stop-motion animation, they begin to back away from the center of the room, eyes always locked, until they back out of the frame entirely. The symmetry is a little awful to look at, partly because the scene that Arnold and his sons have dreamed up expresses their situation so elegantly. They had been working together for years on these videos, and they were very good at them.

Jesse eventually made the same mistake his father did and pled guilty, too. Once Arnold went away to a federal prison in Wisconsin, the brothers seem to have drawn one another close in a rather manic way—they had the camera rolling even as they drove over to the courthouse so that Jesse could enter his plea. “Are you a child molester, Jesse?” David says from the passenger seat, in a melodramatic voice. “Did you do what they said you did?” “I never touched a kid,” Jesse replies, “I never saw my father touch a kid.” One brother says, “Good,” in an affectionate tone of voice, and then there is a little pause. “Yeah, but still, you must have done it,” David says, and then all three of them burst out laughing. Their theatrical habits would climax on the steps of the courthouse later that day, after Jesse had entered his guilty plea, and after he had tried to win the judge’s sympathy by making the argument that he, too, was a victim of Arnold Friedman’s abuse. “My father raised me confused about what was right and what was wrong,” Jesse told the court, “and I realize now how terribly wrong it all was. I wish I could have done something to stop it sooner.” He sobbed as his lawyer, Peter Panaro, reiterated the point, identifying Arnold Friedman as a “monster” and begging the court to take Jesse’s history of abuse into consideration. “This can’t be overlooked,” Panaro said. “I can’t believe we live in such a cold society that no one could look at this man and understand that.” After the hearing, Jesse went outside with his brothers and put on a bizarre and reckless performance, which many people around the courthouse witnessed and remembered years later. They did a Monty Python bit, an unhinged sketch in which a man complains to a doctor, played by John Cleese, that his brain hurts. The joke is that everybody yells everything in stupid voices. “My brain hurts!” Jesse yells in the brothers’ video. “Nurse! Nurse!” There is only one line in the brother’s performance that isn’t also in the original sketch, and it happens right after one of the brothers says to Jesse that his brain will “have to come out.” Jesse says, “But I’m using it!”

Jesse wasn't using his brain very well during this period. Before he decided to enter his guilty plea, he regularly speculated at home about trying the case "in the media." Once he decided that he could not possibly come out of a trial with an acquittal, he decided to play the media in a different way, and in the months after his guilty plea, he sank deeper into his adopted role of traumatized abuse victim turned abuser. His worst decision during this period was to appear on a Geraldo Rivera special, "Busting the Kiddy Porn Underground," which aired in February 1989. (This interview is not mentioned in *Capturing the Friedmans*, an omission to which the authors of the Conviction Review Team darkly allude again and again.) In between speculative reporting about the underground child pornography industry, Geraldo asked Jesse to describe his crimes. In the interview, Jesse's voice is small and soft, and he glances around in a dazed way that appears nowhere in *Capturing the Friedmans*:

I fondled them. I was . . . forced to . . . pose in hundreds of photos for my father in all sorts of sexual positions with the kids. And the kids likewise with myself. Oral sex going both ways. I was forced to pose with my penis against their anus. . . . I . . . I know my . . . my father had made vicious threats to the kids about . . . about burning down their homes and things like that and . . . I . . . reestablished that with the kids that I . . . I thought it was completely possible that my father would actually burn down their homes.

The Conviction Integrity Review describes Jesse as looking "directly at Rivera" as he made these admissions, as though to emphasize the reliability of his claims. But the claims Jesse makes in the interview are ridiculous—no homemade pornography produced by Arnold or Jesse Friedman was ever found, anywhere. In addition, Geraldo Rivera was one of the most unreliable television journalists in the country, a man who made a career out of getting stories totally wrong and then making a show of atoning for his sins. Other *Geraldo* specials from this period included unsubstantiated claims about a nationwide Satanic conspiracy—"The odds are that this is happening in your town," he said—and pieces on "Men in Lace Panties and the Women Who Love Them" (this one may have been true). Jesse's decision to incorporate his family habit of character acting into his public defense was very ill-advised. The jokes were not as funny on the courthouse steps as they had been in the

living room, and the personas did not have such a sympathetic audience. Just as the Review Team's need to describe their reinvestigation in the manner of an outraged relative at Thanksgiving complicated and deepened the difficulties surrounding the case, Jesse Friedman's attempts to apply the dynamics of his family life to the news media placed him in an apparently intractable situation.

Only one member of the Friedman family seems to have made a clean getaway. After Arnold went to prison, Elaine filed for divorce. Even if he were to come home one day, she said, "I would have to stare at Arnie across the dinner table with just the two of us. There was really nothing between us except these children that we yelled at." She found a measure of peace in the wake of her son's conviction. "I know my friends said to me, 'Don't you feel, like, terrible being alone in such a big house?'" she says in *Capturing the Friedmans*. "I said, 'No, I feel calm.' That's when I really started becoming a person." In 2003, she remarried and moved into a small house with her new husband. They named their new home Peaceful Pond Cottage.

**W**HEN WRITING BRIEFS, opinions, and other professional documents, lawyers and judges usually do not like to mention the social or political context that surrounds their work. Criminal law works most efficiently and most elegantly when it is allowed to function as a closed system, when evidence speaks for itself and statutes foreclose every judicial option except for one. In the Friedman case, those working with the prosecution have held to this principle. "Advocates for Jesse Friedman attempt to draw a parallel between the case against the Friedmans and the unreliable 'moral panic' cases of the 1980s," the Review Team writes. "But the cases are in no way comparable." Jesse and his allies, meanwhile, have done everything they can to put the social context at the center of the legal process.

The child-care sex abuse panic began in 1983, when seven teachers were charged with abusing a few dozen children at the McMartin Preschool in Manhattan Beach, California. Six of the teachers were women, and the alleged victims were mostly 4 and 5 years old. The charges filed by the district attorney's office do not really capture the whole scope of the investigation. Therapists who interviewed McMartin students at a nonprofit called Children's Institute International were convinced that hundreds, not dozens, of children had been molested and forced

to play sexual games. They also believed that the school's teachers had photographed and videotaped the children, taken them to an Episcopal church in the middle of the night for elaborate rituals, and slaughtered classroom pets to intimidate the children into silence. The FBI got involved in the investigation, which spanned multiple states, and so did many local parents, some of whom believed their children had been abused in secret tunnels underneath the preschool. *20/20* ran a piece on the case that focused on brainwashing. Formal legal proceedings began in August 1984, and did not wind down for good until July 1990, making McMartin the longest and most expensive criminal trial in American history. The DA's office failed to win a single conviction.

The McMartin prosecution eventually collapsed because of the discovery that the therapists at Children's Institute International had coerced children into making their allegations, asking whether they had been abused, over and over, until the child produced the appropriate answer, which was *yes*. Over the course of the following decade, similar cases emerged around the country, with leading and coercive interviews producing wildly exaggerated allegations of abuse. Because this was a hysteria, as opposed to a conscious, coordinated conspiracy to imprison the innocent, the allegations and the situations that produced them varied from case to case. In some instances, charges were filed against innocents. In others, the interviewing process allowed prosecutors to file charges that grossly exaggerated what appears to have been real, actually occurring—if not widespread, gothic, and ritualistic—molestation. What gave the panic legs was the fact that American women had spent the previous decade moving en masse into the workforce. For those women who were also mothers, that often meant leaving their children with strangers during the day. Could those strangers be trusted? A lot of people were prepared to believe the answer was no.

*Capturing the Friedmans* occupies a complicated position with respect to this context. In shopping the film around at Sundance and other festivals, Andrew Jarecki honed a marketing strategy predicated on ambiguity—the film's tagline was "Who Do You Believe?"—and in the years since its release, some of Jesse's supporters have criticized the film for failing to mention the child-care sex abuse panic. In an interview included with the film's DVD release, Jarecki tried to explain this omission:

We tried to build the film like any dramatic film. I think we didn't think to ourselves, Well, it's a documentary and therefore it needs to follow this structure that's based on historical information and putting it in the context of other cases like this. You know, we knew this was a film about the family. It wasn't a film about a phenomenon. Or it wasn't a film about a period in American history. It was a film about a family.

In the last few years, Jarecki has dropped this ambiguity bit. He is now a highly visible advocate for Jesse Friedman, and he is sure of his innocence. Still, his DVD commentary is evasive and annoying, and seeing it makes it a little easier to understand why it is that Jarecki makes the Nassau County prosecutors so crazy. The remarkable thing about *Capturing the Friedmans*, though, is that the close-up family view ultimately doesn't distract from the social context—it illuminates it. During the child-care sex abuse panic, the place and purpose of the American family *was* the social context.

It is inaccurate to say that social hysteria sees problems where none really exist. McCarthyism emerged in a world that had millions of Communists in it, Americans among them, and widespread fears about nonexistent “crack babies” filled the airwaves at a time when crack really was hollowing out American cities. Hysteria tells true stories, falsely. It lies about real social problems in a way that makes the social problems politically and psychologically palatable. Hysteria shifts blame and shields certain groups of people from the truth of their own situation.

The child-care sex abuse panic told a story about child abuse in which children were most threatened outside the home—in day-care facilities, preschools, church basements, babysitters' houses, and evening computer classes. It focused overwhelmingly on sexual abuse—no groups of day-care workers were accused of banding together to simply beat or kick the kids they cared for. It said that the victims were usually very young, sometimes just 3 or 4 years old, and that their abusers were violent sadists who loved to inflict pain and make outlandish threats as a means of enforcing their victims' silence. It also said that parents were not complicit in abuse, that they could not possibly have known anything was amiss—if they had, they obviously would have taken swift action to protect their kids. The panic made child abuse into a phenomenon visited upon blameless families by a frightening and mysterious outside world.

Every part of this story is false. Most child abuse takes place not in preschools or church basements but in private homes, and the perpetrators are usually relatives or close friends of the family. It is also incorrect to think that most child abuse is sexual. Physical violence, verbal abuse, and neglect are much more common, and they are all at least as damaging as sexual abuse, if not more so. Many people who are sexually attracted to children never act on those desires, and among those who do, extreme violence is vanishingly rare. Adolescents are much more likely to be victims of sexual abuse or assault than small children. These facts suggest, first, that the propensity to commit child abuse is not simply a function of psychological deviance; distribution of authority and social power plays a major role as well. They also, distressingly, suggest that child abuse is in many respects the product of, not a threat to, the extraordinary prestige and privacy accorded to the nuclear family as a social institution. When victims of abuse feel unable to speak out about what has happened to them, as they very frequently do, they are often made to feel this way not by awful outside threats but by the dynamics that organize family life.

In psychoanalytic terms, hysteria refers specifically to a way for the unconscious to protect the patient from some kind of psychic stress. It may be expressed through any number of troubling symptoms—uncontrollable twitches, sudden screams, spontaneous convulsions or feelings of sexual pleasure—but the important point is that the symptoms aren't half as frightening as the knowledge they work to submerge. Around the country in the 1970s and 1980s, the nuclear family was dramatically and irrevocably changing. Women had entered the workforce in unprecedented numbers, and this helped to direct anxiety toward preschools and other child-care institutions, without which mothers would have been unable to leave the home. (Conservative “family values” politicians objected to day care as a form of “communal” child rearing.) There is evidence to suggest that in Great Neck the unbearable knowledge was that some people knew something was amiss but hadn't felt the problem was serious enough to justify calling the police. Along with his magazines, police found a number of pornographic computer games in Arnold Friedman's basement. Some children told police that Arnold gave them the disks, while others have said the games were being widely circulated around town by the kids themselves. The kids brought the computer games to Arnold's basement, which Arnold either tolerated

or encouraged. One former student told Andrew Jarecki that while he was never abused in computer class, he did remember Arnold patting kids on the legs through their jeans, or putting his arm around their shoulders and letting the embrace linger. Years before his arrest, Arnold says in the film he told a therapist about his pedophilia, and the therapist had suggested he go to Times Square and buy porn, “to sublimate with.” Even David Friedman, in an interview with the *Village Voice*, said that he and his brothers found their father’s magazines when they were young and rummaging around in the basement one day. The Conviction Integrity Review describes one mother who, hearing that Arnold would sometimes sit students on his lap, removed her son from the class but did not take any further action.

The child abuse scandals and prosecutions that swept across the US in the 1980s had many different local contexts and many different results. Manhattan Beach was a white, wealthy, beachside town, and despite the long trial, nobody went to prison. One hundred and twenty-five miles up Interstate 5, more than thirty people in working-class Kern County were convicted of abusing children as part of an organized Satanic sex ring. Thirty-four of the accused eventually had their convictions overturned, and two others died in prison. Just outside Minneapolis, in a tiny town called Jordan, a trash collector named James Rud, who really had molested a 12-year-old girl, implicated many of his neighbors in a similar sex-ring tale. The authorities interviewed Rud’s victim so many times that she eventually claimed to have witnessed not only sex abuse but also multiple homicides. Although charges were filed against twenty-four people, only Rud was convicted. In El Paso, two middle-aged women who worked at a YMCA were convicted of molesting small children. They were both freed within a few years. In Maplewood, New Jersey, the accused was a 26-year-old woman who served five years of a forty-seven-year sentence before her release. In Malden, Massachusetts, a mother and daughter had their convictions overturned and then reinstated. Only one of the four gay women who were sent to prison in San Antonio in the mid-’90s, has been freed. Eighty miles to the northwest, outside Austin, husband and wife Danny and Fran Keller remain in prison today. They were put there in 1992.

Great Neck was one of the wealthiest communities to experience such a case. That the alleged abuse took place at evening computer classes for children suggests the ambitions maintained by the town’s

parents on behalf of their kids. But the child-care sex abuse panic did not just flare up in one kind of community. It appeared in cities, suburbs, and small towns—in wealthy enclaves and working-class neighborhoods alike. The panic was able to take root in such a wide range of communities because there are certain institutions that pervade the whole of American life—among them the police, the courts, child protection services, and psychiatry. The specter of mass child abuse caused all these institutions to lash out in destructive ways. The police made a hash of the case because the police are supposed to solve crimes and gather evidence. This is by no means an infallible institution under the best of circumstances, and in circumstances where a crime did not occur, the police can only do damage.

No institution was more central, however—both to the Friedman case in particular and the sex abuse panic more generally—than the family. Jesse Friedman remains trapped in this unending and ambiguous drama because of how families in the 1980s responded to their own fears about the family's decline. The Friedmans made a mess of things on their own, of course, with their reactions to the discovery of Arnold's pedophilia, but so did the other families involved. The parents of Arnold's students were helpless to protect themselves from the police because they thought (wrongly, it seems) that they had been helpless to protect themselves from the Friedmans. In Great Neck, the family turned out to be an institution that could do as much damage protecting its members from external threats as those external threats themselves.

If Arnold Friedman did show magazines to his students, if he provided or tolerated the computer games, if he was figuring out just how long he could leave his hand on a child's shoulder or back before anybody noticed, then clearly something needed to be done. But in Great Neck, the final truth of Arnold's actions was swallowed up by the police department's sprawling, sadistic fantasy, and by the community's eagerness to believe it. This fantasy was designed to hide the truth about who Arnold Friedman was and what people like him do, and it allowed other people in Great Neck to acquit themselves of any involvement. +