# No. 20-

In the United States Court of Appeals
for the Second Circuit

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**Jesse Friedman,**

*Petitioner-Movant*,

**v.**

**Michael C. Green, Executive Deputy Commissioner, New York State Division of Criminal Justice Services, Letitia James, Attorney General of the State of New York**

*Respondent*.

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**DECLARATION OF RHIDAYA S. TRIVEDI IN SUPPORT OF JESSE FRIEDMAN'S MOTION UNDER 28 U.S.C. § 2244 FOR AUTHORIZATION TO FILE A SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS**

RHIDAYA S. TRIVEDI, an attorney duly admitted to practice law in the State of New York and the Second Circuit Court of Appeals, declares as follows,

1. I am an associate at the Law Office of Ronald L. Kuby, attorneys for Petitioner-Movant Jesse Friedman. I submit this Declaration in support of Mr. Friedman's Motion Pursuant to 28 U.S.C. § 2244 for Authorization to File a Successive Petition for Writ of Habeas Corpus. I am fully familiar with the facts and circumstances set out below based on my personal knowledge, my review of files maintained by my law office, and information provided to me by other knowledgeable individuals.

**2. The purpose of this Declaration is to a) put before the Court true and correct copies of certain documents referred to in Mr. Friedman's motion, b) set forth the procedural history of this case, and c) describe the newly discovered evidence upon which this motion is based.[1]**

## EXHIBITS ATTACHED

3. Attached as Exhibits A - D are the following documents, relating to the exhaustion of the claims herein:

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| Exhibit A | June 23, 2014 Notice of Motion to Vacate Pursuant to CPL § 440.10 and June 23, 2014 Memorandum of Law |
| Exhibit B | December 23, 2014 Decision and Order of Judge Corrigan |

[1] Balancing the procedural demands of § 2244 with the need to fully set forth the now 20-year-long attempt to vindicate Mr. Friedman's innocence, evidence is discussed that is not newly discovered. It is, however, presented as such.

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| Exhibit C | September 12, 2018, Transcript of Proceedings At Which Innocence Claim Was Dismissed |
| Exhibit D | August 12, 2019, Decision and Order of the Appellate Division, Second Department, Denying Leave to Appeal |

4. Attached as Exhibits E - K are the following documents, relating to the Conviction Review Process:

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| Exhibit E | June 24, 2013 Conviction Integrity Report of Jesse Friedman ("Rice Report") |
| Exhibit F | Affirmation of Barry C. Scheck, a former member of District Attorney Kathleen Rice's Advisory Panel overseeing the re-investigation of the case, that calls for the trial court to grant a full evidentiary hearing on the merits of Mr. Friedman's claims and to provide full discovery of the documents and materials long denied to him |
| Exhibit G | "Victim Questionnaire" attached to the June 24, 2013 Conviction Integrity Review of Jesse Friedman as Document 21 |
| Exhibit H | March 8, 2013 Letter from Ross Goldstein to the Conviction Review Team |
| Exhibit I | May 20, 2013 Letter from Kenneth Doe to Friedman Case Review Team |
| Exhibit J | Arline Epstein: Interview Statements, January 22, 2013 Prepared Statement for Friedman Conviction Review Panel, August 19, 2013 Letter to Justice F. Dana Winslow, Notes Taken During Friedman Prosecution from 1987-1989; Presentation by Arline Epstein to the Friedman Case Review Team |
| Exhibit K | August 8, 2014 Affidavit of Carol Frank |

5. Attached as Exhibits L - Y are the following exhibits, related to the defense's re-investigative efforts in conjunction to and after the release of, the Rice Report:

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| Exhibit L | 2012 Recorded Interview with Michael Kanefsky |
| Exhibit M | 2012 Recorded Interview with Margalith Georgalis |
| Exhibit N | 2012 Recorded Interview with Christopher Blaha |
| Exhibit O | 2012 Recorded Interview with Shahar Lushe |
| Exhibit P | May 21, 2012 Interview Statements of Barry Doe |
| Exhibit Q | May 23, 2012 Interview Statements of Gary Meyers |
| Exhibit R | May 24, 2012 Interview Statements of Joan Blaha |
| Exhibit S | June 4, 2012 Interview Statements of Rafe Liber |
| Exhibit T | August 1, 2012 Interview Statements of Michael Epstein |
| Exhibit U | November 13, 2012 Recorded Interview of Keith Doe |
| Exhibit V | May 2013, "Destruction of Innocence, the Friedman Case: How Coerced Testimony and Confessions Harm Children, Families & Communities for Decades After the Wrongful Convictions Occur", Gaven de Becker and Emily Horowitz, National Center for Reason and Justice |
| Exhibit W | June 20, 2013 Affidavit of Jeffrey Leff |
| Exhibit X | June 27, 2013 Affidavit of Dan Aibel |
| Exhibit Y | August 4, 2013 Affidavit of Keith Lanning |

6. Attached as Exhibits Z - CC are the following exhibits, relating to Jesse's FOIL litigation:

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| Exhibit Z | June 28, 2013 Transcript of Hearing in Friedman v. Rice, Index No. 4015-13 (Sup. Ct. Nassau Cty.) ("FOIL Hearing") |
| Exhibit AA | August 19, 2013 Letter from Arline Epstein to Justice F. Dana Winslow, with attachment |

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| Exhibit BB | August 18, 2013 Letter from Scott Banks to Justice F. Dana Winslow, Supreme Court, Nassau County |
| Exhibit CC | August 22, 2013 Transcript of Hearing in Friedman v. Rice, Index No. 4015-13 (Sup. Ct. Nassau Cty.) ("FOIL Hearing II") |

7. Attached as Exhibits DD - VV are the following exhibits, gathered during the making of *Capturing the Friedmans* and prior to the filing of Jesse's first 440.10 motion:

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| Exhibit DD | Transcript of *Capturing the Friedmans* |
| Exhibit EE | 2001 Interview of Judge Abby Boklan |
| Exhibit FF | February 21, 2001 Interview Statements of Fran Galasso |
| Exhibit GG | March 21, 2001 Interview Statements of Scott Banks |
| Exhibit HH | 2001 Interview Statements of Larry Solotoff |
| Exhibit II | May 18, 2001 Excerpts of Recorded Interview Statements of Detective Anthony Squeglia |
| Exhibit JJ | July 27, 2001 Recorded Interview of David Zarrin |
| Exhibit KK | August 6, 2001 Interview Statements of Dennis Doe |
| Exhibit LL | Undated Affidavit of Peter Panaro |
| Exhibit MM | December 9, 2003 Affidavit of Richard Tilker |
| Exhibit NN | December 15, 2003 Affidavit of Judd Maltin |
| Exhibit OO | December 23, 2003 Affidavit of Brian Tilker |
| Exhibit PP | December 29, 2003 Affidavit of James Forrest |
| Exhibit QQ | December 30, 2003 Affidavit of Margalith Georgalis |
| Exhibit RR | December 30, 2003 Affidavit of Ralph Georgalis |
| Exhibit SS | December 30, 2003 Affidavit of Ron Georgalis |
| Exhibit TT | January 6, 2004 Affirmation of David Kuhn Re: March 10, 2001 Interview of Detective Wallene Jones |

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| Exhibit UU | February 23, 2004, "Abuse Experts Assail Movie", Marina Pisano, *San Antonio Express News* |
| Exhibit VV | 2003-2004 Transcripts and Statements of Judge Abby Boklan |

8. Attached as Exhibits WW - III are the following exhibits, from the original Jesse Friedman prosecution

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| Exhibit WW | 1988 Nassau County Indictment Numbers 67104, 67430, 69783 |
| Exhibit XX | Declaration of Grace Gill |
| Exhibit YY | December 1987 Statement of Fred Doe |
| Exhibit ZZ | 1988 Interview of Gary Meyers by Detective William Hatch |
| Exhibit AAA | October 16, 1989 Witness Statement Recorded by Detective Merriweather in the prosecution of Robert Izzo |
| Exhibit BBB | February 15, 1989 Interdepartmental Memo from Barry Grennan to Fran Galasso |
| Exhibit CCC | November 24, 1987 Affidavit of Detective William Hatch |
| Exhibit DDD | 1988 Discovery Demands |
| Exhibit EEE | November 16, 1988 Notes of Meeting at Temple Beth-El by Theodore O'Neill |
| Exhibit FFF | March 26, 1990 Letter from District Attorney Dennis Dillon to Inspector Olsen |
| Exhibit GGG | November 29, 1987, "Parents Seek Therapy for Abuse Victims", Kathy Boccella, *Newsday;* Undated Letter from Parent to Dr. Sandra Kaplan at North Shore University Hospital |
| Exhibit HHH | June 23, 1988, "New Arrest in Child-Sex Case", Bill Van Haintze and Alvin Bessent, *Newsday* |
| Exhibit III | November 24, 1988, "Help for Victims of Sex Abuse Stressed in Temple Program", *Great Neck Record* |

## PROCEDURAL HISTORY

### Factual Background / Introduction

9. Jesse Friedman ("Jesse") was arrested the day before Thanksgiving, 1987. A few days earlier, his father, Arnold Friedman ("Arnold") had confessed to him and his brothers for the first time that he had possessed child pornography, and that federal agents had searched the house and found it. Jesse assumed that this arrest had to do with the pornography possession. It wasn't until the recitation of the charges against Arnold, at arraignment on Thanksgiving morning, that Jesse realized for the first time that they were both being charged with molesting children. Jesse spent the next two weeks in jail before being granted bail.

10. After interviewing more than 100 students, the Nassau County District Attorney convened a Grand Jury featuring children who testified that Arnold and Jesse had abused them during popular after-school computer classes conducted in the Friedman's house.[2]

[2] Three indictments would ultimately be returned, as a result of a total 14 complaining child witnesses who made formal allegations against Jesse Friedman. In 1988, they were assigned "Doe" names: Barry Doe, Kenneth Doe, William Doe, Daniel Doe, Fred Doe, Edward Doe, Dennis Doe, Richard Doe, Steven Doe, Keith Doe, James Doe, Lawrence Doe, Patrick Doe, and Gregory Doe. The defense was informed of the true identities of these 14 individuals by letter dated November 30, 1988 but has never disclosed them in any public filings.

The Rice Report would not utilize the complaining witness' Doe names, but instead, assigned numerals to them (i.e., "Witness 14"). The prosecution has never turned over to the defense a description of which numeral pseudonym corresponds to which "Doe" pseudonym.

11. The Grand Jury returned an indictment (#67104) on December 7, 1987 which focused substantially on Arnold, though it also charged Jesse with 10 counts of child sex abuse. Soon after, Jesse was indicted a second time (#67430) on February 1, 1988. This time he was charged with 35 counts of child sexual abuse.

12. The day before he was arraigned on the second indictment, on February 8, 1988, Arnold pled guilty to the federal child pornography charges. At the Nassau County arraignment, Judge Boklan allowed press and television cameras into the courtroom — a first for Nassau County. Great Neck was now in a frenzy, and Jesse was at its center. With Arnold admitting guilt to some charges, no one had any doubt as to the state charges still pending. 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. *See* Ex. K, Affidavit of Carol Frank.

13. No physical evidence of abuse had been found (nor has it to this day); the indictments had been returned solely on the basis of the testimony of children elicited through "yes or no" questions; no hint of complaint had ever been made before the police began their investigation. Parents picked up their children after

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The attribution of specific allegations to specific witnesses contained *herein* is thus the result of re-investigation, interpretation, and process of elimination. For a summary of the allegations made by each of the fourteen "Doe" complaining witnesses, *see* Exhibit XX, Declaration of Grace Gill.

class for years, often arriving unannounced, and many children re-enrolled for more advanced classes. It was alleged that the Friedmans had photographed and videotaped hundreds of alleged incidents of abuse, but no photos or videotapes were ever found.

14. A month later, in March of 1988, Arnold pled guilty to the state charges (including a plea to charges alleging sodomy) and gave a "close-out" statement, which provided ammunition for the police to pressure even more witnesses to make allegations against Jesse and cemented the assumption in the public's mind that the wild accusations were completely true. Then, in June, with Jesse refusing to plead guilty and expressing his intention to go to trial, the police arrested 17-year-old Ross Goldstein ("Mr. Goldstein"), shocking Jesse, who could not fathom how his friend could possibly have become caught up in this. Ex. LL, Affidavit of Peter Panaro at ¶ 5-7.

15. Peter Panaro ("Mr. Panaro"), Jesse's defense attorney, relayed to Jesse what he had been told by Judge Boklan: that if Jesse were convicted of any of the charges, he would be sentenced for each consecutively. *Id.* With just the 39 charges pending at the time, it would amount to a life sentence.

16. Attempting to build a defense, Jesse's attorneys made multiple document demands, specifying all evidence available under Brady v. Maryland. Ex. DDD, *Brady* Demands. The prosecution denied the existence of a single piece of

Brady material.[3] The police had interviewed more than 100 students, the vast majority of whom denied being abused or witnessing abuse.

17. Simultaneously, Jesse kept abreast of the contemporaneous Kelly Michaels prosecution. Ms. Michaels was a teacher in New Jersey; like Jesse, she was accused of bizarre ritualistic sexual abuse of children in her care, including sodomizing them with forks and knives. Like Jesse, there was no physical evidence; no complaints before an innocent comment by a child; and no damage to any child despite the wild accusations. She was convicted after trial and sentenced to a term of 47 years in prison in August of 1988. Jesse could not know that five years later she 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 and employed coercive and unduly suggestive methods." State v. Michaels, 136 N.J. 299, 315 (1994).

18. During that summer of 1988, during which Mr. Goldstein was arrested and Ms. Michaels sentenced, Jesse would also learn that two other friends of Mr. Goldstein had been questioned by the police at the same time. He discovered that police had threatened all three; if they didn't cooperate, others would testify that they

[3] 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 none *existed*. See Ex. DDD at ¶34.

were part of the "Friedman child molestation ring." These two would never be prosecuted. Ex. E at iii.

19. Throughout this period the headlines continued. It was 1988; the McMartin pre-school case, and nearly 75 other "multiple-victim multiple-offender" cases would completely unravel within a few years, proven to be the result of mass hysteria. These cases involved dozens of alleged victims and hundreds of charges; *all* of the charges were fabricated by communities twisting in fear and anger over the perceived attacks on its children. *See* People of Territory of Guam v. McGravey, 14 F.3d 1344, 1350 (9th Cir. 1994) (referring to the McMartin and Akiki cases as similar only to the Salem witch trials).

20. Anyone with whom Jesse Friedman spoke assumed he was guilty. His attorney had offered him hope that he had an excellent chance of being released early if he were perceived not as someone who voluntarily committed terrible crimes, but rather as another victim of his father. Jesse was 18 at the time of his arrest, but as young as 15 when these crimes allegedly began.

21. The prosecution exercised tremendous pressure on Mr. Goldstein to plead guilty and testify against Jesse. Eventually, weighing the DA's offer of six months in county jail and Youthful Offender status against the functional life sentence Judge Boklan threatened for Jesse, Mr. Goldstein capitulated, agreeing to provide the testimony sought by the DA upon which a third indictment was returned

(#69783, charging Jesse with 198 counts of child sex abuse). Though no physical evidence linked Mr. Goldstein to the computer classes, and Mr. Goldstein denied involvement for weeks, that third indictment implicated him and charged with him 118 counts of abuse, substantially more than the alleged ringleader, Arnold. 79 of the counts against Mr. Goldstein were sodomy charges — ten times the number leveled against Arnold Friedman.

22. Facing the possibility that, if the prosecution could have three indictments returned, alleging hundreds of acts of sadistic sex abuse, they could secure a conviction at trial — particularly with the help of Ross Goldstein's testimony — and threatened with the possibility of never again being a free man by Judge Boklan,[4] Jesse Friedman ultimately pled guilty on December 20, 1988.

23. Jesse was sentenced to 16 to 18 years' imprisonment and judgment entered on December 20, 1988.

24. Nearly two decades later, after Jesse and Arnold had been imprisoned for years (Arnold died there), and Mr. Goldstein had served a shorter prison term, the case became the subject of the Academy Award-nominated documentary, *Capturing the Friedmans*, released in 2003. The documentary team would

[4] Judge Boklan's threat to sentence Jesse consecutively would prove real; at Ross Goldstein's sentencing, Judge Boklan would sentence him to a sentence of imprisonment of two to six years, without Youthful Offender status. The promised sentence had been six months in county jail and Youthful Offender Status. This illegally imposed sentence was later vacated on appeal. See People v. Ross G., 163 A.D.2d 529 (2d. Dep't 1990).

repeatedly attempt to communicate with all 14 original complaining witnesses, among others. *See* "Victims Say Film on Molesters Distorts Facts", https://www.nytimes.com/2004/02/24/movies/victims-say-film-on-molesters-distorts-facts.html (*last accessed,* October 13, 2020) (describing Andrew Jarecki stating that he attempted 500 times to contact 100 former computer class students). Three agreed to be interviewed — Dennis Doe, Steven Doe and Gregory Doe —, while six would outright refuse James Doe, Edward Doe, Fred Doe, Richard Doe, Patrick Doe, and Lawrence Doe. The remaining three — Barry Doe, Kenneth Doe and Keith Doe — would not be reachable until the Conviction Review Process was announced, nearly a decade later. See, *infra* at ¶¶ 119-123.

25. Jesse was released in 2002 after 13 years in prison and has been a "Level-3 Violent Sexual Predator" under the Sex Offender Registration Act ("SORA") ever since.

**Prior Post-Conviction Proceedings Culminating in This Court's Concern for Jesse's Possible Innocence**

26. Jesse filed his first motion to vacate his conviction pursuant to New York's Criminal Procedure Law § 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 (Jan. 6, 2006)

(Lapera, J.). After leave to appeal was denied, Jesse 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 Jesse 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.

27. Jesse then appealed that decision to this Court, and that case was argued on July 8, 2009. A supplemental motion for an actual innocence petition was filed 12 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 v. Rehal, 618 F.3d at 161. Despite ruling the claim procedurally barred, the Friedman Court found a "reasonable likelihood that Jesse Friedman was wrongfully convicted" based upon the following findings:

> "The quality of the evidence was extraordinarily suspect."
>
> "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.'"
>
> "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 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…
>
> 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.

[Id. at 158-59.]

28. This Court was also very concerned about 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. This Court concluded that the evidence against Friedman was "extraordinarily suspect." Id. at 161.

29. Lacking a legal basis to act, this Court 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, which 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.

**The "Re-investigation" and the Rice Report**

30. Following the direction of this Court, Nassau County District Attorney Kathleen Rice undertook re-investigation of Jesse's conviction. There were two relevant groups within the review team, 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, announced by DA Rice, and included Barry Scheck, the Executive Director of the Innocence Project. See Exhibit F, Affidavit of Barry Scheck.

31. The Review Team, who actually had access to evidence and witnesses, was comprised of assistant district attorneys within Nassau County; put another way, the very institution that originally brought the investigation arrogated to itself the exclusive power to determine the credibility of witnesses. Ex. Z, Transcript of Hearing, Friedman v. Rice, No. 4015-13 (Sup. Ct. Nassau Cty June 28, 2013), 10:19-18:11; see also, Exhibit F, Affidavit of Barry Scheck at ¶ 7 ("such determinations were the exclusive province of the District Attorney").

32. The "Advisory Panel" did not conduct its own independent review, and the DA withheld from them all the evidence except a small amount. Ex. Z, at 10:19-18:11).

33. Of the original 14 complaining witnesses, the Conviction Review process involved interviews with only five – Stephen Doe, Gregory Doe, James Doe, Richard Doe, and Barry Doe. These five were responsible for only 29% of the charges brought against Jesse. As described at length, *infra*, four of the five have recanted, partially or completely. The DA has never provided an explanation for why the remaining *nine* complaining witnesses were never interviewed.

34. On June 23, 2013, the Review Team published its "Conviction Integrity Review," (hereinafter the "Rice Report") reaffirming the original conviction. *See,* Ex. E, Rice Report.

35. At no point in the Conviction Review process were the written statements of complaining witnesses, gathered by law enforcement, disclosed to the defense. The Rice Report, however, curiously and painstakingly detailed the sequence of each investigation, describing instances where interviews were conducted with child witnesses and specifying where those interviews led to children 'providing written statements.' Ex. E at 7-32, *discussed infra* at ¶¶ 86-103.

36. According to the Rice Report, Nassau County officials began conducting interviews on November 12, 1987, more than a week after Arnold Friedman's arrest, and between November 12, 1987 and November 25, 1987, police spoke with at least 35 children (none of whom made allegations of sodomy against Jesse).

37. The Report contains dozens of attacks on Jesse's character, employing scores of epithets to describe him as a "psychopath," "pansexual," and "deviant." The Report persistently relied on the contents of documents it refused to disclose, and grossly mischaracterized evidence.[5] The Report, instead of employing the

[5] For example, DA Rice was challenged to explain why police in 1988, 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

original "Doe" names given to complaining witnesses (i.e. "Barry Doe"), utilized numerals for each witness (e.g., "Witness 14"). *Supra* at fn. 2. The report abounded with tautological reasoning. Ex. E. at 108 (including the conclusion that adults who repudiate the statements police coerced from them when they were children are self-serving and unreliable because those statements now "stand in marked contrast" to the original accusations elicited by police).

38. In addition to withholding from the Advisory Panel virtually all the relevant documents (such as all the original interview notes and police files) 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 in the context of the final Report. This policy resulted in the omission and mischaracterization of essential witness statements, as starkly illustrated in the interview of Scott Banks, law secretary to Judge Boklan in 1988.

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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", Ex. E 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 and 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. The defense has thus engaged in its own reconstruction and investigation of non-complainant witnesses to the alleged abuse. *See* Ex. XX at ¶¶ 10-19.

39. Mr. Banks — one of the only people who reviewed the original grand jury testimony that led to the three indictments — 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 Judge Winslow to support Jesse Friedman's FOIL effort 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 a "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 Jesse. 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…
>
> [Ex. BB, August 18, 2013 Letter from Scott Banks to Justice F. Dana Winslow, Supreme Court, Nassau County.]

40. The substantial doubts volunteered by the Judge's law secretary **appear nowhere in the Rice Report**. In fact, Banks's thorough interview with the DA's Review Team was contorted into the following tiny passage, seeming to endorse the outcome of the case:

> "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."
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> [Ex. E at 86.]

41. Similarly, Arline Epstein, the only person known to have taken contemporaneous notes throughout the original Friedman investigation, and who was originally convinced that her son Michael had been molested by the Friedmans, was so offended by the Review Team's mischaracterization of her documents and interview that she composed and submitted to Judge Winslow (the Judge presiding over Jesse's FOIL hearing, described below) 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.
>
> [Ex. AA, Aug. 19, 2013 Letter from Arline Epstein to Judge F. Dana Winslow.]

42. Another shocking and even more relevant illustration of the DA's mischaracterization of evidence in the Rice Report comes from Barry Doe, whose grand jury testimony resulted in 10 charges against Jesse, including some to which he pled guilty. Doe's recantation to the *Capturing the Friedmans* team 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.
>
> [Ex. P, May 21, 2012 Interview Statements of Barry Doe].

43. 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." Ex. E at 109. The Rice Report goes on to mislead the reader, attributing 20 charges to "the Friedmans" when in fact only two pertained to Jesse. *Id.*

44. Fundamentally, despite "reviewing" Jesse's conviction for two and a half years, the prosecution's review was illusory. 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. 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 abuse in plain view of the entire class. Their review

was suspect enough that Barry Scheck, a member of the Advisory Panel, would submit an affidavit in support of Jesse's requests pursuant to New York State's Freedom of Information Law for the underlying investigative materials, explicitly stating that it "would be desirable for the court and the parties…to review materials not available to the Advisory Panel" such that Jesse Friedman's innocence or guilt could "finally" be resolved. Ex. F, Affidavit of Barry Scheck at ¶ 7.

**FOIL Litigation**

45. 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 but before the Rice Repot was released, Jesse filed a Freedom of Information Law ("FOIL") request for the documents being reviewed. That was denied. Jesse appealed to the appeals officer, who similarly denied the request. Jesse 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.

46. During the pendency of the FOIL litigation, the defense was ordered to serve a copy of the Article 78 petition on each and every one of the 14 original

complaining witnesses.[6] Service of process would lead to one original complaining witness — Kenneth Doe — coming forward and explicitly recanting his prior inculpation of Jesse Friedman, Ex. I, May 20, 2013 Letter of Kenneth Doe to Conviction Review Panel. Another — Barry Doe — would recant through counsel. *See infra* at ¶ 120-122.

47. After reviewing the documents and holding multiple hearings on the issue, on August 23, 2013, Justice Winslow conveyed his grave concerns about the exculpatory nature of the materials withheld from Friedman. Ex. Z at 36:21. Specifically, he stated:

> 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.
>
> [Ex. Z at 31:17-32:2].

48. Judge Winslow continued, stating that the lack of physical evidence was reason to "look closer and not further away," and ordered the disclosure of

[6] We note that service of process was required all over the world and cost nearly $100,000. Those costs, borne by the defense, shed tremendous light on one category of obstacles the defense has always faced in investigating Jesse's innocence: how to locate and ultimately contact witnesses with generic names who could reside anywhere.

"every piece of paper" with Friedman's name on it, protecting only the names of complaining witnesses who had contacted the court and requested protection of their identities. *Id.*

49. Before the materials were turned over, however, Judge Winslow's decision was stayed and reversed by the Appellate Division, Second Department. Friedman v. Rice, 134 A.D.3d 826 (2d. Dep't 2015) (holding that FOIL exempted the statements of non-testifying witnesses as confidential informant statements and that Friedman had failed to meet the 'good cause' standard warranting disclosure of grand jury materials). Leave to appeal to the Court of Appeals was sought and granted, culminating in Court of Appeals holding that FOIL's exemption for 'confidential informants' applied only where an agency could establish that an express promise of confidentiality was made to the source, or that circumstances of the particular case are such that the confidentiality can be reasonably inferred. Friedman v. Rice, 30 N.Y.3d 461 (N.Y. Ct. App. 2017). The case was thus reversed and remitted back to Supreme Court for proceedings under the new legal standard.

**Current 440.10 Proceedings**

50. On June 23, 2014, while FOIL litigation was ongoing, Jesse filed his second motion to overturn his conviction and dismiss the charges on three grounds: actual innocence, coerced false testimony before the grand jury, and a coerced plea. The prosecution consented to a hearing on the actual innocence claim, while seeking

summary dismissal of the other two claims. Summary dismissal of the grand jury coercion and plea coercion claims was granted on December 23, 2014 by Judge Theresa Corrigan. Ex. B.

51. In the absence of a final judgment, and with the actual innocence claim pending, no appeal could be sought. Proceedings on the actual innocence claim were eventually stayed, pending a resolution of Friedman's FOIL litigation (described above). For four years, the defense was thus, preparing for the actual innocence hearing, and in this capacity, contacted an *additional* **11** non-complainant students who denied the occurrence of any abuse.[7]

52. And then, on September 4, 2018, while the FOIL case was back on remand from the Court of Appeals and in light of the then-recent Court of Appeal's decision in People v. Tiger, 2018 Slip Op. 04377 (N.Y. Ct. App. June 14, 2018), holding that an individual who pleads guilty may never raise a claim of actual innocence on CPL §440.10 motion, the actual innocence claim was dismissed, and final judgment entered on Friedman's 440.10 motion.[8]

[7] By definition, these witnesses were not included in the 440 filing from which this case emerges, and as such they are not discussed here. We reference them only to flag their existence, and to note that were Jesse granted leave to file his successive habeas granted and an evidentiary hearing ordered, that they would be called to testify.

[8] On the consent of all the parties, after Mr. Friedman's actual innocence claim was dismissed and the previously anticipated evidentiary hearing, canceled, the FOIL proceedings were ultimately dismissed, without prejudice to re-file. Fundamentally, Mr. Friedman seeks an opportunity for discovery — for access to materials long covered up and withheld by the District Attorney's

53. On August 12, 2019, the Appellate Division, Second Department, denied leave to appeal the trial court's December 23, 2014 denial of Jesse's grand jury coercion and plea coercion claims. Petition for writ of certiorari is permissible, after leave to appeal to the Appellate Division has been denied; thus, Jesse had one year and 90 days from August 12, 2019 to file motion requesting that this Court grant him permission for leave file a successive habeas petition in District Court. This motion is thus, timely.

## NEWLY DISCOVERED EVIDENCE OF COERCION AT THE GRAND JURY

54. The Rice Report and the defense re-investigation it facilitated demonstrate that, in order to have the Grand Jury return three indictments against Jesse Friedman, charging him with 235 counts of child abuse, law enforcement relied upon a) five coercive interrogation techniques, b) individuals they assumed were sex abuse victims, c) to elicit accusations that Detectives would then craft into witness statements, d) all the while electing to disbelieve any allegation that was unbelievable while e) selectively crediting anything that confirmed their suspicions. The new evidence indicates that the investigation into the Friedmans was conducted in a manner that ignored, contradicted, and ran afoul of known best practices in child

Office. If that opportunity comes in the form of a full evidentiary hearing in District Court, the need to resume FOIL proceedings will be moot.

sex abuse investigations. None of this evidence could have been discovered were it not for this Court's direction that the Nassau County District Attorney's Office reinvestigate Mr. Friedman's original conviction.

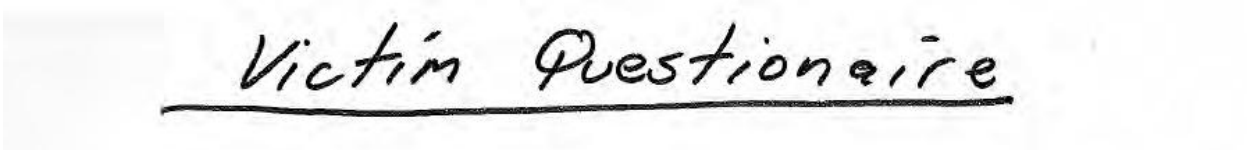
55. Discrete instances of these techniques abounded in the statements of complaining witnesses, non-complaining witness students and parents, and members of law enforcements given to the *Capturing the Friedmans* team in the early 2000's. The Rice Report and subsequent FOIL litigation made clear that which could not have previously been known: that these techniques constituted the whole of law enforcement's approach to child witnesses, and as such, not a shred of evidence elicited by them was reliable.

**Coercive Questioning**

56. The Rice Report provided evidence of reliance by law enforcement upon five techniques, all of which coerced false testimony at the grand jury: 1) suggestive and aggressive questioning; 2) an insistence that other people had already alleged abuse when in fact they hadn't; 3) affirming inculpations with positive consequences and discouraging exculpations with negative consequences; 4) repeatedly asking questions that the children had already, unambiguously, answered; and 5) inviting speculation.

Coercive Technique #1: Suggestive and Aggressive Questioning

57. In the Rice Report, the prosecution revealed for the first time that Detective Sergeant Frances Galasso, the head of the 1988 investigation into the Friedmans, 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 indicates to the interviewer, parents, and the child that every child interviewed is, unambiguously, a "victim":


Victim Questionaire

The following constitutes a sampling of the dozens of suggestive questions offered in Galasso's questionnaire:

- Did Jesse ever take you to the bathroom or come into the bathroom while you were there?
- Did anyone ever see Jesse 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?

[Ex. G, Victim Questionnaire, Rice Report Appendix Doc 21.]

Not only were the questions suggestive, however, but they were asked in a consistently aggressive manner.

58. 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 she retained them in her personal files. *See* Ex. J, Arline Epstein Submissions and Notes.

59. 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. Ex. J 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. As a result of Michael's disclosures, Ms. Epstein came forward and shared her notes with the defense.

60. Ms. Epstein's notes recall that 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.*

61. Detective Squeglia acknowledged to the *Capturing the Friedmans* team 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 Jesse'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.
>
> [Ex. II at 65.]

62. Chris Blaha's 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.
>
> [Ex. R, Interview with Joan Blaha at 3.]

Detectives would ask him the same question as many as five or ten times. 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, Ex. N, Interview with Chris Blaha. 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.

63. Richard Tilker, father of Steven Doe (who has given permission for his name to be used), described the police's insistence that Brian had been abused. "They didn't' say 'we believe', they said 'we know.'" Ex. M, December 9, 2003 Affidavit of Richard Tilker at 4. Though he wasn't permitted to be present during the questioning, 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.]

64. Barry Doe confirmed the police "wanting you to say almost what they wanted to hear." Ex. P.

Coercive Technique #2: "Other People"

65. Admissions made in the Rice Report indicate that Detectives used a technique whereby a child would be told what other children had supposedly already said:

> …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.
>
> [Ex. E at 87.]

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.

66. Brian Tilker remembered both the use of "other people" and the Detective's insistence that abuse had taken place:

> 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.
>
> [Ex. OO, Affidavit of Brian Tilker at ¶ 5.]

67. The Detectives relied upon the "other people" technique to get Michael Epstein to corroborate abuse claimed by two other key complainants. Ex. T, August 1, 2012 Interview Statements of Michael Epstein. When that failed, police pressured him to admit having been abused himself. Though he declined to make charges, he describes how he later lied both to his mother and 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 leapfrog, 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.
>
> [Ex. T at 15.]

68. 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 multiple times 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. Ex. E at 127.

69. Although he was able to withstand the direct police pressures, the totality of police misconduct created pressure on others, including his mother, which forced him to make false accusations. In late March 1988, immediately following Arnold Friedman's plea and close-out 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 "[the detectives] want to speak to Mike again... police need their help." Ex. J at A-16.

70. This conversation was contemporaneously documented in Ms. Epstein's notes which reveal that Detective Galasso knowingly lied to Epstein in this

telephone call, telling her that in his close-out statement "[Arnold] *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." Ex. DD at 36. Galasso repeated that lie to parents with whom she spoke. Ms. Epstein recalls that when she inquired in November of 1987, Det. Sgt. Galasso told her they found "stacks of pornographic materials." 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 10-page statement over five hours of questioning. Ex. J at A-3. At a later parent meeting in January 1988, therapists described having difficulty getting through to the children in this case, since they "have no symptoms" of abuse. *Id.* at A-11-A-12.

71. Reliance upon Arnold's close-out statement accounted for a subset of the use of the "other people" technique.[9] Ron Georgalis recalls Detective Sergeant 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." Ex. SS, December 30, 2003 Affidavit of Ron Georgalis. Similarly, complainant Dennis

[9] Again, the statements of the Georgalis family and Dennis Doe with respect to Arnold's close-out statement were known to the defense in the early 2000's. The context — that this was but one sub-type of reliance upon a coercive interrogation technique where witnesses are gaslit and bullied into believing that their peers have made certain kinds of statements — was unknowable to the defense until the release of the Rice Report and events subsequent.

Doe recalled the detectives bringing a "huge book" to his house, labeled "Confession from Arnold Friedman", and insisting that Arnold had spoken about Dennis "in there." Ex. KK, Aug. 6, 2001 recorded interview of Dennis Doe at 17.

72. Ron Georgalis' parents, Ralph and Margalith, confirm this. Ralph 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." Ex. RR, Dec. 30, 2003 Affidavit of Ralph Georgalis at ¶ 3-4. Margalith was also shown Arnold's "close-out" 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.
>
> [Ex. M, Nov. 15, 2012 Transcript of Recorded Interview with Margalith Georgalis; Ex. QQ, Dec. 30, 2003 Affidavit of Margalith Georgalis.]

Coercive Technique #3: Positive and Negative Consequences

73. Using this technique, the detectives would respond positively to accusations of abuse and negatively to denials. In the Rice Report, the prosecution admitted 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."
>
> [Ex. E at 66, 71-72.]

74. Police also provided "positive consequences" by offering rewards to cooperative students. Detective Squeglia admitted to the Rice Review he would befriend children and even offer to "deputize" them to induce them to make allegations. *Id.* 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." Ex. T, at 9. The Rice Report concedes the use of this tactic as well, noting:

> "Police gave some boys rewards to gain their cooperation, including police badges as rewards for cooperation."
>
> 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."
>
> [Ex. E at 66, 71-72].

75. Richard Tilker also remembers these "many different approaches in trying to persuade the children to answer their questions in the way they wished them to." Ex. MM 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.*

76. Gary Meyers 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 had not been abused, Detective Hatch alternated between abusive and coercive interrogation methods:

> 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.
>
> [Ex. ZZ, Transcript of 1988 interview of Gary Meyers by Detective Hatch.]

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.*

<u>Coercive Technique #4: Asked and Answered</u>

77. Here, a questioner, over the course of multiple, lengthy interrogations, asks a child the same question repeatedly — one that the child has already unambiguously answered — indicating his previous answers to the question were unacceptable. The intensity of the questioning steadily increased until an acceptable answer was produced.

78. The newly available notes of Arline Epstein document the fact that Detective Galasso 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 were sitting with young children for many hours at a time to try to get them to "disclose" having been abused. *Id.* at A-11-A-12.

79. Similarly, 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 a 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."*** Ex. J, A-8. In addition, Epstein's notes state that ***police interviewed complainant Barry Doe for five hours***. Ex. J 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.

80. The devastating effects of such relentless police questioning is attested to by Friedman complainant "Kenneth Doe." 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. 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.
>
> [Ex. I, May 20, 2013 Letter from Kenneth Doe to the Friedman Case Review Panel at 1-2.]

81. Newly recanting complainant Barry Doe 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.
>
> [Ex. P, May 21, 2012 Interview Statements of Barry Doe at 6; *see also* Ex. Z at 4:9-10.]

82. Because of the context provided by the Rice Report's thorough documentation of coercive interrogation techniques, pieces of interviews recorded

during the making of *Capturing the Friedmans* can now be understood. For example, Wallene Jones told filmmakers in 2004 that the 'asked and answered' technique was being used:

> 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**.**
>
> [Ex. TT, Jan. 6, 2004 Affirmation of David Kuhn at ¶ 9 (**emphasis added**).]

Why Detective Jones would subject children to this can be summed up in her own words: "we assumed all of the children had been sexually abused there." *Id.*at ¶ 5).

Coercive Technique #5: Inviting Speculation

83. Jesse Aviram, one of nine newly discovered non-complainant witnesses, 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 and when he said that Arnold did not, the officers asked if Jesse might not have been aware of it when it happened." Ex. E 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. By

offering him no choice but to admit that anything a detective asserts or asks *could* have happened, pressure on the child is increased to say what the detectives want him to say.

84. Though Jesse Aviram is one of many former Friedman computer students who insist that no abuse took place in the Friedman classes, *infra* at ¶ 132 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 was (and to this day remains) an *Assistant District Attorney in the Nassau County DA's office.* 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 using terms of art, well aware of the unreliability and impropriety of interrogating children in this manner.

85. Through the use of these five techniques, Detectives coerced the testimony of the 14 child witnesses who would ultimately testify at the Grand Jury against Jesse. Scott Banks, Judge Boklan's Law Secretary, confirmed this. Ex. BB (expressing concern that questioning at the grand jury "demand[ed] yes or no responses", and answers "lacked specificity regarding the dates and times of alleged offenses, and failed to note the presence of other witnesses…and provided absolutely

no detail from the children concerning the specific acts alleged against Mr. Friedman.").

**Allegation Authoring**

86. The Rice Report made clear that the children did not compose their own statements; that every assertion in the case against Jesse emerged from multiple interviews which were then composed into statement-form by detectives. In reviewing original statements attributed to the complainants, the first person outside of the DA's office ever to have done so, Nassau County Supreme Court Judge Winslow confirmed that all of the statements were written by someone other than the children themselves, and that there were an alarming number of discrepancies. Ex. Z at 31:17-32:2. Of course, the defense has never seen these statements, let alone been privy to the extent to which they were authored by members of law enforcement.[10]

87. The Rice Report describes at least **ten** interviews that were conducted with the 14 original complaining witnesses during or after which no formal statement

[10] Prior to the release of the Rice Report and subsequent FOIL litigation, the defense had *extremely* limited awareness of the extent to which law enforcement had authored victim statements. For example, in her 2004 interview with attorney David Kuhn, of the *Capturing the Friedmans* team, Detective Wallene Jones candidly stated that three boys' parents 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. Ex. TT at ¶ 8; *see also* Ex. E at 68. To know the extent of reliance upon this [coercive] method required the release of the Rice Report and Judge Winslow's findings during the FOIL litigation.

was taken. *See* Ex. XX, Declaration of Grace Gill at ¶ 10. It also makes clear that at least **25** formal statements were taken that the defense has never seen. *Id.*

88. The statements of Fred Doe ("Witness 17") (the sole victim statement turned over to the defense in 1988 (in redacted form), Ex. YY, Daniel Doe ("Witness 5") and William Doe ("Witness 7"), the circumstances of which are recited in the Rice Report for the first time, are particularly revealing. Fred Doe and William Doe were interviewed at least five times; Daniel Doe was interviewed four times. Ex. XX at ¶ 11. William Doe and Daniel Doe were responsible for the most and second most charges against Jesse Friedman. *Id.*

89. It is noteworthy that the DA's office **did not interview Fred, Daniel or William**, yet tremendous portions of the report were devoted to the trajectory and nature of their allegations against Jesse. *See* Ex. XX at ¶ 11. The defense has repeatedly attempted to speak with all of them, without success. Standing alone, the trajectory and nature of Fred, Daniel and William Doe's allegations raise more questions than they answer about the integrity of the original investigation.

**FRED DOE**
**Five interviews**
**Three statements,**
**Eight counts of the indictment**

90. **FIRST INTERVIEW:** First, according to the Rice Report, on November 19, 1987, Fred Doe told Detective Merriweather and Police Officer Durkin 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. Ex. E at 12-13.

91. **SECOND INTERVIEW / FIRST STATEMENT:** Then, on December 3, 1987, two weeks later, Fred Doe gave his "first written statement during a second documented interview", in which he described Jesse as i) anally sodomizing Fred Doe and another child; ii) exposing himself; and iii) inviting children to touch his penis. Fred Doe further said that Arnold Friedman i) put his hand down Fred Doe's pants; ii) touched his penis; iii) anally sodomized him twice in class; iv) did the same to other students; and v) showed pornographic magazines and video games to the children. Ex E at 18. Nothing in the Rice Report sought to explain the dramatic escalation in the severity of the allegations, why the first interview was not recorded or documented, or what from the statement had been gleaned at the first interview and what from the second.

92. **FOURTH INTERVIEW/SECOND STATEMENT:** Thereafter, according to the Rice Report, Fred Doe testified before the grand jury. After Jesse refused to plead guilty to the first indictment, police brought Fred Doe forward to make a brand-new series of allegations; indeed, five months after Merriweather drafted Fred Doe's original written statement, on April 29, 1988, Fred Doe, "during his fourth interview with police…gave a second written statement". Ex. E at 24. In this statement, Fred Doe reported seeing Arnold and Jesse Friedman anally sodomize

other children while in class. The Rice Report simply does not state what, if anything, took place at Fred Doe's third interview, or why Fred Doe would fail to mention the most egregious, violent, harmful behavior in his first interviews/statements.

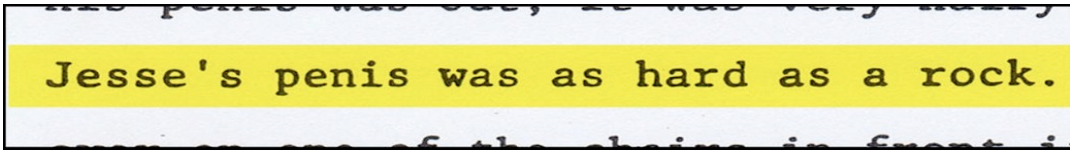
93. **FIFTH INTERVIEW/THIRD STATEMENT:** And on June 9, 1988, during a fifth interview, Fred Doe gave his third statement to Detectives Merriweather and Squeglia, in which he described, for the first time, the presence of Jesse's three friends, stating that they "would hold him down while Jesse anally sodomized him." Ex. E at 26. He further stated that he was forced, by Jesse, to perform oral sex on him. *Id.* When Fred Doe was later taken to a police line-up, which contained 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.[11]

94. Portions of Fred Doe's statement appear not only to have been drafted by Detective Merriweather, but were conceived by him as well, and were clearly written in his own language. A year after the Friedman prosecution, a similar case

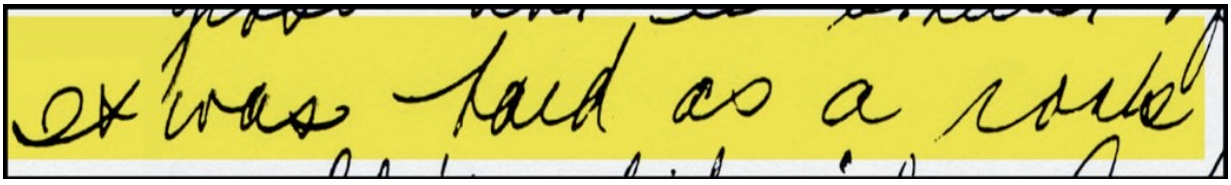
[11] None of Fred Doe's classmates, three of whom were complainants who have since recanted, corroborate any of Fred Doe's written allegations. *See,* Ex. XX at ¶ 16.

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 (the witness statements were made available in that case). 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



Ex. YY; *see also,* Ex. AAA, Oct. 16, 1989 Witness Statement recorded by Det. Merriweather in Izzo Case.

**Daniel Doe**
**Five interviews**
**Three statements**
**54 counts of the indictment**

95. The statements of Daniel Doe ("Witness 5"), as described in the Rice Report for the first time, are equally telling. All of his 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. Ex. XX at ¶ 8. 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. Ex E at 26. In his first statement, November 30 1987, he alleged only 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 Keith's actual statement: that the instructors leaned over students to type on the keyboards. *Id.* That was the second time he was questioned by police. *Id.*

96. In October of 1988, eleven months after the first rounds of questioning, Daniel Doe expanded further. He detailed games called "Leap Frog," "Simon Says," and "Superhero," in which all of the children in the class were ritualistically sodomized in the classroom. *Id*. at 27. He also described another activity called "Extravaganza" in which children watched while adults in the classroom performed sex acts on each other. *Id.* According to Daniel, 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.

**97.** Ultimately, Daniel Doe alleged that during his 10-week course (Basic I Spring 1986, *see* Ex. XX at ¶ 16) 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.* Yet, in the wake of these alleged attacks, Daniel re-enrolled for the advanced class, where he said he was abused 68 times. On 11 occasions the indictments indicate it was 10-year-old Daniel Doe who anally sodomized Jesse Friedman and Ross Goldstein. Ex. WW, Indictments.

**William Doe**
**Five interviews**
**Four statements**
**38 counts of the indictments**

98. William Doe ("Witness 7") was also interviewed *five times*. Notably, he only inculpated Jesse during his *third* interview with law enforcement (also the first time he mentioned being sodomized). Ex. E at 17. At least one of his interviews is undocumented in any way. Ex. E at 25 (describing that his "third statement" originated in his fourth interview). It was not until his fifth interview that he identified Jesse as someone who victimized him. Ex. E at 26.

**Accomplices and Allegations Unbelievable and Unbelieved**

99. The Rice Report reveals, for the first time, that the testimony of alleged victims was riddled with allegations **that simply cannot be taken to be true**, with multiple alleged victims claiming an ever-increasing number of different assailants

who participated in, or were present for, the molestation. 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. Ex. E at 28. Various children then allegedly selected these two possible 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. Ex. BBB, Feb. 15, 1989 Interdepartmental Memo from Barry Grennan to Fran Galasso.

100. Many of the alleged accomplices were demonstrably fictional. Complainant Richard Doe, whose testimony resulted in ten charges, including some to which Jesse Friedman pled guilty, disclosed to the police an additional "helper" in the Friedman class who abused children. According to Richard Doe, this person was named "Snake" and was a tattooed, menacing man who also abused children including Michael Epstein. Ex. J at A-17-20. Though police enlisted parents – including Arline Epstein — to canvass the area for him, no such person was ever found. *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; it undermines 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 (along with James and Gregory Doe) who "stand by their allegations of abuse", discussed *infra;* Ex. E at x.[12]

101. As already described, Fred Doe (identified as "Witness 17" in the Rice Report) 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 any of his four prior interviews, the presence of *three additional violent teenage assailants* in the room, (alleged friends of Jesse's), including Ross Goldstein. Ex. E at 26.

102. Similarly, the Rice Report reveals that James Doe (identified as "Witness 11" in the Report) 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 was, allegedly, Ross Goldstein. When speaking to the Review Team today, however, he claimed that he was abused by the Friedmans only and has withdrawn any claims he made 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

[12] The Rice Report, however, is the reason the defense is aware of the "Snake" story, inasmuch as Arline Epstein came forward to aid the defense in the summer of 2013 after her son Michael came forward with his recantation.

statements. Either way, it is a major inconsistency that undermines the veracity of one out of only three alleged victims' statements, which are cited in the Rice Report as the three who maintained 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.

103. The nature of the evidence against these other accused-but-uncharged rapists — multiple victim accounts elicited after intense and repeated interrogation, without corroboration from physical evidence or other student witnesses — 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 reasons that explain 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. Jesse has thus sought, but has been repeatedly denied, access to the actual witness statements, which, in their various iterations, could explain this otherwise baffling discounting of the statements of alleged victims.

## Unreliable Investigative Methods

104. Former FBI Special Agent Kenneth Lanning has investigated hundreds of child sex abuse cases and is a leading expert in the field of "child sex rings." He 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. Ex. Y, Aug. 4, 2013 Affidavit of Kenneth Lanning, at ¶¶ 1-7.

105. The defense contacted Detective Lanning to provide his expert opinion on the integrity of the Conviction Review process and the Rice Report. As a preliminary matter, Detective Lanning found "no indication" that either the original investigation or the Conviction Integrity Review included any input or guidance from experts, like himself, with specialized knowledge and experience with what he referred to as, "acquaintance child sex ring cases." Ex. Y at ¶ 12-13. He went on to identify intentionally misleading references to his own research, made in the Rice Report, *Id.* at ¶ 14-15, an utter absence of curiosity as to the underlying explanation of inconsistencies within and across victim statements, *Id.* at ¶ 17-18, a conscious failure to document and record interactions with victims, *Id.* at ¶ 23, affirmative

proof of overzealous interrogators influencing children's allegations and the phenomenon of contagion in which community members spread and reaffirm unproven stories, *Id.* at ¶ 26, the need, given the lack of physical evidence, to be methodical, intentional, and objective, with respect to alleged victims and their questioning. *Id.* at ¶ 35-39.

106. He also made specific findings based on the kinds and trajectory of allegations leveled at Jesse and Arnold. 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. Furthermore, 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. *Id.*

*107.* Detective Lanning characterized these changes as hallmarks of "false cases" of child abuse. Ex. T, at para. 19. *See* Exhibit XX; *see also,* Ex. WW, Nassau County 1988 Indictment Nos. 67104, 67430, 69783.

108. Detective Lanning stated, that as a rule, "valid cases tend to get *better* and 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 prosecution

should have shared this concern; instead, they proceeded without caution, to present this coerced evidence to the Grand Jury, thus securing three indictments against Jesse Friedman.

## NEWLY DISCOVERED EVIDENCE THAT JESSE FRIEDMAN'S GUILTY PLEA WAS COERCED

109. Prior to securing the cooperation of Ross Goldstein in September 1988, the prosecution's entire case rested upon the testimony of young children who had, at the grand jury, required detailed prompting in order to answer "yes or no" questions to the satisfaction of the prosecution. *See* Ex. BB. At this time, despite the fact that two indictments had been returned, and despite the prosecution's "repeated efforts" to persuade Jesse's lawyer, Peter Panaro, that he should plead guilty, Jesse Friedman was determined to go to trial. Ex. LL, Aff. of Peter Panaro at ¶ 5. The prosecution thus sought to strengthen their case, pursuing a third indictment specifically to pressure Jesse Friedman. *Id.* ("ADA Onorato advised me that if Jesse did not plead guilty, his office would obtain a third indictment, and that this indictment would include many more charges than both previous indictments combined, and that those charges would be much more serious.").

110. The third indictment, true to ADA Onorato's word, showed an exponential increase and worsening of the charges against Jesse, to 198 counts of child sexual abuse. Ex. XX at ¶ 8. 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, in plain view of the entire class*, and in a classroom with a large glass sliding door. *See,* Ex. WW; *see also,* Ex. XX at ¶ 3. 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 sex abuse "games" in which every child in a class was forced to participate. *Id.*

111. But the third indictment brought more than just additional wild charges. It brought a set of charges against Mr. 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, it was clear Jesse's case would be unwinnable. Jesse had maintained his innocence for more than 11 months of 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. Ex. LL at ¶¶ 10-12.

112. Ross Goldstein's cooperation was sought specifically to pressure Jesse. Judge Boklan's law secretary, Scott Banks, confirmed this: "[Assistant DA] Joe Onorato's determination to offer a plea of guilty, a plea to Ross Goldstein was, and, was [*sic*] basically done to put some pressure on Jesse. . ." Ex. GG, March 21, 2001 Interview of Scott Banks. It worked; Jesse pled guilty shortly thereafter on December 20, 1988.

113. Mr. Goldstein never spoke publicly about the case until 2013, when he sacrificed the 25 years of anonymity afforded him by his Youthful Offender status and provided the Rice Review team with a nine-page recantation. The recantation included a detailed description of how he was "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 the DA, Goldstein appeared for three hours in front of the Review Team and confirmed that he "did not witness Jesse or anyone else commit any crime in the Friedman home with any computer student." His statement included the following declarations:

> 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.

[Ex. H, March 8, 2013 Letter from Ross Goldstein to the Review Team (**emphasis added**).[13]]

[13] Jesse's coerced plea claim is based substantially, but not solely, upon the newly discovered Ross Goldstein's recantation. The claim is also based upon the long since known threats of Judge Boklan, resultant of her unwavering belief in Jesse's guilt of each and every allegation. Indeed, the affirmation of Peter Panaro, Jesse's former attorney, reveals that prior to the entry of Jesse's guilty plea, Judge Boklan informed him that she would sentence Jesse to consecutive terms on every count if he were convicted after trial. Ex. LL, Affirmation of Peter Panaro at ¶ 11. There has never been an evidentiary hearing on the accuracy of the Panaro Affirmation due to the Nassau County District Attorney consistently and successfully opposing a hearing and discovery from the time Friedman filed his §440.10 motion in 2004, through the Second Circuit's decision in 2010, and since. But there is a more than sufficient basis to conclude that this threat was made. 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 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.

Moreover, 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 has 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 had 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." Ex. VV 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, Ex. UU. 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 Det. 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). Ex. VV.

On *Now with Paula Zahn*, Judge Boklan cited at length 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."

114. As discussed *infra* at ¶134 Ross Goldstein's recantation is not only evidence that Jesse was unlawfully coerced into pleading guilty, but also of Jesse's actual, factual innocence.

## NEWLY DISCOVERED EVIDENCE OF JESSE FRIEDMAN'S ACTUAL, FACTUAL INNOCENCE

115. The Conviction Review Process, the Rice Report and subsequent efforts to secure the underlying documents has yielded newly discovered evidence directly from seven of the 14 original complaining witnesses. Five were interviewed by the DA's Office (Barry Doe, James Doe, Gregory Doe, Richard Doe and Stephen Doe); two spoke directly to the defense (Kenneth Doe and Keith Doe). An eighth — Dennis Doe — previously recanted to the defense but was not re-interviewed in the

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In January 2004, two anonymous letters from complainants were posted on a website for the activist group "The Leadership Council" (www.leadershipcouncil.org), and a statement from Judge Boklan is included with the letters that states:

> 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, captured at www.leadershipcouncil.org/1/ctf/vict.html#Doe. 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. Judge Boklan first permitted camera media inside the courtroom for pre-trial appearances and granted permission in advance to News 12 LI to cover the trial from inside the courtroom.

Conviction Review Process. The remaining six — Daniel, William, Patrick, Lawrence, Edward and Fred Doe — have never spoken with either the defense or the prosecution.

116. Of the five original complaining witnesses who the Rice team interviewed, four — Barry Doe, James Doe, Gregory Doe, Richard Doe — would bolster the argument for Jesse's innocence: Barry and James would recant in some fashion, and the Rice Report would itself express doubt as to the reliability of Gregory and Richard. And the fifth, Stephen Doe, would offer statements that did not alter, in any way, the integrity of his 2001 recantation.[14]

[14] We note also the emergence of Witnesses 18, Witness 22 and Witness 23 — three witnesses who never testified in any formal proceeding but who inculpated Jesse, either during the original investigation or during the conviction review process.

Witness 18, during the original investigation, described being abused by Arnold only, but was "removed…from the case" and never spoke with police again or testified in any formal proceeding. Ex. E at 105. Upon receiving a letter from the Rice Review Team, he said he felt "re-victimized, to the point that he almost collapsed." *Id.* Witness 18 gave an interview to the Review Team, where he remembered inculpating Jesse also, during the original investigation. The Rice Report notes: the "notes [of the original interview] do not mention Jesse Friedman as an abuser, though the detective who recorded the notes also told the Review Team that the detective believed Witness 18 *had* implicated Jesse in the course of the interview." *Id.* (*emphasis in original*). The Rice Report goes on to document various inculpatory statements made by Witness 18, regarding both Jesse and Arnold. *Id.* at 106-107.

Witness 18's father, curiously, spoke with the *Capturing the Friedmans* team in 2001. *See* Ex. HH, 2001 Interview Statements of Larry Solotoff (stating that he didn't believe that his "children were involved in the matter, pre se", questioning the integrity of the "particularly aggressive" investigative methods, and comparing those methods to the Robert Izzo civil acquittal).

Both Witness 22's incredibly violent allegations (that Jesse would cover another student's mouth while Arnold sodomized the child, etc.) and Witness 23's tamer allegations, given to law enforcement in November-December 1987, are detailed in a single paragraph; the Rice Report

117. The Nassau County District Attorney's Office has never explained their failure to interview the remaining nine original complaining witnesses (which include Dennis Doe, who recanted in the early 2000's in *Capturing the Friedmans*, and Fred Doe, who made some of the most egregious allegations against Jesse).

118. Confusingly, despite their recantations/unreliability, Gregory, Richard, and James Doe are the three complaining witnesses the Rice Report repeatedly relies upon as evidence of Jesse's guilt. Ex. E at page x ("three other victims…came forward during this re-investigation to re-affirm the abuse they suffered at the hands of Arnold and Jesse Friedman."). Despite Barry Doe's 2012 recantation and Stephen Doe's 2001 recantation, as demonstrated *herein* at ¶¶ 109-11, 118-119, the Rice Report would go on to characterize interviews with both in a deliberately misleading fashion.

119. Kenneth Doe: On May 20, 2013, Kenneth Doe, after being served with the Article 78 Petition in the FOIL case, submitted a letter to the DA in which he completely repudiated 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

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does not explain why they did not testify at the grand jury or detail a single piece of evidence that corroborates the allegations. Ex. E at 19-20.

> in anything even remotely akin to sexual conduct, and I have no reason to believe such events occurred.
>
> [Ex. I.]

Kenneth Doe's account of how those allegations came to be, mirrors myriad other accounts from the investigations, particularly the use of the "asked and answered" technique:

> 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. 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 specifically explained his desire to keep his participation in the Friedman case in his past, while telling the truth specifically to the District Attorney's Office. *Id.*

120. Barry Doe: In a tape made in May 2012 with the *Capturing the Friedmans* team, Barry Doe was 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.
>
> [Ex. P 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.*

121. The Rice Report would speak to Barry Doe subsequently, and stress in their report, in a deliberately misleading fashion, Barry Doe's vague recollection of pornography being "present in the classroom",[15] the fact that his "heart [was] pounding" when he had his historic allegations read back to him, and the fact that he did not tell the District Attorney's Office affirmatively that abuse did not take place. Ex. E at xi.

122. 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

[15] Importantly, numerous witnesses remember the students being the ones to sneak pornographic videogames into the classroom. For example, Chris Blaha remembers the games, but remembers it as something the students were "sneaking." It was, in his words "definitely not a part of the computer class." Ex. N 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. Ex. U at 3-5.

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.
>
> [Ex. Z at 4:1-10.]

123. Keith Doe: In his recorded interview with filmmaker Jarecki in 2012, in which Jarecki showed Keith, 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 on 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.
>
> [Ex. U, Nov. 13, 2012 taped interview with Keith Doe 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.

124. With respect to James Doe, the Rice Report buried in a single sentence his **complete** recantation as to Ross Goldstein. Ex. E at 104 ("Witness 11 only remembered being abused by the Friedmans, not by an additional individual he had specifically named as an abuser in 1988."). The Rice Report ignored the fact that James Doe's 2012 inculpation of "the Friedmans" was profoundly inconsistent with his original accusations, which never included Arnold Friedman and applied to Jesse only. *See* Ex. XX. As outlined in Exhibit XX, Ross Goldstein was named in 60% of the allegations made by James Doe; the Rice Report is silent as to the applicability of this recantation to the 40% of remaining allegations made solely against Jesse Friedman, which mostly involved videogames. *See* Ex. XX at ¶ 17; *see also,* Ex. NN, December 15, 2003 Affidavit of Judd Maltin (explaining that pornographic videogames were extremely common in Great Neck and describing no wrongdoing in the several classes he observed in his role as Jesse's "constant companion"). The instances of abuse alleged by James Doe are all alleged to have occurred in the classroom, in full view of everyone.

125. Beyond these four recantations, the reliability of another two of the original complaining witnesses — Gregory Doe and Richard Doe — was newly addressed by the Rice Report.

126. The Rice Report concluded, after interviewing Gregory Doe ("Witness 2"), that he was "unreliable", "fraught with inconsistencies" and even "perilous to rely on", Ex. E at 79)). Nothing more is said about their interview.[16]

127. The Conviction Review Team interviewed Richard Doe ("Witness 13"), noting that "no medical evidence exist[ed] to substantiate his memory" of physical injury. Ex. E at 103. Richard Doe is the author of the allegations involving the functional perpetrator "Snake: - a tell-tale sign of false allegations, according to Detective Lanning. *See* Ex. Y at ¶ 19.

128. Brian Tilker/Stephen Doe was interviewed by the Rice team, who emphasized in their ultimate Report that Mr. Tilker did not proclaim Jesse's innocence, and instead, merely stated that a) police questioning was highly suggestive and b) that he had not witnessed any abuse. Ex. E at 111. The Report went on to summarize a rambling discussion about the importance of the bathroom at the Friedmans. Ex. E at 112.

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[16] Gregory Doe, was of course, interviewed in *Capturing the Friedmans*, describing 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." Ex. DD, Transcript of *Capturing the Friedmans* at 97. Gregory Doe was known to law enforcement prior to the third indictment, and yet only appears for the first time in the third indictment, responsible for twenty-four counts of sodomy in one ten-week winter class (more than two incidents per session). Gregory Doe then reenrolled in the advanced class that Spring where he alleged, he was sodomized another eleven times. In *Capturing the Friedmans* he made even further allegations, in some places apparently borrowing memories from other students. For example, he now claims to recall games such as "leapfrog" and "Simon says", and makes new claims that Arnold Friedman would ejaculate onto gum, or into orange juice, and force all of the students to eat it. He also claims that Arnold Friedman frequently waved knives at the children, threatening to kill all of their families if they ever revealed the abuse. *Id.*

129. Ultimately, according to the Rice Report, Brian Tilker ("Witness 1") was excluded from their "tallies of Jesse's victims" because the two charges for which he was responsible were stricken by Judge Boklan for evidentiary insufficiency. Ex. E at 19, fn. 78. One would assume that such a ruling, combined with his a) unambiguous statements to the Panel that he did not witness abuse and that police questioning was suggestive, and b) total recantation to the *Capturing the* Friedmans team in 2003, would bolster Jesse's innocence claim, as opposed to merely being excluded from the case of his guilt. Ex. OO at 12 ("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.").[17]

[17] Dennis Doe was a previously recanting complaining witness who was not interviewed by the Rice team. His recantation in 2001 included the following statement;

> 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.
>
> [Ex. KK at 17.]

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. He has, however, no recollection of abuse, none of either being sodomized or witnessing anyone else being sodomized. He only has vague recollections, absolutely intertwined with his

130. The allegations of the six remaining complaining witnesses who were neither interviewed during the Conviction Review process nor have elected to speak with the defense — Daniel Doe, Patrick Doe, Lawrence Doe, Edward Doe, Fred Doe, and William Doe — all involve public acts of abuse that involved other students. **All of these allegations have been refuted by the statements of at least one student with the power to confirm or deny that these acts ever took place.** *See* Ex. XX at ¶¶ 16-17.

131. Indeed, in the original Friedman investigation, despite the use of extensive pressure and improperly coercive techniques, a substantial number of computer students denied that any abuse took place.[18] Because the prosecution

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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.

[18] 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." Ex. AA. The Detectives did not credit these denials, as they were convinced that, as stated by Sgt. 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, Ex. EEE.

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."
>
> [Ex. TT at 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, and that the more they denied it,

refuses to supply any of the original case materials, it is impossible for the defense to know the actual number of computer students who, despite coercive and repeated interrogation, continued to insist that nothing took place. During the result-driven Rice reinvestigation, the prosecution completely abandoned even the idea of compiling 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. The defense has, thus, attempted to contact as many former students as possible, yielding, most recently, new exculpations by nine former students. *Infra* at ¶ 131.[19]

132. Below is a detailed summary of the statements of each of these former student eyewitnesses — **the first nine are newly discovered;** the last three were identified during the making of *Capturing the Friedmans*.

1. **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

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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.

[19] During the making of *Capturing the Friedmans*, filmmaker Andrew Jarecki attempted to contact 100 former computer students, 500 times. "Victims Say Film on Molesters Distorts Facts", https://www.nytimes.com/2004/02/24/movies/victims-say-film-on-molesters-distorts-facts.html (*last accessed,* October 13, 2020) (describing Andrew Jarecki stating that he attempted 500 times to contact 100 former computer class students). Only three came forward — David Zarrin, James Forrest and Ron Georgalis. The remaining nine described herein only came forward, with willingness to speak to the defense and/or the Rice Review team, after the District Attorney publicly announced her intention to reinvestigate and/or after the defense initiated their FOIL litigation. That only three were willing to come forward and corroborate Jesse's claims of innocence, is perhaps, not surprising, given the extremely high-profile nature of the case in Great Neck, *see* Ex. K, Affidavit of Carol Frank at ¶ 11 (describing the case as the "story of the year.").

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. Ex. X, June 27, 2013 Affidavit of Dan Aibel at 6-9; 17-20. Of the sexual abuse, Aibel insists: "I don't know of anything that happened. Nothing certainly happened while I was around." *Id.*

2. **Jesse Aviram** is currently an Assistant DA in Nassau County District Attorney's Office, reporting to DA Kathleen Rice. New evidence from the Rice Report indicates that the friend who put Dan Aibel in touch with Chief Assistant Singas was Nassau County ADA Jesse Aviram. According to the Rice Report, he told the Review Team that no abuse occurred, confirmed that police interviews were "forceful and leading," even well before the third indictment. Ex. E at 71. ADA Aviram highlighted the police's use of "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. **Chris Blaha**, U.S. Army, Major (Ret.), a decorated veteran of the United States Army, today recalls no sort of abuse, and "can't even fathom logistically how that would be possible." Ex. N, Interview Statements of Christopher Blaha.

4. **Michael Epstein**, a high-level engineer at a major software company, is emphatic that "I never saw anything abusive…there was nothing inappropriate. There was nothing suggestive. There was nothing sexual about it." Ex. T at 7. 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. *Id.*

5. **Michael Kanefsky** 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." Ex. L, 2012 recorded interview transcript of Michael Kanefsky.

*6.* **Rafe Lieber**, the vice president of a title insurance company, recalled the police as being "very intimidating." Ex. S, June 4, 2012 recorded interview statements of Rafe Lieber 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.*

7. **Shahar Lushe** stated in a recorded interview: 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. Ex. O, Recorded interview statements of Shahar Lushe at 5.

8. **Gary Meyers**, Chief Financial Officer of a university institute, 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." Ex. Q, Transcript of May 23, 2012 recorded interview of Gary Meyers at 4.

9. **Jeffrey Leff**, Gary Meyers' younger brother, 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. Ex. W, June 20, 2013 Affidavit of Jeffrey Leff at ¶ 3.

10. **David Zarrin**, an employee at his family's business, says "[f]rom what I remember, there was nothing odd going on at all in the classes." Ex. JJ, July 27, 2001 Transcript of Recorded Interview of David Zarrin at 3.

11. **James Forest**: Jamie Forest 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." Ex. PP, Dec. 29, 2003 Affidavit of James Forrest.

12. **Ron Georgalis**" an educator at Florida State University, recalls his experience in the computer classes as "overwhelmingly positive." Ex. SS, Dec. 30, 2003 Affidavit of Ron Georgalis at ¶ 3. He calls the games that the DA alleges occurred in the classroom, such as "leapfrog," "patently ridiculous." He "never witnessed Jesse touching any of the children, inappropriately or otherwise." *Id.* at ¶ 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 ¶ 5.

133. To summarize, 12 students who attended the same computer classes as the original complaining witnesses clearly and unequivocally assert that no sexual abuse took place. Ex. XX at ¶ 16. Many of them, as explained *supra*, only inculpated Jesse back in 1988 as the result of the coercive techniques employed by law enforcement.

134. The recantation of Ross Goldstein is the last noteworthy piece of newly discovered evidence of Jesse's innocence. Ross was clear — he was coerced into inculpating Jesse because Detectives were fearful that none of the children could credibly take the witness stand at a trial. Ex. H at 6. Given Ross' thorough recantation of any prior inculpation of Jesse; given the 12 non-complainant witnesses who deny the existence or even possibility, of any abuse; given the five explicit recantations of Kenneth, Keith, Barry, Stephen, Dennis and James Doe; given the total impeachment of six other complaining witnesses; and given the

prosecution's own disavowal of Gregory and Richard Doe, nothing can be said to remain of the case against Jesse Friedman.

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Respectfully submitted,

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