COUNTY COURT
NASSAU COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK, Ind. Nos. 67104, 67430, and 69783

-v- Hon. Teresa K. Corrigan

JESSE FRIEDMAN,

Defendant.

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AFFIRMATION IN SUPPORT OF RENEWED MOTION TO RECUSE THE JUDGE

I, RONALD L. KUBY, an attorney at law duly licensed to practice in the State of New York, do hereby affirm the following according to CPLR §2106 and under the penalties of perjury:

1. This affirmation is submitted in renewal of Defendant's Motion to Recuse the Judge in accordance with 22 NYCRR 100.3. Attached to the Motion is a true and accurate original and copy of the March 9, 2015 Affirmation of Professor Bruce Green, an expert in the field of judicial and legal ethics and law professor at Fordham Law School. New facts, described below and unknowable to the Defendant at the time of filing his August 2014 motion, justify the renewal of the motion here.

Background

2. The assigned judge, Teresa Corrigan, is an elected County Court judge in Nassau County. She is assigned to the County Court Felony Sex Offense Part, where Jesse Friedman's motion to vacate his conviction, pursuant to CPL 440.10, is pending.
3. Petitioner in this case is Jesse Friedman (herein "Friedman"). In 1989, in the midst of a national hysteria involving false accusations of mass sexual abuse of children at schools and day care centers, he pled guilty to numerous sex crime counts alleging that he (and his father) sexually assaulted adolescent boys attending computer classes

at the Friedmans' Great Neck home. The high school-aged Friedman assisted his father, Arnold Friedman (herein "Arnold" or "Arnold Friedman"), part-time in teaching these after-school computer classes to neighborhood boys, girls, and adults. In 1987, after Postal Service investigators had intercepted an illicit magazine purchased from the Netherlands addressed to Arnold Friedman, they searched Arnold Friedman's home and found several magazines and catalogs depicting sexual activity with minors. Such magazines were commercially available overseas, however postal inspectors were prosecuting cases of sending and/or receiving them through the U.S. mail, and Arnold Friedman was arrested.

4. Shortly thereafter, the Nassau County Police Department was notified of the arrest, and further notified that Arnold Friedman taught computer classes in his home. Nassau County Police then conducted their own search, seizing class rosters, the computers, disks, and other materials related to the classes. Nassau County detectives then began to interview scores of children who had taken classes at the Friedman home. None of the children had ever complained of any inappropriate conduct at the Friedman home during the more than five years in which the classes had been offered.

5. No evidence of any misconduct was seized from the Friedman home by Nassau County Police.[1] There was no physical evidence of any kind ever collected or produced, including any cognizable harm to the children.[2] Nassau County ADA

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[1] There were several commercially available video games seized from the home, such as "Strip Poker" and "Leisure Suit Larry," that police characterized as "pornographic."
[2] Prosecutors would later claim that there were reports of children showing physical symptoms of stress, such as hair falling out, during the investigation, though there is no medical documentation of that fact. Despite the allegations of repeated and violent

Onorato, who prosecuted the Friedmans, would later refer to it as a "dearth" of physical evidence.

6. Because the District Attorney has to this day refused to provide Friedman's attorneys with any of the relevant materials -- original police notes, witness statements, class rosters, etc. the precise nature of the police interviews may only be gleaned from the limited information available in the June 2013 Conviction Integrity Review of People v. Jesse Friedman, (herein referred to as the "Rice Report"), as well as later interviews of students, and some detectives that conducted interviews.
7. Detectives conducting the interviews have acknowledged that the children were reluctant to "disclose abuse."
8. Of the more than a dozen detectives who, in teams of two, interviewed the students of the Friedman computer classes, only four detectives (two teams) reported allegations of abuse from students.
9. Detectives have stated that they believed the child-witnesses who at first recalled no abuse, could be repressing memories of abuse, and that such memories needed to be "drawn out." The methods they used to "draw out" that testimony were coercive, and are known to lead to false testimony.[3] Techniques that the DA's office acknowledges were used include: a) telling boys that failure to disclose abuse would affect their future sexuality, could them to become homosexual or cause them to become abusers themselves; b) warning children that they would "suffer lasting psychological

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sexual abuse, it is undisputed that no child or parent had ever reported any evidence of any physical harm.

[3] See Sena Garven et al., *More than Suggestion: The Effect of Interviewing Techniques From the McMartin PreSchool Case*, 83 J. Applied Psychol. 347 (1998); see also Elizabeth F. Loftus & Deborah Davis, *Recovered Memories*, 2 Annu. Rev. Clin. Pschol. 469, 477 (2006).

consequences later in life if they did not disclose abuse," c) rewarding students who "cooperated" in providing testimony, with pizza parties and deputy badges; d) conducting certain interviews "off the record," without any attempt to memorialize the visit, and e) using a question list with the title "Victim Questionnaire," containing a series of leading questions based on the premise that each child had been abused.

10. Students who were interviewed report that detectives also told interview subjects that fellow students who had attended the same classes had already told police they had witnessed the subject being abused. For example, Stephen Doe, a complaining witness who has fully recanted his allegations against Friedman stated:

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

11. Though the Nassau County District Attorney's Office has acknowledged that the techniques used to glean the statements were "unprofessional, unfair, and cruel" it does not acknowledge any possibility that it led to false accusations.

12. After an initial round of interviews, prosecutors produced an indictment on December 9, 1987. It charged Arnold Friedman with nearly forty counts of offenses against a child, including fewer than five charges of sodomy. The indictment charged Jesse Friedman with fewer than twenty counts of offenses, and no charges of sodomy.

13. Prosecutors then pressured both Friedmans to plead guilty, and both refused. Detectives then conducted more interviews of many of the same students who had already been interviewed for the first indictment, and produced a second indictment on February 9, 1988. In other words, detectives returned to the same students and

were able to procure substantially more and more serious charges the same students had presumably not recollected in their prior interviews on the same subject.

14. The second indictment charged Jesse Friedman with more than thirty counts of abuse, including six counts of sodomy. This new indictment charged Arnold Friedman with more than fifty counts of abuse, and also five new charges of sodomy. Arnold soon pleaded guilty to the charges against him in exchange for serving that time concurrently with prison time connected to the federal pornography charges against him.

15. Jesse Friedman did not plead guilty when Arnold Friedman did, despite pressure to do so.

16. Prosecutors told Jesse Friedman between the summer of 1988 and November 1988 that unless he pleaded guilty, they would bring further charges against him, his friends, and his brothers.

17. In the spring of 1988, with Jesse Friedman maintaining he intended to go to trial, and without any adult witness to support their case, the Nassau County Police began interviewing and intimidating teenagers they believed to be friends of Jesse Friedman.

18. In the summer of 1988, Nassau County Police arrested three more teenaged acquaintances of Friedman's, threatening to prosecute them for sexual abuse of the same computer students.

19. One of them described his interrogation by the police as follows:

> Some of the things that they said were 'We know you were there. We know you had something to do with this. So if you want to make this easier on yourself, you better just admit it now. You're going to be indicted if, if you don't admit it.'. Uh, 'You're going to, you're going to jail for this.' They used every threatening and intimidation sort of technique that they could pull out of their pockets.

[Filmed Interview Transcript with witness "DA," 8/22/01, pg. 6]

20. Two of the three teenagers were never charged.

21. The third, Ross Goldstein, was charged alongside Friedman. According to Goldstein, after his arrest he was subjected to "tremendous and unrelenting pressure and intimidation by the police and district attorney's office – in which (he) was coerced to lie about the crimes taking place in order to save (himself)..." Goldstein maintained his innocence for months after his arrest, but police and prosecutors used the press to "destroy (his) identity and sense of self by forming a new image of (him) in the media as a guilty evil monster."

22. Goldstein recalls that in the late spring of 1988 an unmarked police car had been following him for several days. Eventually, the car parked in his friend's driveway while he was there, and officers in the car approached and questioned Goldstein and his friends. They asked if he had ever witnessed any children in the Friedman home being abused, and he replied that he had limited experience in the Friedman home as an acquaintance of Jesse, and had not witnessed anything untoward.

23. A few weeks later, the day after the high school prom, a white van approached Goldstein and declared that he was under arrest for molesting children in concert with the Friedmans. They put him into the back of the van, into a garden patio chair, surrounded by multiple officers who yelled at him, asking if he was prepared for prison, telling him he would go to Attica prison, be raped, and contract AIDS, and asking how he felt to be "the worst person in the entire town of Great Neck." They demanded that he "admit it."

24. They brought him to the police station where he was interrogated for many hours without counsel or being read his rights under Miranda v. Arizona. They demanded that he admit abusing children, eventually offering "immunity" as an enticement to do so. They did not charge him, but told him to "expect" them to be back, and encouraged him to "do the right thing for the community."
25. No documents or other materials had ever been collected that indicated that Goldstein was in any way employed by the Friedmans or had any role in the computer classes as an assistant or otherwise.
26. A few weeks later, a few hours before his high school graduation, approximately ten officers arrived at Goldstein's house and arrested him. He was pressured over the ensuing months to become a "cooperating witness" in exchange for a lenient sentence and youthful offender status. He describes his preparation as being "coached, rehearsed, and directed by the prosecutor and Detective William Hatch."
27. Throughout the period, Goldstein repeatedly refused to confirm allegations, admit any wrongdoing, or state that he saw Jesse Friedman do anything wrong. The prosecutor would then threaten to remove his youthful offender status. The prosecutor often threatened Goldstein that if he did not cooperate, the officer could simply arrest someone else and offer them youthful offender status and make Goldstein another co-defendant without the promise of that status.
28. Goldstein maintains that his testimony before the grand jury was completely fabricated.
29. On November 15, 1988, nearly one year after interviews of the computer class students began, this time bolstered by the testimony of Ross Goldstein, prosecutors

produced a third indictment. It charged Friedman with nearly 200 counts of child abuse, including 127 counts of sodomy. It charged Ross Goldstein with nearly 120 counts of abuse, and nearly 80 counts of sodomy.

30. In each indictment, the charges grew increasingly bizarre and even impossible. They included numerous allegations of "naked group sex games", with titles such as "leap frog" or "superhero." In these games, adults would sodomize numerous children in the process of leaping naked over them, or fly through the air and sodomize children upon landing.

31. Many of the charges throughout the three indictments consisted of viewing one or more adults abusing children, either violently or sexually. The crimes were alleged to have been conducted in full view of the other children. None of the crimes were alleged to have occurred at precise times. Rather, they were phrased as having occurred at some point within a span of months, generally the length of a course, e.g. "between March 1, 1986 and July 1, 1986."

32. The charges also lacked internal consistency or corroboration. There were accusations of repeated abuse of one student in view of others, but no corresponding allegations by other students in the same classes.

33. Between the second and third indictments, newspapers quoted the lead detective in the investigation as stating that new allegations were revealed after therapy sessions, which helped recover memories of abuse in some victims.

34. In the year following the first indictment, Friedman made requests for documents and evidence, including requests under Brady v. Maryland. These were summarily denied in letters stating flatly that no such evidence existed. Friedman's attorney also

became aware of a transcript of a video taken clandestinely by one student's parents, who became concerned with the high-pressure style of the detective interrogating her child. His attorney showed the transcript to ADA Onorato, and informed him that any evidence of such forms of questioning would fall under the auspices of Brady v. Maryland. Onorato denied that any such evidence existed.

35. Similarly, the existence of the many students who had insisted no abuse had occurred was not disclosed.

36. Judge Abby Boklan, herself the former head of the Sex Crimes Unit in the Nassau County District Attorneys office said years later of the charges that there was "never a doubt in her mind as to guilt or innocence." According to Friedman's attorney at the time, Peter Panaro, she further told him that if he went to trial she would sentence Friedman to consecutive sentences for any counts (of the hundreds) for which he was found guilty. That statement is memorialized in an Attorney's Affirmation, which Panaro stands behind, but the veracity of which the District Attorney's Office disputes.

37. Another factor working against Friedman was the "vast moral panic" in the United States in the 1980s over what many believed were a wave of mass-sexual abuse rings, in which numerous children were allegedly being abused ritualistically. Friedman v. Rehal, 618 F.3d 142, 155 (2d Cir. 2010); citing Susan Bandes, *The Lessons of Capturing the Friedmans: Moral Panic, Institutional Denial and Due Process*, 3 Law Culture Human, 293, 294 (2007). That panic in turn led to a series of questionable and faulty child sex abuse prosecutions. Friedman, 618 F.3d at 155,

citing Samuel P. Gross, *Exonerations in the United States, 1989 through 2003*, 95 J. Crim. L. & Criminology 523, 539-540 (2005).

38. The most famous such case is likely the McMartin pre-school case, but there were, as the Second Circuit has noted, at least seventy-two prosecutions for major child sex abuse and satanic rituals between 1984 and 1995, and almost all have since been reversed. They share many traits in common, the most common are all found in this case:

    a. Police Misconduct
    b. Absence of physical evidence
    c. Absence of medical evidence
    d. Outlandish or impossible scenarios
    e. Prosecutorial misconduct
    f. Judicial misconduct
    g. Coercive interviews by police and therapists
    h. Improper relationship between police and therapists
    i. The use of now-discredited memory-recovery techniques and hypnosis
    j. Police and prosecutors fuel community hysteria.

39. The Second Circuit noted that the "crux of the moral panic dynamic is that the legal system, in such cases, does not correct" for the "fear, outrage, anger and disgust" that the public can become caught up in, "it gets swept up in them instead." Friedman v. Rehal, 618 F.3d at 158. It further stated that "the record in (the Friedman) case suggests that this is precisely the moral panic that swept up Nassau County law enforcement officers." Id.

40. In the context of this moral panic, Friedman watched closely in 1988 the Kelly Michaels "Wee Care" case in New Jersey. Michaels was accused of similarly horrific crimes, committed en masse, including sex games and an overwhelming number of counts. She went to trial, and despite the lack of corroboration, the lack of physical evidence, and the lack of any medically discernible harm to the supposed victims,

was convicted and sentenced to 47 years imprisonment in August 1988. What Friedman could not have known at the time was five years later she would successfully appeal the conviction, based on the improperly coercive and unduly suggestive questioning methods used by the police.

41. Rather than face such a fate, Friedman ultimately pleaded guilty to seventeen counts in satisfaction of the three indictments in early 1989. He was released from prison in late 2001.

42. Late in his sentence, Andrew Jarecki began filming for a documentary that would later become focused on the Friedman case titled "Capturing the Friedmans." Its release informed Friedman of new information, which then formed the basis of a 2004 440 motion. The Nassau County District Attorney's office opposed the motion, which was denied.

43. In 2006 Friedman moved the United States District Court for the Eastern District of New York for a writ of *habeas corpus*. That too was denied on procedural grounds. It was opposed again by the District Attorney's Office, this time with the newly elected Kathleen Rice at its helm.

44. The order was appealed to the Second Circuit Court of Appeals. That Court first asked the Nassau County District Attorney's Office if it would set aside its objections and hold an evidentiary hearing notwithstanding the statute of limitations. The District Attorney's Office refused.

45. The Second Circuit Court of Appeals then upheld the Eastern District's ruling. But, convinced of the possibility of Friedman's innocence, the Court urged the Nassau County District Attorney to review the evidence as well as the manner in which

Friedman's conviction had been obtained. See Friedman v. Rehal, 618 F.3d 142, 161 (2d Cir. 2010).

46. The Second Circuit Court of Appeals further noted that:

    a. "The quality of the evidence was extraordinarily suspect." Id. at 158.
    b. "Police, prosecutors, and the judge did everything they could to coerce a guilty plea and avoid a trial." Id.
    c. "Detectives generally entered an interview with a presumption that a child had been abused and refused to accept denials of abuse." Id. at 146.
    d. "The strategy was designed to force children to agree with the detectives' story." Id. at 147.
    e. "The allegations also grew increasingly bizarre, sadistic, and even logistically impossible." Id. at 148.
    f. "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.'" Id. at 146.
    g. "Aggressive investigation techniques like those employed in [Friedman's} case can induce false reports." Id. at 160.
    h. "The tactics were so aggressive that several former students admit that they responded to them by falsely alleging instances of abuse." Id. at 147.
    i. "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.

47. In November 2010, in response to the Second Circuit ruling, District Attorney Kathleen Rice issued a press release announcing the convening of an "Advisory Panel" of outside attorneys to review the conviction.

48. Friedman submitted during the review a detailed brief to that Panel, urging certain evidentiary standards and standards of review.

49. What Friedman did not know then was that the members of the Advisory Panel whom Rice had named in her press releases would not conduct the review themselves, but rather occasionally "advise" a separate "Review Team" of senior ADAs to conduct the review and interview witnesses. Friedman was unaware that the DA would not

provide to the Advisory Panel any of the essential documentary evidence in the case, such as the police reports or witness statements. Friedman was also unaware that the Advisory Panel would not itself be interviewing witnesses. Instead, the members of the DA's internal Review Team would review all the materials and interview witnesses themselves, and distill its results into intermittent reports to the outside Advisory Panel.

50. Friedman submitted numerous documents from his own files to aid in the review. So too did Andrew Jarecki, who turned over many transcripts and other witness interview materials collected in the process of filming "Capturing the Friedmans."

51. Friedman informally requested to see the files being reviewed, or in the alternative, see how the review was being conducted. He was rebuffed.

52. Friedman then filed a request under New York's Freedom of Information Law for the documents being reviewed. That request was denied, Friedman appealed it, and it was denied again.

53. The denials cited Civil Rights Law 50-b and various provisions of the Public Officers Law § 87. The former shields from disclosure documents that identify the victim of a sex crime; the latter shields documents that reveal the identities of confidential informants. The denials declined to identify how those provisions could apply to document paper within their file, or to identify any documents in the file at all.

54. Friedman then sought an order under CPLR Article 78 directing the Nassau County District Attorney's Office to disclose its file in the Nassau County Supreme Court.

55. Justice F. Dana Winslow heard the petition in June 2013. The DA's office asked the Justice to withhold hearings until after it could issue the findings of its reinvestigation, which it stated would put the issue to rest.

56. The result was the Rice Report, issued in June 2013, that broadly upheld the investigative and prosecutorial methods used and reaffirmed Friedman's guilt.

57. Justice Winslow then reconvened the parties after the issuance in July 2013. He asked the DA's representative about the nature of the report, which parties had reviewed documents, and what had been reviewed. The DA's office admitted that the supporting documents were withheld from the Panel, reviewed instead by a separate team of ADAs.

58. Counsel for Friedman also pointed out that the DA's office had made extraneous, unsupportable accusations against Friedman, including that he had penned and distributed shocking pornography while in prison. When counsel presented a prison disciplinary report that indicated that Friedman had not done so, the DA's office accused counsel of forging the document. The DA's office would later retract that accusation of counsel, though it would not retract its demonstrably false accusation of Friedman.

59. Justice Winslow ordered the withheld documents brought to his office for *in camera* review. At a hearing in August, 2013, he stated that he found the materials to contain glaring inconsistencies and contradictions. He also stated his belief that the materials he reviewed contained Brady material. He ordered their total release.

60. The DA's office then appealed that order to the Second Department of the Appellate Division, where it awaits decision.

61. During the pendency of the appeal, Friedman asked for the return of his personal files that he had loaned to the DA's office to aid in their review. They refused.

62. Through the Rice Report and other means of investigation, the evidence demonstrates the following facts which undermine its conclusions:

    a. Ross Goldstein, the only adult witness in the case has fully recanted his testimony. He describes the enormous pressure put on him to lie, and threats of significant jail time if he did not confirm the prosecution's story. He was himself prosecuted in the original case, but granted Youthful Offender status.

    b. The Rice Report conceded that beyond the fourteen complainants, the police had interviewed many of the other students who sat alongside complainants in the very same classes in which abuse had been alleged by others. None of these students corroborated the charges based on crimes that allegedly would have been occurring steps away from them in the very same classes. When police officers were unable to corroborate any reports of abuse by students who claimed they were abused in full view of others, they simply stopped recording their efforts.

    c. Five complainants have recanted their allegations. Others have stated that they have no memory of abuse, or even of being a significant part of the proceedings, despite the fact that numerous counts against the Friedmans had been attributed to them.

    d. Eleven students who were present in the classes in which the abuse is alleged to have taken place have confirmed as adults that they witnessed no such abuse. The Rice Report further revealed (though obscured) that Nassau County ADA Jesse Aviram was a student in the classes, and witnessed no abuse.

    e. Multiple students and parents of students have reported that the police used extraordinary pressure to force accusations out of the complaining witness. One student recalled consciously lying about abuse just so the pressure to disclose abuse would stop.

    f. Parents have also come forward stating that they picked their child up early from class, coming into the classroom, and never witnessing anything untoward.

    g. The transcript of one interrogation revealed a detective telling a child that if he did not disclose abuse, he would become "gay" or a "pedophile." The Rice Report acknowledged this method of questioning.

h. Justice F. Dana Winslow, of the Nassau County Supreme Court, in a collateral Article 78 Proceeding, conducted an *in camera* review of the documents that made up the Rice Report. He concluded that there was evidence withheld that would fall under Brady v. Maryland, and that none of the witness statements were written by the children themselves. He further noted that the witness statements had "glaring discrepancies."

i. The DA's office, who stated publicly during the investigation in the 1980s that there was photographic and video evidence of the crimes, and at another time stated that there was a "devastating amount of evidence" against the Friedmans, confirmed that there was in fact no physical evidence, no medical evidence, no photographic evidence, or anything of the sort beyond the witness statements.

j. Several students have described the implausibility or impossibility of the crimes charged, given the space in the classroom.

k. Other examination of the indictments has revealed the impossibility of the charges, including numbers of charges too numerous to be possible, or feats not only physically impossible, but necessarily involving numerous then-children who emphatically deny any such events occurred.

l. Scott Banks, the former law clerk for Judge Boklan, and the only person to view the grand jury minutes, has revealed that he was deeply troubled by the lack of specificity in the indictments. He has also stated his concern with the fact that none of the children ever expressed any hesitancy to go back to the classes. His familiarity with sex crimes at the time told him that children would express some trauma, and some hesitancy to return to the classroom.

m. There is increasing evidence that "memory enhancing therapy" was used in the Friedman case to draw out allegations of abuse. The District Attorney's office vehemently denies its use, though acknowledges the use of therapists. The therapist in charge along with the lead detective later made several professional presentations touting the use of psychotherapy to "draw out" the allegations. In June 1988, prior to the third indictment, Newsday quoted the lead detective, who stated "additional details of abuse were revealed by previously identified victims during sessions with their therapists."

n. Dr. Kaplan, the lead therapist, was a significant proponent of the theory that children can "dissociate" thus forgetting abuse almost instantly. That theory has since been wildly debunked by social scientists.

63. In the report, the office called Friedman a "deviant," a "psychopath," "drug abuser," and "pansexual," among other attacks. It cited no evidence for those conclusions

except an interview by a conflicted junior psychologist when Friedman was a teenager.

64. The Rice Report further accused him of being punished for penning, possessing and distributing pornography describing "violent and disturbing acts, including incest involving a father and his children, sex with a dog, and child rape." The basis for that accusation was a prison disciplinary report, in which Friedman was accused of possessing contraband materials, and found not guilty.

65. The Rice Report also speculated that Friedman had "failed" a "penile plethysmograph," a 1950s test in which subjects would be exposed to certain stimuli while blood flow to the penis was monitored. The purpose was to determine whether the subject was aroused by the stimulus. Friedman has never taken such a test, and the Report conceded that there is no evidence that it was administered.

66. The Rice Report conceded that the methods used to question children were "unprofessional, unfair, and cruel." It further conceded that police warned children would suffer lasting psychological consequences if they did not disclose abuse, that police gave some boys rewards to gain cooperation, police told children that failure to disclose abuse would cause them to become homosexuals or abusers themselves, and that many interviews were conducted without any attempt to reduce to writing what was learned from the visit or why.

67. The Report concluded that there was no reason to think these methods could have caused false testimony, despite witness statements claiming directly that it had caused them to testify falsely, and despite the scientific studies demonstrating that they cause false testimony.

68. The Rice Report further denied the validity of recanting witnesses on various grounds, including the refusal to meet with ADAs, that current testimony "(stood) in marked contrast to his 1987 sworn statement to the police," and that one was couched in uncertain terms.

69. The Report further claimed that many recantations were partial or ambiguous, despite the complete and decisive nature of statements such as this:

> 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...I'll tell you I never said I was sodomized or, you know, I was never raped or ... molested. And I can't honestly tell you what other things I might have said...I never saw a kid get 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.
>
> -Statement of Barry Doe

70. The Rice Report contradictorily claimed that parents were "forbidden" to enter the classroom, that parents were "free to observe," and that there were "few documented accounts in which a parent actually entered the classroom and those instances appear limited to the beginning or end of class."

71. Scientists, judges, legal observers, reporters, and even the public at large have broadly come to realize with hindsight that the massive prosecutions during the late 1980s and early 90s of mass sexual abuse were a collective failure of many institutions. Indeed, they almost certainly hindered the investigation of actual sexual abuse, which remains a pervasive threat to children.

72. In issuing the Rice Report, DA Rice, its drafters, and the Nassau County District Attorney's Office as an institution, in effect approved and validated the investigative techniques used to prosecute the Friedmans as a reliable and viable method of

procuring accusations, indictments, and convictions. Current DA Singas has since reaffirmed the report, calling the review process a "critical function" of the DA's duties.

73. Despite implicitly conceding nearly every factor common to the false mass-sexual abuse cases of the 1980s and 90s, the writers of the report insist that the case is "nothing like" the McMartin case (or others), for various reasons, including that the children were older (8-12) when in fact scientific research proves that boys of this age are highly vulnerable to suggestive questioning, that Arnold Friedman was an admitted pedophile, that the Friedman case did not involve "ritualistic satanic sexual abuse," and that Friedman pleaded guilty. Of course, the age of the children, young regardless, is of no moment, as many mass sexual abuse prosecutions were later proven faulty that involved similarly aged children. That Arnold was guilty of receiving illicit pornography has no bearing on whether Jesse Friedman committed the heinous acts of which he was accused. That the McMartin case involved allegations of "ritualistic satanic" abuse rather than daily mass sexual abuse without satanic flavor is on its face a baffling inclusion among the distinctions. The allegations of "satanic" abuse were fabricated, or otherwise unfounded. The Rice Report's position is that the prosecutors in California who pursued the McMartin case falsely alleged something that the prosecutors in Nassau County did not, therefore the cases are not similar.

74. The final distinction between the cases asserted by the writers of the Rice Report is that unlike the McMartin case, which involved, according to them, a "kindly teacher wrongfully accused by his community," Jesse Friedman was "a psychopath,

narcissist, and drug abuser who was unable to tell right from wrong." In effect, Friedman – prior to these accusations a thoughtful and educated young man with no history of violence -- seems to them like he was "the type" to commit such acts, so likely did.

75. The existence of the Rice Report, and the nature of an actual innocence hearing that puts the burden of proof on the convicted, changes what is "at stake" for the Nassau County District Attorney's Office in this hearing. That office has defended its record in this case for nearly thirty years. It has also never allowed any insight into that record by way of public hearing of the evidence in the case.

76. A judgment that Friedman is actually innocent will be a rebuke of Judge Corrigan's former office, which spent three years, countless hours and resources reinvestigating this case, and will not entertain the possibility that their office was caught up in the same panic as many others were. An adverse ruling states the DA's office has a strong bias towards assuming the propriety of its own past conduct, even in the face of strong evidence otherwise. Normal cases do not risk that sort of embarrassment, because in most cases the burden on the DA's office is high. Here the burden is on Friedman to prove they were wrong. A "loss" by the DA's office would be an embarrassment unlike any other case.

The Current 440.10 Petition and Motion to Recuse

77. In June 2014 Friedman brought a second motion under CPL 440.10, on the grounds that since he is actually innocent, his conviction is unconstitutional, that prosecutors knowingly put false evidence before the grand jury, the indictments were fatally flawed, and that Judge Boklan's conduct had impermissibly coerced a guilty plea.

78. The case was assigned to Judge Teresa Corrigan, a longtime former member of the Nassau County District Attorney's office, and prior to that, an ADA in Kings County, where she served alongside then ADA Kathleen Rice.

79. The Rice Report is highly relevant in this case because Friedman will prove his innocence, in part, by revealing the evidence underlying the Rice Report; he will seek to destroy the integrity of the factual conclusions underlying the report and those who participated in its preparation; and he will try the case based on the evidence gathered in the Rice investigation as well as the other evidence he has independently assembled. Friedman will further establish that the Rice Report was a related step in the series of acts of misconduct that resulted in his wrongful conviction.

80. It is critical to fact finding, and therefore justice, that a disinterested judge weigh that evidence and ask whether it demonstrates guilt or evidence. Such a judge must be willing to reject the findings of the Rice Report if the evidence does not support them, and not give undue weight to the People's findings, credibility determinations, and other characterizations or conclusions. Essentially, a disinterested judge shouldn't assume that the District Attorney's Office did their job well when reinvestigating the conviction of Jesse Friedman.

81. A second critical aspect to Friedman's theory of the case is that the Nassau County District Attorney's Office withheld exculpatory evidence, in violation of their ethical duties. Friedman is entitled to a disinterested judge who will weigh the evidence against him, and determine whether that evidence is exculpatory. A disinterested judge would do so without regard for the impact it may have on any members of the

District Attorney's office, be it in reputational damage, charges of ethical violations, or civil liability.

82. Finally, Friedman's case will necessarily show or attempt to show that the practices and procedures of the Nassau County District Attorney's Office in the 1980s, and their procedures for reinvestigation today, can cause a wrongful conviction. A disinterested judge ought not give undue weight to those practices, and ought not to assume that merely following them ensures that a member of the DA's office is fulfilling their duties, ethical and otherwise.

83. In this case, the relationships described below raise questions about whether Judge Corrigan can be disinterested.

84. Friedman thus moved to disqualify Judge Corrigan or have her recuse herself under Article 2, Section 14 of the New York Judiciary Law, and under the New York Rules of Judicial Conduct, 22 NYCRR 100.3. Section 14 of the Judiciary Law prohibits a judge from taking part in the decision of a matter in which she is a "party," or has been an attorney, or is "interested." Section 100.3 of the Rules of Judicial Conduct requires disqualification in a proceeding in which "the judge's impartiality might reasonably be questioned," including where the judge has personal knowledge of disputed evidentiary facts, or practiced law with a lawyer who was counsel in the matter, and other circumstances. Friedman's motion also cited due process cases dealing with actual bias as well as New York State cases urging judges to disqualify themselves where there is an appearance of partiality.

85. On October 24, 2014 Judge Corrigan denied the motion to recuse, stating that she had not known, worked, or socialized with Kathleen Rice at the Brooklyn DA's office,

merely known of her. Judge Corrigan stated her hiring at the Nassau County DA's office was through the normal course.

86. The order also revealed other relationships, further raising the question of whether Judge Corrigan can be truly disinterested.

87. Judge Corrigan revealed that while at the Nassau County DA's office she reported to Meg Reiss and Chief Investigator Charles Ribando. She also revealed that prior to his departure in 2011, Joseph Onorato was one of her deputy bureau chiefs, reporting directly to her. She did not disclose anything about her relationship, work or otherwise, with DA Rice.

88. Regarding her judicial campaign in 2012, Judge Corrigan wrote that many supported her candidacy, including DA Rice, Meg Reiss, and Charles Ribando. In fact, Meg Reiss was her largest financial contributor. Corrigan wrote that she did not make "herself aware of the campaign contributions, if any, of those who supported (her) and in fact remained ignorant of many of those who actually donated to (her) campaign."

89. Judge Corrigan did not respond to that section of the motion that asked if members of the DA's office who had been involved in the Friedman case had campaigned for her, circulated petitions, spoken publicly or privately on her behalf, or engaged in other campaign activities.

90. Judge Corrigan denied any knowledge of the Friedman case beyond what she had learned in the motion papers.

91. On December 23, 2014, Judge Corrigan granted a hearing on actual innocence based on the petition, the portion that was unopposed by the People. Judge Corrigan denied

the claims within the petition that sought relief on the grounds of coercion of the plea and a defective grand jury indictment, which the People did oppose.

92. In doing so, Judge Corrigan relied in several cases on the Rice Report's credibility determinations, and characterizations of interviews conducted by the Review Team. She further declared that she would not be reviewing any evidence within "Capturing the Friedmans," insistent that she rely on "evidence that is not subject to the editing skills of successful and talented movie producers."

93. Judge Corrigan's order described the Second Circuit decision earlier that had found a likelihood of actual innocence as being "relying primarily on the movie *Capturing the Friedmans,*" a statement contained within the Rice Report but having no basis in the Second Circuit's decision.

The Proposed Grounds for Recusal

94. This case involves serious allegations of misconduct by the Nassau County District Attorney's Office during two periods of time. The first was from 1987 to 1989, during the initial prosecution. The second from 2010-2013, during which the Rice Report was researched and drafted, and compounded the errors from the 1980s by condoning the misconduct it admitted and hiding the rest.

95. Kathleen Rice was the District Attorney from January 2006 until November 2014, when she was elected to Congress. Prior to that in the 1990s she was an ADA in Kings County alongside Teresa Corrigan. Rice left for the US Attorney's Office in Philadelphia, but returned to New York to run for District Attorney, and won. She immediately hired Teresa Corrigan and others from the Kings County District Attorney's Office. Then ADA Corrigan was hired as a Bureau Chief.

96. The entirety of the District Attorney's Office's defense of the Friedman *habeas* petition (brought in early 2006) in the Eastern District of New York and ultimately the Second Circuit occurred during the Rice administration. The Second Circuit noted that the Nassau County DA's office would not permit a hearing on the merits, and encouraged an evidentiary review.

97. Rice announced an outside panel to oversee the review. She then appointed a team of senior ADAs to actually conduct that review. The office has never disclosed the identities of all members of the team, but we know that at least Charles Ribando, Meg Reiss, and Madeline Singas were members of it. The latter two conducted interviews, and mentioned that Mr. Ribando was the lead investigator in the reinvestigation.

98. The outside panel did not review original documents such as witness statements or police reports, or except in very limited instances, conduct interviews. The Review Team provided to the Advisory Panel redacted statements, distilled summaries of interviews, and credibility determinations.

99. When the Rice Report was issued, Rice defended the bad acts of her predecessor and of the office during the 1980s. While acknowledging "unprofessional, unfair, and cruel" practices in gleaning testimony, the Report refused to acknowledge any possibility that those practices, widely known to elicit false testimony, could have done so in this case.

100. The Rice Report contains multiple misrepresentations of witnesses' statements, as well as baseless and irrelevant accusations against Friedman.

101. Several witnesses before it have decried its misrepresentation of their testimony and publicly stated so.

102. One prominent member of the Advisory Panel, Barry Scheck, has submitted an affidavit modifying his statements. Despite the review by the DA's office, he urged a full evidentiary hearing "to review materials not available to the Advisory Panel, such as grand jury minutes, the original case file, and the results of the re-investigation to aid in finally resolving, to the extent possible, the issue of Jesse Friedman's guilt or innocence."

103. When Justice Winslow of the New York State Supreme Court for Nassau County was asked to rely on the Rice Report's conclusions for a collateral proceeding seeking documents, he asked to see the evidence behind the report. He decried the inconsistency in witness statements, and the long-time withholding of Brady material, and issued a total release of documents, an order the appeal of which is currently before the Second Department of the Appellate Division.

104. The outside panel and, presumably, the review team, were convened in November 2010. The team issued its Report in June 2013, and Judge Corrigan was a member of the DA's office until August 2012. During this time the case aroused significant public interest, generating numerous articles in the local newspapers as well as the *New York Post* and *The New York Times*.

105. The mere issuing of multiple press releases by the DA's office regarding the Friedman case, as well as the appointment of an Advisory Panel, a first for Nassau County, further proves that it was an important case to both the DA's office and the community generally. It also was the subject of an Academy Award-nominated film.

106. Observers in legal and scientific fields have pointed out the impossibility of the charges as well as the questionable conduct by police and prosecutors in bringing those charges.

107. During the above-described period of review, Teresa Corrigan was a Bureau Chief for Kathleen Rice. Then ADA Corrigan reported directly to Meg Reiss, who was intimately involved in the Friedman review.

108. After Reiss left the office in 2011, ADA Corrigan reported directly to Charles Ribando, the chief investigator on the review team.

109. One of her deputy bureau chiefs was Joseph Onorato, the original Friedman prosecutor. He reported directly to Corrigan. According to Judge Corrigan, they never discussed the case, and she was unaware that he prosecuted the Friedmans until after he left the office in 2011.

110. Judge Corrigan is also currently a co-defendant with now Congresswoman Rice and Charles Ribando in a federal civil rights lawsuit. On September 30, 2014, just 24 days before issuing her order, a judge of the Eastern District of New York ruled that the three could be added to the lawsuit.

111. That suit is Sanseviro v. State of New York, et al., CV 12-4985 (LDW)(AKT). In it the plaintiff, a gun dealer, claims that State Police and Kathleen Rice's office conspired to bring firearms sales charges against him even though they knew he was in the business lawfully. The lawsuit alleges that the County of Nassau and a police officer already have been found liable, based upon a jury verdict returned in federal court on Long Island, for false arrest and malicious prosecution for a prior arrest and

prosecution of another gun dealer at the same gun store, T&T Gunnery in Seaford, and suggests these authorities had a vendetta.

112. A deposition in mid-2013 revealed the involvement of ADA Corrigan and Ribando in the criminal investigation of Sanseviro. Sanseviro then moved in July 2013 to amend his civil complaint to add false arrest, malicious prosecution, and federal constitutional claims for evidence manufacturing against Rice, Corrigan, and Ribando. The amended complaint claims that Rice issued a press release which falsely accused the plaintiff of "openly breaking the law" knowing that then-ADA Corrigan, Chief Investigator Ribando, and the State Police, had seized firearms that were legal and physically altered them to make them appear illegal. A grand jury declined to indict the plaintiff, and the felony complaint against him was dismissed.

113. Rice, Corrigan, and Ribando are all jointly represented by the same attorney. Judge Corrigan did not disclose this lawsuit in her October 2014 Order.

114. Throughout this case, any judge hearing this case will be forced to make a series of rulings. Those include evidentiary rulings on admissibility, discovery rulings, and credibility rulings.

115. Every one of these rulings will necessarily reflect in some way on the Rice Report, and therefore on Judge Corrigan's colleagues. That is because the team of ADAs that reviewed this material issued a voluminous document describing the conclusions they believed could be fairly drawn from it. But those conclusions don't seem justified, particularly compared to the evidence presented in the 440.10 petition.

116. An actual examination of those documents in open court will test each time the faithfulness with which the ADAs who drafted the Rice Report publicly represented

them. It then obviously could show that the ADAs were publicly misrepresenting the evidence in their possession.

117. Examination of those documents could also show that the District Attorney's Office withheld documents they knew to be exculpatory, violating their ethical obligations, and potentially exposing them to civil liability.

118. Examination could further show that the original allegations made in 1988 were unsupported by the evidence, damaging the Office's reputation as an institution.

119. Every ruling on discovery and admissibility bears on the above, and could create a temptation, or the public perception of a temptation, for Judge Corrigan to protect her former colleagues rather than risk such exposure.

120. Judge Corrigan may also be reasonably tempted to avoid disclosure, since the misconduct alleged would be ascribed to two of her co-defendants in the Sanseviro case, Charles Ribando and Kathleen Rice. If evidence of their misconduct, or hiding of Brady material, is publicly revealed, it could be additional persuasive material against the three co-defendants in that case from the Nassau County District Attorney's Office.

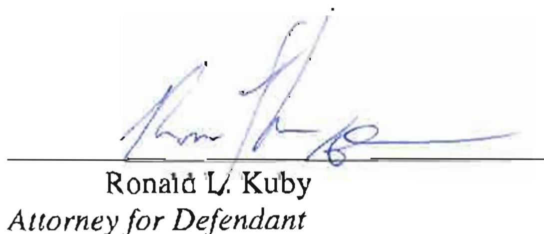
121. Every credibility ruling will also reflect, poorly or not, on the Rice Report and its authors. The Report makes numerous credibility rulings. This hearing, given the lack of any physical or medical evidence, will ultimately depend on such rulings. Each will raise the question of whether the ADAs in a closed proceeding made the same finding.

122. In the December 23, 2014 order dismissing several causes of action, Judge Corrigan has already accepted several credibility determinations made by the District Attorney's office, those of Ross Goldstein and Peter Panaro.

123. Unlike most cases of wrongful conviction, Friedman does not claim that the police and prosecutors found the wrong culprit. In this case, Friedman's position is that the crimes of which Jesse Friedman was convicted never occurred. Nassau County officials investigating the Friedmans undertook that investigation assuming that the Friedmans had abused children, despite no child ever having come forward with any such accusation. This therefore is even outside of the sort of case where a crime may be falsely alleged by a complainant. The crimes supposedly committed by Jesse Friedman are an invention of the Nassau County District Attorney's Office and police department.

124. So Nassau County's public statement on the matter, the Rice Report, the drafters of it, the original prosecutors, and Nassau County District Attorney's Office and Police Department as institutions are at serious risk of reputational damage if Friedman successfully shows that he is innocent of the crimes of which he was accused. It will not just mean that Nassau County wrongfully convicted an innocent man, but that it wrongfully created a crime, and condemned an innocent man to decades of punishment for that crime.

Dated: March 9, 2015
New York, New York



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