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**Comments Concerning
Conviction Integrity Review:
People vs. Jesse Friedman
Nassau County, NY District Attorney
June 2013**

1. My name is Kenneth V. Lanning. I am currently a consultant in the area of crimes against children. Before retiring in 2000, I was a Special Agent with the FBI for more than 30 years.
2. I was assigned to the FBI Behavioral Science Unit (BSU) at the FBI Academy in Quantico, Virginia for 20 years (1981-2000). My work in this Unit involved conducting training, research, and case consultation concerning the sexual victimization of children.
3. During this time, I was able to consult on and evaluate thousands of cases involving the sexual victimization of children. Since my retirement from the FBI, I have continued to consult on such cases in much the same way.
4. I have testified on seven occasions before the U.S. Congress and many times as an expert witness in state and Federal court. I have authored more than 30 articles, monographs, and book chapters setting forth what I have learned about understanding the behavior of sex offenders and their child victims and analyzing criminal cases.
5. I am 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.
6. While assigned to the FBI BSU, I was regularly contacted by law enforcement and prosecutors for guidance in cases involving the sexual victimization of multiple child victims. In most of these cases the offenders were not family members but acquaintances (i.e., teacher, coach, priest, scout leader, babysitter, etc.) well known to the child victims. I referred to such cases involving acquaintance offenders with multiple child victims as *child sex rings*.
7. In 1989, the National Center for Missing & Exploited Children published and then distributed thousands of copies of a monograph I wrote titled *Child Sex Rings: A Behavioral Analysis*. In addition to my analysis of these cases and investigative recommendations, this monograph also contains two response protocols for organizing such an investigation. The monograph was updated in a 2nd edition in 1992. The U.S. Department of Justice published in 1992 a monograph I wrote titled "Investigator's Guide to Allegations of 'Ritual' Abuse." This monograph was distributed at no cost by the FBI and has been posted by numerous groups on the Internet.

8. Many people have extreme and stereotypical ideas of what a child sex ring is. As I use the term, however, a *child sex ring* is simply defined as one or more offenders simultaneously involved sexually with several child victims.

9. Cases in which multiple children are sexually exploited by acquaintances involve different dynamics and require different investigative responses than typical or more common intrafamilial abuse cases.

10. Many experts on the sexual abuse of children have little or no experience with acquaintance-exploitation cases especially those involving multiple victims. Almost all their experience is with stranger or intrafamilial-incest cases. The investigation of acquaintance-exploitation cases requires specialized knowledge and techniques. The protocols, policies, and procedures for addressing one-on-one, intrafamilial, child sexual abuse have only limited application when addressing multiple-victim, extrafamilial, child sexual exploitation cases.

11. I have read the June 2013 Report of the Nassau County, NY District Attorney titled "Conviction Integrity Review: People vs. Jesse Friedman" and have opinions, concerns, and questions about its methodology and parts of the basis for its conclusion.

12. Regardless of the term chosen to label it, the Friedman case is clearly one involving allegations that multiple acquaintance offenders repeatedly sexually victimized multiple children over an extended period of time. I would refer to such a case as a *child sex ring*.

13. There are basic best practice policies and procedures applicable to all investigations and prosecutions. As a less common and more complex acquaintance *child sex ring* case, however, both the original investigation and the current Conviction Integrity Review should have included at least some input and guidance from experts with specialized knowledge and experience with this specific type of case. From the Report, I could see no indication that anyone involved, including the impressive Advisory Panel, had such specialized expertise. In the review conducted or the preparation of the Report, the District Attorney did not consult with me.

14. On pp. 132-133, the Report discusses the skepticism concerning Jesse Friedman's conviction based on charges that Arnold and Jesse Friedman both engineered complicated "games" in which play was used as a cover for sexual activity and that some of the "games" reported by the victims were outlandish. To address this concern, the Report states, "experts note that 'acquaintance child molesters' typically employ strategies that start from a premise of making children comfortable through play, and then progress to sex acts." It then quotes from one of my publications stating specifically that the offender "relies more on techniques involving fun, games, and play to manipulate younger children into sex."

15. The concept in the Report that certain pedophiles use fun, games, and play as a premise to make children comfortable before progressing to sex acts was accurately taken from one of my publications, but was used to imply as typical something that is not. The specific "complicated" or "outlandish" games victims described in the Friedman case as a cover for violent sexual activity do not appear to be consistent with the fun and common games I was describing in my

publication as part of grooming techniques to lower inhibitions. In my experience, such games are usually part of non-violent manipulation and not violent sexual acts.

16. One primary purpose of the grooming process as used by child molesters is to control child victims without the need for threats and violence, which typically increase the likelihood of discovery and disclosure. Grooming and violence tend to be incompatible. Violence, threats of violence, and blackmail if used are more likely applied by acquaintance offenders when pushing a victim out or attempting to hold onto a still-desirable victim who wants to leave. The Report describes alleged behavior patterns that are somewhat inconsistent by the same offender.

17. If a child victim describes his or her victimization as involving what clearly sound like the behavior patterns of a nonviolent sex offender using grooming, then the fact the alleged offender fits that pattern is corroborative. If a victim describes a violent, aggressive assault, then the fact the offender does not fit that pattern is an inconsistency that needs to be addressed.

18. In the Friedman case, many victim allegations include both elements of grooming with attention, affection and kindness **and** violence with threats, intimidation, and force. This contrast needs to be carefully evaluated and reconciled. The inconsistency could be because the alleged *what* is inaccurate (*e.g.*, distorted account from victim, insufficient details), the suspected *who* has been misevaluated (*e.g.*, incomplete background, erroneous assessment), or the alleged *who* is innocent (*e.g.*, suspect did not commit alleged crime). I saw no indication in the Report of any attempt to evaluate or reconcile these apparent victim control inconsistencies.

19. As a general principle valid cases tend to get *better* and false cases tend to get *worse* with investigation. I get concerned when as an investigation progresses, the number of alleged offenders keeps growing and the allegations get increasingly more bizarre and atypical. The Report seems to support the fact that such progressions did take place over time in the Friedman case investigation but it sets forth no detailed or plausible explanations of their significance.

20. One of the most important victim patterns of behavior investigators need to identify and document is the disclosure process. Investigators should verify, through active investigation, the exact nature and content of each disclosure, outcry, or statement made by the victim. Secondhand information about disclosure is not good enough. To whatever extent humanly possible, the investigator should determine exactly when, where, to whom, in precisely what words, and why the victim disclosed. Efforts to determine answers to these questions are not limited to and sometimes do not even involve asking the child.

21. At one end of the victim disclosure continuum are children whose sexual victimization is only suspected. These may be the most difficult, complex, and sensitive investigative interviews. The investigator must weigh a child's understandable reluctance to talk about sexual victimization against the possibility that the child was not victimized. The need to protect the child must be balanced with concern about damaging the reputation of an innocent suspect and leading or suggestive questioning. This is often the situation in acquaintance-exploitation cases.

22. There is the complex question of whether and what type of an investigation can be conducted to identify victims when there are no disclosing victims or only vague, non-specific

complaints. The indication that the behavior of someone with access to children seemingly fits some suspicious pattern would justify what amount of investigation? Does the mere collection (not production) of child pornography justify an investigation into the possibility the identified collector has molested children? Do you interview both intrafamilial and extrafamilial potential victims? How many interviews can you conduct? What other type of investigation is justified? The answers to these questions are not as simple as many think. Such issues should be discussed with supervisors and legal advisors. In the Report, I did not find a clear and detailed discussion of the issues raised by such questions and their possible impact on the original investigation and the current review.

23. It is the job of the professional investigator to nonjudgmentally listen to all victims, objectively assess and evaluate the relevant information, and conduct an appropriate proficient investigation. Investigative interviews should always be conducted with an open mind and the assumption there are multiple hypotheses or explanations for what is being described, alleged, or suspected. Investigative interviews should emphasize open-ended, age-appropriate questions that are hoped to elicit narrative accounts of events. A child's credibility is jeopardized when and if the information was contaminated, obtained through repetitive or leading questioning, and turns out to be exaggerated, unsubstantiated, or false. Whether by audio/video recording and/or detailed notes/reports, all investigative interaction with victims must be carefully and thoroughly documented. As much as possible, such records should reflect the exact terminology used by the victims. The Report openly admits a deficiency in the existence of such documentation.

24. A child's account of victimization might be affected by suggestions, assumptions, and misinterpretations of overzealous interveners. Overzealous interveners can include parents, family members, foster parents, doctors, therapists, social workers, law enforcement officers, prosecutors, and any combination thereof. Victims have been subtly as well as overtly rewarded and bribed by usually well-meaning interveners for furnishing further details. Some "details" of a child's allegation might even have originated as a result of interveners making assumptions about or misinterpreting what the victim actually said. The interveners then repeat, and possibly embellish, these assumptions and misinterpretations, and eventually the victims are "forced" to agree with or come to accept this "official" version of what happened. This possibility needs to be evaluated in any case review.

25. The importance and difficulty of establishing communication with parents in multi-victim extrafamilial cases cannot be overemphasized. Parents must be told that in the absence of some extraordinary circumstance investigators need to interview their children outside of their presence. In some cases departmental policy or the law may give parents the right to be present during the interview of their minor children. If that is the situation, every effort should be made to get parental and/or departmental permission to waive that right. If parents are present during the interviews, any information so obtained must be carefully assessed and evaluated with the understanding of the parents' potentially significant influence on their children's statements. Compromises involving one-way mirrors, video cameras, and out-of-eye contact sitting positions may be possible. Parents should not be given the details of the disclosures of any other victims. Parents should be told of the importance of keeping the details of their child's disclosures confidential, especially from the media and other parents. It appears in the Friedman case

parents were frequently present during the interviews of their children and the potential affect of this was not evaluated or considered.

26. Simply the fact that children's disclosures of alleged sexual victimization contain details is not proof that they actually occurred. Cases like the Friedman case where sexual victimization of children by multiple offenders over an extended period of time is alleged are among the most complex and difficult cases to investigate. After much study and research, I discovered that apparent victims often alleged crimes and provided details of activity that did not necessarily happen. Causes include overzealous interveners influencing children's allegations and the phenomenon of contagion in which community members spread and reaffirm each other's stories.

27. Documenting existing contagion and eliminating additional contagion is crucial to the successful investigation and prosecution of *child sex ring* cases. There is no way, however, to erase or undo contagion or contamination. The best you can hope for is to identify and evaluate it and attempt to explain it.

28. In *child sex ring* cases, it is extremely important that investigators evaluate all possible contagion. Consistent statements obtained from different interviews and multiple victims are powerful pieces of corroborative evidence – that is as long as those statements were not “contaminated.” Investigation must evaluate both pre- and post-disclosure contagion and both victim and intervener contagion carefully. Are the different victim statements consistent because they describe common experiences/events or reflect contamination or shared cultural mythology?

29. The sources of potential contagion are widespread. Contamination can occur quickly even before any or after only a few victim interviews. Victims can communicate with each other both prior to and after their disclosures. Intervenors can communicate with each other and the victims. The team or cell investigation concepts are attempts to address potential investigator contagion in multivictim cases. The same investigators do not interview all the victims, and interviewers do not necessarily share all information directly with each other. The goal of this team or cell concept is defeated if there is too much interaction between the members of different teams or cells. Although teams of investigators were used for the interviews in the Friedman case, from the Report it appears there may have been some investigative cross contamination whose significance was not thoroughly evaluated.

30. Are victims describing events and activities that are consistent with law-enforcement-documented criminal behavior and prior cases, or are they more consistent with distorted media accounts, stereotypical beliefs about child molesters, and erroneous public perceptions of criminal behavior? Investigators should apply the “template of probability.” Accounts of child sexual victimization that are more like books, television, news accounts, movies, or the exaggerated fear-mongering of zealots and less like documented cases should be viewed with skepticism, but thoroughly investigated.

31. Unreliable information and false victim denials can be obtained from perfect interviews and reliable information and valid disclosures can be obtained even from highly imperfect

interviews. This possibility in no way denies the fact that repetitive, suggestive, or leading interviews are real problems and can produce false or inaccurate information.

32. The judgment of interveners may be affected by their zeal to "believe the children" and to uncover child sexual abuse, pornography, cult activity, or conspiracies. However well intentioned, overzealous interveners must accept varying degrees of responsibility for damaging the prosecutive potential of those cases where criminal abuse did occur and destroying the lives of innocent people where criminal abuse did not occur. Some false claims of threats and force are caused by shame and embarrassment over what actually happened and the children's desire to tell interviewers the socially acceptable version they sense the interviewers may prefer to hear.

33. Investigators should not just accept something sexual happened to a child and ignore the context details that are necessary if it is to be proven in a court of law. If a child makes a disclosure, investigators must attempt to determine not just *what* is alleged but also the details of the context in which that disclosure took place. When the only evidence offered is the word of a child against the word of an adult, child sexual victimization can be difficult to prove in a court of law.

34. It is not the job of law-enforcement officers to believe a child or any other victim or witness. The child victim should be carefully *interviewed*. The information obtained should be *assessed and evaluated*. Appropriate investigation should be conducted to *corroborate* any and all aspects of a victim's statement. The investigator should always be an objective fact-finder considering all possibilities and attempting to determine what happened with an open mind.

35. Although it provides few specific details, the Report clearly indicates that to varying degrees the investigators in the Friedman case misunderstood behavioral inconsistencies; engaged in repetitive, leading, and suggestive questioning; provided rewards and incentives to alleged victims; and indicated a bias toward validating victimization. The Reports suggests this had little significant impact on the case. Without the details of the interviews, however, it is impossible to evaluate this claim with any degree of certainty. The information in the Report provides minimal insight into the details of original interviews.

36. For example, as part of the justification for its conclusions, the Report on pp. 103-104 states that witness 11 was interviewed during the review and, uninterrupted by questions, told them that: the police were aggressive, but never told him what to say; he was terrified when the police came because Jesse had promised to kill his dog if he reported to the police; he was aware that Jesse attended the alternative Village School, which also terrified him, because he perceived that students at that school were outside the mainstream; the police came several times and he initially told them that nothing had happened; it was clear that the police would keep coming; a female detective warned that he would never enjoy a "normal" relationship with a woman if he covered for the Friedmans; he took the class for several years, and was abused more by Arnold than Jesse in the early years such as when Arnold would sit next to him, put his hand on his leg, and rub it; that from there the activity escalated; and he felt that he was being groomed.

37. Some issues raised by this one interview include: Exactly what does it mean for the police to be aggressive? Why did the police keep coming back if he had said nothing had happened?

How many times? Why was it clear the police would keep coming? Why would he have sexual problems with women if he did not tell something happened? Is it appropriate or leading for the police to suggest this? Are they implying he would become gay? Why didn't he report Arnold's activity during all those years if Arnold had not threatened violence or gone to a non-traditional school? Why did he keep returning to class? Is it consistent for offenders to both groom and use threats of violence? Did the review team consider these questions? Did these statements raise concerns about the reliability and validity of the witness's original allegations? If not, why not?

38. I recognize that the original Friedman investigation was conducted more than 25 years ago. Investigative procedures have changed and improved, memories fail, and old records are hard to find and follow. However, there is no way to evaluate the past investigation and conviction with confidence without understanding the dynamics of this specific type of case and having access to all relevant material.

39. The criminal-justice system must use fair and objective criteria for evaluating the accuracy of allegations of child sexual victimization and filing charges against the accused. The lack of corroborative evidence **is** significant when there should be corroborative evidence. Blindly believing everything in spite of a lack of logical evidence or simply ignoring the impossible or improbable and accepting the possible is **not** good enough. If some of what the victim describes is accurate, some misperceived, some distorted, and some contaminated, what is the court supposed to believe? Until we come up with better answers, the court should be asked to believe what a thorough investigation can corroborate, understanding that physical evidence is **only one form of corroboration**. In those cases in which there simply is no corroborative evidence, the court may have to make its decision based on carefully assessed and evaluated victim interviews/testimony and the elimination of alternative explanations.

40. Any attempt to review Jesse's conviction should include competent and objective professionals documenting the disclosure process, evaluating potential contamination, and assessing interview procedures with access to and analysis of the most detailed and contemporaneous notes, reports, statements, records, transcripts, documentation, and evidence available.



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Subscribed and Sworn before the undersigned Notary Public
On the 4th day of August, 2013

my commission expires 2/28/17

Sara B. Toye
County of Spotsylvania
Notary Public, State of Virginia