

**Prosecution Masquerading as Investigation: A Response from the National Center for Reason & Justice to the Nassau County DA's Report on Jesse Friedman**

**August 2013**

*Executive Summary*

The Nassau County, New York District Attorney's *Conviction Integrity Review of People v. Jesse Friedman* (Report) is not an objective re-examination of the case. Instead, it is, plain and simple, a prosecutor's brief. District Attorney Kathleen Rice appears to be motivated not by a desire to find the truth but rather to re-convict Jesse Friedman and smear his image in the press.

The National Center for Reason and Justice (NCRJ) has sponsored Jesse Friedman for over a decade. Based on the knowledge and expertise of our board members about similar cases and also on our own investigation of this case, we fully believe he is innocent.

NCRJ's response details many of the errors and incidents of bias in the investigation. Here, briefly, are some of the NCRJ's findings:

**1. *People v. Jesse Friedman* was a complex yet stereotypical instance of 1980s mass-sex abuse panic and hysteria.** In arguing the uniqueness of this case, DA Rice and her team show their ignorance of basic facts of U.S. social history and criminology.

DA Rice and her team take pains to distinguish this investigation and prosecution, which first arose in 1987, from other, now firmly discredited sex-panic cases of the 1980s. But even the partial record cited by the DA's office—much of it published in an appendix—clearly shows that it is a textbook case, replete with conspiracy-theory scenarios; fundamental investigative errors committed by the police; prosecutorial zealotry; and frightened, confused behavior on the part of the falsely accused.

As in those other cases, there was no physical or forensic evidence—no photos or videotapes of the alleged crimes, in spite of claims that they were recorded; no record of any visit to a doctor in spite of children's accounts of bloodshed, anal fissures, pain and physical trauma; and no credible medical evidence presented at trial.

**2. The investigation was secret and the evidence cherry-picked.**

The DA conducted the investigation in secret. The report selects negative evidence and innuendo about Friedman, while re-interpreting and dismissing all records and witness accounts that support his claim of innocence. Rice continues to withhold exculpatory evidence from the public, Mr. Friedman's lawyers, and even from her own advisory board.

**3. The report evinces ignorance of history and presents misinformation about child sex abuse allegations and disclosure.**

For instance, the report claims that the older ages of Friedman's accusers undergird the credibility of their testimony then and now. In fact, history and research show that older children are susceptible to pressure and suggestion, that some older children lie about having been sexually abused, and others develop false memories. In the infamous McMartin Preschool trials (which the report specifically cites as distinctly different from *Friedman* in this regard) eight, nine, and ten-

year-old children gave testimony of abuse at the preliminary hearing. Years later, one such child recalled that he had been urged to “help” the younger victims by telling stories of abuse. He did so, knowing he was lying.

The DA’s report improperly justifies repeated police questioning of non-disclosing children in the Friedman case—a repetition shown, in other cases, to have produced many false accusations. The report claims research indicates that severely abused children tend not to reveal their abuse when first interviewed. In fact, research shows not only that most children disclose during the first interview, but also that severely abused children tend to readily disclose.

#### **4. The report mischaracterizes Friedman’s confession.**

Rice and her team rely heavily on Mr. Friedman’s confession and plea of guilty, which they characterize as a rational choice. They point out it was not coerced.

In fact, such false confessions are not uncommon. Of the hundreds of exonerations with DNA evidence won by the Innocence Project, about 25 per cent of the convictions had come about through false confessions. Very few were coerced—except in the sense that the defendants were under unbearable pressure from a system dependent upon guilty pleas. The same was true for Friedman, as it was for beleaguered but innocent defendants in mass sex abuse cases throughout the country.

Then 19 years old, Friedman was charged with 126 counts of sodomy in the first degree and dozens of other felony charges that could lead to centuries of incarceration—effectively, a life sentence. In taped conversations, his lawyer, Peter Panaro, told Friedman the trial would last six months and inevitably end in conviction. This was counsel’s best judgment, after considering the circumstances. But as evidence in the Appendix reveals, a guilty plea also served the lawyer’s personal interests. For instance, he promised to defend Mr. Friedman in a trial for no additional fee—condemning himself to work for free for half a year.

Mr. Friedman’s letters, also in the appendix, begin with indignation at being subjected to such ludicrous charges, and move gradually to a recognition of how hopeless was his position. Had Friedman not confessed he would still be in prison. Yet no one was willing to defend his innocence.

#### **5. DA Rice uses inflammatory language based on a ‘deeply flawed’ evaluation to describe Friedman.**

Throughout the report and her executive summary, Rice indulges in repeated name-calling, labeling Mr. Friedman a “narcissist” and a “psychopath.” Her source for these insults was Dr. David Pogge, in the late 1980s a young psychologist hired by Peter Panaro to examine Mr. Friedman. Dr. Pogge produced a negative report, diagnosing Mr. Friedman as a psychopath with perverse sexual impulses.

Conspicuously absent from Rice’s report is the analysis of Dr. Pogge’s work on Friedman by the eminent Columbia University forensic psychiatrist Dr. Richard Kreuger. Dr. Kreuger found Dr. Pogge’s report lacking in scientific objectivity and “deeply flawed” in its methodology and conclusions. Dr. Kreuger added: “Even if Mr. Friedman were demonstrated by numerous psychological or psychophysiological tests to have strong pedophilic interests (which he does not have) the determination of his guilt or innocence is an entirely separate process.”

Friedman's attorney, Ron Kuby, also learned that at the time Dr. Pogge was evaluating Friedman, he was a member of the North Shore Hospital Group, which was providing therapy to Friedman's alleged victims and working with the police investigating the case. In other words, Dr. Pogge was deeply invested in the notion that Mr. Friedman was guilty—a clear conflict of interest.

Kuby sent a copy of Dr. Kreuger's assessment to the review team and pointed out this conflict of interest. That assessment is neither mentioned in the report nor cited in the appendix, and the team continued to rely on Dr. Pogge's report to support the assertion that Friedman is guilty of sexually abusing children.

**6. Barry Scheck's endorsement is ill considered.** Such a patently biased and incomplete report would have no credibility were it not for the endorsement of the process by Innocence Project founder Barry Scheck. NCRJ has great respect for Scheck and his colleagues. They have transformed America's understanding of the criminal justice system by exposing the frequency with which false convictions occur and the myriad ways, both systemic and psychological, in which such grave errors can happen.

However, this type of case is outside Mr. Scheck's area of expertise. He was also careful to note what materials he had *not* been shown – including the documents most critical to the evaluation of cases like the one against Mr. Friedman. We ask him to lend his support to Friedman's efforts to gain access to the hidden materials, and we look forward to hearing from him after these efforts are successful and the development of this case is truly understood.

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NCRJ's response was authored by NCRJ board members journalist Debbie Nathan, Attorney Mike Snedeker, and sociologist Emily Horowitz. Nathan and Snedeker wrote *Satan's Silence* (1995), the first book tracing the origins and outcomes of the child sex abuse hysteria of the 1980s. They identified Jesse Friedman as one of dozens of innocent defendants in the dedication. Horowitz, an expert in false accusations and convictions, has worked with Jesse Friedman's legal team since 2004, when Friedman first filed his motion to overturn his 1988 wrongful conviction.