

**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**

***Introduction***

The Nassau County, New York District Attorney's *Conviction Integrity Review of People v. Jesse Friedman* (Report) is no objective re-examination of the case. Instead, it is, plain and simple, a prosecutor's brief. District Attorney Kathleen Rice was not concerned with achieving justice. Her conclusions in *People v. Jesse Friedman* appear politically motivated. They flow not from an investigative impulse, but rather from an inculpatory one.

The National Center for Reason and Justice (NCRJ) has sponsored Jesse Friedman for over a decade. We fully believe he is innocent, based on the knowledge and expertise of our board members about similar cases, and also because of our own investigation and knowledge of his particular case.<sup>i</sup>

NCRJ's knowledge of the case makes it glaringly obvious that DA Rice's report cherry-picks every bad fact about the defendant and every negative innuendo, while re-interpreting and dismissing all records and witness accounts that support Mr. Friedman's claim of innocence. The report prosecutes Mr. Friedman outside of any courthouse but inside the court of public opinion. To further manipulate that opinion, Rice has not stopped with the Report. After releasing it, she has gone on to feed the media slanderous misrepresentations about Mr. Friedman.

To make matters worse, Rice's office conducted much of their investigation in secret. Rice withheld—and continues to withhold – exculpatory evidence from expert and lay witnesses, not only from the public and Mr. Friedman's lawyers, but even from the DA's own advisors, including Barry Scheck.

The partial record cited by the DA's office—much of which is published in an appendix—clearly shows that *People v. Jesse Friedman* was a complex yet stereotypical instance of 1980s mass-sex abuse panic and hysteria, 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.

Throughout the United States, cases marked by these problems were legion during the period when Jesse Friedman was being investigated, criminally charged, and sentenced. The Report claims his case was different from others such as McMartin. It was not

different. In stating otherwise, DA Kathleen Rice and her team show that they are grossly ignorant of basic facts of US social history and criminology.

### ***Historical Context for the Friedman case: 1980s Panic***

The bias of the DA's report cannot be fully appreciated without reviewing recent American history. During the 1980s, communities across the country were convulsed by large-scale sex abuse cases, often with ritual overtones, that centered on providers of services for children. In Nassau County the Friedman case led to what Judge Abby Boklan called a "media frenzy;" there were community meetings of parents, and a "tremendous undercurrent of rage and horror." A veritable community lynch mob attempted to converge on the Friedman home less than three weeks after the local investigation began.<sup>ii</sup>

The Friedman case surfaced in late 1987. By that time throughout the United States, allegations had triggered investigations in more than 100 communities. Like the Friedman case, children around the country were reported as having been photographed and videotaped while subjected to unspeakable sexual acts committed in group settings – and like the Friedman case, no such photographs or tapes were found. Like the Friedman case, case investigators reported children talking about blood, anal fissures, pain and physical trauma, but credible medical evidence was not presented.

In the Friedman case, in a vivid display of how little investigators themselves believed the charges, the children supposedly sodomized by Jesse and his father and by other children were not taken to doctors, despite supposedly disclosing intense physical trauma.

In an effort to distinguish the Friedman case from what are now accepted to have been flawed prosecutions that led to wrongful convictions or acquittals, Rice discusses only the McMartin case. But even with McMartin, more history is in order—much of which Rice is unaware.

In early September 1983 police in the seaside town Manhattan Beach, near Los Angeles, sent a form letter to 200 families asking them to question their children about suspected sex abuse by a male teacher at the McMartin Preschool. As Rice correctly notes in her Report, the origin of the suspicion was a mother of a young boy who attended the preschool. She was later deemed psychotic, and the McMartin case is now considered to be a tragic compendium of errors based completely on moral panic.

But Rice and her team incorrectly claim that the panic in McMartin developed only after police and other investigators spent months interviewing the children. They also claim that the Friedman case was different because many children accused Arnold and Jesse

immediately, when the police made their first visits. In fact, Friedman and McMartin have very similar time frames.

In McMartin, two days after police mailed the letter to parents, mothers of two little girls were reporting that their daughters said they had been molested by the same male teacher who had earlier been accused by the psychotic mother who initiated the case. The little girls made their claims even before they spoke with police. And within days of these girls charges, parents throughout the Manhattan Beach area were anxiously phoning each other and repeatedly questioning their children. Within three weeks—the same time as elapsed in the Friedman case after parents began learning that Arnold Friedman had been arrested for child pornography possession — McMartin children were saying the teacher had sodomized large numbers of children in mixed-gender groups, and photographed them. They were also saying that other teachers—women—had witnessed the abuse and done nothing.

These first accusers were quite young—preschool aged. But, contrary to assertions by the Nassau County DA's office, many other McMartin accusers were the same ages as the Friedman accusers. Several eight, nine, and ten-year-old children testified at a Preliminary Hearing—California's version of a Grand Jury. They had been questioned because they had attended the school years ago, and police theorized that abuse had been going on for a long while. One such child, years later recalled that he had been urged to “help” the younger victims by telling stories of abuse. He did so, knowing he was lying.<sup>iii</sup>

This individual and many other older children produced accusations that were so violent and bizarre that they stained credulity, even among McMartin's prosecutors. Years later, even after the entire case had fallen apart and been utterly discredited, many children continued to insist they had been sexually abused, and many behaved as though they had been profoundly traumatized. It is thus abundantly clear that older children are susceptible to pressure and suggestion.<sup>iv</sup> It is also obvious that some older children will lie about having been sexually abused, and others will develop false memories. Further, research has revealed that children are subject to suggestion from their parents, even before the children are interviewed by police and other forensic questioners.<sup>v</sup>

This was true for McMartin—and many other mass sex abuse cases of the 1980s and 1990s. It was equally so for Friedman.

### ***The DA's further mistaken claims about child interviews***

Rice and her team also incorrectly claim that, in order to obtain disclosures, police needed to interview the Friedman computer class students multiple times and refuse to take “no” for an answer. The DA report cites selected studies claiming that the typical

child sex abuse victim does not disclose during his or her first or even second interview with the authorities. Further, the report rationalizes many Friedman students' denials of abuse by claiming that Mr. Friedman and his father had threatened the children with assault against themselves, their families and their pets.

But a recent, comprehensive literature review contradicts these claims. The review, by London, Bruck et al<sup>vi</sup> examines studies that investigated sexually abused children's spontaneous disclosures of abuse compared to others' non-disclosure; and children's disclosure patterns after they were asked about abuse by investigators. The review found that, on their own and without being asked, many children waited one to five years to disclose abuse. But findings were quite different for children who were questioned by sex abuse investigators. These children had a high median rate of immediate disclosure: 64 percent. In other words, the research found that most children, when questioned by police and other investigators, disclosed their abuse during their first investigative interview. And age matters in ways DA Rice does not seem aware of: the disclosure rate was higher among six-to-ten year olds—the age cohort for the Friedman computer class students—than for preschool-aged children.

The London and Bruck review also found no compelling evidence that “disclosure rates are related to severity of abuse.” In fact, the review notes, most researchers have “found the opposite pattern—that is, higher disclosure rates are associated with incidents that are life threatening and involve physical injury...the data indicate no consistent association between severity or method of coercion and disclosure.”<sup>vii</sup>

### ***The DA's mischaracterization of Jesse Friedman's Confession***

The Report relies heavily on Mr. Friedman's confession and plea of guilty: “Jesse,” it says, “pled guilty because his own calculations showed it to be the optimal strategy in light of the choices available to him, not because someone else forced him to do so.”<sup>viii</sup> This assertion reveals how little Rice knows of these other “sex ring” cases where innocent people also confessed; it shows how blind she is to the way her office created the conditions in which a confession became the rational choice, regardless of innocence or guilt.

According to Barry Scheck's Innocence Project website, about 25 per cent of the convictions in several hundred DNA exoneration cases came about through false confessions.<sup>ix</sup> Very few of these were coerced. False confessions come from people susceptible to suggestion, and people subjected to unbearable pressure by a system utterly dependent upon guilty pleas.<sup>x</sup>

In November of 1988, after the third indictment against him, Mr. Friedman, then 19 years old, 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.<sup>xi</sup> His lawyer, Peter Panaro, told him that the trial, which would occur in a county that loathed Friedman and his father after months of negative press coverage, would take six months.<sup>xii</sup> Panaro promised to defend Mr. Friedman even though he would not be paid any additional money. A trial would thus have meant no income for Panaro for half a year.

Panaro was recognized by the judge as a fixture in local criminal justice circles, someone she knew and trusted, someone with whom she would have further dealings after Jesse’s case was resolved.<sup>xiii</sup> The transcript of a recording of Mr. Friedman’s willingness to plead guilty included in the Report’s appendix shows that Panaro was thorough in his presentation to his client of the work he had done on the case, how he had explored every avenue, what the prosecution would entail, and what the likelihood of success would be – zero.<sup>xiv</sup> All counsel’s best judgment and personal interests were aimed at getting a guilty plea. Mr. Friedman had no allies outside his family – a family mired in confusion and discord.

Mr. Friedman’s letters in the appendix to the DA’s report begin with indignation at being subjected to such ludicrous charges, and move gradually to a recognition of how hopeless was his position. No one around him thought it possible for him to avoid a decades-long sentence unless he pled guilty. Had he not confessed he would still be in prison.

During the Salem witch trials dozens of people confessed to being witches. None of them were killed, or even brought to trial. But twenty people who told the truth and denied being witches were hanged, or slowly crushed with rocks. Imagine that Mr. Friedman is innocent. What should he have done, facing a months-long trial in a town boiling with hatred of him, an entire criminal justice system arrayed against him? It was not an easy choice. False confessions by beleaguered but innocent defendants in mass sex abuse cases in Kern County, California and in many other parts of the country were chosen by people caught in the same “sex ring” web as Jesse Friedman.

### ***The DA’s reckless eagerness to smear Mr. Friedman***

DA Rice’s extreme bias is evident in her cherry picking of information, and her refusal to consider or even acknowledge data about Mr. Friedman which contradicts what she has chosen to publicize.

To cite one example, Rice indulges in repeated name-calling, labeling Mr. Friedman as a “narcissist” and a “psychopath” in her executive summary, in her conclusion, and

throughout the Report.<sup>xv</sup> 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 very negative report, diagnosing Mr. Friedman as a psychopath with perverse sexual impulses.

Conspicuously absent from the Rice's report is the reaction of noted Columbia University forensic psychiatrist, Dr. Richard Kreuger, to Dr. Pogge's work on Friedman.

Dr. Kreuger analyzed Dr. Pogge's report and found it lacking in scientific objectivity and "deeply flawed." Dr. Kreuger wrote, in part, that the MSI, the instrument Dr. Pogge used in his work, was not an appropriate tool to analyze Jesse Friedman, because "it should not be used with clients who deny sexual assault or misconduct accusations."

Dr. Kreuger added that "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," and, "The psychological testing contains many statements that are tendentious in nature and convey a negative image of Mr. Friedman."

Mr. Friedman's attorney, Ron Kuby, sent a copy of Dr. Kreuger's assessment to the DA Rice review team. The assessment is neither mentioned in the report nor cited in the appendix.

Attorney Kuby also learned that, at the time Dr. Pogge was evaluating Mr. Friedman, Pogge was a member of the North Shore Hospital Group, the team that was providing therapy to alleged Friedman victims and working with the police investigating the case. North Shore Hospital Group, in other words, was deeply invested in the notion that Mr. Friedman was guilty. For a psychologist to be associated with this group and simultaneously to be evaluating the defendant was a grave conflict of interest. Kuby wrote to DA Rice and her team, asking that they not rely on Dr. Pogge's work or findings because of this conflict.

Yet, even after receiving Kuby's letter, DA Rice relied on Dr. Pogge and on the claims in his report to support her assertion that Mr. Friedman is guilty of sexually abusing children.

### ***Conclusion***

In *Friedman v. Rehal*, 618 F.3d 142 (2d Cir., 2010), the Second Circuit made many of these same points, and suggested that the prosecutor's office do an independent

investigation of the case, in a search for the truth. Instead, the prosecutor's office doubled down with a cruel and misleading insistence on the guilt of Jesse Friedman. This is disappointing but unsurprising. It would be of little note were it not for the endorsement of the Report's process by Barry Scheck. Mr. Scheck and his colleagues have transformed our understanding of the criminal justice system with their development and popularization of systematic DNA testing. His endorsement lends credibility to the report that it has not earned, and would not have on its own.

We note that this type of case is outside Mr. Scheck's area of expertise, and that he was 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 Mr. Friedman's efforts to gain access to the hidden materials from the early stages of this case, and look forward to hearing from him after these efforts are successful, and the development of this case is truly understood.

<sup>i</sup> Journalist Debbie Nathan and Attorney Mike Snedeker, NCRJ board members, first identified Friedman as one of dozens of innocent defendants in the dedication to their 1995 book *Satan's Silence*, the first book to delineate the origins and outcomes of the child sex abuse hysteria of the 1980s. Sociologist Emily Horowitz, also an NCRJ board member, has worked with Jesse Friedman's legal team since 2004, when Mr. Friedman first filed his motion to overturn his 1988 wrongful conviction.

<sup>ii</sup> See appendix to DA Rice Report, 633, 653. Full-text of all appendices are available here: <http://www.nassaucountyny.gov/agencies/DA/NewsReleases/2013/062413friedman.html>.

<sup>iii</sup> "I'm Sorry: A long-delayed apology from one of the accusers in the notorious McMartin Pre-School molestation case," *Los Angeles Times*, October 30, 2005, at [https://www.google.com/url?sa=f&rct=j&url=http://articles.latimes.com/2005/oct/30/magazine/tm-mcmartin44&q=&esrc=s&ei=M\\_T2UfnpEs\\_H4APQ6oBQ&usg=AFQjCNE1s98Nhe8ADVaGFyeIULpbdanupw](https://www.google.com/url?sa=f&rct=j&url=http://articles.latimes.com/2005/oct/30/magazine/tm-mcmartin44&q=&esrc=s&ei=M_T2UfnpEs_H4APQ6oBQ&usg=AFQjCNE1s98Nhe8ADVaGFyeIULpbdanupw)

<sup>iv</sup> AR Warren and DF Marsil, "Why Children's Suggestibility Remains a Serious Concern," *Law and Contemporary Problems*, 65:1 (2002), pp. 127-147.

<sup>v</sup> MD Leichtman & SJ Ceci, *The Effects of Stereotypes and Suggestions on Preschoolers' Reports*, 31 DEVELOPMENTAL PSYCHOLOGY, 568, 570-71 (1995).

vi London, K., Bruck, M., Ceci, S. J., & Shuman, D. W. (2005). Disclosure of child sexual abuse: What does the research tell us about the ways that children tell?. *Psychology, Public Policy, and Law*, 11(1), 194.

vii Ibid., p. 202.

viii “Conviction Integrity Review,” p. vi, full-text of report is available here: <http://www.nassaucountyny.gov/agencies/DA/NewsReleases/2013/062413friedman.html>.

ix See [www.innocenceproject.org](http://www.innocenceproject.org); Retrieved on July 9, 2013.

x A close examination of these pressures was made by Ofra Bikel in the Frontline special, “The Plea,” first shown by PBS on June 17, 2004.

xi CIR, p. 34

xii Appendix 2, Doc 34, p. 375.

xiii Appendix 3, Doc 84, interview with Judge Boklan, pp 652-654.

xiv Appendix, pp. 349-389

xv See, Report, at vi, vii,