SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
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In the Matter of JESSE FRIEDMAN,

Petitioner,

vs. Index No. 13-004015

KATHLEEN M. RICE, in her official capacity as the
NASSAU COUNTY DISTRICT ATTORNEY,

Respondent.
---x

PETITIONER'S REPLY MEMORANDUM OF LAW

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PETITIONER'S REPLY MEMORANDUM OF LAW

[T]here 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…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.

--Kenneth V. Lanning, SA, FBI (Ret.), Behavioral Sciences Unit, Quantico.
Affidavit, August 4, 2013, at para. 38-40.[1]

INTRODUCTION

Three years ago, in an extraordinary ruling, the United States Court of Appeals for the Second Circuit issued a scathing denunciation of the practices and participants in the conviction of Jesse Friedman, strongly suggested that Friedman had been wrongfully convicted, and called upon District Attorney Kathleen Rice to

[1] Lanning's work and expertise are favorably cited in the Rice Report, at 133, footnote 496.

assess "the means by which his conviction was procured." Friedman v. Rehal, 618 F.3d 142, 161 (2d Cir. 2010). Instead, DA Rice spent the next three years engaged in a re-justification of the original misconduct and a vindication of the officials who had engaged in it. The report that emerged was a lengthy screed attacking the Second Circuit, and its arrogant and admonitory tone continues in Respondent's current answer.[2]

No amount of vitriol can cover up the basic flaws in the Rice Report. When young adult men, many of whom are successful professionals, came forward to explain the things they told police when they were eight years old were false and products of coercive and persistent interrogation techniques, the DA chose to exclusively credit the versions given by the eight-year old frightened boys, even while acknowledging that the techniques used to obtain their statements were "at a minimum, unprofessional, unfair, and cruel." (Rice Report, at 72) The DA chose to ignore the statements of the many student eyewitnesses who sat alongside the alleged victims in the very same classes in which abuse was alleged,[3] and who

[2] See, e.g., Respondent's Memorandum, at 2 (Respondent incorrectly claims the Second Circuit "assumed the truth and accuracy of the facts presented in the movie…."); id. at 4 ("And while some who should know better have mistaken a movie for legal evidence, it is not.")

[3] The nomenclature used herein refers to the 13 individuals whose testimony resulted in counts for which Jesse Friedman was convicted as "alleged victims." The word "complainants" is used to refer to those other individuals who claimed abuse to the police and investigators, but for unknown reasons were not presented to the grand jury. All of the persons referred to as "Doe" fit within the former category. The Rice Report, for unknown reasons, sows even more confusion by assigning a number to each person whose statements are in the Report, making it

insisted no abuse ever took place. Ironically, the DA even dismissed the exculpatory account provided by one of her own Assistant District Attorneys, who coincidentally was himself a student in the Friedman computer classes. DA Rice arrogated to herself the exclusive right to make all credibility determinations, and consistently chose to accept without question the unsworn recollections of the police and prosecutorial officials while deeming incredible the former students and parents who came forward and contradicted the police accounts. DA Rice appointed a special Advisory Panel to ensure a fair and thorough review, but then chose to withhold from them the evidence most essential in a case based upon child testimony, including the unredacted witness statements, police interview notes, records of when and how the statements were taken, in addition to the grand jury testimony that formed the basis for the indictments.

Although the validity of the Rice Report is not before the Court, Respondent cites it repeatedly to support its circular argument that Friedman cannot show good cause for production of the requested documents. These documents cannot assist him in establishing his innocence because he is guilty, according to Respondent, and the Rice Report so says. During the prior court session, Friedman submitted a short report documenting several of the crucial falsehoods most loudly trumpeted

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difficult to distinguish among those students who testified against Friedman, those who made complaints but did not testify, non-complainant witnesses, and those who did neither but appeared at some point in the re-investigation.

by the DA in her Report, Executive Summary, and press release. Since that time, Friedman's defense team has obtained and prepared additional materials that are relevant to this Court's task. These documents are attached herewith and described as follows:

Exhibit A is the Affidavit of Kenneth V. Lanning, one of the leading authorities on child sex abuse rings. His work was distorted by the Rice Report, making it falsely appear that he supported certain conclusions that he in fact does not. Former Special Agent Lanning also discusses, at length, the indispensible need to see the original witness statements, and police reports as to how and under what circumstances they were generated.

Exhibit B is an updated DVD, containing interviews with witnesses in addition to those previously submitted to the Court. All of this information was provided to the DA, though it is mentioned, if at all, in distorted and unrecognizable form in the Rice Report. Although certain to be derided by Respondent as only a "movie," videotaping witness statements is widely regarded as an important, and sometimes vital, investigatory tool.

Exhibit C is the recently released report by the National Center for Reason and Justice, an academic and advocacy organization that specializes in mass sex abuse cases, responding to the Rice Report.

Exhibit D is the only statement by an alleged victim from the original Friedman investigation in Petitioner's possession, and one of the several statements attributed to alleged victim Fred Doe.

Since the filing of Friedman's first 440.10 motion in 2004, the consistent legal position taken by both DAs Dillon and Rice is that Friedman should never be entitled to view any of the documents that comprised the case against him and should never be entitled to any evidentiary hearing.[4] The Second Circuit specifically criticized this stance:

> Moreover, we too would have preferred if the facts and circumstances were developed at a hearing. Nevertheless, we could not order a hearing over the objection of the District Attorney, who declined to waive the defense of the statute of limitations and permit such a hearing to be held.

Rehal, 618 F.3d at 160.

Notwithstanding this critique, the DA continues in her determination to make sure that the only eyes that see these materials belong to people who get a paycheck from her. Under such a system, no review process can lay any claim to integrity.

[4] The DA correctly notes that had Friedman gone to trial, he would have been entitled to all of these materials. Presumably such access would not have caused the sky to fall or presented any other of the parade of horribles repeatedly cited by the DA a quarter century later to maintain secrecy.

ARGUMENT

I. FRIEDMAN HAS SHOWN GOOD CAUSE FOR A DISCLOSURE ORDER UNDER 50-b(2)(b).

The showing required to constitute "good cause" pursuant to 50-b(2)(b) is not unnecessarily stringent.[5] Rather, it is meant to balance the realistic need for privacy against the need for disclosure in a particular case, and the interests of justice--which have been appropriately demonstrated in this case. In Tonia E.-A. v. Kathleen K, 12 Misc.3d 828 (Family Ct., Orange Cty., 2006), a custody case, the mother of the child applied for the records related to sexual abuse cases involving the child's father. Family Court concluded that the privacy protections of those child victims were far outweighed by the need to obtain relevant information as to the father's custody request, and granted the request. Similarly, in Doe v. Riback, 7 Misc.3d 341(Sup. Ct., Albany Cty. 2005), Supreme Court held that a civil defendant's request for documents identifying infant victims of sexual abuse outweighed any potential impact on the infant plaintiffs, as well as the "vague and conclusory" invocation of the confidential source exception. Id. at 345. As set forth more fully below, Friedman has shown "good cause" for receiving the requested documents.

[5] Respondent erroneously conflates the "good cause" requirement under 50-b(2)(b) with the far more stringent "compelling and particularized" showing required for release of grand jury minutes under C.P.L. § 165.75. Although Friedman meets both standards, they derive from different statutes, impose different requirements, serve different interests, and are best analyzed separately.

A. Limited Disclosure of the Statements Will Permit Review by an Expert in Child Sex Ring Cases.[6]

In the absence of any physical or medical evidence, the witness statements elicited by police were the only evidence in the case. For this reason, the contents of these statements, their evolution over time, and the interrogation methods used to elicit this testimony are of paramount importance. The Second Circuit concluded that detectives had applied tactics "designed to force children to agree with the detectives' story" and stated that "*In this case, the quality of the evidence was extraordinarily suspect....*" Rehal, 618 F.3d at 159. The Rice Report now confirms that police used tactics on children that were "unprofessional, unfair, and cruel." (Rice Report, at 72). Boys were told that unless they cooperated they would become homosexuals or child abusers, and would "suffer lasting psychological consequences later in life if they do not disclose abuse." (Id. at 71). Beyond these punishments threatened for non-cooperative children, police offered rewards such as metal police badges and pizza parties to children who did disclose abuse (Id. at 66). Yet the Report inexplicably concludes there is "no reason to believe such interviews resulted in unreliable information," (Id. at 71), and that

[6] Friedman seeks specific categories of documents in order to help establish his innocence and to challenge the integrity of his conviction. Respondent argues that Friedman has not explained why he needs the original police statements and reports, or "how he could use these allegations to his benefit." (Resp. Mem., at 27). This Memorandum, *inter alia*, specifically addresses the utility of those statements.

these investigative deficiencies "did not prevent the Review Team from reaching the conclusions with full confidence." (Id.)

The confidence that Respondent has in her own conclusions cannot be disputed. But the bases for this confidence are not apparent or non-existent. Attached hereto as Exhibit A is the affidavit of Kenneth V. Lanning, one of the nation's foremost authorities on child sex rings, the type of abuse alleged in the Friedman case.[7] Lanning was a Special Agent with the FBI for over thirty years, 20 of which were spent at the FBI Behavioral Science Unit (BSU) in Quantico, Virginia (1981-2000), where he conducted training, research, and case consultation on thousand of cases concerning the sexual victimization of children. Lanning has testified seven times before the U.S. Congress, numerous times as an expert witness in state and Federal courts, and authored more than 30 articles, monographs, and book chapters about understanding the behavior of sex offenders and their child victims and analyzing criminal cases. Since his retirement from the Bureau, he has worked as a consultant to police and prosecutors about child sex ring cases. (Lanning Aff., at 1). The Rice Report acknowledges him as expert,

[7] The term "child sex ring" is used to denote acquaintance sexual abuse with multiple child victims simultaneously. (Lanning Aff., at 2).

and cites his research (incorrectly[8]) in support of its conclusions. (Rice Report, at 132-35).

Lanning highlights the failure of the DA's office, during the original Friedman investigation or the reinvestigation process, to consult with an expert on child sex rings:

> 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….

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[8] The Rice Report claims Lanning's work validates the conclusion that the bizarre games alleged by the Friedman accusers were part of "grooming techniques" and "accord with the observed behavioral patterns of pedophiles." (Rice Report, at 132). In fact, as Lanning notes, the allegations of games are *inconsistent* with the allegations that the Friedmans used and threatened physical violence against the alleged victims:

> 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...

(Lanning Aff., at 3, para. 15-16). See also, Id. at para. 18 ("I saw no indication in the Report of any attempt to evaluate or reconcile these apparent victim control inconsistencies.").

(Lanning Aff., at 2, para. 13). The expertise required is highly specialized and is different from general expertise involving sexual abuse of children:

> 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."

(Id., para. 10)

A vital part of any investigation, or reinvestigation, of these rare cases is access to the original source materials. Lanning states:

> 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…To whatever extent humanly possible, the investigator should determine exactly when, where, to whom, in precisely what words, and why the victim disclosed.

(Lanning Aff., at 3, para. 20). Notably, the largest concern in the Friedman-type cases is 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? …Contamination can occur quickly even before any or after only a few victim interviews.

(Lanning Aff., at 5, para. 28-29). This averment by Lanning directly disputes *the* fundamental conclusion most essential to the Rice Report—that five weeks was an

insufficient time period for the acknowledged improper police work to have contaminated the results. (Rice Report, See Generally Section III A. "Claims of Inappropriate Police Questioning are Exaggerated").

Lanning notes that likely sources of contagion include alleged victims communicating with each other, "interveners" (such as parents) communicating with each other, and investigators contaminating each other. (Lanning Aff., at 5, para. 29). All of those phenomena were present in the Friedman investigation. Lanning acknowledges that without access to the original case materials, he cannot offer any definitive opinion, but reiterates that access is crucial:

> 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 any analysis of the most detailed and contemporaneous notes, reports, statements, records, transcripts, documentation, and evidence available.

(Lanning Aff., at 7, para. 40). However, based upon what is contained in the Rice Report, Lanning offers a number of cautionary notes. Cases involving allegations like those in the Friedman cases are extremely difficult to investigate. Lanning has found that "apparent victims often alleged crimes and provided details 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." (Lanning Aff., at 3, para. 26). As a general guideline, "[i]nvestigators should apply the "template of probability." (Id.,

para. 30). Moreover, [a]ccounts 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." (Id.)

Finally, Lanning notes:

> [a]s 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.

(Lanning Aff., at 3, para. 19).

Lanning's general observations are illustrated by the process that led to the disclosures by "Fred Doe," the *one* alleged victim for which the defense has *one* of his several statements. The statement, attached hereto as Exhibit D, is heavily redacted, and must be read in *para materia* with additional information provided about this witness in the Rice Report. On November 19, 1987, detectives conducted interviews with Fred Doe, denominated in the Rice Report as Witness 17. At that time, Doe allegedly stated to Detective Merriweather and Police Officer Durkin that Arnold gave him "bad hugs" that hurt, and that Arnold would hug him from behind and rest his head on his back, and also reported seeing a

Polaroid camera in the Friedman home, in a big room with a couch. (Rice Report, at 13).

On December 3, in his first statement reduced to writing, during a second documented interview, Witness 17 allegedly described to Detective Merriweather and Police Officer Durkin sexual criminal acts performed by Arnold and Jesse Friedman. According to Detective Merriweather, Fred Doe said that Jesse anally sodomized him and another child, exposed himself, and invited children to touch his penis. The child further said that Arnold Friedman put his hand down Witness 17's pants, touched his penis, and anally sodomized him twice in class. Witness 17 said Arnold Friedman did the same to other students. After one such incident, he saw "sticky white stuff." He also described being shown pornographic magazines and videogames, some of which were pre-loaded on the computers when the children sat down. (Rice Report, at 18).

In January 1988, Witness 17 was given the name "Fred Doe" and cited in a second grand jury indictment against Jesse Friedman. In March 1988, Detective Merriweather's assembly of various Fred Doe statements was attached as an exhibit to Arnold Friedman's federal pre-sentence report, which is how it became available to Jesse Friedman.

Yet Fred Doe was not done. On April 29, 1988, during his fourth interview with police, he gave another statement reduced to writing by Detective

Merriweather reporting that he saw Arnold and Jesse Friedman anally sodomize other children while in class. (Rice Report, at 24).

On June 9, 1988, Fred Doe gave another statement that was reduced to writing by Detectives Merriweather and Squeglia. He *added the presence of three of Jesse's friends*, stating that they would hold him down while Jesse anally sodomized him. He also stated that Jesse made him perform oral sex on Jesse, and that he was anally sodomized [redacted] —as were the other children. Additionally, he stated that [three lines of redaction]. (Rice Report, at 26).

In a lineup conducted on June 22, 1988, Fred Doe identified Ross Goldstein and another individual. For reasons that are unknown to Friedman and not explained in the Rice Report, Fred Doe was not called to testify in the grand jury that indicted Goldstein.

Limited disclosure of the original case materials will permit an expert in this field (rather than attorneys or police), to offer definitive conclusions about what went right and what went wrong in the interrogation of the Friedman accusers, and the ways in which investigative shortcomings and failures may have affected the final result. In light of the fact that Lanning is an expert acceptable to both the defense and the District Attorney, this Court may consider extending any limited disclosure of these statements that may be ordered to Lanning as well.

B. Limited Disclosure of the Witness Statements Will Permit Reliable Identification of Children Who Were Present Together in Specific Computer Classes.

The need for an expert in child sex ring cases to review the witness statements and the methods by which they were procured—a need unmet in two Friedman investigations over the past quarter century—is "good cause" enough to order the disclosures. But there is specific, additional information that these records contain: information that cannot be obtained through any other source.

The statement of Fred Doe asserts that "everyone" in the class was abused, and the vicious anal rapes were conducted in full view of "everyone" in the class. According to the detectives involved in the case, this was a common theme—everyone in the class had been abused, and the abuse took place in front of the entire class. Unlike most cases of actual child abuse, which take place in isolation, the abuse charged in the Friedman case all took place in full view of the other students, as well as a shifting number of other adults.

The Fred Doe statement provides the names of at least five other students (whose names have been redacted in the copy that the Freidman team has) who were present in the class, describing in detail where specific students sat in relationship to him. In addition, analysis of the Rice Report reveals, for the first time, that of the 41 police interviews summarized (not every interview resulted in a written statement); only three do not mention witnessing the abuse of other

children or being abused in plain sight of others. Indeed, the document suggestively entitled “Victim Questionnaire,” which was revealed in the Rice Report and was one of the basic investigatory tools, specifically directs investigators to ask the following classically suggestive questions: “Who else goes to the class?,” “Any friends you know of that go?,” and “Have you ever seen anyone else in the classroom being touched?” There is every reason to think the other alleged victims were asked these questions and provided this information.

A basic investigative technique would be to reconstruct, to the extent possible, rosters or partial rosters of the computer classes in which the alleged victims were in attendance, determine who was present with the alleged victims, then interview these children to ascertain what they did or did not see and hear, and what did or did not happen to them. If an alleged victim’s allegations are overwhelmingly contradicted by eyewitnesses who sat alongside him in the same computer classes (which the defense believes to be the case based on the contemporary interviews conducted with now-grown Friedman computer students), then it is difficult to credit such allegations.

Friedman’s defense team and the filmmakers provided the DA, as well as this Court, with partially reconstructed class rosters in which non-complainants who sat alongside alleged victims state unequivocally that (a) nothing

inappropriate ever happened to them, and (b) nothing inappropriate ever happened to the complainants in the relevant classes.

The DA discredits this entire area of inquiry on the specious ground that it is difficult to accurately reconstruct the computer class rosters:

> …at the time of Jesse Friedman's guilty plea, neither the police nor the prosecution had yet compiled a full list of the membership of each of Arnold Friedman's classes. Though the police and prosecution files contain some partial rosters, there is no way of ascertaining whether those were made based on information from the victims themselves, from their parents, or from some other unnamed source. Indeed, to the knowledge of the Review Team, a reliable roster has never existed.

(Rice Report, at 62).

If the DA chooses to discount the class rosters she states are in her files, and to discount the rosters reconstructed by the filmmakers (who provided a detailed source list identifying the source of data on each class), she need not discount the entire idea of using partial rosters of the relevant classes to corroborate or discount claims made by alleged victims. But the original investigators placed little credence in the students who stated that no abuse took place, and the DA simply ignores them now that they have come forward as young men. However, the reconstruction of reliable class lists is a necessary and fundamental task that cannot be accomplished without the original statements of the alleged victims. The original witness statements will provide Friedman the names of other witnesses whom the DA chose not to interview and Friedman's team could not interview.

C. Limited Disclosure of the Original Witness Statements Will Reveal Which Complainants Made Baseless Claims of Abuse Against Other Uncharged Assailants, and the Circumstances Under Which Such Accusations Were Made.

It seems both undisputable and obvious that if a complaining witness claims he was simultaneously attacked by Peter, Paul, and Bill, then it is learned that Peter and Paul have ironclad alibis, this information would raise significant questions about the remaining claim against Bill. These questions may or may not be answered or answerable; that is the stuff of which basic criminal prosecution and defense is made. But no one can seriously question that when a witness simultaneously makes an accusation the DA knows is false in conjunction with one she believes to be true, it raises a serious credibility problem.

The Rice Report reveals that these issues arose repeatedly in the police interrogation of the alleged victims, with multiple alleged victims claiming an ever increasing number of different assailants who participated in or were present for the molestation. The Rice Report, commencing on page 28, under the subheading "Police Identify Three Potential Accomplices," notes that after repeated interrogations, four students, in one week, named two additional rapists who participated in the abuse. Various children then dutifully picked out these and possibly additional attackers from photo arrays, yearbooks, and lineups. (Rice Report, at 28-30). The Rice Report unhelpfully explains that these individuals were not prosecuted due to "insufficient evidence," (Rice Report, at 30), and the source

document cited in the Appendix is equally non-illuminating. (Rice Appendix, at 293).

But the nature of the evidence against these accused rapists—multiple victim accounts elicited after intense and repeated interrogation—does not appear to differ in any material respect from the nature of the evidence used to indict Friedman and obtain his guilty plea. There must be specific factual reasons why the accusations against other suspects were discounted and deemed insufficient, yet the same type of allegations made by the same alleged victims against the Friedmans were fully credited—then and now. It is likely the actual witness statements, in their various iterations, will explain this otherwise baffling discounting of the statements of alleged victims.

Looking again at Fred Doe (witness 17), for example, he was interrogated at least five times over five months by Detective Merriweather. It was only in the fifth round of questioning that Merriweather elicited a new and important admission: that Fred Doe had neglected to mention in four prior interviews the presence of three additional violent teenage assailants in the room, friends of Jesse's previously unmentioned, including Ross Goldstein. (Rice Report, at 26). That Fred Doe was not presented to the grand jury, and that the two other child rapists he described were never prosecuted, suggest that investigators recognized that at least some parts of Fred Doe's account simply could not be true.

Similarly, the Rice Report reveals that Witness 11 (James Doe), one of the three alleged victims who apparently still claim Jesse Friedman abused them, was untruthful with investigators when questioned in 1988. The DA's report explains that there was "an additional individual he had specifically named as an abuser in 1988." When speaking to the Review Team, however, he claimed that he was abused by the Friedmans only. (Rice Report, at 104). The DA ascribes no significance to this, and mentions it only as a small factual detail, but it is actually exceedingly important: it confirms that James Doe either lied to police about the crimes he alleged, or that his interrogator did not accurately record the boy's statements. Either way, it is a major inconsistency that warrants examination, as do the numerous additional witness statements in which child rapists appear to inexplicably pop in and out of existence.

D. Disclosure of the Original Statements and Police Reports Will Permit A Forensic Textual Comparison Revealing the Statements Were Created by the Police.

In the Friedman case, none of the alleged victims came forward with allegations outside of interviews with detectives. Every assertion in this case emerged from an interview, and was composed into statement form by detectives. The Fred Doe statement, for example, was taken by Detective Larry Merriweather, who claims his reconstruction of Fred Doe's statements is true to the boy's interview. This assertion is called into question by events that took place a year

after the Friedman prosecution, in the case involving school bus driver Robert Izzo. The Izzo case was a strikingly similar mass sex abuse case in which dozens of children were said to have been raped by a bus driver and his assistant on a school bus in broad daylight. Like the Friedman case, the Izzo case suffered from the absence of any physical or medical evidence of the alleged abuse. The Izzo case was investigated by most of the same detectives who worked on the Friedman case, under the direction of Detective Sergeant Frances Galasso, the same head of the sex crimes division of the Nassau County Police Department who investigated the Friedman case.

In an unusual twist, because Izzo's accusers filed a civil lawsuit,[9] the witness statements were made public. The statements taken by the various detective teams are strikingly similar to those procured in the Friedman case. Below is a comparison of just one such statement, showing that the same detectives, Detective Merriweather and his partner Detective Nancy Meyers, elicited identical statements from eight-year-old Fred Doe in the Friedman case and a seven-year-old girl in the Izzo case:

[9] Izzo plead guilty, then subsequently moved to withdraw his plea on the ground that he was innocent. Before his application was finally decided, he died in prison. The subsequent civil jury declined to award damages to the accusers, notwithstanding the judgment of conviction, because it did not believe that the abuse took place. See, Pete Bowles, "Sex Abuse Felon Wins Civil Case," *Newsday*, July 27, 1996.

Exhibit 1: Statement from eight-year-old Fred Doe in Friedman Case (Nassau County, 1989).

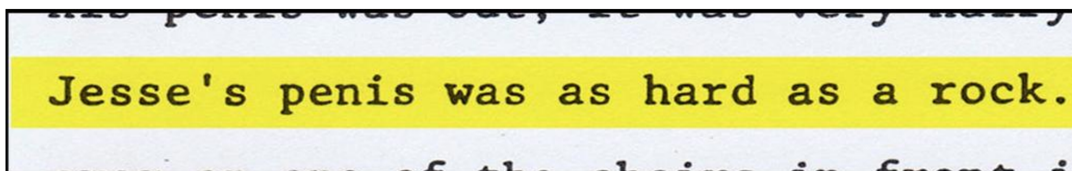
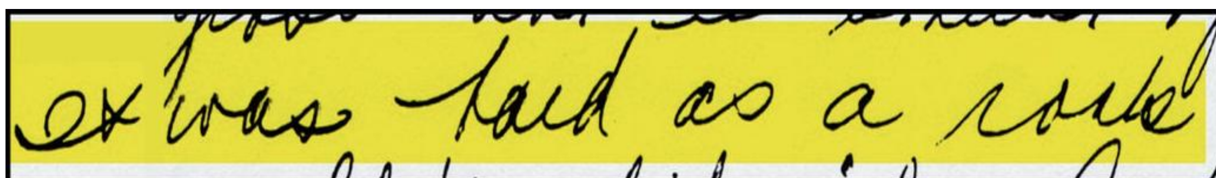

Jesse's penis was as hard as a rock.

Exhibit 2: Statement from seven-year-old girl in Izzo Case (Nassau County, 1989).


it was hard as a rock

It is possible, but unlikely that two different children in two different cases, having only detectives in common, would provide the same, decidedly adult, somewhat abstract simile to describe an erect penis. In cases involving allegations that police manufactured inculpatory statements, textual comparisons of the statements for word and phrase choices tied to specific investigators is an increasingly common and accepted technique. See, e.g., Frances Robles, "Several Murder Confessions Taken By Brooklyn Detective Have Similar Language," *N.Y. Times*, June 12, 2013.

Though Respondent had access to all the relevant witness information to allow her to utilize this powerful investigative technique, she chose not to do so. Friedman's defense team is willing to do this essential work, though the DA

continues to withhold the original witness statements that would need to be examined.

In summary, the record establishes that the interests of privacy have diminished over the many years that have passed in this case; by the actions of the DA; by the changed and expressed sentiments of many of the alleged victims; and even more importantly, they are overwhelmed by the overriding interests of justice which require that the mission outlined by the Second Circuit opinion be properly carried out for all of the reasons the opinion expressed.

II. PETITIONER HAS MADE A SHOWING OF PARTICULARIZED AND COMPELLING NEED FOR THE GRAND JURY MINUTES, ESPECIALLY SINCE THE GRAND JURY WAS DISCHARGED OVER TWENTY FIVE YEARS AGO AND THERE IS LITTLE CONCERN THAT THE POLICIES REQUIRED FOR GRAND JURY SECRECY WILL BE UNDERMINED.

Petitioner recognizes that an applicant for grand jury minutes must demonstrate a compelling and particularized need for these minutes. See, People v. Robinson, 98 N.Y.2d 755 (Ct. App. 2002). The reasons set forth above fulfill this more exacting standard, especially since the public policy reasons for grand jury secrecy in Friedman's case no longer exist. These reasons grounding the provisions of grand jury secrecy are well-established and often cited:

> (1) prevention of flight by a defendant who is about to be indicted; (2) protection of the grand jurors from interference from those under investigation; (3) prevention of subornation of perjury and tampering with

> prospective witnesses at the trial to be held as a result of any indictment the grand jury returns; (4) protection of an innocent accused from unfounded accusations if in fact no indictment is returned; and (5) assurance to prospective witnesses that their testimony will be kept secret so that they will be willing to testify freely.

People v. Di Napoli, 27 N.Y.2d 229, 235 (Ct. App. 1970).

It is equally true that when these reasons are absent or dramatically diminished in a particular case, the policy against non-disclosure must similarly yield. In the relatively recent case of Ostroy v. Six Square, LLC, 29 Misc.3d 470 (Sup. Ct., N.Y. Cty. 2010), for example, the court permitted disclosure of the grand jury minutes on the grounds that "many of the reasons for keeping the proceedings secret in an ongoing proceeding no longer exist," and thus the "the integrity of the proceeding cannot be compromised." Id. at 472.

Similarly, in a recent Suffolk County case, the Supreme Court released the grand jury minutes on similar grounds. In the Matter of Druker, 2012 N.Y. Misc. LEXIS 2342 (Sup. Ct., Suffolk Cty, May 8, 2012). In coming to this conclusion, the court wrote:

> There is no risk that a defendant who is about to be indicted will take flight, and the grand jury has long finished its work in this matter, meaning there is no risk of interference from those under investigation, or of subornation of perjury and tampering with prospective witnesses.

Id. at *10. In addition, the individuals seeking the grand jury minutes were the accused under the indictments in question, and thus the court found that "they require no protection from unfounded accusations." Id. Perhaps most applicable

to the case at bar is the court's finding that "if it is established that [the witnesses] testified falsely before the grand jury, the [witnesses] cannot claim that they relied on secrecy in exchange for their willingness to testify freely." Id.

In People v. Driscoll, 165 Misc.2d 245 (Sup. Ct., Suffolk Cty. 1995), the court discussed its "duty" to release grand jury minutes under certain circumstances:

> As a matter of public policy the court has a duty, where no counterbalancing evil or inequity will ensue, to remove any artificial barriers standing between these parties and the evidentiary resources needed to bring about an expeditious and just conclusion to the litigation between them.

Id. at 248.

In its analysis of the public policy factors governing disclosure of grand jury minutes, the court noted that "there is no risk" that the defendant who seeks disclosure of the minutes will flee. Id. at 247. The court also reasoned that "[t]he Grand Jury which held these proceedings has long been disbanded. There are no possible future actions of this former Grand Jury upon which to work any influence." Id. Particularly relevant to this case, the court notes that releasing the minutes "may allow witnesses with failed memories to have their memory refreshed and avoid the perception that they have intentionally testified at variance to their previous testimony, with the attendant risk of criminal prosecution." Id.

In Friedman's case, all of the factors supporting release of the minutes are present. There is obviously no risk that Friedman will flee. The grand jury has

long since disbanded and there is no investigation or risk of tampering with the witnesses. Friedman knows the names of the witnesses, their addresses, and the inculpatory nature of their testimony. Even the District Attorney's generalized, institutional concern with preserving the secrecy of the grand jury proceedings is unavailing to her--the identities of the witnesses were disclosed by the prosecution in 1988. Had Friedman gone to trial, the contents of the statements would also have been disclosed; the witnesses could not have been relying on a promise of secrecy. The District Attorney cannot credibly claim that future witnesses will be discouraged from coming forward to testify when the prosecution itself provided their identities as part of the regular course of a criminal prosecution.

Last, Justice York's thoughtful opinion in Ostroy also answers Respondent's assertion that only "the court in charge of the grand jury is authorized to release their statements from the secrecy requirement…" (Resp. Mem., at 8), quoting Lungen v. Kane, 217 A.D.2d 849, 850 (3d Dept. 1995). Justice York considered this objection, and noted that "in this case, the grand jury has been discharged for some time" and "there is no longer a judge supervising the grand jury…." Ostroy, 29 Misc.2d at 472-73. Thus, the traditional rule preventing a court of coordinate jurisdiction from interfering with the processes of another is no longer applicable. In Friedman's case, of course, the grand jury was discharged over a quarter century ago, and the presiding Judge is deceased. As in Ostroy, this Court is "more

familiar with the issues" than any other and is "in a better position to weigh the instant parties' need for the minutes against the need for secrecy in the grand jury proceedings…." Id.

III. CIVIL RIGHTS LAW §50-B PROTECTS ONLY THE IDENTITIES OF SEXUAL ABUSE VICTIMS. BECAUSE THE DA DISCLOSED THSE IDENTITIES TO FRIEDMAN IN 1988, RESPONDENT HAS NO LEGAL BASIS TO PROTECT ANYTHING.

The District Attorney asserts that *every* document provided to the Case Review Panel is exempted from disclosure under Civil Rights Law §50-b, and *every* document created in the course of the original Friedman investigation and prosecution, none of which were provided to the Panel, are similarly exempt. By its own term, Civil Rights Law 50-b protects the *identities* of sexual abuse victims. N.Y. Civil Rights Law §50-b(1) (McKinney's 2009). It does not provide independent protection to the contents of their statements or the methods the police used to obtain these statements, *except* to the extent that these materials tend to reveal identities. But it is undisputed that Petitioner knows these identities—he obtained them first from Respondent. A letter from District Attorney Joseph Onorato, dated November 30, 1988, provides 17 names of alleged victims (Rice Appendix, at 344), together with their "Doe" names in the indictment. Moreover, in the course of this Article 78 litigation, it was *Respondent* who insisted that *Petitioner* properly serve each and every one of Friedman's alleged victims.

Petitioner did so, and fully executed affidavits of service on all seventeen; fourteen of whom testified against Jesse Freidman and three of whom testified against Arnold. Thus, the District Attorney has no legal basis to protect anything. Under the guise of protecting identities (long since revealed), the DA now wishes to protect the dubious integrity of its original investigation and so-called reinvestigation—which are entitled to no protection.

The DA's assertion that release of the identities would be a "devastating intrusion into the complainant's lives," (Resp. Mem., at 5) carries no legal weight. It is also factually untrue. Petitioner, as well as those working with him, have taken great pains to minimize the intrusion into the lives of the alleged victims, consistently refusing to make their names public, although nothing prevents them from doing so. One of the victims, Kenneth Doe, provided a full and detailed written recantation to the District Attorney (at Mr. Kuby's request), and then sought Mr. Kuby's assistance when the *District Attorney's misconduct* threatened to intrude into his work life. (Kenneth Doe Letter, May 20, 2013, at 2). Numerous other victims were interviewed at length by filmmaker Andrew Jarecki, although they were under no obligation to speak to him. One alleged victim retained counsel after being provided with notice of the Article 78, but counsel thus far has made no objection to limited disclosure.

Of even greater importance, any genuine objection to public revelation can be addressed through this Court's plenary power under 50-b(3) to "order any restrictions upon disclosure . . . as it deems necessary and proper to preserve the confidentiality of the identity of the victim." Not only does this subsection again confirm that it is only the *identity of the victim* that is entitled to protection, it gives this Court more control over Petitioner's revelations than it now has. That is, this Court can order disclosure of the relevant documents conditioned upon Petitioner not making public any of the names of the alleged victims; even though there is no current impediment to Petitioner releasing the names. In other words, this Court's power to order "any" restriction could impose a *quid pro quo*—in exchange for granting Petitioner materials that he does not have, he is prohibited from releasing information that he has gathered independently of the Court's process. The same restriction could be placed upon Mr. Jarecki, who also has never disclosed this information despite the absence of any prohibition on his doing so. Indeed, if the District Attorney genuinely were interested in making certain the names of the victims were kept from public view, she would endorse this suggestion.[10]

[10] The true value the DA placed upon protecting the victims from "intrusion" is best illustrated by her insistence that Petitioner serve all of the victims as a way of reducing the financial burden on the prosecution. A party genuinely interested in protecting a victim from an "intrusion" by Friedman would not have insisted that this Court order this intrusion.

IV. THIS COURT HAS JURISDICTION OVER THIS PETITION AND APPLICATION, AND SHOULD EXERCISE THIS JURISDICTION.

To the extent Respondent argues that this Court does not have jurisdiction to entertain this application,[11] Respondent is clearly wrong. The Supreme Court is the Court of original and general jurisdiction and by definition has jurisdiction over this matter. N.Y. Const., Art. 6, §7(a); People v. Correa, 15 N.Y.3d 213 (2010). This objection has already been fully addressed and rejected by the Supreme Court in Doe v. Riback, 7 Misc.3d at 343. In Riback, the civil defendant in Supreme Court moved for a "good cause" order under 50-b(2)(b) to unseal certain records from his County Court conviction. The Town of Colonie objected, claiming that the Supreme Court lacked jurisdiction, as the offense was adjudicated in County Court. The Riback Court reminded the litigants that Supreme Court is a court of general jurisdiction, and also had jurisdiction over the offenses that resulted in conviction. Accordingly, the Riback Court found it had jurisdiction. Id.

The DA also asserts that this Court should not entertain this matter, and instead shunt it off to a County Court to begin the process anew, because the Legislature has "evinced an intention" that 50(b)(2) applications be heard in the Court that generated the criminal conviction in which these records were

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[11] Somewhat confusingly, Respondent twice asserted on the record that she would be making an objection to this Court's jurisdiction, and denied that this Court had jurisdiction in her Verified Answer. Respondent then twice concedes this Court does have jurisdiction but should not exercise it. (Ver. Ans., at 9; Resp. Mem., at 8).

generated. (Resp. Mem., at 8). Again, Respondent is wrong. No such "intention" is anywhere "evinced." Civil Rights Law 50-b(2)(b) and (3) unambiguously use the remarkably clear and precise word "jurisdiction" over the offense. If the Legislature intended to require applicants to make their application to the court in which the judgment was entered, the Legislature could easily have done so.

Pursuant to N.Y. C.P.L. § 440.10, for example, a motion to vacate the judgment of conviction must be made to "the court in which it was entered…." This is why the Second Department correctly ruled in Pirro v. Cirigliano, 226 A.D.2d 465 (2d Dept. 1996), affirmed, 88 N.Y.2d 1033 (Ct. App. 1996) that the movant's 440.10 application was improperly brought in Supreme Court when the conviction arose in County Court. The only thing "evinced" is that the Legislature knows the difference between the terms "jurisdiction" and "the court in which a judgment of conviction is entered," and chose to use the former in governing 50-b(2)(b) applications and the latter in governing C.P.L.§440.10 applications.

V. THERE IS NO REQUIREMENT OF ADMINISTRATIVE EXHAUSTION FOR A CIVIL RIGHTS LAW §50-b(2)(b) REQUEST WHEN RESPONDENT LACKS THE POWER TO GRANT THE REQUESTED RELIEF AND FURTHER REQUESTS WOULD BE FUTILE.

Respondent correctly notes that Friedman's demand for the original documents that constituted the original Friedman investigation was not first made to the District Attorney's Office. There are several independent reasons that the

exhaustion requirement is inapplicable to Friedman's request for a 50-b(2)(b) order.

First, applications made under Civil Rights Law §50-b(2)(b) do not have an administrative exhaustion requirement. They are "applications" that *must* be made "to a court with jurisdiction over the offense." Civil Rights Law §50-b(2)(b). The subsection does not dictate the form the application must take, and the Court of Appeals has suggested that procedurally, such an application is best made in conjunction with an Article 78. Fappiano v. N.Y. City Police Dep't, 95 N.Y.2d 738, 748, n.* (Ct. App. 2001).

Second, because Respondent cannot provide documents that tend to identify a sexual abuse victim without a court order, the agency cannot grant the requested relief. When an agency is prohibited from granting the requested relief, exhaustion is not required. In Good Samaritan Hosp. v. Axelrod, 150 A.D.2d 775 (2d Dept. 1989), for example, the Good Samaritan Hospital commenced an Article 78 proceeding to review a determination by an insurance company and the Commissioner of the Department of Health denying certain relief. Id. at 775. The respondents argued that the petitioner failed to exhaust administrative remedies. The Second Department noted that the agency's own regulations prohibited a grant of the requested relief, so exhaustion would be futile, and not required. The Court held: "[i]n the instant case, resort to the administrative appeal process would be

futile because the Commissioner's own regulations do not permit a remedy which would afford the petitioner adequate relief…." Id. at 776-77.

Last, exhaustion would be factually futile, as Respondent has already demonstrated her commitment to deny Friedman *any* document that may be protected by 50-b, even when it could redact specific information to remove the victim's identity. See, Singas Letter, Oct. 12, 2012 ("Any records that would tend to identify a victim of these crimes are confidential…most or all of the documents that were provided to the panel…tend to identify the victims…To the extent that your letter requests that this office redact records to avoid the confidentiality requirement of Civil Rights Law §50-b, that request is also denied.");[12] Schwartz Letter, Dec. 3, 2012 (The 50-b exemption from disclosure "is well established and was properly applied….").

Exhaustion is not necessary when "resort to an administrative remedy would be futile." Town of Oyster Bay v. Kirkland, 19 N.Y.3d 1035 (Ct. App. 2012) (internal quotations omitted). Futility is established when, as here, there is no question that the result of such exhaustion would be a denial of the remedy the petitioner seeks. Parkway Hosp. v. Axelrod, 178 A.D.2d 644 (2d Dept. 1991). In Parkway Hospital, the Second Department held that the petitioner hospital was not

[12] As argued in the administrative appeal and in the Petition, the terms "most" and "all" are not synonymous. If "most" of the documents are exempted, then the DA should release those that are not.

required to pursue further administrative remedies in an Article 78 proceeding "because the Commissioner has already demonstrated his commitment to deny the petitioner's application for reimbursement based upon the lack of a definitive statement as to the minimum number of nurses mandated by the New York State Hospital Code." Id. In Friedman's case, the one thing that the District Attorney has made clear for close to three years is her utter unwillingness to provide any of the Friedman case materials to Friedman.

CONCLUSION

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.

--Kenneth V. Lanning, SA, FBI (Ret.), Behavioral Sciences Unit, Quantico. Affidavit, August 4, 2013, at 7, para. 38.

For the foregoing reasons, Petitioner's applications should be granted.

Respectfully Submitted,

/s/

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EXHIBIT A

VADL 9825

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August 4, 2013

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. Interveners 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.

Kenneth V. Lanning
CAC Consultants
Fredericksburg, VA

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

EXHIBIT B

This Exhibit is a DVD.

EXHIBIT C

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.[i]

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.[ii]

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.[iii]

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.[iv] 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.[v]

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[vi] 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."[vii]

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."[viii] 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.[ix] 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.[x]

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.[xi] 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.[xii] 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.[xiii] 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.[xiv] 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.[xv] 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.

[i] 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.

[ii] 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.

[iii] "I'm Sorry: A long-delayed apology from one of the accusers in the notorious McMartin Pre-School molestation case," *Los Angeles Times*, Octoaber 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

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

[v] 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.innocence.project.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,

EXHIBIT D

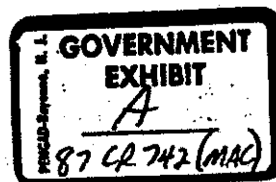
wp/8/587

STATEMENT OF ________

My name is ________ and I am 8 years old, my birthday is on ______. I live on _______, New York, with my ________, mother and father. My telephone # is __________. I also go to the ______ school and I am in the ______ grade.

I want to say that I have told Detective Merriweather that I know the difference between telling a lie and telling the truth and everything that I am telling Detective Merriweather the truth about what happened to me. My mom and dad are present with me and I am telling the truth.

I want to say that I had attended computer lessons for two times with Mr. Friedman. I can't remember the name of his street. I know who he is and how to get to his house from my house. I went to Mr. Friedman's computer school for the first time in September 1986 for 10 weeks and it was on _______ every time and it was about 4:30 p.m. in the afternoon each time. I also had some of my friends in my computer class were _________________________ myself and another ______named _______ and I think his class is something like ______. All of us were just about the same



age except for _____ who is in the 4th grade and _____ who could be in either the 4th or 5th grade. I can remember that when I would go into Mr. Friedman's school he had his son Jesse help him out in the classes. I remember seeing some magazines of naked boys in Mr. Friedman's house in his downstairs bathroom. I remember seeing these magazines for about all the time on the back of the toilet. I also remembered that I saw some computer disc programs at Mr. Friedman's showing naked people and people taking their clothes off. I also remember seeing some disc that had a man talking from his shoulderes up and sometimes I remember it say to us, to take our pants off. These things were already on the screen on one of the computers in the class. I also remember there was one program that used the talk about parts of the body. Mr. Friedman used to load the computers and when the programs that told us to take off our clothes we would just listen to them. I used to sit in the middle of two other people, mostly between _____ and _________ and ________ sat next [to] me exactly, because he and I used the Apple Computer and the other guys used the Commodore 64 Computers. The reasons why I sat in the middle was to try and keep Mr. Friedman and his son Jesse from giving me bad touches. I remember seeing Mr. Friedman and Jesse give bad touches and do some bad things to me and the other boys in the class. I want to say that during about

my second and third time in the 1st session that Mr. Friedman would sneak up behind me and take his hand and push it down into my pants and then he would touch my penis. He did this to me two times and I would squirm around and he would tell me to stop moving around and [I] would tell him to stop, but Mr. Friedman would keep doing it anyway to me. Mr. Friedman would also do this to _______ and sometimes _______ would tell him to stop for me. I also remember that Jesse used to hit _____ a lot and I was also hit too by Jesse in my rear end. I also remember that Jesse would hit me more when I told his father not to touch me on my penis. Also, Mr. Friedman used to touch my behind when my pants were up about two times and he also did the same thing two times when my pants were down. Mr. Friedman's son Jesse did the exact same thing to me as his father did. He would touch my behind when my pants were down, two times and he did the same two times when my pants were up. I told Jesse to stop and he would just say to me to be quiet. I can remember this happening to everyone in the class and even to some other kids in the class whose names I can't remember. I can also remember that Jesse used sneak up from behind me and he would slide his hands the same way his father did. First, he would touch my shoulders then down my chest and into my pants. He would touch my penis with his hand for a while then he would stop. Jesse did this to -

me two times, the first time in the September 1986 session and one time in the [ ] 1987 session as far as I can remember. I also remember Mr. Friedman and Jesse doing some other things to me and to the other boys in the class and they hurt me and the others very much, so much that I cried and I called for my mommy and so did the others call for their moms and dads. When we called out and screamed I was told to shut up and sometimes my mouth was covered up so I could not cry and scream. This was done to the other boys in the class and I think that _______ was hit the most by Mr. Friedman and by Jesse but he did not do it as much as his father did to __________. But, both of them used the hit me. I want to say that during this session Mr. Friedman came up to me in one of the classes and he told me to pull my pants down. This time he did not touch my penis like he did before sometimes, instead Mr. Friedman told me to pull them down and I said no, and he got mad and hit me and then I tried to hold onto my pants. I wish I would have kicked Mr. Friedman, but Jesse, was standing there and he would have kicked me back much harder. Mr. Friedman pulled my pants half-way down and he made me hold onto one of the computer table chairs and then I was made to bend over and Mr. Friedman was holding me very tight around my waist and he took his penis and while squirming trying to get away from him, he pushed his penis into my behind and

it hurt me very much. I screamed dad and Mr. Friedman said to me to be quiet. He kept on pushing his penis into my behind and he tried to make it fit and I felt like I was going to make a dutty on him but I didn't. I wish I could have made a dutty on him but I didn't. Mr. Friedman put his hands over my mouth. During this time the other kids, were screaming and telling Mr. Friedman to get off of me. I was scared and the other kids were scared too. Jesse was telling everybody else to shut up. I also remember that he used to tell all of us that if we didn't shut up we were not going to the be able to come back to computer class again. I really wanted to take computer so I never told anyone about what was going on except for my dog, ______. I can also remember when Mr. Friedman did this to me some sticky white, slimy stuff came out of his penis and it was yucky, gross, disgusting. I remembered a lot and and I used to come home and go into my bathroom and I would wash my underwear out because it had blood on it and it took a long time for me to wash my underwear out to get the blood off. I did that so my mother would not see the blood in my underwear, I didn't notice the blood until when I went to the bathroom when I got home. I washed them over also because Mr. Friedman had told me after he put his penis into my behind. Mr. Friedman did this to me one time in this first session. Also I remember that Jesse did the very

same thing to me as his father did in this session too. Jesse had told me if I didn't take my pants down that I would never be allowed to come back again to computer class. I said fine, I won't tell and then I pulled my pants down to my knees and I was held tight around my waist so I could not move and I had to hold onto one of the chairs in the room, bent over and Jesse tried to push his penis which was hard like his father's was, into my behind, Jesse hurt me very much and I screamed out but he covered up my mouth and kept on trying and pushing his penis into my behind. After a while he stopped and I stopped and pulled up my pants up and went back to my computer to work. I can also remember that when Mr. Friedman did things with his penis to me and the other boys he would whisper to us something like, "[Y]ou won't come back," and also he would say "[D]on't tell your mom or you won't be able to come back." I can also remember in the first session that Mr. Friedman pulled his pants and came over to me and told me his penis was out and it was hard and he pulled my pants down and he took his penis and rubbed it agains my penis. He did this for about a minute or so and then he stopped. Jesse was there too but he was just screaming at everyone. This hurt me and I cried but he didn't stopp rubbing his penis against my penis. I can remember that everyone in the class had to touch both Mr. Friedman and Jesse's penis,

they would come around to the computer with their pants down when we had to touch their penises. I want to talk to [the detectives] about the session in Mr. Friedman's computer class. This session was started in January 1987 and it was on _______ at about 4:30 p.m. The same boys were in my class as were in the first session. I can remember, that Jesse and Mr. Friedman did some of the same things to me and the other boys as they did in the first session. The second session was also run for 10 weeks like the first one did. I remember that it was in the beginning of the session when Mr. Friedman came over to my computer and he told me take my pants down. _______ was next to me didn't say anything because he didn't want to get into any trouble. Jesse was in the room too, anyway I stood up and I didn't want to get hit very hard so I did it. Mr. Friedman made me bend over and hold onto the back of the computer class and he took his hard penis and pushed it into by behind and it hurt me a little and I cried to myself because it hurt and Mr. Friedman held me around my shoulders and Jesse was sitting on the couch just relaxing and watching what his father was doing to me. The other boys were just watching and I was saying to myself to tell Mr. Friedman to get off of me. Mr. Friedman stopped after a while and then I pulled my pants and went back to my computer. One other thing that I remember that happened during the first

session was that Jesse had gotten some of the sticky stuff from his penis on my shoulder. This was during the same time when Jesse had been pushing his penis into my behind. I come home and wiped it off my clothes. Now I want to talk abut my second session again and about what Jesse did to me. Jesse came over to me and he told me to stand up and pull your pants down, this was on a different day in the beginning of the class but not the same day when his father did it to me. Anyway I stood up and Jesse pulled them down, my pants. Jesse said this to me, to pull my pants down and I said no. Jesse had his zipper undone and his penis was out, it was very hairy and gross looking. Jesse's penis was as hard as a rock. Jesse told me to bend over on one of the chairs in front if my computer. My hands were on the on the chair and Jesse put his hands on top of mine and then be tried to push his hard penis into my behind. The only way I can explain . . . was that is was like a popcycle trying to go into my behind. Jesse could not get it to work, get it into the hole in my behind. But the hole in my behind was too small. I also remember that after Jesse tried to do this to me, he stopped after a while and I don't remember crying out or anything. I just went back to my computer. I can also remember that Jesse and his father used to fight with each other, because Jesse used to scream at everyone and his

father use to yell at him and then Jesse would do the same thing back to the father. I also remember in the first session that Mr. Friedman had tried to put his penis into _______ rear and also Jesse did this to him too and _______ screamed out and Jesse would cover his mouth. He had to do the same thing that I did by bending over the chairs too and holding on to the back of the chairs. I also remember that __________ was hit a lot by Mr. Friedman and Jesse and one time I remember on two times that Jesse pulled _____ pants down around his legs and he hit him in the behind. _____ cried out and he was told to be quiet and _____ would stop. I remember that ______ also had to touch both Mr. Friedman and Jesse's penises two times like everyone else did. I also remember ________, he had to pull his pants down to his knees and Mr. Friedman and Jesse spanked him at the same time and I also remember that Mr. Friedman tried on one day to put his penis into _________ behind, but _________ penis would not come down, so the could not get his pants down and Mr. Friedman, put his own penis back into his pants. Also one time I remember that _______ had to pull his pants down for Mr. Friedman and Mr. Friedman tried to put his penis into ______ behind. _____ screamed out Mom and Daddy and Mr. Friedman told him to shut up and be quiet. My mother, father and [the detectives] are here with me. Detective Merriweather is writing my story about

Mr. Friedman and Jesse and the computer classes. I swear this is the truth and all I can remember at this time.