



the Court did not have any conversations with anyone regarding the integrity review. As such this Court discredits defense's statement that "even though she does not now recall such conversations, Judge Corrigan would have formed impressions that will influence her present perception of the case." If in fact the Court had been involved in any part of the integrity review process, the Court would have recused itself months ago.

The insistence that the integrity review process undertaken by the Nassau County District Attorney's Office is a vital part of an actual innocence hearing must be addressed. The "integrity review process" is the creation of District Attorneys throughout the Country. Their purpose is to determine whether a previously obtained conviction meets that particular District Attorney's Office's level of integrity to not be disturbed or whether evidentiary issues have been uncovered that cause the particular District Attorney's Office to apply to a Court for a nullification of the conviction and a dismissal of the case. The reasons behind those decisions are solely determined by the elected District Attorney. Significantly, it is the Court that ultimately determines whether or not convictions should be overturned and cases dismissed. When there is disagreement between a District Attorney's Office and a convicted felon related to his or her actual innocence, the Court has the power to order a hearing to determine for itself the "actual innocence" of the defendant. Such a determination is to be based on the facts and circumstances surrounding the commission of the crime, the investigation of that crime and evidence related to the crime. This Court does not believe that the credibility of the interviewer, twenty years after the fact, should be the Court's focus. In fact, this Court believes that it is the Court's duty to determine the credibility of the interviewee, free from any influence of an outside speaker. Quite frankly, a finessed interviewer can as easily get a person with facts related to innocence to fail to recount same as much as an inept investigator can fall prey to a seasoned criminal witness espousing innocence where none actually exists. Thus, the Court should evaluate what happened at the time of the crime; what happened during the investigation of the crime; and what evidence, if any, then existed to support the criminal conviction. That may include the advances of science and the advances of interrogation techniques in child sexual abuse cases and how it may impact on the gathering of credible evidence. It would also include evidence of innocence that may not have been available at the time of the conviction such as DNA, alibi and medical information. What it does not include, in this Court's opinion, is an evaluation of the people who conducted the integrity review.<sup>1</sup> The evidence of actual innocence needs to come from first hand information related to the Court during a hearing; not from an interviewer who is recounting his/her recollection and view of that first hand information.

With that understanding as to how this Court envisions an "actual innocence" hearing being conducted, there is no concern about having to evaluate the credibility of those involved in

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<sup>1</sup>It should be noted that in this particular case the Friedman Advisory Panel wrote its own statement related to the Integrity Review undertaken by the Nassau County District Attorney's Office. While acknowledging its limited role in the process, they state, "[w]hat is clear to us is that the Review Team did an excellent job under difficult circumstances." They go on to state that it was their belief that if the evidence warranted same, "we have no doubt the Review Team was prepared to recommend without reservation that Friedman's conviction be overturned." Statement of the Friedman Advisory Panel



the integrity review process. If that were not the case, this Court would have recused itself months ago. That recusal would not have been based on the Court's inability to do the job but rather on the overwhelming appearance of impropriety that would exist if the Court was called upon to evaluate the credibility of the very people the Court worked with on a daily basis even though those interactions did not include the integrity review process.

This Court is now confronted with two additional concerns. First, this Court recognizes the extensive delay foisted upon this case by the requests for this Court's recusal. There is a man who is proclaiming he is actually innocent of the charges to which he pled guilty. This Court was ready to hear his case in the fall of 2014. The summer of 2015 is fast approaching and no progress has been made in moving this case forward to a hearing that was previously granted. Additionally, even under this Court's belief as to how this hearing should be conducted, it is possible that Joseph Onorato, one of the original prosecutors in the Friedman matter, may be called to testify. The Court has always stated and still believes it can fairly evaluate the credibility of Mr. Onorato as a witness. However, as the Court has always disclosed, she was his supervisor in her early years at the Nassau District Attorney's Office. Also of concern to this Court is the fact that approximately one month ago, the current lead prosecutor on this matter, Robert Schwartz, became a member of the Judiciary and is no longer a part of this case. Although that event again has no bearing on this Court's ability to do its job, the Court can foresee an argument that this Court may feel a need to support the position previously espoused by a member of the District Attorney's Office at a time when this Court was a member of the District Attorney's Office, who is now a fellow member of the Judiciary only two short years after this Court was elected to the bench. These unique set of circumstances involving Joseph Onorato and Robert Schwartz have been carefully evaluated by this Court in making the decision on whether or not to recuse from this case.

Mr. Friedman deserves his day in court. The public deserves the right to believe that the case is being decided without concerns of partiality from the Court. There is now a potential appearance that the Court's impartiality could be questioned. As such, I hereby recuse myself from this matter. This case is being returned to the Clerk's Office for re-assignment. They will notify the Parties of the next Court date and the newly assigned Judge.

**SO ORDERED.**

Dated: June 2, 2015

ENTER

  
TERESA K. CORRIGAN, AJSC