

STATE OF NEW YORK  
COUNTY OF NASSAU

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In the Matter of the Re-Investigation of the )  
Case of Jesse Friedman )  
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**AFFIRMATION**

**BARRY C. SCHECK**, an attorney duly admitted to practice as such in the Courts of the State of New York, hereby affirms, under the pains and penalties of perjury, as follows:

1. I was a member of the Advisory Panel to District Attorney Kathleen Rice and her Review Team who performed a conviction review of the Jesse Friedman case. The opinions I express in this affirmation are solely my own and they are limited.

2. I express these views from the standpoint of someone who is concerned about “Conviction Integrity” process issues and not as someone who has reached a substantive judgment about facts or credibility – that was not, is not, and never has been my role in this matter. The merits of Mr. Friedman’s criticisms of the Review Team Report, contained in Mr. Friedman’s 440 application, should be adjudicated by the court, and by submitting this affirmation I am not endorsing or rejecting them, in whole or in part.

3. When a substantial question has been raised post-conviction about due process or innocence claims, and a prosecutor’s office decides to undertake a serious and conscientious Conviction Integrity review, there are three possible outcomes:

- a) The parties agree there is a due process or innocence claim that merits a conviction be vacated, or here, withdrawal of a guilty plea;
- b) The parties agree there is no ground for relief; or
- c) The parties agree to disagree and leave it up to a court to resolve, but with a

much better factual record than would have been available without a Conviction Integrity review.

4. Ordinarily, following best practices in a Conviction Integrity Review it is desirable to have substantial disclosure of the prosecution's file, grand jury minutes, and police reports to the defense and materials from the petitioner provided to the prosecutor pursuant to non-disclosure agreements. For reasons we discussed in the Advisory Panel Statement given the nature of this case, the District Attorney made the decision not to release such materials to the defense.


5. Members of the Advisory Panel did not interview witnesses, except, under limited circumstances, Ross Goldstein and Jesse Friedman, nor did we personally review grand jury minutes or the District Attorney's file. The Advisory Panel did not make credibility determinations. Such determinations were the exclusive province of the District Attorney.

6. I have now read the post-conviction application submitted by counsel for Jesse Friedman, and have had the opportunity to review some of the evidence on which those claims are based. The defense raises very specific claims that there are a number of serious substantive errors in the Rice Report. The parties to this litigation have drawn starkly different conclusions about the credibility of witnesses who did come forward

7. I believe it would be desirable for the court and the parties, utilizing whatever procedural mechanisms the court deems suitable, to review materials not available to the Advisory Panel, such as grand jury minutes, the original case file, and the results of the re-investigation to aid in finally resolving, to the extent it is possible, the issue of Jesse Friedman's guilt or innocence.

8. I believe public confidence in the fair resolution of this matter would be greatly enhanced if the court could find a way to resolve these issues, including crucial issues of witness credibility, using appropriate safeguards. Accordingly, I urge the court to accord Mr. Friedman a full evidentiary hearing on the merits of his claims.

Dated: New York, New York  
June 20, 2014



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BARRY C. SCHECK