

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JESSE FRIEDMAN,)

Petitioner,)

-against-)

JOE REHAL, Parole Officer, and)
ROBERT DENNISON, Chairman of the)
New York State Division of Parole,)

Respondents, and)

THE ATTORNEY GENERAL OF THE)
STATE OF NEW YORK,)

Additional Respondent.)

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Index No. 06 CV 3136 (JS)

**AFFIRMATION IN
SUPPORT OF
MOTION FOR LEAVE
TO COMMENCE
DISCOVERY
PURSUANT TO HABEAS
RULE 6(A)**

**AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO COMMENCE
DISCOVERY PURSUANT TO HABEAS RULE 6(A)**

DAVID PRESSMAN, an attorney duly licensed to practice as such before this Court, hereby declares the following under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. I represent Petitioner Jesse Friedman. As such, I am familiar with the facts and proceedings in this case. I submit this Affirmation in support of Petitioner's motion for leave to commence limited discovery pursuant to Habeas Rule 6(a).

2. The only evidence against Jesse Friedman were the statements of young children; statements made only after repeated, hostile, and highly suggestive interrogations and therapy sessions which included the use of hypnosis. Not one child ever alleged inappropriate conduct during the years they repeatedly enrolled in Arnold

Friedman's computer classes. Not one child ever complained to a parent or teacher. Not one child showed any sign of physical or emotional abuse. There was not a single piece of physical evidence in this case. Children began to tell stories of lurid sexual abuse only *after* police and therapists utilized a panoply of highly suggestive, improper methods. We now know that these methods included hypnosis. Gregory Doe, who was the source of thirty-five sodomy counts against Petitioner, acknowledged not remembering any abuse until he was hypnotized. "I just remember that I went through hypnosis, came out, and it was in my mind." See Petition at p. 41. I respectfully refer the Court to Petitioner's Petition for a Writ of Habeas Corpus By A Person In State Custody Pursuant to 28 U.S.C. § 2254 (hereinafter, "the Petition"), and the Statement of Facts, in particular, regarding the background and procedural history relevant to this motion.

3. This Court, by Memorandum and Order dated July 20, 2007, ordered an evidentiary hearing on the use of hypnosis in the Friedman investigation and prosecution. To examine what improper "therapeutic" methods were utilized, and to show the contaminating effect of those methods, Petitioner seeks leave of the Court to engage in limited discovery pursuant to the Federal Rules of Civil Procedure.

4. In habeas corpus actions, Rule 6(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that leave of the Court is required prior to conducting discovery pursuant to the Federal Rules of Civil Procedure. Rule 6(a) states that "[a] judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure[.]" In order to meaningfully prepare for the evidentiary hearing ordered by this Court, Petitioner respectfully seeks leave to commence the following limited categories of discovery:

**REQUESTS FOR PRODUCTION FROM THE
OFFICE OF THE DISTRICT ATTORNEY, NASSAU COUNTY**

5. Petitioner seeks leave of the Court to request the production of all material, documents, records, recordings, notes, memoranda, logs, files, forms, etc. (hereinafter, “material” or “materials”) in the possession or control of the Office of the District Attorney, Nassau County regarding the use of hypnosis, visualization, relaxation, group therapy, individual therapy, or substantially similar methods on any of the complainants, potential complainants, or witnesses in the prosecution and/or investigation of Arnold Friedman or Jesse Friedman (hereinafter, “the Friedman case”). This request for production includes, but is not limited to,:

- a. any materials documenting or related to the cooperation between psychologists, psychiatrists, social workers, counselors, therapists, or other mental health care providers and the police, investigators, or prosecution in the Friedman case;
- b. the names of any therapists, psychologists, psychiatrists, counselors, social workers, or other mental health care providers that the Nassau County Police Department or the District Attorney’s Office referred suspected victims and/or witnesses to for any purpose;
- c. the dates of all individual and group therapy sessions known to the District Attorney’s office, including the names of the participants.

Petitioner consents to the use of complainants’ “Doe” names.

6. Petitioner seeks leave of the Court to request the production of all materials in the possession or control of the Office of the District Attorney, Nassau

County describing or containing, in whole or in part, the initial statements of any child complainant or potential complainant, made to the prosecution or police investigators concerning what, if anything, happened in the Friedman's computer classes. Petitioner consents to these statements being redacted to include only the complainants' assigned "Doe" name.

7. Petitioner seeks this information in order to establish whether hypnosis or substantially similar methods were utilized by the prosecution and police in eliciting accusations from the complainants. It is impossible to show that memories were enhanced or implanted without showing what the complainants initially remembered. Only by disclosing the original statements of the complainants or potential complainants, will Petitioner be in a position to establish that complainants' initial statements were refreshed and/or modified through the use of hypnosis or substantially similar methods.

8. Petitioner seeks leave of the Court to demand the production of the last known address or other contact information on file with the District Attorney of the Crime Victims Compensation/Notification Board for each of the complaining witnesses in the Friedman case.

9. Petitioner also seeks leave of the Court to demand the production of all material in the possession or control of the Office of the District Attorney, Nassau County regarding the use of hypnosis, visualization, relaxation, group therapy, individual therapy, or substantially similar therapeutic methods on any of the child complainants and potential complainants in the case of People v. Robert J. Izzo, Ind. 72972/89.

10. People v. Robert J. Izzo, Ind. 72972/89, like the Friedman case, was a mass sex-abuse case in Nassau County during the same period as the Friedman

investigation/prosecution and involving the very same therapists. In light of the same therapists' involvement in the Izzo case, and the close temporal proximity and substantive allegations of the Izzo and Friedman cases, Petitioner seeks to discover information concerning the use of hypnosis by the therapists in the Izzo investigation as evidence of the *modus operandi* of therapists tapped by the Nassau County Police Department to assist with mass child sex-abuse investigations. Upon information and belief, the therapists utilized hypnosis and/or substantially similar methods in the Izzo investigation.

11. As a final technical matter, it is important to point out that while the Office of the District Attorney is not a named party in this action, it is the real party of interest. Accordingly, the discovery tools under the Federal Rules of Civil Procedure, made available to Petitioner pursuant to the Rules Governing § 2254 Cases, are appropriately directed to the District Attorney's office. Wardens of correctional institutions and probation officers are almost without exception the named respondents in habeas petitions. However, wardens and probation officers play no role whatsoever in the court proceedings that are the subject of most habeas actions. See Harris v. Nelson, 394 U.S. 286, 296 (1969)(noting the non-existent role of wardens in trial proceedings). In Harris, the Supreme Court noted that a technical application of the rules would require habeas petitioners to serve interrogatories upon the prison warden (a party to the habeas action), even though the warden would be unable to answer a single question from personal knowledge. See Harris, 394 U.S. at 296. The Harris Court observed that such a literal application of the rules would be circuitous and burdensome. Id. Accordingly, "the proper individuals to whom this Court should look to provide the

information...need[ed] to develop [Friedman's] habeas petition" is the Office of the District Attorney, Nassau County, "the equivalent[] to [a] 'part[y] to this suit under the common notions of who constitutes a party for discovery purposes.'" Cherriz v. Braxton, 131 F. Supp. 2d 756, 777 (E.D.Va. 2000).

**DISCOVERY FROM THERAPISTS WHO UTILIZED HYPNOSIS AND WORKED
COOPERATIVELY WITH LAW ENFORCEMENT**

Subpoena for Production

12. Petitioner seeks to subpoena production of all materials from the therapists—Sandra Kaplan, M.D., Chief of Child and Adolescent Psychiatry, North Shore University Hospital; David Pelcovitz, Ph.D., North Shore University Hospital; Victor Fornari, M.D., Physician in Charge, Pediatric Consultation, North Shore University Hospital; Carol Samit, C.S.W., Assistant Coordinator of Family Crisis Program, North Shore University Hospital; Renee Krieger,¹ North Shore University Hospital; Joyce Cates (or, alternatively, Joyce Kates), A.C.S.W., Schneider Children's Hospital, Child Protection Team; and, Sandra Valli,² North Shore University Hospital; and, Joyce W. Parks, Ph.D.³ (hereinafter, "therapists" or "the therapists")— describing, analyzing, recording, or otherwise related to their current or past professional use of, or research/writing involving, hypnosis and therapeutic techniques and devices substantially similar to hypnosis (or part of the hypnotic induction process), including, but not limited to visualization, relaxation, eye-movement desensitization, etc. See King v. Conde, 121

¹ Ms. Krieger's position is unknown. However, upon information and belief, she was involved in the group and individual therapy provided to alleged victims of mass sex-abuse at North Shore University Hospital.

² Ms. Valli's position is unknown. However, she is listed as a person to contact for more information about group therapy sessions offered to complainants in the Friedman case.

³ Dr. Parks was Gregory Doe's psychologist. Gregory Doe has stated on video that he did not recall any abuse until he was hypnotized..

F.R.D. 180, 197-198 (E.D.N.Y. 1988)(permitting discovery of documents reflecting police officers' recollection of incidents in which their misconduct is alleged).

13. Petitioner seeks leave to subpoena the production of all materials, documents, notes, papers, and recordings of public statements made by the therapists about any aspect of the Friedman case or the Friedman complainants.

14. Petitioner seeks leave to subpoena the production of all documents, notes, memoranda, recordings, papers, etc. produced during, or in preparation for, or in anyway related to the *Child Pornography and Extrafamilial Child Sex Abuse* session of the "Health Science Response to Child Maltreatment" Conference, held on January 17-20, 1990, sponsored by Children's Hospital and Health Center, The Center for Child Protection, in San Diego, California.

15. As the Court is aware, at the *Child Pornography and Extrafamilial Child Sex Abuse* session of the "Health Science Response to Child Maltreatment" conference, therapists from North Shore University Hospital (Sandra Kaplan, David Pelcovitz, and Carol Samit) teamed up with Nassau County Police Department Sex Crimes Detective Frances M. Galasso to present a session about the Friedman case and the use of hypnosis on the child complainants. The abstracts of the papers make clear that the presenters openly discussed their use of hypnosis on the Friedman complainants. See Petition Exh. 35 ("use of hypnosis in the treatment of disassociation in victims"; "The presentations will address the individual treatment of these children, group therapy of the children and their parents and use of hypnosis in the treatment of disassociation in victims;" Dr. Pelcovitz's presentation is titled, "Group Therapy and Hypnosis for Victims of Child Pornography and Extrafamilial Sexual Abuse," etc.)

16. As this Conference was held 17 years ago, Petitioner is unable to locate witnesses, recordings, or additional documentation of what the therapists said during this session or the full text of the papers they presented.

17. The therapists' prior statements about the use of hypnosis in the Friedman case, made in close proximity to the actual investigation and prosecution of the Friedmans, may be the most reliable evidence of what occurred in the individual and group "therapy" sessions with the child complainants.

Depositions

18. Petitioner seeks to depose the therapists, psychiatrists, psychologists, and other related mental health care providers, and their employees, who worked on the Friedman case. Specifically, Petitioner seeks to depose Sandra Kaplan, M.D.; David Pelcovitz, Ph.D; Victor Fornari, M.D.; Carol Samit, C.S.W.; Ms. Sandra Valli; Renee Krieger; Joyce Cates (alternatively, Joyce Kates), A.C.S.W.; Joyce W. Parks, PhD; and, as yet unknown therapists presently or formerly employed by Pride of Judea (Douglaston, New York) who worked on the Friedman case.

19. The focus of deposition inquiry will be the techniques deployed by the therapists in individual and group therapy sessions with child complainants or potential complainants in the Friedman case. In addition, Petitioner seeks to depose the therapists about their relationship with the Nassau County Police Department, as it relates to mass sex-abuse investigation/prosecution.

20. The full factual development of the claim raised in the Petition requires Petitioner to discover what methods the therapists used to elicit accusations against Petitioner or "refresh" the recollection of complainants. Petitioner has already uncovered

videotaped evidence that at least one complainant, Gregory Doe, did not recall any abuse until he was hypnotized by a therapist. See Petition at p. 41. This information was never disclosed to the defense; Gregory Doe's testimony served as the basis of thirty-five separate sodomy counts against Petitioner.

21. As Petitioner seeks to obviate the need to depose any complainants or their parents about the methods used in the individual and group therapy sessions, the deposition of the therapists is essential to the full factual development of this claim.

Depositions Upon Written Questions

22. Petitioner seeks leave, pursuant to Fed. R. Civ. P. 31, to submit a limited number of deposition upon written questions (hereinafter, "interrogatories") to each of the therapists, identified above, in order to narrow the scope of depositions.

23. The interrogatories will be limited to ten (10) questions and shall include the following:

- a. Please identify all presentations, conferences, publications, unpublished articles, media appearances, panel discussions, lectures, and similar public writings or appearances in which you have discussed the use of hypnosis, visualization, relaxation, and substantially similar therapeutic methods etc. in the treatment or diagnosis of victims of amnesia, trauma, physical or sexual abuse, post traumatic stress, complex post traumatic stress, identity disorders, personality disorders, or substantially similar mental health conditions.
- b. Please identify all public appearances, panel discussions, academic conferences, news conferences, media interviews, community

meetings, school group meetings, or similar events you have participated in that discussed, dealt with, analyzed, relied upon, or otherwise related to the Friedman investigation/prosecution, regardless of whether the Friedman investigation/prosecution was explicitly cited.

- c. Please identify any training you have received in hypnosis, visualization, eye-movement desensitization, or relaxation for use in individual or group therapy.
- d. Please identify any persons who were present at the *Child Pornography and Extrafamilial Child Sex Abuse* session of the “Health Science Response to Child Maltreatment” Conference, held on January 17-20, 1990, sponsored by Children’s Hospital and Health Center, The Center for Child Protection, in San Diego, California.
- e. Please identify the dates of each individual or group therapy session with each complainant in the Friedman case up to, and including December 20, 1988. Please notate whether the session was an individual or group therapy session and identify the participants. Petitioner consents to the use of complainants’ assigned “Doe” names for the response to this request.
- f. Please identify all individuals in the Nassau County Police Department who referred suspected victims of child sex abuse to you, up to and including December 20, 1988.

ADDITIONAL SUBPOENA REQUESTS

Therapists' Media Interviews

24. Petitioner seeks leave to subpoena from News 12 Long Island any film/video footage of interviews with the therapists, identified above, about the Friedman case or related to the treatment of victims of child abuse victims. See Coleman v. Zant, 708 F.2d 541, 547 (11th Cir. 1983)(production of documents by newspaper and media organizations).

25. Upon information and belief, Sandra Kaplan gave at least one interview to News 12 Long Island related to the therapy techniques utilized on the Friedman complainants.

26. Petitioner submits that the prior statements of the therapists—made at or around the time of the investigation and prosecution of Jesse Friedman—describing the therapeutic methods they were utilizing on the children is perhaps the most reliable indication of what actually happened in these “therapy” sessions.

Dr. David Finkelhor – University of New Hampshire

27. Upon information and belief, Dr. David Finkelhor organized and presided over the *Child Pornography and Extrafamilial Child Sex Abuse* session of the “Health Science Response to Child Maltreatment” Conference, held on January 17-20, 1990, sponsored by Children’s Hospital and Health Center, The Center for Child Protection, in San Diego, California.

28. Dr. David Finkelhor selected the papers and presenters for the 1990 “Health Science Response to Child Maltreatment” conference. Upon information and belief, Dr. Finkelhor has maintained notes, recordings, transcripts, videotape, audiotape,

and/or full drafts of relevant papers. Petitioner seeks leave of the Court to subpoena the production of all such papers, notes, memoranda, recordings, speaking notes, and related materials produced during, or in preparation for, the session described in ¶ 24 from Dr. Finkelhor, pursuant to Fed. R. Civ. P. 45.

29. Petitioner incorporates by reference the facts alleged in Paragraphs 14 – 17 of this Affirmation.

30. As this Conference was held over 17 years ago, Petitioner is unable to locate witnesses, recordings, or additional documentation of what was said in this session.

31. The witnesses' prior statements about the use of hypnosis in the Friedman case around the time of the investigation and prosecution of the Friedmans may be the most reliable evidence of what actually occurred in these sessions. Upon information and belief, Dr. Finkelhor was in possession of such materials.

CONCLUSION

32. Petitioner views the discovery detailed above as essential to the development of the factual claims that will be the centerpiece of the hearing ordered by this Court. In order to avoid pursuing discovery from the child complainants, and their parents, Petitioner seeks leave of the Court to commence discovery focused on the therapists and the therapeutic methods they deployed.

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that this Court grant leave to commence the discovery described in this Affirmation.

Dated: New York, New York
August 1, 2007

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SO ORDERED:

Hon. Joanna Seybert, U.S.D.J.