UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JESSE FRIEDMAN,	)	
Petitioner,	)	Index No.
-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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PETITION FOR A WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY PURSUANT TO 28 U.S.C. § 2254

Petitioner JESSE FRIEDMAN, by his attorneys Kuby & Perez LLP, submits this Petition for a Writ of Habeas Corpus as follows:

1. The court that entered the judgment of conviction under attack is the County Court, Nassau County, 262 Old Country Road, Mineola, New York.

2. Petitioner entered a plea of guilty on December 20, 1988, and was sentenced to multiple terms aggregating six to eighteen years on January 24, 1989.

3. Petitioner pled guilty to seventeen counts of sodomy in the first degree, one count of use of a child in a sexual performance, four counts of sexual abuse in the first degree, one count

of attempted sexual abuse in the first degree, and two counts of endangering the welfare of a minor.

4. No appeal was filed.

5. Petitioner was released to parole supervision in New York County on December 7, 2001. He is currently in the custody of the New York State Division of Parole, reporting in New York County. His parole officer, responsible for day to day supervision, is Respondent Joe Rehal.

6. As set forth more fully below, *infra* at pp. 4 – 42, the factual predicates of the claim herein became known to Petitioner commencing in July, 2003, once he was granted access to the original source material obtained by filmmaker Andrew Jarecki. Said materials were unavailable to petitioner prior to that time.

7. On or about January 7, 2004, Petitioner filed a motion to vacate his judgment of conviction on the same grounds alleged herein, *viz*., that despite a court order directing the prosecution to provide all Brady material, the prosecution withheld two broad categories of exculpatory evidence: (1) eyewitness statements exculpating Jesse Friedman of the crimes charged (and, in fact, stating that the crimes never took place), and (2) evidence that investigators used high-pressure, manipulative, and result-oriented interrogation techniques with child witnesses that produced false allegations. Had Jesse Friedman been aware of this and other undisclosed evidence, he would not have pled guilty to crimes of child sexual abuse that he did not commit. Hence, Petitioner is in state custody in violation of his right to due process of law, as set forth in Brady v. Maryland, 373 U.S. 83 (1963), in violation of the Fourteenth Amendment to the Constitution of the United States.

8. By Order dated January 6, 2006, and entered on January 19, 2006, the County Court, by the Hon. Richard A. Lapera, J.C.C., denied the motion and all related claims for relief.

9. On February 16, 2006, Petitioner timely applied for a Certificate granting Leave to Appeal to the Appellate Division, Second Department.

10. By Order dated March 10, 2006, and served on April 10, 2006 with Notice of Entry, the Hon. Howard Miller denied the application.

11. On May 10, 2006, Petitioner applied to the New York Court of Appeals for a Certificate granting Leave to Appeal.

12. On May 24, 2006, the New York Court of Appeals dismissed the application.

13. Calculating the one-year limitations period from July 1, 2006 (when Petitioner began to gain access to the factual predicate for the within claim), 190 days elapsed from discovery of the factual basis to the time of filing for state post-conviction relief. Assuming that the tolling period ended on March 10, 2006,[1] petitioner is within the one-year limitations period.

14. Pursuant to 28 U.S.C. § 2254(d)(1), it is alleged that the state court decision was contrary to, and an unreasonable application of, clearly established federal law, as set forth by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Ruiz, 536 U.S. 622 (2002).

15. Pursuant to 28 U.S.C. § 2254(d)(2), the decision of the state court was based on an unreasonable determination of the facts, as the state court precluded full factual development by denying both an evidentiary hearing and compelling the Prosecution to produce certain relevant discovery.

16. The extensive background to, and description of, Petitioner's claim is as follows:

[1] The Court of Appeals dismissed Petitioner's application on the ground that it lacked jurisdiction to entertain an appeal in the absence of an appeal being granted below.

INTRODUCTION

On December 20, 1988, Jesse Friedman, then nineteen years old, stood before the Nassau County Court accused under three separate indictments charging him with 243 counts of sodomy, sexual abuse, and other crimes against children. It was alleged that his father, Arnold Friedman, a retired teacher who taught after-school computer classes to children in his home, as well as Jesse, who had assisted him in these classes, had sexually abused many students over a number of years. Jesse Friedman was condemned in the press and vilified by a community hungry for retribution based on inflammatory allegations of heinous offenses. If he went to trial and was convicted, Jesse faced the likelihood of consecutive sentences on all of the charges against him – the equivalent of life in prison – from a judge who had made clear her intention to impose such a sentence, before hearing a single piece of trial evidence.

The prosecution of Jesse Friedman came in the thick of an era characterized by many high-profile sex abuse prosecutions that shook the communities in which they arose and the country as a whole. A startling number of these so-called "mass sex abuse" cases – in which the prosecution produced little or no physical evidence – ended in dismissals, acquittals, or post-conviction exonerations of defendants because the prosecution relied on the same suggestive interrogation methods at issue here. But at the time of Jesse Friedman's conviction, these other high-profile cases had not yet unraveled and the atmosphere was still dominated by an imaginary epidemic of mass sexual abuse. By the time of the third indictment, the Prosecution was alleging that the Friedmans led a sex ring, in which numerous adults would violently abuse the children in the computer classes, leading them in bizarre sex games in which all of the children in a class were forced to participate, and continually taking photographs and recording videotapes of the abuse.

The only evidence ever relied on to support the claim that Jesse Friedman, who was between fifteen and eighteen years old at the time, was a violent child molester was the statements of the computer students whom the Prosecution claimed he molested. Not one of these children had ever alleged inappropriate conduct in the years during which hundreds were later said to have been molested in the Friedman home. There were no such allegations until after the police launched a sex abuse investigation and began questioning the children. Not one child had ever complained to a parent or teacher, or shown any physical or emotional sign of abuse, despite the fact that parents arrived promptly to pick their children up after each ninety-minute computer class.

There was absolutely no physical evidence of abuse, which police claimed had taken place on a grand and brutal scale, and had been documented extensively in photographs and on videotape, and no such evidence would ever be produced. Finally, the accusations from the children were obtained by police officers who used a panoply of suggestive techniques in conducting their interviews. But since the Prosecution did not, as constitutionally required, disclose any of the evidence in their possession that was favorable to the defense, Jesse Friedman was ignorant of these facts when it came time for him to decide whether to put the Prosecution to their proof at trial.

Confronted by these circumstances, Jesse Friedman decided to plead guilty to crimes he did not commit in exchange for a sentence of six to eighteen years. Affidavit of Jesse Friedman ("Friedman Aff.") ¶ 35. He was incarcerated for thirteen years, and released on parole on December 7, 2001, classified as a "Level 3 Sexually Violent Predator" by the same judge who originally sentenced him.

Toward the end of Jesse's prison term, a documentary filmmaker, Andrew Jarecki, began to discover a large volume of information, never disclosed to the Defense by the Prosecution,

regarding the tactics used by police investigators to obtain accusations of abuse from the fourteen complainants against Jesse Friedman. This new evidence revealed undisclosed statements of child eyewitnesses to police interrogators exculpating Jesse Friedman of any wrongdoing whatsoever. The undisclosed evidence also showed that the investigative method employed by the detectives was a compendium of suggestive and manipulative interview techniques that the police knew, or should have known, would elicit false accusations from children. Jesse Friedman learned about the existence of some of the evidence unearthed by Jarecki when he viewed a rough cut version of the film, "Capturing the Friedmans," in January 2003, and was permitted to view the underlying documents and footage commencing in July 2003. That evidence forms the basis of this Petition.

In the absence of any physical or medical evidence, or prior reports of abuse, the Prosecution relied entirely on allegations made by the computer students after extensive questioning by the police and after the children had entered therapy intended to help deal with the claimed abuse. However, when first questioned by the police, the students stated they had not been abused. They had no recollection of having been abused until after they had been subjected to up to five types of suggestive questioning by the police. Therapists used hypnosis or other so-called "visualization techniques" on at least one child whose complaint was central to the Prosecution's case, eliciting an accusation from a child who, prior to being hypnotized had no memory of sexual abuse. All of these methods have been recognized, in case law and scientific literature, to distort memory and encourage false accusations. The cumulative effect of these tactics fundamentally compromised the competence of all of the child complainants' testimony. That the child complainants (a) at first uniformly denied being abused, and (b) were later subjected to these interrogation methods known to elicit false accusations from children, are two facts that

would clearly have been favorable, and in fact crucial, to the defense, therefore requiring disclosure under Brady.

STATEMENT OF FACTS

1. The Federal Child Pornography Investigation

The events that led to the filing of child sexual abuse charges against Jesse Friedman were sparked by the investigation of his father Arnold – a retired school teacher who also taught after-school computer classes in the family's home – for mailing a child pornography magazine to an undercover postal inspector. In July 1984, customs agents at Kennedy Airport intercepted a package from the Netherlands containing a piece of child pornography and addressed to Arnold Friedman. Affidavit of United States Postal Inspector John McDermott in Support of Search Warrant, dated November 3, 1987 ("McDermott Aff."), Exh. 4 (App. 120).[2] They informed Postal Inspector John McDermott.

For the next two years, another postal inspector, posing as a collector of child pornography, wrote letters to Arnold Friedman requesting that Mr. Friedman send him a piece of child pornography, which Mr. Friedman eventually did. McDermott Aff. (App. 121-22). Approximately a year after the mailing of this magazine, on November 3, 1987, Inspector McDermott, posing as a postman, returned the magazine to Mr. Friedman. At that time, McDermott and other agents executed a search of Mr. Friedman's home and found – behind a piano in Mr. Friedman's office – approximately twenty magazines containing "nude photos of pre-adolescent and teenage males," as well as "various pamphlets, booklets and brochures depicting boys in nude and sexual poses." Transcript of Interview with Detective Sergeant Fran Galasso

[2] Numbers preceded by "App." indicate the page number in the Appendix of Exhibits, submitted with the instant Petition.

("Galasso"), Exh. 5 (App. 131); Transcript of the film, "Capturing the Friedmans,"[3] ("CTF"), Exh. 6 (App. 244-48) (McDermott); Affidavit of Detective William Hatch in Support of Search Warrant, dated November 24, 1987 ("Hatch Aff."), Exh. 7 (App. 371). In addition, the agents found "evidence of a computer class being taught there by Mr. Friedman." CTF (App. 248) (McDermott). They seized "some list of names that we thought could be students." Id. The list turned out to be a list of names and phone numbers of eighty-one of the children who had been students in the computer classes over the prior several years. Galasso (App. 130-32). See Inventory of November 3, 1987 Search, Exh. 7 (App. 377-82).[4]

While the Prosecution would later allege that the Friedmans created hundreds of photographs and videotapes in which they could be seen molesting the children, no such material was found during the federal search or at any other time. Affidavit of Andrew Jarecki ("Jarecki Aff.") ¶ 10 (Onorato) ("In the best case scenario you would like to find videotapes of Mr. Friedman actually sexually abusing the children or at the very least some photographs of some of the children in some sort of compromising sexual positions. We didn't find any of that."); Galasso (App. 188) ("virtually every single one [of the children…] told us they were videotaped"); Alvin E. Bessent, *Dragnet Is Out For Porn Photos In Child-Sex Case,* NEWSDAY, February 8, 1989 (Galasso said, "Just about every class was videotaped. It had to be dozens [of tapes]."), Exh. 9 (App. 384).

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[3] In instances when the complete transcript of an individual's interview for the film was not available to the Petitioner, citations to the statements are made to the transcript of the film itself, Exhibit 6 to this motion. The name of the speaker is indicated in parentheses. Where the statement appears in footage not included in the film, it is set forth in the Affidavit of Andrew Jarecki and the citation is to that affidavit. A videotape of the film, as well as the videotape of some of the additional footage, referred to in this brief, are provided for the court's convenience.

[4] The record is unclear as to whether and to what extent this list of computer students to be questioned by the police was expanded. One detective, Anthony Sgueglia, said that the police list of possible victims eventually grew to 400. Transcript of Interview with Detective Anthony Sgueglia, Exh. 11 (App. 412).

2. The State Child Sexual Abuse Investigation

On November 4, 1987, the District Attorney's Detective Squad notified Nassau County Detective William Hatch of the search of the Friedman house the previous day. Hatch Aff. (App. 371). That afternoon Hatch informed Detective Sergeant Fran Galasso, head of the Nassau County Police Department's sex crimes unit, of the search and gave her a copy of the student list that had been found**.** Hatch Aff. (App. 372); Galasso (App. 130). Galasso immediately started an investigation into possible child abuse. Hatch Aff. (App. 372); Galasso (App. 132). Beginning on November 4, and running into the fall of 1988, Galasso sent out a number of two-detective teams to interview the children who, according to the list, had attended Arnold Friedman's computer classes. Galasso (App. 130-32); Friedman Aff. ¶ 10.

a. The Computer Classes

Arnold Friedman had conducted these classes since 1982, when he began teaching computer skills to a few Great Neck boys and girls at his home at 17 Piccadilly Road. Friedman Aff. ¶ 4. There were three levels of classes offered (beginner, intermediate, and advanced) at three different times during the school year (starting in September, January, and April). Generally, children in the same class advanced together to the next level. Enrollment in the classes steadily increased over time, and by the time of the investigation Arnold Friedman had taught computer skills to hundreds of boys and girls. He also gave classes for adults that were equally well-attended. Friedman Aff. ¶ 6.

Arnold and Elaine Friedman had three sons – David, the eldest, Seth, the middle child, and Jesse, the youngest. In 1984, Arnold requested that Jesse Friedman begin assisting him in teaching the classes. Friedman Aff. ¶ 4. His responsibilities included preparing the room for the computer class, helping to supervise the children, and assisting his father with the computer instruction.

Friedman Aff. ¶ 5. Jesse continued to assist in teaching the classes until June 1987, when he was replaced by another high school student so he could begin college at the State University of New York at Purchase in September 1987. Friedman Aff. ¶ 8.

b. Absence Of Complaint And Of Physical Or Medical Evidence

At the time of the federal search – November 3, 1987 – not a single one of the hundreds of computer students who had attended class at the Friedman house over six years had ever complained of any inappropriate treatment. Parents regularly picked their children up right after class and never noted any negative reaction from any child. One parent, Margalith Georgalis, regularly entered the Friedman house before, during, and after classes, and never saw a hint of any abuse. Affidavit of Margalith Georgalis ("M. Georgalis Aff.") ¶ 4. No parent had ever reported any physical or psychological signs that might be associated with their child having been abused. Indeed, Joseph Onorato, the assistant district attorney in charge of the case, does not recall there being any physical evidence to suggest that abuse had occurred. CTF (App. 273) (Onorato) ("[T]here was a dearth of physical evidence. I don't even recall whether there was any physical evidence that would have indicated one way or another that these events took place."). See also Richard Esposito, *Ex-Teacher Focus of Porno Probe*, NEWSDAY, November 13, 1987 ("Police sources said they have not received any complaints about Friedman."), Exh. 10 (App. 386-87).

Detectives, many of whom were transferred into or temporarily assigned to the sex crimes squad, see Transcript of Interview with Detective Anthony Sgueglia ("Sgueglia"), Exh. 11 (App. 390), and untrained in the proper methods for questioning children, fanned out across the town of Great Neck to interview alleged victims.[5] The teams included, among others, the team of

[5] In addition to common sense, there are specific protocols that should be followed when interviewing children about possible sexual abuse. See, e.g., Dr. Debra Poole, "A Model Child Abuse Protocol - Coordinated Investigative Team Approach," which was developed for the Governor's Task Force on

Detectives William Hatch and Wallene Jones and the team of Detectives Anthony Sgueglia and Patty Brimlow.[6] Affidavit of David Kuhn ("Kuhn Aff.") ¶ 5; Sgueglia (App. 393). Detective Sergeant Galasso hoped to gather enough evidence to justify a second search, by state law enforcement. Galasso (App. 139).

That search occurred on November 25, 1987. Inventory of Property Seized in November 25, 1987 Search, Exh. 12 (App. 476–83). Detectives seized all computers and computer-related equipment, all family photographs, home movies, cameras, a home movie projector, and nine "assorted papers with list of boys names and letters." Id. During this search, no child pornography of any kind was found, as substantiated by the detailed search warrant inventory made by the detectives reporting to Detective Sergeant Galasso. Id. Despite this, Detective Sergeant Galasso told filmmaker Jarecki in her interview that the most "overwhelming" thing she recalled from this search was the "enormous amount of child pornography. You would just have to walk into the living room, and it'd be piled around the piano," Galasso (App. 154-155). There were literally foot-high stacks of pornography…in, in plain view, all around the house." Galasso (App. 143).

Arnold and Jesse Friedman were arrested that night. The police then continued to interview computer students at least until shortly before Jesse's guilty plea on December 20, 1988. Friedman Aff. ¶ 10.

Children's Justice in Michigan (1993). The protocol outlines an interviewing protocol that police should follow when interviewing children alleged to have been sexually abused.

[6] Other detectives who worked the case included Alex Armstrong, Lloyd Doppman, Larry Merriwether, and Nancy Myers.

c. Jesse Friedman Was Unaware Of The Tactics Police Used To Manufacture Allegations Against Him And Unaware That Eyewitnesses Had Told Investigators That No Sexual Abuse Occurred

Jesse Friedman was initially unaware of the broad sweep of the investigation targeting him, which included questioning of scores of his father's former computer students. Friedman Aff. ¶ 11. More important, Jesse was unaware then, and for fourteen years after his arrest, of the aggressive tactics used by police to obtain sex abuse accusations from the eight to eleven year-old boys who had attended the classes, and of the critical facts that (a) the children who later became complainants had not recalled being abused until after being subjected to interrogation techniques the police knew, or should have known, would produce false accusations and (b) the children eyewitnesses who did not become complainants (the vast majority of the children the police interviewed) maintained that they had not been abused and that no abuse occurred, even after rigorous police questioning.

Clearly, the methods used by the police were effective at producing sexual abuse charges from children. Between December 1987 and November 1988, Jesse Friedman was charged with child sexual abuse in three separate indictments. In all, the indictments charged 447 counts of sodomy, sexual abuse, endangering the welfare of a child, and other crimes. Two hundred and forty-three of these charges were against Jesse Friedman.[7] The first two indictments named Jesse Friedman's father as his codefendant. In the third, Jesse Friedman's codefendant was another Great Neck teenager named Ross Goldstein.

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[7] The first indictment, handed down on December 7, 1987, charged Arnold Friedman and Jesse Friedman with fifty-four counts of child sexual abuse. Ten of these charges were against Jesse Friedman. The second indictment, dated February 1, 1988, charged Arnold and Jesse Friedman with ninety-one counts of child sexual abuse, with thirty-five of these charges pertaining to Jesse. The third indictment, issued on November 7, 1988, charged Jesse Friedman and another teenager name Ross Goldstein with 302 counts of child sexual abuse. Of those, 198 charges were against Jesse Friedman. The specific charges in the three indictments included sodomy, sexual abuse of a child, use of a child in a sexual performance, and endangering the welfare of a child. See Indictments 67104, 67430, and 69783, Exh. 1, 2, & 3 (App. 1-117).

d. Additional Suspects

Some time in the first half of 1988, the police came to believe that there was a so-called "sex ring" operating out of the Friedman house, and that many teenagers, besides Jesse Friedman, had also participated in the molestation that allegedly took place. See Bill Van Haintze and Alvin E. Bessent, *New Arrest in Child Sex Case*, NEWSDAY, June 23, 1988, Exh. 29 (App. 806) ("`These were additional friends of Jesse who were invited to the Friedman home to participate in these sexual performances,' Galasso said."). Jesse met Ross Goldstein in September 1986, when Goldstein enrolled in the Village School, the high school Jesse attended in Great Neck. Friedman Aff. ¶ 20. Goldstein was a year behind Jesse, who had been attending the Village School for two years before Goldstein's enrollment, and they were casual acquaintances. Id.; Affidavit of Judd Maltin ("Maltin Aff.") ¶ 7. On June 22, 1988, Goldstein was arrested pursuant to a felony complaint alleging eighteen acts of child sexual abuse. Friedman Aff. ¶ 20. The next day, Jesse Friedman was arrested on allegations of thirty-seven acts of child sexual abuse. Friedman Aff. ¶ 21.

In June 1988, Detective Sergeant Galasso told *Newsday* that the new arrests were the result of revelations from "previously identified victims during sessions with their therapists." Haintze and Bessent, supra (App. 806). Detectives continued contacting families, and after "numerous sessions with children brought out information that has led to the latest arrests." Alvin E. Bessent, *Teen Faces 37 New Sex Charges*, NEWSDAY, June 24, 1988, Exh. 30 (App. 807). Galasso stated that, "[o]n further questioning, we began to hear that the friends [of Jesse Friedman] were involved." Id.

The assistant district attorney began negotiating with Ross Goldstein for the purpose of persuading him to cooperate and testify against Jesse Friedman. Friedman Aff. ¶ 23. During the

summer of 1988, as it appeared increasingly likely that Jesse Friedman would go to trial, the Prosecution was preparing its case based solely on the testimony of small children, without the benefit of any physical evidence or adult witnesses to the alleged crimes. By August 1988, when it appeared most likely that Jesse Friedman would proceed to trial, the district attorney's office made Ross Goldstein an offer of six months in jail, five years probation, and treatment as a "youthful offender," in return for testifying against Jesse Friedman. After repeatedly denying the charges against him, and three months of plea discussions with prosecutors, Goldstein accepted this offer on September 8, 1988 and signed a sealed cooperation agreement. People v. Ross G., 163 A.D.2d 529, 531 (2d Dept. 1990). In fact, no evidence was ever put forward to corroborate the claim that Ross Goldstein had any role in the computer classes or had spent any significant amount of time at the Friedman house. See Maltin Aff. ¶ 7.

Around the end of October 1988, Ross Goldstein appeared before a Nassau County grand jury and testified that Jesse Friedman was involved in sexually abusing numerous children. See Ross G, 163 A.D.2d at 531. Goldstein further testified that he, as well as two other Great Neck teenagers, had participated in the conduct. See id. at 530-531. On March 22, 1989, Goldstein pled guilty to three counts of sodomy in the first degree and one count of use of a child in a sexual performance. Id. at 529. Despite the assistant district attorney's promise that Goldstein would be treated as a youthful offender and receive a six month jail term, on May 3, 1989, Judge Abbey Boklan sentenced him to four concurrent terms of imprisonment of two to six years. Id. On appeal, the Second Department reduced his sentence to the six months he had bargained for. Id. at 533. See Shirley E. Perlman, *Teen Told: Stay Away From Kids*, NEWSDAY, August 9, 1990, Exh. 13 (App. 484).

The two additional teenagers whom Ross Goldstein implicated, were pulled into the case in the fall of 1988. John Roe[8] and Wayne Roe – approximately eighteen at the time – were arrested and questioned by police. John Roe has described a high pressure interrogation in which he was browbeaten for "hours and hours" and prohibited from calling his parents or an attorney. Jarecki Aff. ¶ 11 (John Roe). The police suggested that the purported participants included "many more" adults in addition to the Friedmans, Goldstein, and the two other boys arrested. Galasso (App. 182) ("Many more, we believe were involved, but did not get arrested because they were not able to be identified . . . ."). Thus, detectives theorized the existence of a pedophiliac sex ring, with at least five adults at a time brutalizing an entire class of ten boys in a small room with barely enough room to accommodate the boys and their computers.[9] It was also alleged that girls were molested, though none became complainants. John Roe also described one evening on which he and Wayne Roe spotted Ross Goldstein, and caught up with him in their car to ask him why he lied and implicated them. Goldstein explicitly acknowledged that he had lied about them. John Roe explains:

> I was wondering how I was pulled into this situation. At one point, the detectives alluded to the fact that Ross Goldstein decided to implicate me. I can't quite imagine what was going through his mind except for intense pressure from the police to come up with anything that seemed like cooperation, however, he implicated two of his friends that he knew had nothing to do with this. He admitted that on another occasion. He was driving around in his car, alone, as he sometimes did. We noticed his car and decided to follow him and ask him whether or not he was aware that he lied flat out about us. And he had no answer as to why, but he did admit that he lied.

Jarecki Aff. ¶ 12 (John Roe).

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[8] In the indictment, the child complainants were referred to by "Doe" names. The two teenage suspects were referred to by their "Roe" names by the District Attorney's Office. In this petition, we use those pseudonyms, except in the one case in which a complainant has voluntarily revealed his identity by submitting an affidavit in support of the motion.

[9] See Blueprint of Lower Level of Friedman House, Exh. 14 (App. 485).

Once Goldstein agreed to testify against Jesse Friedman, the police and prosecution took no further action against John Roe, Wayne Roe, or any other of the claimed adult participants.

e. The Nature Of The Charges Against the Friedmans

The indictments depicted a pattern of rampant pedophilia in Arnold Friedman's classes that was astonishing in its magnitude and bizarre, sadistic, and violent in its particulars. They alleged hundreds of separate instances of abuse, including scores of instances of oral and anal sodomy. The children's statements to detectives, which formed the basis for the indictments, included accusations that Jesse Friedman, a young man with no history of violence, would slap children, pull their hair, and twist their arms. Galasso (App. 150).

It was also alleged that the children were induced to participate en masse in sex games such as "leap frog." Indictment 69783, count 192, 222, 223, 224, 240, 241, and 242, Exh. 3 (App. 88-101) (complainant William Doe). In this game, Arnold and Jesse would supposedly sodomize an entire class of naked boys by "leaping" from one boy to the next. See Transcript of Interview with Gregory Doe ("Gregory Doe"), Exh. 27 (App. 737) ("Arnold and Jesse would leap one person to another sticking their dick each in their ass."[10]); CTF (App. 268) (Sgueglia) ("There was a game…called 'leapfrog'…one guy jumping over another guy. But the fact is, it means everybody's butt's up in the air."). The bizarre nature of this allegation is reminiscent of other late-80's "sex-ring" cases, such as the McMartin case. In that notorious prosecution, which lasted six years and cost the State of California fifteen million dollars without obtaining a single conviction, children made outrageous allegations that turned out to be totally untrue. For example, one child in the McMartin case "testified in the preliminary hearing that he was taken to a

[10] The indictments did not include a "leapfrog" claim with Gregory Doe as the complainant. However, by the time of his interview for "Capturing the Friedmans," Gregory Doe "recalled" the game and described it in detail.

cemetery, where he was forced to help dig up a coffin and watch as the body was cut up with knives." Douglas J. Besharov, *Lessons from the McMartin Case*, THE CHRISTIAN SCIENCE MONITOR, February 9, 1990, Exh. 15 (App. 487).

The implausibility of the charges against the Friedmans is illustrated by the charges made by one boy who was the complainant in 104 counts of oral and anal sodomy in the first degree against Jesse Friedman and Ross Goldstein in the third indictment. Indictment 69783, counts 49–153, Exh. 3 (App. 56-80). These counts represent seventy-two separate alleged incidents of sodomy.[11] As Jesse Friedman has observed,

> There was one complainant, ten year old boy, says he came to [the] class in the spring of 1986, and during this ten week session, where he was only over my house for an hour and a half, once a week, he says that there were thirty-one instances of sexual contact. That's three times a week, every single week, for ten straight weeks. And then the course ends. In the fall, he re-enrolled for the advanced course and says that he was subjected to forty-one more instances of anal and oral sodomy in the next ten week session.

CTF (App. 332) (Jesse Friedman).

Notably, this complainant alleged only eight counts of sexual abuse, against Arnold Friedman, in the second indictment. Yet by the time of his grand jury testimony for the third indictment, he "recalled" conduct giving rise to more than one hundred additional counts of sodomy. This example is representative of the dramatic expansion of the charges from indictment to indictment as the police, trying to establish the existence of a sex ring, carried forward their aggressive and, as demonstrated below, unconstitutionally suggestive investigation they knew, or should have known, would elicit false accusations. The final indictment added three new complainants – and more than ***three hundred*** new charges.

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[11] Thirty-two of the seventy-two alleged incidents were charged under two different theories: sodomy by forcible compulsion (N.Y. Penal Law § 130.50 (1)) and sodomy with a person less than eleven years old (N.Y. Penal Law § 130.50 (3).

A further example of the implausible and haphazard nature of the charges, is the fact that sixty-eight of the 118 counts against Ross Goldstein were alleged to have taken place between March 1 and July 1, 1986 – before Goldstein first met Jesse Friedman in September 1986. See Indictment 69783, counts 1-4, 38-39, 41-42, 104-128, 196-200, 206, 221, 240-253, 279-291, and 298, Exh. 3, (App. 43-113); Friedman Aff. ¶ 20; Maltin Aff. ¶ 7.

f. The Prosecution's Theory Of Why The Computer Students Never Complained

The Prosecution's theory about why none of these boys, ranging in age from eight to eleven, complained to their parents about the routine brutality they allegedly suffered at the hands of the Friedmans was that they were viciously threatened that something horrible would happen if they told anyone about the abuse. See, e.g., Indictment 67104, count 48, Exh. 1 (App. 12-13) (charging that Arnold Friedman "did slam" the head of a child against wall and threatened the class that the same would happen to them if they revealed what they had witnessed in the classes). According to Galasso, these included threats to "kidnap your baby sister," "kill your parents," and send the alleged pornographic videotapes of the children "to Channel 12 News" in the event that "I get arrested." Galasso (App. 148). See also Transcript of Federal Sentencing of Arnold Friedman, March 28, 1988, Exh. 16 (App. 524) (Assistant U.S. Attorney tells district court that Arnold Friedman threatened that he would bang children's heads against the wall, kill their parents or other relatives, or set fire to their houses if they told anyone about the molestation).

No account of the conduct of the police can adequately convey the tenor of the investigation without taking notice of the willingness of police, both at the time and in retrospect, to misrepresent the facts of the case. For example, the press reported shortly after Jesse Friedman's conviction, based on conversations with police that child pornography was found

"interspersed on shelves along with legitimate classroom materials." Alvin E. Bessent, *The Secret Life of Arnold Friedman*, NEWSDAY, May 28, 1989, Exh. 26 (App. 632). See Jarecki Aff. ¶ 9.

This implied that the viewing of pornographic materials was somehow integrated into the computer classes, when in fact the magazines were all found behind the piano in Arnold Friedman's private office, not within reach of any of the computer students. Clearly, the inaccurate police version was a damning allegation, put forward by the police, who knew at the time that it was untrue, since they had themselves conducted the search. Years later, in an interview with filmmaker Jarecki, Galasso would tell the camera that, "the most overwhelming thing" she recalled from the search of the house was the "foot-high stacks" of child pornography found "all around the house," when in fact, she was present for the search and reviewed the inventory lists, which clearly show that pornography was found only in Arnold Friedman's private office. Galasso (App. 143, 154-55). Comments like these were used to stoke the hysteria surrounding the case.

Perhaps most troubling is the evidence that police constructed a bogus photograph at the "crime scene," combining several items that were innocuous in themselves into a tableau suggestive of perversion and abuse. This photograph included several cameras, a number of heterosexual soft pornography magazines, a number of computer floppy disks, and a hypodermic needle. As other photographs demonstrate, none of these items were found together during the actual search. Jarecki Aff. ¶ 15.

3. Discovery

In a demand for discovery, dated April 11, 1988, Jesse Friedman's attorney, Douglas H. Krieger,[12] asked the District Attorney's Office to provide both a bill of particulars and discovery with respect to Indictments 67104 and 67430. Demand for Discovery, April 11, 1988, ("Demand for Discovery"), Exh. 17 (App. 536-47). Specifically citing the prosecution's obligations under Brady v. Maryland, the defense made two demands of particular relevance here:

> 16. Any and all written or oral statements or utterances – formal or informal – made to the prosecution, its agents and representatives by any person whom the prosecution intends to call as a witness at trial, which statements are in any way contrary to the testimony or expected testimony of that person or any other person whom the prosecution intends to call as a witness at trial or which otherwise reflect upon the credibility, competency, bias or motive of any prosecution witness. Included in this request, for example, are the names of any individuals who were students of the defendant's during the time period of the charges in the indictment, who stated that they had not witnessed the alleged crimes.
>
> . . . .
>
> 34. In addition to the information and material requested above, any documents, books, papers, photographs, scientific tests or experiments, tangible objects, written or recorded statements of anyone, grand jury transcripts and oral statements of anyone, reports, memoranda, names and addresses of persons, or other evidence or information which either tends to exculpate the defendant or tends to be favorable or useful to the defense as to either guilt or punishment or tends to affect the weight or credibility of the evidence to be presented against the defendant or which will lead to evidence favorable to or exculpatory of the defendant which is within the possession, custody, or control of the prosecution the existence of which is known or by the exercise of due diligence may become known to the Government.

Demand for Discovery (App. 542, 545).

The letter concluded with an emphatic reminder that "each request and each paragraph of this letter is specifically sought under the rule of Brady v. Maryland, supra, and this Brady material must be made available to the accused as soon as it should be evident to the prosecution that

[12] Jesse Friedman had two different attorneys before Douglas Krieger, each of whom represented him at one court appearance. Krieger represented Jesse from December 4, 1987 until June 3, 1988, when he was replaced by Peter Panaro. Panaro continued to represent Jesse through his sentencing.

information or material in its possession falls within the ambit of the rule." Demand for Discovery (App. 546).

A week later the Prosecution responded to the demand to produce. In response to paragraph 16 of the defense's discovery request, the Prosecution stated:

> 16. The defendant is not entitled to any statements made by the People's witnesses until the proper time, namely after the jury is selected. See People v. Rosario. With reference to the names of students of the defendant, the defendant himself is in the best position to know their identity.

Letter from Assistant District Attorney Joseph Onorato, dated April 18, 1988, Exh. 18 (App. 550).

This response demonstrated that the prosecution had either willfully or inadvertently misconstrued the defense's request. Paragraph 16 of the defense's discovery request was not a narrow demand for Rosario material – statements of prosecution witnesses that, indeed, need not be turned over until immediately before cross-examination of a witness. See People v. Poole, 48 N.Y.2d 144 (1979). Paragraph 16 was essentially a Brady request. It asked for evidence of inconsistent statements, statements suggesting a lack of credibility, and statements reflecting witness bias. Significantly, it demanded "the names of any individuals who were students of the defendant's" – a group clearly not limited to prosecution witnesses – "who stated that they had not witnessed the alleged crimes." Demand for Discovery (App. 542).

The Prosecution responded to paragraph 34 of the demand for discovery by asserting that they possessed no Brady material at all:

> As to evidence tending to be exculpatory to the defendant such is not now known upon information and belief gained from the files of the District Attorney's Office to be in existence. Should such evidence become available, it will be furnished to the defendant pursuant to Brady v. Maryland.

Letter from Assistant District Attorney Joseph Onorato, dated April 18, 1988, Exh. 18 (App. 552).

The defense filed an omnibus motion on April 15, 1988. The motion included a request that the indictments be dismissed "for failure of the People to provide adequate discovery pursuant to [N.Y. Crim. Proc. Law] § 200.95 and § 240.40."[13] Omnibus Motion, April 15, 1988, ¶ 9, Exh. 19 (App. 555). The Prosecution did not produce any Brady material in response to this request. See People's Affirmation in Opposition to Defendant's Omnibus Motion, May 10, 1988, ¶ 9, Exh. 20 (App. 580). In a decision dated July 14, 1988, Judge Boklan denied defendant's motion to dismiss the first two indictments for failure of the Prosecution to provide adequate discovery. Decision on Omnibus Motion, July 14, 1988, Exh. 21 (App. 590).

A third indictment was issued on November 7, 1988. By that time, Peter Panaro had taken over as Jesse's lawyer. Immediately after arraignment on this indictment, both parties agreed that rather than commence motion practice again, a stipulation in lieu of motions and voluntary disclosure would suffice. This stipulation, dated November 17, 1988, and so ordered by Judge Boklan, directed the prosecution to "deliver to the defendant all evidence favorable to him under the authority of Brady v. Maryland." Affidavit of Peter Panaro ("Panaro Aff.") ¶ 7.

Some time before the third indictment was handed down, Panaro viewed a videotape of a police interview with one of the computer students, Gary Meyers, that had been recorded by Gary's mother. See Taped Interview of Gary Meyers ("Meyers Interview"), Exh. 28 (App. 804-805); Panaro Aff. ¶ 8. Gary Meyers' mother secretly taped the interview, in or about Summer 1988, because the detectives would not allow her to be present and she wanted to know what they were discussing with her son. Jarecki Aff. ¶ 6. Detectives Jones and Hatch conducted the interview. Later Gary Meyers' mother allowed Peter Panaro, Jesse Friedman's attorney, to view

[13] CPL § 240.40 requires that, upon a defendant's motion, a court "must order discovery as to any material not disclosed upon demand pursuant to § 240.20, if it finds that the prosecutor's refusal to disclose such material is not justified." CPL § 240.40(1)(a). CPL § 240.20(1)(h) provided the statutory basis for the defendant's Brady request here.

the tape in her presence, and transcribe it, although she would not provide Panaro with a copy of the tape. The picture on this Betamax tape was of very poor quality. Panaro Aff. ¶ 8.

As described in greater detail below, the recording of the interview with Gary Meyers showed that the detectives used manipulative, aggressive, and even humiliating interrogation methods designed to produce accusations. Immediately after viewing the Gary Meyers tape, Panaro informed District Attorney Joseph Onorato about the interview. Panaro made it clear to Onorato that any evidence that similar tactics were used in interviewing any of the complainants against Jesse Friedman would be evidence favorable to the defense that the defense had a right to be informed of. Panaro never received any Brady material indicating that such suggestive methods were used with any of the children interviewed by the police. Parano Aff. ¶ 18.

4. Jesse Friedman's Plea

In late 1988, Jesse Friedman confronted the horrible choice between pleading guilty in return for a sentence of six to eighteen years and going to trial.

If convicted at trial, it was a virtual certainty that Jesse Friedman would spend the rest of his life in prison. Judge Boklan, herself the former head of the Nassau County District Attorney's Sex Crimes Unit, had a reputation as a tough judge, especially when it came to sex crimes. Friedman Aff. ¶ 26. Friedman's attorney, Peter Panaro, had told him that he had been expressly informed by Judge Boklan that she intended to sentence Friedman consecutively on every count – even though she had not yet seen any of the defense's evidence. Friedman Aff. ¶ 26; Panaro Aff. ¶ 11. See also CTF (App. 270) (Boklan) ("There was never a doubt in my mind as to their guilt."). With 167 felony counts against Jesse Friedman, this was a penalty sure to far exceed his lifetime.

Without the benefit of the exculpatory evidence raised by this Petition, Jesse Friedman decided to plead guilty in return for a six to eighteen year sentence. Attorney Panaro demanded

that Friedman admit his guilt in order for Panaro to pursue a guilty plea. Panaro Aff. ¶ 12. In telling Panaro that he was guilty, Friedman offered an explanation for his conduct, telling his attorney that he himself had been a victim of sexual abuse by his father for many years and that his father had coerced him into participating in the sexual abuse of the computer students. Friedman Aff. ¶ 38.

Panaro told Jesse Friedman's story to Judge Boklan during plea negotiations. Panaro Aff. ¶ 14. Friedman presented it to the court again on December 20, 1988, when he pled guilty to sodomy in the first degree (seventeen counts), sexual abuse in the first degree (four counts), attempted sexual abuse in the first degree, use of a child in a sexual performance, and endangering the welfare of a child (two counts), in return for a sentence of six to eighteen years. Friedman Aff. ¶ 37.

Jesse Friedman told this story because he hoped that portraying himself as a victim, and not just a perpetrator, might benefit him in three ways. Friedman Aff. ¶ 38. First, he hoped that this explanation for his conduct would encourage Judge Boklan, who had to approve any plea deal with the prosecutor, to approve a lesser term of imprisonment. Friedman Aff. ¶ 38.

Second, Friedman was hopeful that portraying himself in this way would increase the chances of being granted parole after he completed his minimum sentence of six years. Friedman Aff. ¶ 38. He was aware that Judge Boklan had the power to make a recommendation regarding his parole and he hoped this more sympathetic account would avoid a recommendation against early parole. He also thought that this version of events could be considered a mitigating circumstance by the parole board itself. Friedman Aff. ¶ 38.

Third, Friedman was also aware of the horrendous and often violent treatment of child molesters in prison, having already experienced this when he was held in detention in Nassau

County, where he had been attacked a number of times, had urine thrown at him, and was subjected to death threats when fellow prisoners learned of the nature of the crimes of which he was being accused. Friedman Aff. ¶ 38. He hoped that portraying himself as a victim rather than a willing participant in the alleged crimes would reduce the chances that he would be targeted by other inmates and corrections officers. Friedman Aff. ¶ 42. Jesse would continue to present this version of events, in statements to the media, until several months after his conviction, when he entered the general prison population and was instructed by other inmates that this story would not help him to win early release.[14] Friedman Aff. ¶ 43.

In accordance with his plea agreement, Jesse was sentenced on January 24, 1989, to a term of imprisonment of six to eighteen years.

5. <u>The Discovery Of Exculpatory Evidence</u>

The uncovering of the exculpatory evidence that underlies this Petition was accidental. In fall 2000, a documentary filmmaker, Andrew Jarecki, had decided to make a film about children's birthday party entertainers in New York City. One possible subject of the film was David Friedman, Jesse Friedman's older brother, who had become one of the most popular of these performers. While doing background research, Jarecki became aware that David Friedman's father and brother had been the defendants in a notorious child sex abuse case in Long Island.

[14] Jesse repeated this story to Alvin Bessent, a reporter for Newsday (Alvin Bessent, *The Secret Life of Arnold Friedman*, NEWSDAY, May 28, 1989) and Geraldo Rivera, who devoted an entire program to the Friedman case, including a taped interview with Jesse in prison. At the time of the interview, Jesse had spent the first two months of his incarceration in solitary confinement. He still believed that adopting this story could enhance his chances of early parole and shelter him from violence. Geraldo Rivera told him that he would provide him with an opportunity to tell this story – which Jesse thought, rightly or wrongly, was the most sympathetic one available to him – to a large audience, and so Jesse appeared on the program. It was only after a few more weeks had passed, that, having lived in prison and talked to prisoners, he became convinced that this story would not improve his chances for early release, and ceased telling it and never did so again. Friedman Aff. ¶ 43.

Over time, as Jarecki became more interested in that story, his film evolved into an examination of the Friedman case.[15]

During a three-year investigation, Jarecki sought to interview as many of the children involved in the case as possible, including the alleged child victims. He was able to obtain verbal or filmed interviews with approximately twenty-five of the students, now in their mid to late twenties, who had attended the computer classes. These included approximately five who had become complainants in the indictments and about twenty non-complainants, many of whom had attended classes alongside those who had claimed to have been violently abused. Jarecki also spoke to many of the key law enforcement personnel and prosecutors connected to the case, as well as attorneys, relatives, and others. Jarecki Aff. ¶¶ 4, 9, 10, 11.

a. Police Used Five Categories Of Highly Suggestive, Result-Oriented Questioning Designed To Produce Accusations From The Children.

The statements of the detectives themselves reveal that after initially being unable to procure incriminating statements from the children, they utilized a high-pressure, manipulative, and result-oriented approach to their questioning that was not disclosed to the Defense in discovery. The interviews of children were usually conducted out of the presence of parents, Sgueglia (App. 394-95); Kuhn Aff. ¶ 7, with the interviewing detective taking notes, Sgueglia (App. 452-55, 458); Kuhn Aff. ¶ 6; Affidavit of Richard Tilker ("R. Tilker Aff.") ¶ 7; Affidavit of Brian Tilker ("B. Tilker Aff.") ¶¶ 7, 9. Questioning was characterized by a series of interview techniques that the police knew, or should have known, would elicit false accusations of sexual abuse from children. The suggestive methods used by police fall into the five categories of conduct described below, which are recognized as improperly suggestive in common sense, case

[15] Jesse Friedman gave two filmed interviews for "Capturing the Friedmans". He was not privy to information that was obtained from other sources. See Friedman Aff. ¶ 60.

law, and scientific literature. Certain aspects of police conduct may fall into more than one of these categories. Police employed all five types of improper conduct in this case. In most of the interviews, several of the techniques were used in combination.

i. Persistent Questioning In The Face of Denials Of Abuse And The Prosecution's Failure To Produce, As Brady Material, Witness Statements That The Abuse Did Not Take Place.

Wallene Jones and her partner, William Hatch, were key investigators on the Friedman case, and handled many of the interviews. Kuhn Aff. ¶ 5. In March 2001, Jones discussed the case with David Kuhn, a lawyer and legal advisor on "Capturing the Friedmans," who interviewed Jones for the film.[16] Jones told Kuhn that when the detectives were unable to procure incriminating statements from a student at first, they visited the child many times – in one case on fifteen separate occasions – until the child provided such statements. Kuhn Aff. ¶ 9, 10. In interview sessions that lasted as long as four hours, this particular boy repeatedly denied being the victim of abuse, on one occasion jumping up and down and shouting that nothing had happened. Kuhn Aff. ¶ 9, 12. But the detectives kept returning to the house because they "already knew" that the boy was a victim. Kuhn Aff. ¶ 9. On the fifteenth visit, the detectives spoke with the boy alone in his bedroom, explaining to his mother that they were going to stay "as long as it takes." Kuhn Aff. ¶ 10. The boy finally stated that he had been abused. Asked why it took fifteen interviews for the child to make the accusation, Jones told Kuhn that this boy had suffered tremendous trauma and had "kept it deep inside." Kuhn Aff. ¶ 11. "I drew it out again," she said. Id.

[16] Kuhn took contemporaneous notes. The quotations of Jones in his notes were taken down verbatim. Kuhn Aff. ¶ 4.

This sort of relentless questioning was not the exception, but the rule. Ron Georgalis was a student in the classes when he was nine and ten years old. On their initial visit to his home, detectives Hatch and Galasso questioned Ron and he told them that nothing inappropriate had happened to him. Affidavit of Ron Georgalis ("Ron Georgalis Aff.") ¶ 5. Still, Galasso returned for a second interview. When Galasso spoke to his parents in the kitchen, Ron eavesdropped on the conversation and heard Galasso tell his parents that he had been sodomized both anally and orally and that Arnold Friedman had referred to him as "his favorite." Ron Georgalis Aff. ¶ 5. See also Affidavit of Ralph Georgalis ("Ralph Georgalis Aff.") ¶ 3 ("Det. Galasso stated to my wife and me that [Arnold] Friedman had been interviewed in prison, and Galasso quoted him as saying, 'Ron was my favorite.'"). Ron Georgalis insisted then, and insists now, that he never witnessed or experienced any abuse whatsoever. Ron Georgalis Aff. ¶¶ 4, 5, 7.

Student complainant Brian Tilker told a similar story:

> I remember the police questioning me on two occasions. On each occasion, I told them I had never been abused by Arnold or Jesse Friedman or anyone else, and that I did not witness anything inappropriate in the computer classes at any time. I recall that this did not end their questioning and that I felt that they would be unsatisfied with any response other than my concurring with their view that sex abuse had taken place in the Friedman computer classes.

B. Tilker Aff. ¶ 4.

Similarly, James Forrest, another of the students, has stated that "the Nassau County Police visited our house, unannounced, and questioned me and my brother regarding the classes and regarding the Friedmans. We told them nothing inappropriate happened." Affidavit of James Forrest ("Forrest Aff.") ¶ 4.[17]

[17] Hal Bienstock, a student who was not interviewed by the police, also states that he never saw anything happening in the classes. Affidavit of Hal Bienstock ¶ 3 ("I never noticed anything inappropriate happening

Gregory Doe, the complainant who has acknowledged that he only made claims against the Friedmans after being subjected to hypnosis, see infra at 40-42, is yet another child who failed to implicate the Friedmans upon initial inquiry.

Perhaps the most unifying theme of the interviews, reflected in the statements of both the detectives and their subjects, is the detectives' practice of returning again and again to question the same children, in one case fifteen times. The police were virtually evangelical in their belief that the children they spoke to had been abused, and treated denials of abuse as anything but the truth. It was typical for police to go back four or five times to a home in which the child had denied that sexual abuse had taken place. Sgueglia (App. 399). See also Sgueglia (App. 413) (numerous children, who Sgueglia believed had been abused said "[n]othing ever happened. We did computers."). The children in the Friedman case were interviewed in their own homes by the detectives. As the Michigan Protocol on the correct methods for interviewing children clearly states, ideally, children should not be interviewed about allegations of sexual abuse in their own home.[18]

As one parent described, "[t]he police wouldn't take no for an answer." R. Tilker Aff. ¶ 6. Detective Sgueglia described the approach: "[Y]ou don't give them an option, really . . . w[]e know that there was a good chance that he touched you or Jesse touched you or somebody in that family touched you in a very inappropriate way." Sgueglia (App. 408).

The apparent premise underlying this unrelenting approach is that child sexual abuse victims tend to deny the abuse at first but will divulge the truth after repeated questioning. This

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in any of the classes."). See also CTF (App. 267-268) (Former computer student # 2) ("I think as someone who took the classes it was just hard to picture even that going on because I did have a good experience. And I didn't . . . see anything . . . remotely like . . . child molestation or child abuse or any, child-anything going on."); See also NoleDreamer24 e-mail, Exh. 39, (App. 900).

18 Dr. Debra Poole, *State of Michigan Governor's Task Force on Children's Justice and Family Independence Agency Protocol*, GOVERNOR'S TASK FORCE ON CHILDREN'S JUSTICE, 12 (1993).

theory, known as the "child sexual abuse accommodation syndrome" (CSAAS), is thoroughly discredited as a basis for a criminal investigation, and was the foundation for many strikingly similar child sexual abuse cases of the 1980's and 1990's.[19] Roland Summit, the leading proponent of the theory, argued, counter-intuitively, that "if there is evidence of sex abuse and a child denies it, this is only further proof that it happened and a therapist should use any means to help the child talk."[20] Dr. Maggie Bruck explains that the CSAAS theory operates on the premise that "abused children must be relentlessly pursued or they will never disclose their abuse; one should not readily accept children's denials or recantations because these responses are typical among sexually abused children."[21] Further, Bruck observes, "sometimes interviewers assure themselves of the safety of actively pursuing children until they assent to abuse by stating that children cannot be influenced to 'lie' about sexual abuse."[22]

Numerous studies challenge and undermine the Summit theory that children are initially silent about abuse, next deny abuse, and finally, after repeated questioning, will disclose the incidents of abuse. For example, a study by Bradley and Wood found that among 234 validated

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[19] In the "Little Rascals" case, in Edenton, North Carolina, a multiple-victim, multiple-offender child sex abuse case that started in 1988, many of the children were repeatedly interviewed until they alleged sexual abuse ("All that is known for sure is that although the children initially denied the abuse, they eventually admitted to it--usually after many months and intervening interviews"). See Stephen J. Ceci and Maggie Bruck, Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony (American Psychological Association 1995).

In the Bobby Fijnje case (jury trial, no published opinion) (in Miami, Florida, in 1991, 14-year old Bobby Fijnje was acquitted at trial in a multiple victim sex abuse where evidence showed that suggestive questioning was used to elicit false accusations of sexual abuse. In a letter to State Attorney Janet Reno, on May 9, 1991, immediately following the acquittal, the jurors in the case wrote that their decision was partially based upon, "The clearly leading and suggestive questioning on the part of both child psychologists while interviewing the two children involved."). Letter from "The Jurors, State of Florida v. Bobby Fijnje" to Janet Reno, State Attorney (May 9, 1991)(available at http://www.pbs.org/wgbh/pages/frontline/shows/terror/cases/fijnjeletter.html)

[20] Debbie Nathan, *The Ritual Sex Abuse Hoax*, THE VILLAGE VOICE, January 12, 1990, Exh. 35, (App. 835).

[21] Affidavit of Dr. Maggie Bruck, Fuster-Escalona v. Singletary, Case No. 97-1369 (S.D.Fla 1997) ¶ 23 *available at* http://www.oranous.com/innocence/FrankFuster/MaggieBruck.htm.

[22] Id.

cases of child sexual abuse, only 5% of the children denied the abuse when first questioned about it.[23] Other important studies have found that when children are asked over and over about events that did not take place, children will increasingly claim that that the events in fact took place (even when interviewed by a different interviewer); that is, during a third or fourth interview a child is more likely to say that a false event happened than during a first or second interview. This evidence confirms common sense and contradicts the detectives' unfounded premise that children need to be interviewed multiple times in order for the truth to emerge. Rather, the first interview with a child is the most accurate, and subsequent interviews are more likely to result in the false reporting of events. [24]

The American Psychiatric Association has also advised against the use of repeated questioning as a method of eliciting memories of sexual abuse, and its STATEMENT ON MEMORIES OF SEXUAL ABUSE notes that,

> Memories can be significantly influenced by questioning, especially in young children. Memories can also be significantly influenced by a trusted person…who suggests abuse as an explanation for symptoms/problems, despite initial lack of memory of such abuse. It has also been shown that repeated questioning may lead individuals to report 'memories' of events that never occurred.[25]

The belief that instances of trauma, including sexual abuse, are forgotten and repressed is controversial at best. Dr. Elizabeth Loftus, a noted memory researcher, opposes absolutely the hypothesis that repeated instances of trauma can be repressed – "It flies in the face of everything

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[23] A. Bradley & J. Wood, *How do children tell? The disclosure process in child sexual abuse*, 20 CHILD ABUSE & NEGLECT, 881-91 (1996).

[24] See M. Bruck, S. J. Ceci, E. Francoer & R.J. Barr, "*I hardly cried when I got my shot!": Influencing children's reports about a visit to their pediatrician*, 66 CHILD DEVELOPMENT 193-208 (1995)

[25] American Psychiatric Association Board of Trustees, The American Psychiatric Association Board Statement on memories of sexual abuse (1993), *available at* http://www.psych.org/edu/other_res/lib_archives/archives/199303.pdf.

we know about memory."[26] Nevertheless, detectives (Sgueglia, Galasso, and Jones) and therapists (such as Dr. Sandra Kaplan) involved in the Friedman case unreasonably presumed that robust repression of major, repeated traumatic incidents could occur literally hundreds of times in this case.[27]

This is in accord with the detectives' recollections of widespread denials when the children were first approached. See Sgueglia (App. 398, 406, 411, 413).

For example:

- On one occasion it required fifteen visits to get the desired result. Before the final visit, the detectives assured the boy's mother that they were going to stay "as long as it takes." They did. Asked about the incident thirteen years later, Detective Jones stated that the barrage of visits was necessary because the child had been traumatized and "kept it deep inside." Kuhn Aff. ¶¶ 9, 10, 11.

- Detective Sgueglia recalled conducting multiple interviews with a computer student, who would not say anything happened in the classes, "this one particular kid, we went to four or five times. He was very cool. Didn't say anything, nothing happened. Sit down on the floor, plays games. Totally ignore you-- That you were even there. After an hour or two you helped him with his toy, you did this, you did that. And then you were friendly…. You come back the next night, it's a whole new ball of wax. It's like the kid is no longer a stranger to you, sitting in a room and all of a sudden-- you find the kid is a little hyper. You feel like – you get that feeling he wants to talk to you and you better do it right before he doesn't wanna talk to you at all." Sgueglia (App. 424-25).

- James Forrest, one of the computer students states that "[t]he Nassau County Police visited our house, unannounced, and questioned me and my brother regarding the classes and regarding the Friedmans. We told them nothing inappropriate happened." Forrest Aff. ¶ 4.

- Another student, Ron Georgalis, has stated that he told detectives on their first visit that he had not been abused: "Nassau County Police Sex Crimes Unit visited our

[26] Leon Jaroff, *Lies of the Mind*, TIME MAGAZINE, November 29, 1993, at 56.
[27] Once memories are implanted by interviewers using suggestive tactics, they often become as real as actual memories, and thus individuals exposed to these techniques can believe that the suggested memories are real. This explains why at least one of the students who only recalled being sexually abused after entering therapy, Gregory Doe, continues to believe that he was actually molested. See Elizabeth Loftus, *Our changeable memories: legal and practical implications*, 4 NATURE, 231-233 (2003).

> home twice . . . . I told them that nothing happened to me." Still Georgalis received another visit. Ron Georgalis Aff. ¶ 5.

- Student complainant Brian Tilker also failed to implicate either of the Friedmans upon initial questioning. Eventually he told the detectives about an incident of abuse, but remembers "saying that not because it was true, but instead because I thought it would get them off my back." B. Tilker Aff. ¶ 8.

Quite apart from the scientific research, it is a matter of simple common sense that the statement of a witness who was regularly at the scene of the alleged crime, stating that no crime occurred, is evidence favorable to the defense and must be disclosed.

In her interview for "Capturing the Friedmans," Judge Boklan acknowledged this plainly true proposition:

> Brady material, I don't know if you're familiar with that. That's material that would be favorable to the defense. For example, [i]f there was a young child, hypothetically, who said oh no, none of this occurred . . . . That would have to be handed over immediately, immediately upon reaching the hands of the district attorney's office.

Jarecki Aff. ¶ 7. (Boklan).

Yet this has never been done.

ii. Presumption Of Guilt By Interviewers

The recently discovered evidence makes clear that it was part of the detectives' methodology to communicate to the children that the detectives already knew they had been victims of abuse, and not to accept denials. As Detective Sgueglia, who conducted many of the interviews, explained:

> Well, if you talk to a lot of children, you don't give them an option, really. You just – be pretty honest with them. You – you have to tell them pretty honestly that we know you went to Mr. Friedman's class, we know how many times you've been to the class. You know – we go through the whole routine. We know there was a good chance that he touched you or Jesse touched you or somebody in that family touched you in a very inappropriate way.

Sgueglia (App. 408). See also Sgueglia (App. 409) ("So you don't really give them too much of an edge to say, what we're here to find out about. We already know about it. We want to hear what you have to say about it."). If an interview subject inquired about what the detective knew about the alleged abuser, Detective Sgueglia would say, "'I know things. But I can't tell you what I know because you know things that I don't know.' And whether they understood that or not, they knew what I was talkin' about." Sgueglia (App. 460). In Sgueglia's words, the detectives "did whatever it took." Sgueglia (App. 407). As Detective Lloyd Doppman said, "We knew going in certain things had happened. We knew that." Jarecki Aff. ¶ 13 (Doppman).

For example, the police did nothing to hide their belief that the Friedmans were guilty when they came to speak to Gregory Doe, one of the child complainants. Gregory Doe has explained,

> Thursday night, about six o'clock knock, knock, knock, knock on the door. My parents came to the door. "It's the Nassau County Police Department. We need to talk to you. Can you please send your son downstairs – upstairs. We need to inform you that your son has been molested for the past year and Jesse and Arnold Friedman have been arrested."

Gregory Doe (App. 742-743). When the interview began, police asked Gregory Doe, "What the fuck happened? Tell me. You were molested. We know. Tell me. I need to make a report." Gregory Doe (App. 755). When Gregory Doe's mother told the police that such a thing could not have happened to her child, one of the detectives responded, "It's that attitude that probably caused your son to be molested in the first place." Gregory Doe (App. 746).

As part of their questioning routine, other detectives also expressed their certainty that there had been sexual abuse in the computer classes. Richard Tilker, the father of one of the student complainants, Brian Tilker, recalls the police arriving at his home unannounced and saying they, "knew 'something happened' to [your] son." R. Tilker Aff. ¶ 4. "They didn't say 'We

believe,' they said, 'We know,' and they insisted upon speaking to our son alone." Id. Mr. Tilker expressed his belief "that the detectives had already formed their opinion of what had happened in the computer classes and that they were just trying to get Brian to agree with their story. . . . [T]hey kept repeating that they know what happened and that he should tell." R. Tilker Aff. ¶ 5. Brian Tilker "remember[s] that they made specific suggestions to me about things that they believed happened in the computer classes . . . ." B. Tilker Aff. ¶ 5.

The suggestiveness of a police presumption of guilt is dramatically demonstrated in the interview of Gary Meyers. In the interview, the detectives went beyond presuming guilt, to actively vilifying the Friedmans. The detectives told Gary on at least seven separate occasions during the interview that Arnold Friedman had confessed to sodomizing children in the classes. See Meyers Interview (App. 804) ("He admitted he sodomized a lot of children"; "Why would Arnold Friedman admit to something that wasn't true?"; "Arnold Friedman in court said that he sodomized children.").

The tactic of actually telling potential witnesses that Arnold Friedman had already specifically admitted molesting them was clearly not limited to Gary Meyers. As Detective Hatch's references to admissions made "in court" make plain, these assurances of Arnold Friedman's guilt were based on the "closeout" statement he gave right after pleading guilty in the state case, in which he admitted abusing every non-complaining child whose name was raised by the police on pain of facing many additional felony charges. Friedman Aff. ¶ 17. "Presumption" is too weak a word to use to describe this virtual guarantee of guilt that detectives provided to the young boys they interviewed. This guarantee worked to manufacture false accusations from the children.

iii. Rewarding, Punishing Or Humiliating A Child To Obtain Desired Answers

When police encourage certain responses by linking them in the child's mind with rewards, or discourage other responses by linking them to punishments, children are far more likely to provide responses consistent with the interviewer's beliefs. These rewards and punishments can be subtle and can take many forms, such as praising, bribing, or befriending a child, on the one hand, or refusing to accept a child's answer, or denigrating a child who doesn't provide the desired responses, on the other. For example, after failing to elicit claims of abuse from one child, a detective in this case told the child's mother, in the child's presence, that he "was a wise guy, and I didn't like his answers." Meyers Interview (App. 805). This type of interview creates an emotional tone in which the motivation to please the interviewer may be elevated above the desire to provide accurate responses.

Mindful that "children always wanna please adults," Detective Sgueglia would "find out the child would either favor myself or my partner. And that's who would take the investigation." Sgueglia (App. 394-95). Often, the interviews would take place in the child's room, a "very friendly atmosphere," where detectives could "make friends with them," and gain the children's confidence. Sgueglia (App. 399, 404). Sgueglia described another situation in which multiple interviews, establishment of a "friendship" with the child, and other inducements were necessary to bring forth a charge of molestation:

> [Y]ou would find some children, this one particular kid, we went to four or five times. He was very cool. Didn't say anything, nothing happened. Sit down on the floor, play games. Totally ignore you – that you were even there. After an hour or two you helped him with his toy, you did this, you did that. And then you were friendly. And then – from that point, you'd say – you know, enough tonight, and why don't you think about it. And you know – we'll come back tomorrow. And you know we'll deputize you and you know – I like

> cops – do you like cops? I like – yeah, they, my mommy says they help us. That kind of stuff.

Sgueglia (App. 424-25). Similarly, Richard Tilker "heard from other parents the police would have pizza parties and give police badges to the children who cooperated." R. Tilker Aff. ¶ 8; see also B. Tilker Aff. ¶ 11.

The police resorted to the stick as readily as they did the carrot. The repetitive questioning by police could be so unpleasant that students would finally agree that abuse occurred in order to obtain psychological relief:

> After many sessions in which the police appeared unsatisfied by my negative responses, I became frustrated at the persistent questioning. As I stated in my interview with Mr. Jarecki for his film, I remember finally telling the police officers that I had seen Jesse chase a kid and hit him. I remember saying that not because it was true, but instead because I thought it would get them off my back. This statement was not accurate but at the time – being 8 years old – I felt that saying this would allow me to avoid the unpleasant experience of being questioned repeatedly by the police.

B. Tilker Aff. ¶ 8. This recollection is confirmed by the boy's father. R. Tilker Aff. ¶ 6 ("Brian finally told them that one time he saw Jesse chase after and hit a child, though he later told us that that was not true and that the only reason he had said that was to end the questioning.").

One child, responsible for sixty-seven counts, including twenty-nine counts of sodomy, clearly remembered the stress produced by police questioning:

> What I do remember is the detectives putting me under a lot of pressure to speak up, and at some point, I kind of broke down. I started crying. And when I started to tell them things, I was telling myself it was not true. I was telling myself, "Just say this to them to get them off your back."

CTF (App. 336) (Dennis Doe).

This use of negative reinforcement to prompt allegations of abuse is also evident in the taped interview of Gary Meyers. In that interview, Detective Hatch pressured Gary with the

intimation that denying abuse in the face of Arnold Friedman's confessions would be an indictment of the boy's intelligence: "You're reasonably intelligent. I wouldn't say you're a genius but you're reasonably intelligent." Meyers Interview (App. 804). Detective Hatch challenged the child's version of events, taunting him: "Oh, it happened to everyone else but not to you." Id. After declaring that Arnold Friedman "liked" young boys, he reiterated incredulously, "You were nine years old and nothing happened?" Id. The detective continued, "You'll find out as you get older that certain things are true, certain things are lies. You denying this doesn't mean it didn't happen." Id. (App. 804-05).

Moving beyond the tactic of refusing to credit the interviewee's answers, the detectives resorted to the even more shocking tactic of humiliation in communicating to Gary, approximately fourteen years old at the time of the interview, that his obstinacy might increase the chances of his becoming a homosexual or pedophile, and having profound psychological problems in the future. After Detective Jones informed Gary that "a lot of boys seem to have concerns about their own sexuality," Detective Hatch expanded on the theme:

> What about a homosexual act over a period of years? Formative years? Would you consider that having an affect on a person's sexuality? Do you think that determines if you are a homosexual? If a person was involved in a homosexual act during preadolescent years after they are forced out of it do you think they would like it?

Id. (App. 805). Hatch then explained that a person's failure to admit being the victim of a pedophile could lead to severe psychological distress in later life or even becoming a pedophile oneself.

> Most children who abuse children have been abused themselves. It's a monster created within you. This little monster inside you. This little voice and every now and then it rears its ugly head. Unless the victim knows enough about the problem to get himself straightened out. If suppressed, it's a twofold problem. One is anger and frustration. And the other is acting itself out. It's a no-win situation

> unless the person goes and gets help and admits that he was victimized. If something bad happens even though it's not the kid's fault the child blames himself and feels tremendous guilt. We find, with the help that they can see it's not their fault. And then they place the blame on the person who created the situation and then they are a lot better off.

Id. (App. 805).

iv. Peer Pressure – Reporting That Other Children Have Already Given The "Right Answer" By Implicating The Friedmans

In addition to the other suggestive techniques they used, the detectives also exploited the power of peer pressure by telling children they questioned that other children in their class had already implicated Jesse and Arnold Friedman. This coercive technique, which plays upon a child's reluctance to make statements inconsistent with those of his peers, took two forms. Detectives would tell children either that other children had claimed to have been abused or that other children had stated that they had witnessed the interviewee himself being abused.

Detectives told Gary Meyers that several of the other children had told them that he had been a victim of abuse. Detective Hatch advised Gary, "We've had kids who stated that they saw you and that you're involved, OK?" Meyers Interview (App. 804). "Don't deny it yet," Detective Jones immediately interjected. Id. Gary repeatedly denied that he had been abused or had witnessed the abuse of others, saying, "No he never touched me" and "I didn't see it. I didn't hear it." Id. But the detectives persisted, making it plain that they thought Gary was lying and that they were impatient with or offended by what they viewed as his evasions of the truth.

The same tactic was used in the Georgalis home. According to Ron Georgalis's father, "the clear intent of the detectives was to convince us that Ron had been abused and that several other children had already admitted that they, also, had been molested." Ralph Georgalis Aff. ¶ 4.

Detectives told Brian Tilker "repeatedly that other students in my class had already told them that they had been abused, and that they were certain in fact I had also been abused and I should tell them so." B. Tilker Aff. ¶ 5. One detective "recount[ed] for me certain statements that others had allegedly made." B. Tilker Aff. ¶ 6.

v. Manipulating Answers Through Exploiting The Interrogator's High Status

To a pre-adolescent child, a police officer conducting an official interview is an authority figure with high status. Inherent in this relationship is the natural tendency of the child to please this authority figure and to provide answers consistent with the beliefs expressed by the officer. While an interviewers' high status is an intrinsic feature of the interview, even where the interviewer strives to maintain neutrality, the suggestive potential of this power relationship is activated when an interviewer communicates his implicit agenda to a child or directly exploits the power of his office. Here, as described above, the interviewing detectives employed a host of manipulative tactics. The pure fact that the interviewer was a police detective was made even more compelling when the detective claimed to have information about the child and what supposedly had happened to them. At least one detective in this case went further, offering the child an opportunity to partake in this high status by becoming a "deputy" to the officer himself, asking the child, "we'll deputize you and you know . . . do you like cops?" Sgueglia (App. 425). Some children considered their interaction with the police "an adventure" and "appeared to get a lot of excitement out of the attention they were getting from the police." B. Tilker Aff. ¶ 11.

b. Hypnosis, Memory Recovery, And Visualization Techniques

In addition to shedding new light on the manner in which police produced claims of abuse from the children, the investigation performed during the making of "Capturing the Friedmans" also revealed that at least one of the complainants did not assert that he had been abused until after

he was subjected to hypnosis. As that complainant has acknowledged, "I just remember that I went through hypnosis, came out, and it was in my mind." Gregory Doe (App. 785). This child was the source for thirty-five separate sodomy counts against Jesse Friedman. But it is likely that this instance of hypnosis is not the only one that occurred in this case. Detective Sergeant Galasso acknowledged at the time that there were additional charges revealed "during sessions with…therapists." Bill Van Haintze and Alvin E. Bessent, *New Arrest in Child Sex Case,* NEWSDAY, June 23, 1988 (App. 806).

Dr. Sandra Kaplan – a therapist who worked closely with the police in this case – was an advocate of hypnosis and other so-called "visualization methods," particularly for alleged victims who had "amnesia" for their abuse. Dr. Kaplan worked with the detectives, and the alleged victims, involved in this case as early as December 1987, long before many of the charges were made, and almost a year before Jesse pled guilty. She attended meetings at Great Neck schools in December 1987, January 1988, and November 1988, together with Galasso and others involved in the case. See William S. Dobkin, *Great Neck Community Marshals its Resources to Deal With Child Abuse and Child-Sex Crime*, GREAT NECK RECORD, February 4, 1988, Exh. 31 (App. 808); Friedman Aff. ¶ 30; Temple Beth-El of Great Neck Panelists of Sexual Abuse of Children Program, November 16, 1988, Exh. 32 (App. 810).

After Jesse pled guilty, Kaplan and Galasso (along with others) presented a lecture entitled "Child Pornography and Extrafamilial Child Sexual Abuse,"[28] and discussed the methods used to treat children in the Friedman case. The presentation summary discusses the techniques used to

[28] This lecture was presented under the auspices of the Center for Child Protection of the Children's Hospital and Health Center, in San Diego, California, in January 1990. The full title of the conference was, "Health Science Response to Child Maltreatment, with the American Professional Society for the Abuse Annual Meeting and the California Professional Society on the Abuse of Children Annual Meeting in Cooperation with the Office of Victims of Crime, United States Department of Justice".

treat the Friedman computer students, even after Jesse's guilty plea, which included hypnosis. Exh. 34 (App. 813-25). The presentation describes the utilization of memory recovery techniques in detail:

> Of the 15 children seen in the two groups, six children had no memories of being victimized even though other group members witnessed their abuse. A technique that was useful in helping these children remembering was having all group members draw pictures of the room where they were victimized and speak about their memories of the classes using the pictures as a visual aid. With the help of this technique, two group members who had amnesia for the abuse, remembered most of the detail of their victimization. Two of the remaining four have had vague but not detailed memories and the remaining two continue to not remember their abuse. The group was also helpful in that those children who remembered, who initially had dissociated, were able to reassure those with amnesia that the process of remembering would not be painful (the children had been told by detectives who questioned them that when they remembered it would be traumatic).

Exh. 34 (App. 821). Thus, even after the conviction of both Friedmans, and all the statements allegedly volunteered by the students, six of the children in the classes could not independently recall the abuse.

17. **The Need For An Evidentiary Hearing And Request For A Discovery Conference:**

The state trial court denied Petitioner's motion, pursuant to § 440.10 of the New York Criminal Procedure Law, without holding an evidentiary hearing, without allowing the Petitioner to take discovery, and without examining the prosecution file in camera to ascertain the nature and extent to which additional Brady material, hitherto undiscovered by the Defense, reposes.

Throughout the course of this litigation in the state courts, the Prosecution has engaged in a particularized, often highly speculative attack on Friedman's evidentiary submissions, offering a potpourri of reasons as to why they should not be credited or why the evidence of misconduct with

respect to witness "x" should not be construed to prove similar misconduct with respect to witness "y" or "w". The Prosecution invited the state courts to resolve credibility determinations based upon argument or competing affidavits—and the state courts accepted such an invitation.

It is important to note what the Prosecution did not plead or prove, and what they will not plead or prove in response to this Petition. The Prosecution never claimed that they did not withhold Brady material. Nowhere did the Prosecution state, under oath, that no Brady material exists. The Prosecution refused to provide documents to the defense, and made no offer or suggestion that the Court should conduct an in camera review.

18. Therefore, it is respectfully requested that a discovery conference be scheduled with respect to this matter.

WHEREFORE, Petitioner Jesse Friedman prays that the Court grant him the relief to which he is entitled in this proceeding.

Dated: New York, New York
June 23, 2006

RONALD L. KUBY [RK- 1879]
DAVID PRESSMAN[29]
Kuby & Perez LLP
119 W. 23rd Street, Suite 900
New York, New York 10011
(212) 529-0223

For the Petitioner Jesse Friedman

[29] David Pressman was admitted in New York State in January 2005, but is not yet admitted to the United States District Court, Eastern District of New York.