

Steven Truscott: His Victory After 48 Years

By Fiorella Grossi

“It’s a dream come true,” said a gracious and grateful Steven Truscott on August 28, 2007, his first day in nearly 50 years that he was no longer living as a convicted murderer.



Steven Truscott the day of his exoneration in August 2007

“This is a day for all of us to celebrate something that has taken a long time and will really take a long time to sink in.” The dream certainly became real for the 62-year-old when he and his family were greeted with thunderous applause by friends and supporters, and media cameras and microphones, as they arrived at a Toronto press conference just moments after hearing the decision of the Ontario Court of Appeals.

A panel of five judges unanimously acquitted Steven of his 1959 conviction of raping and murdering his classmate, 12-year-old Lynne Harper. Fourteen-year-old Steven then became the youngest person in Canadian history sentenced to hang. His death sentence was later commuted to life in prison and he was paroled in 1969 after ten years imprisonment.

“Never in my wildest dreams did I expect this to come true,” Steven said. He thanked his “dream team,” of lawyers from the Toronto based Association in Defence of the Wrongly Convicted who worked on his case during the 10 years it took to clear his name – James Lockyer, Phil Campbell, Marlys Edwardh, Hersh Wolch and Jenny Friedland.

AIDWYC uncovered a mountain of evidence that ultimately convinced the court of appeal that Steven’s conviction was a “miscarriage of justice and must be quashed.” The evidence AIDWYC presented:

- Supported that the prosecution’s version of the timeline of events that lead to the murder – and pointed to Steven as the murderer – was false;
- Proved the prosecution’s time of death was “scientifically unsupportable”; and
- Cast serious doubt on the honesty of a key prosecution witness.

Steven also thanked his children Lesley, Ryan and Devon, for their unwavering believe in his innocence, and his wife Marlene, his “strongest supporter in the world ... I don’t know what I would’ve done without her.” True to his courageous and generous spirit, Steven identified that there were friends in the audience who have also gone through the ordeal of being wrongly convicted, and vowed to help exonerate them.

One battle is behind Steven, but another looms: the issue of compensation. How much should a man receive after being initially condemned to hang, spending 10 years behind bars for a crime he never committed, and who, along with his family, was forced to live for decades with the stigma of a murder conviction?



Steven Truscott in 1959 when he was convicted of murder as a 14-year-old

Ontario Attorney General Michael Bryant, who apologized to Steven after the decision was released, immediately appointed retired Judge Sydney Robins to advise the government on the compensation issue. In 2003 Thomas Sophonow received \$2.3 million for the wrongful murder conviction of a doughnut shop waitress in 1981. Since Steven’s life has been severely circumscribed by this tragic event, we should expect the government to honor a moral obligation by generously compensating him for the experience he and his family have had to endure.

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Jesse Friedman filed a federal habeas corpus petition on June 23, 2006 challenging his 1988 conviction of charges related to the alleged sexual assault of children by him and his father in the basement of the family’s Great Neck, New York home. (See accompanying review of *Capturing the Friedmans*, a documentary about the case that was nominated for the 2003 Academy Award for best documentary.)

Friedman’s petition was based on three grounds: (1) the prosecution failed to disclose eyewitnesses who denied that Petitioner committed any wrongdoing; (2) the police officers investigating the case used overtly suggestive and aggressive interrogation methods with the child witnesses; and, (3) the state failed to disclose that at least one child witness underwent hypnosis prior to alleging that Petitioner sexually abused him.

Friedman first learned of the information underlying his petition when in 2003 he saw interviews of possible witnesses in the documentary *Capturing the Friedmans*. The documentary about the investigation and prosecution of Jesse and his dad was produced by an independent filmmaker who had no direct association with the Friedmans.

Jesse Friedman’s Federal Habeas Dismissed As Untimely

By JD Staff

U.S. District Judge Joanna Seybert dismissed Friedman’s first and second claims as time-barred by the AEDPA, but she reserved judgment about the third claim. Oral arguments were held by Seybert on October 3, 2007, concerning the timeliness of Friedman’s claim that the state failed to disclose the use of hypnosis to enhance the memory of Friedman’s accusers.

Three months after the hearing Friedman’s third claim was dismissed by Seybert on January 4, 2008. The AEDPA imposes a one year statute of limitations for filing a federal habeas petition beginning on “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” (28 U.S.C. 2244(d)(1)(D)) Seybert’s dismissal was based on her analysis of when Friedman first “knew, or could have known through the exercise of due diligence, that the prosecution may have withheld information regard-

ing the use of hypnosis” on his accusers. Seybert ruled that calculating the one year time limit beginning from the date she considered most favorable to Friedman, his habeas petition was filed “eighteen days late.”

Consequently, Friedman’s habeas petition that challenged the underlying factual basis of his convictions has been dismissed in its entirety without having any of his claims considered on their merits.

In a March 2008 email Jesse wrote: “With what we’ve been able to uncover it is apparent that the children were subjected to dangerous therapeutic methods. It appears that nearly all complainants were subjected to therapeutic practices not limited to hypnosis, but also guided imagery, suggestive questioning, and treatment for suspected “disassociation disorder”, all of which are now known to induce false memories. This was the evidence we were hoping to present to the judge, had we been granted the opportunity. Had Judge Seybert granted our motion for discovery, we believe extensive evidence would have been uncovered to support our initial indication that hypnosis therapy was

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Capturing the Friedmans is a documentary about the impact on the Arnold Friedman family of allegations that father Arnold, a retired school teacher, and teenaged son Jesse, molested and sodomized male children in the mid-1980s in Great Neck, New York.

The documentary that was an Academy Award Nominee for the Best Documentary Feature in 2003, traces the Friedman family back to when Arnold and his wife were children. In so doing it peels off the mask of middle-class normalcy that concealed Arnold's disturbing past of being a molestation victim as a child, and that up to the time of his 1984 arrest he had a secret fetish for child pornography.

Satisfying his desire to see pictures of young boys was what led Arnold to purchase a kiddie porn magazine from the Netherlands that was inspected by U.S. Customs. During the subsequent search of the Friedman's home, Customs agents and police officers not only found many magazines that Arnold had kept hidden from his wife and three teenaged sons – but they also found records of computer classes that Arnold taught in his home with the sometimes help of his teenaged son Jesse.

Local police detectives tracked down children who took the computer classes, and after being severely browbeaten, and in some cases hypnotized, several of the boys agreed that Arnold and Jesse had sodomized them and engaged in bizarre sexual games with many boys at a time in the Friedman's home.

The documentary effectively portrays through news clips and interviews the hysteria that swept Great Neck in the wake of the arrest and charges against Arnold and Jesse.

Arnold and Jesse both adamantly professed their innocence. However, faced with the testimony of the children that the jurors would likely accept as believable because of his many kiddie porn magazines, Arnold pled guilty to try and prevent his son Jesse from

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used as a method to elicit false testimony from witnesses." He also emphasized that "Judge Seybert did not indicate that my appeal was without merit, groundless, unfounded, or factually unsupported. Her decisions focused strictly on a technical matter relating to the counting of days on a calendar."

Sources:

Jesse Friedman v. Joe Rehal, et al, 06-CV-3136(JS) (EDNY 1-4-2008), Memorandum and Order. Email received by *Justice:Denied* from Jesse Friedman, March 19, 2008.

Capturing the Friedmans

Documentary, Directed by Andrew Jarcecki, 107 minutes, Released to theaters in 2003. Available on DVD.

Review by Hans Sherrer

being convicted by association with him in their scheduled joint trial. Arnold was sentenced in 1988 to 10 to 30 years in prison.

A few days before Jesse's trial, he faced the reality that the witch hunt atmosphere in Great Neck (and around the country at that time regarding child sex charges) would prevent him from receiving a fair trial, and the judge had already let it be known that if convicted he would be sentenced to three consecutive life sentences. That meant 19-year-old Jesse would never be paroled and die in prison. So even though Jesse claimed he had never done anything sexual to any of the students and he never saw his father inappropriately touch a student, and no student ever told their parents – prior to being interrogated by the police – that anything had been done to them by Arnold or Jesse, he caved in to the pressure and pled guilty. Jesse was sentenced in 1989 to 6 to 18 years in prison.

Since Arnold's wife divorced him after his imprisonment and remarried, Jesse was the beneficiary of Arnold's \$250,000 life insurance policy that didn't have a suicide exclusion. So when Arnold committed suicide in 1995 with an overdose of medicine, Jesse had the \$250,000 to build his life after his release from prison, which occurred in 2001 after almost 13 years of imprisonment.

Capturing the Friedmans doesn't soft pedal Arnold's pedophilia, but he denied ever harming any of his computer students. His claim has some credibility because of his candid admission to two incidents with young children in another city years before the Great Neck allegations. Also supporting his claim are the filmmaker's interviews with students who said they agreed with the police interrogator's suggestions to implicate the Friedman's only to stop the officer's badgering. Arnold and Jesse's denials and the student's statements that nothing happened are consistent with the fact that no physical or medical evidence supported the children's fantastic tales of unusual and repeated sex orgies at the Friedman home, and that no child mentioned anything to

their parents who observed nothing that gave them any inkling that any sexual abuse occurred at the Friedman's home.

Capturing the Friedmans once again proves that truth is stranger than fiction, as it lays bare the complex dynamics of the Friedman family and the response of each family member to the criminal charges. Although the filmmakers don't take a position on Arnold or Jesse's guilt or innocence, they definitely gives the viewer reasons to conclude that they were the innocent victims of unsavory police detectives and prosecutors hellbent on making a case against them, and the public's lynch mob fever fueled by the media's sensationalized reporting.

With its blend of archival film clips of news stories and courtroom proceedings, the Friedman's home movies made before and after Arnold and Jesse's arrest and imprisonment, and interviews with the Friedmans and students who were allegedly molested, watching *Capturing the Friedmans* is a mesmerizing and surprisingly gripping viewing experience. It can be purchased at video stores or from Internet sellers.

Postscript

A postscript to the documentary is that in 2004 Jesse Friedman filed a motion for a new trial in New York State court. The motion was based on exculpatory evidence concealed by the prosecution prior to Arnold and Jesse's guilty pleas. The concealment of the evidence was discovered by the filmmakers during their three-year investigation of the Friedman's case and interviews they conducted for *Capturing the Friedmans*.

After Jesse's motion was denied by the New York State courts, he filed a federal writ of habeas corpus. In July 2007 two of Jesse's three claims were dismissed as untimely under the one year statute of limitations imposed by the Anti-Terrorism and Death

Penalty Act of 1996 (AEDPA). (See p. 16.) On January 4, 2008 Jesse's third claim — that the prosecution failed to disclose the use of hypnosis to enhance the memory of Friedman's accusers — was also dismissed on the basis of the judge's determination that Jesse's habeas petition was filed 18 days later than the one-year time limit imposed by the AEDPA. Jesse Friedman's website is at, <http://www.freejesse.net>

