

TESTIMONY OF LONNIE SOURY, CSW, MARTIN TANKLEFF DEFENSE TEAM,  
BEFORE ASSEMBLY STANDING COMMITTEE ON CODES AND COMMITTEE  
ON CORRECTION

Legislation Addressing Wrongful Convictions and the State DNA Database

Thursday, May 31, 2007

Hello, I am Lonnie Soury, part of a legal defense team from five law firms in New York and Washington, DC, who have been fighting for over ten years on behalf of Martin Tankleff, a man who has been imprisoned in New York State since he was a teenager and has served 17 years of a 50-to-life sentence for a murder he did not commit. I represent Marty Tankleff and his family, the sisters of his murdered mother Arlene, brother of his murdered father Seymour and the dozens of cousins and relatives who have been fighting for 17 years to free Marty.

Thank you to the members of these committees, Chairman Lentol and Chairman Aubrey, as well as Assembly members Gianaris, Hoyt and Gantt for the opportunity to speak with you today. You have been leaders in an effort to address a terrible wrong in our criminal justice system: the wrongful conviction of the innocent in New York State. I would also like to recognize the Innocence Project in New York, Barry Scheck and Peter Neufield, their staff, and innocence projects at universities across the country for shedding light on a serious problem in our criminal justice system, and one that can only really be addressed by this legislature and our elected officials.

Most would like to believe that our criminal justice system works, that but for a few cases the guilty are incarcerated and the innocent receive justice. The truth is not so clear. In far too many cases the tragic occurs and the innocent are indicted, tried and convicted based on any number of factors including obtaining coerced false confessions, shoddy evidence collection, poor eyewitness identification, overzealous prosecutors and politically connected local judges. This has led to thousands of cases of wrongful convictions in New York and other states throughout the country.

I would like to take a moment to speak about one of the most infamous and tragic cases of wrongful conviction, the true story of a false confession. Nearly 20 years ago, on the night of September 7, 1988, Martin Tankleff, who was to start his senior year in high school, found his father dying from horrendous wounds and his mother brutally murdered in her bedroom. A frightened and panicked Marty called 911 for help and within minutes an ambulance rushed his father Seymour to the emergency room. Marty himself was whisked away to the police station by Detective James McCready, a notorious homicide cop who had been cited by the New York State Investigations Commission for providing false evidence in another murder trial in Suffolk County, previous to Marty's case (see New York State Investigation Commission Report on Suffolk County attached). Unfortunately, Detective McCready remained on the Suffolk County homicide squad, and showed up at the Tankleff residence shortly after the murder even though it was his day off.

Seventeen-year-old Martin was then subjected to a series of lies; that his father awoke from his coma to identify him as his attacker, and that his hair was found clutched in his mother's dead fingers. After hours of intense and unrelentless interrogation from Det. McCready, Marty, who insisted that he had nothing to do with this terrible crime on his parents, begging to take a lie detector test because all this made no sense to the teenager, never given his Miranda rights and presented with what he believed was the truth, uttered the only rational explanation to the set of lies presented to him, "could it have been another Marty who did this"? Martin was then fed a few facts that Detective McCready believed were from the crime scene and proceeded to write Marty's false confession for him. Members of the committee, Martin Tankleff was never read his rights, his purported confession was written by Detective McCready, never signed by Marty, never shown to Marty and most telling, none of it matched the evidence at the crime scene, none of it. Nevertheless, Marty was convicted and sentenced to 50 years in prison on June 28, 1990, 17 years ago. To quote two of the dissenting New York State Appellate Court judges in the second department who heard his original appeal 15 years ago, "In view of the absence of any other evidence connecting the defendant to the murders, except for the confession that he disavowed at trial, the indictment should be dismissed," said Appellate court, second department, 1992 Judge Cornelius J. O'Brien and Judge Geraldine Eiber.

The evidence of Martin's innocence began with the false confession that matched nothing in the crime scene and today includes sworn testimony and affidavits from scores of witnesses, including the getaway driver the night of the murder who identified his criminal accomplices, a prison priest to whom he confessed, testimony from two Suffolk County businessmen that Detective McCready was friendly with and seen with one Jerry Steuerman. This was Marty's father's business partner, the man who owed him \$575,000, the last man in the Tankleff home after a late night poker game, the man who threatened Marty's family in the months before the murder, the man who faked his own suicide and disappeared a few weeks later, and the man Detective McCready did not consider a suspect. Finally, we have testimony from the 17-year-old son of one of the murderers who testified in hearings in Suffolk County last year that his father, Joseph Creeden, told him the horrendous and brutal details of the murder of Arlene and Seymour Tankleff. Joseph Guarascio's affidavit is attached for your review. We have solved the Tankleff murders. We have presented overwhelming new evidence as to who did it, how it was planned and carried out how the weapon was disposed, who contracted the murderers, on and on.

In a hearing before Suffolk County Judge Braslow last year, we presented more than enough evidence to indict the guilty and free Marty Tankleff, but to no avail. We presented witnesses after witness but to no avail. We were not shocked, but we were tragically saddened. We had been told by other Suffolk County judges, police officials, and many prominent people that Marty Tankleff could never get a fair hearing in Suffolk County before DA Thomas Spota and the local judges who are part of a system that has no interest in the truth and less interest in resurrecting the case of Martin Tankleff and the stain on the system. I have often said that Suffolk County New York is akin to Selma,

Alabama during the civil rights movement. The difference is Selma has changed. Suffolk has not.

Most people believe Marty is innocent. Thousands of people, from Long Island to Australia, have reached out asking how they can help. We have thousands of hand-written letters asking the governor and Attorney General for their help. Former federal Judge John Martin, former Appellate Judge John Carro, and NY State Supreme Court Justice Herbert Posner have come forward seeking justice for Marty. We have 31 prominent former prosecutors and US Attorneys asking the Appellate Court, Second Department who will soon be hearing Marty's appeal to vacate Marty's conviction and order a new trial. Marty has also received amici support from the National Association of Criminal Defense Lawyers, NYS Association of Criminal Defense Lawyers, the NY Defenders Association, the Innocence Project, the Center on Wrongful Convictions at Northwestern University, the Innocence Network, and the Centurion Ministries.

As has been reported recently, there have been hundreds of cases of exonerations throughout the country and, as you are surely aware, a significant number in New York. The advent of DNA evidence has helped to free some innocent men, many of whom have spent decades in prison. Much of the legislation you are recommending will certainly help provide more protection to the innocent and make it easier to prosecute the truly guilty. But we must remember that those who have been fortunate enough to have been freed by DNA, and those cases in the future where DNA will be used to protect the innocent, represent a small subset, the tip of the iceberg, the wrongfully convicted. Tragically, for every DNA exonerated person, there are hundreds, maybe thousands more who have presented credible evidence, in some cases overwhelming evidence, that they are innocent, yet they remain imprisoned. Have we set a bar that is too high for the majority of the innocent? Even with DNA evidence, prosecutors and judges are loath to grant new trials. Without DNA evidence, the wrongfully convicted have little chance of being set free. I hope that this legislation will help to change that equation for those incarcerated now and in the future.

Of the 23 or so exonerations in New York State, 11 have been based upon false confession. Two-thirds of murder convictions overturned by DNA evidence turned out to have been based on false confessions (Welsh S. White, Confessions in Capital Cases, 2003U.ill.L.Rev.979,984). Another study found that among a total of 340 exonerations of all kinds documented between 1989 and 2003, 15 percent involved false confessions (Samuel R. Gross et al., Exonerations in the United States 1989 through 2003, 95 J. L. & Criminology 523 (2005), and of course the research by the Innocence Project and Barry Scheck found false confession or admissions in 27 percent of all DNA exonerations studied. Just this past year in New York State Jeffrey Deskovic was freed after 15 years in prison based on DNA evidence, but convicted based upon a false confession, or Douglas Warney before him, another false confession conviction, and another DNA exoneration. And just the other day in New Jersey, Byron Halsey was freed after years in prison, once again based on DNA evidence, but convicted based upon a false confession.

There exists a tragic gap in the system where there is currently no mechanism to fix a mistake that can literally take an innocent person's life. Even, as in Marty Tankleff's case, everyone knows a terrible wrong has been committed, we have no way to correct it. To leave it to the judicial and prosecutorial entities to correct their own mistakes is what leads the wrongfully convicted to remain imprisoned for many, many years.

I respectfully ask the legislature to help answer the question Marty and his family asked me yesterday, and one countless other innocent men and women in New York State prisons want desperately to know. How will this legislation help us? The answer, in part, begins with making recordings of police interrogations mandatory. We must have avenues to review cases of the wrongfully convicted that are independent of the office of local district attorneys and the local judiciary, independent of local politics.

We need the establishment of an Innocence Commission with full power to investigate cases where there is credible evidence of a wrongful conviction, with a legal and investigative staff that has full subpoena power. We must have a commission to review cases where there is reason to believe a false confession may have been obtained, and to review all confessions from juveniles who it has been proven are susceptible to even the mildest form of coercion. To that end there could be no better inaugural case for such a Commission to investigate than Marty's case given its mixture of overwhelming evidence of innocence with conflicts of interest by both the investigating detective and the DA's Office. Finally, please note that as currently proposed, the Innocence Commission would only have the power to investigate cases after the fact -- after a wrongful conviction has been established -- to determine what went wrong. What we are advocating is for a Commission with the power to investigate cases where there is credible evidence of a wrongful conviction, but the wrongful conviction has not yet been established in court (where as this case demonstrates the bar is extraordinarily high and where the defense has no grand jury or subpoena power to develop evidence). Thus, we are calling for a far more robust Commission than the one the Legislature is presently contemplating

Finally, we need our elected officials to stand up and be heard. What you are doing is so important, not only to the wrongfully convicted, their family and friends, but to thousands of New Yorkers, from all walks of life, who want safe streets and safe cities, who want the guilty incarcerated but also want the innocent freed and our justice system to be honest. Please put in place laws that can help return Martin Tankleff to his family, put those guilty of these murders in prison, and let Seymour and Arlene rest in peace.