

COUNTY OF SUFFOLK  
OFFICE OF DISTRICT ATTORNEY  
**INSURANCE CRIMES BUREAU**

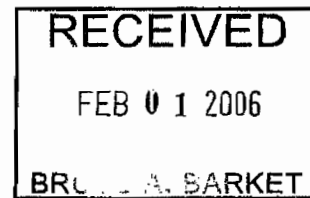


**THOMAS J. SPOTA**  
DISTRICT ATTORNEY

January 31, 2006

The Honorable Stephen L. Braslow  
Judge of the County Court  
Arthur M. Cromarty Court Complex  
210 Center Drive  
Riverhead, NY 11901

Re: People v. Tankleff  
Indictment Nos. 1290-88 & 1535-88



Dear Judge Braslow:

The People write in response to Tankleff attorney Bruce Barket's "Affirmation to supplement the motion currently pending before the court asking for a new trial for Martin [sic] Tankleff, sanctions for prosecutorial misconduct, for a special prosecutor and for a hearing on the allegations." Barket contends that District Attorney Special Investigator Walter Warkenthien has tampered with and intimidated Tankleff witness William Ram and that Warkenthien's conduct "represents a continued pattern of attempts to intimidate and harass witnesses." Barket also contends that the District Attorney's "tactics . . . have the potential, and are arguably intended, to . . . deter other witnesses from coming forward." (Barket Aff. of 1/25/06 ¶¶ 1-2, 5 & n.3). Barket's contentions are meritless.

**Facts**

Ram testified on October 26, 2004. On that date, Ram had prior felony convictions for forgery and for the sale of a controlled substance and had violated parole several times. Ram testified that, since being reparaoled in December 2003, he had been selling timeshares in Florida, that he worked on commission, that his employer was not paying him for lost work and that Tankleff's defense had

promised him reimbursement only for out-of-pocket expenses and for the money that he was losing by not being at work on the day of his testimony. (Hearing Tr. of 10/26/04, at 3-6, 20-21, 46-49). Ram's testimony was false, because Tankleff investigator Jay Salpeter had already given Ram \$2,500 for five days' "lost wages," including \$500 in cash the day before Ram testified. Salpeter would later give Ram an additional \$1,500, including \$500 in cash the day after Ram testified. (Hearing Tr. of 12/21/04, at 690-99, 702-05).

About six weeks after he testified, Ram went on a violent-crime spree, and on December 14, 2004, the Hillsborough County Sheriff in Tampa, Florida, arrested and charged him with nine violent felonies. See Hillsborough County's Sheriff's Office, <http://www.hsco.tampa.fl.us>. Warkenthien contacted the Sheriff's Office, and a Sheriff's Office employee told Warkenthien that, while Ram was on his rampage, Ram made a statement that the "DA's Office and the cops" in New York were out to get him and that it did not matter what he did. Warkenthien informed me that, over the next 13 months, he called the Sheriff's Office a few times and asked if the Office had located a record of the statement. According to Warkenthien, in early January 2006, the Office stated that it had not located a record of the statement but that, if a record did exist, it would be in the possession of the State Attorney's Office.

Warkenthien contacted the State Attorney's Office for Hillsborough County and spoke with an assistant State attorney. According to Warkenthien, the assistant State attorney said that he did not have a record of the statement. When Warkenthien asked the assistant State attorney for the status of Ram's criminal cases, the assistant State attorney said that Ram was looking to make "a deal," advised Warkenthien to contact Ram's attorney, Hubbel Losson, and provided Warkenthien with Losson's office telephone number.

Barket contends that he spoke with Losson "this past weekend" (which began on Saturday, January 21). (Barket Aff. of 1/25/06 ¶ 3). This is Barket's version of what Losson said:

According to Mr. Losson, Walkenthein [sic] called him and told him that they (the prosecution in the Tankleff case) "knew" that Ram lied to this Court and was "bribed." Walkenthein [sic] then stated if Ram were to "come clean," "admit" his perjury and implicate members of the Tankleff defense team in bribery allegations, he (Walkenthein) [sic] would bring Ram's

cooperation to the attention of the Florida authorities in order to help Ram reduce his sentence.

*Id.*

According to Warkenthien,<sup>1</sup> this is what really happened.

On January 12, 2006, Warkenthien placed a telephone call to Losson's office and spoke with Losson. Warkenthien said that he was calling at the suggestion of the assistant State attorney, informed Losson that there were allegations that some of the Tankleff witnesses may have been paid but did not know whether the allegations were true, and asked Losson to ask Ram if Ram "knew anything about it." According to Warkenthien, Losson asked if Ram could be facing charges in New York for perjury, and Warkenthien answered that although it "was up to the ADA," Warkenthien expected that, if Ram told the truth, he would not be charged.

Warkenthien did not, as Barket contends, offer to help Ram obtain a reduced sentence. Warkenthien informed me that he had told Losson that, according to the Hillsborough County Sheriff, Ram would be spending the rest of his life in jail and that the only thing that Warkenthien *might* be able to do for Ram would be to look into helping Ram get "a better place to stay." According to Warkenthien, Losson stated that he would speak with Ram and get back to Warkenthien.

According to Warkenthien, on January 18, 2006, he placed a telephone call to Losson's office, was told that Losson was not in and left a message asking that Losson return the call. According to Warkenthien, later that day, Losson returned the call and stated that he had been unable to have a "good talk" with Ram but that he would speak with Ram again and contact Warkenthien. Warkenthien has not heard from Losson and has made no further effort to contact him.

Ram will be spending the next 15 years in jail. On January 26, 2006, an assistant State attorney in Hillsborough County told me that, on January 20, 2006, Ram pleaded guilty to nine violent felonies and was sentenced to 15 years' imprisonment. According to the assistant State attorney, Ram pleaded guilty to two counts of robbery, five counts of robbery with a firearm, one count of armed

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<sup>1</sup> On January 26, 2006, in an attempt to obtain Losson's rendition of his conversation with Warkenthien and his rendition of his conversation with Barket, I placed a telephone call to Losson's office. An office employee informed me that Losson was not in, and I left a message asking that Losson call me. As of the date of this letter, Losson has not returned my call.

kidnapping and one count of aggravated assault on a police officer. *See also* Hillsborough County's Sheriff's Office, <http://www.hSCO.tampa.fl.a.us> (confirming the accuracy of the attorney's information).

### **Argument**

Barket does not explain how Warkenthien could have tampered with or intimidated Ram *after* Ram testified. Nor does Barket explain how Warkenthien's *private* conversations with Ram's attorney could "deter other witnesses from coming forward." For Warkenthien to have tampered with or intimidated Ram, Warkenthien would have had to approach Ram before Ram testified. To deter other potential witnesses from testifying, Warkenthien would have to publish his private conversations with Ram's attorney. Yet Warkenthien has never spoken with Ram, he spoke with Ram's attorney some 15 months after Ram testified, and only Barket has published, albeit falsely so, the substance of Warkenthien's conversations. Thus, Barket has not "allege[d] sufficient facts to show that [Warkenthien]'s allegedly coercive tactics could have prejudiced [Tankleff's] defense." (*See* The People's Sanctions Opp. Mem. of 10/11/05 at 5 (quoting *People v. Friedgood*, 58 N.Y.2d 467, 470-72 (1983))).

### **Barket's Unprofessional Conduct**

The People have written that, "[b]y the end of the trial, Tankleff and his attorneys had already begun their crusade of impugning the integrity of the detectives who investigated him, the office that prosecuted him, the jury<sup>2</sup> that convicted him and the judge who sentenced him." (*See* The People's Post-Hearing Opp. Mem. of 6/14/05 at 159). At the 440 hearing, Barket disparaged Glenn Harris attorney Richard Barbuto, (Hearing Tr. of 8/3/04 at 7), and Tankleff's attorneys later disparaged Warkenthien and me, (*see* Def.'s Disqual. Reply Mem. of 8/25/04 at 5 n.4 & 6-7; Def.'s 440 Reply Mem. of 9/21/05 at 3 n.2 & 5 n.5).

Contrary to Barket's accusation, Warkenthien and I have not engaged in a "pattern of attempts to intimidate and harass witnesses." (Barket Aff. of 1/25/06 ¶ 5). But patterns nevertheless exist in *People v. Tankleff*, with one pattern being that of Tankleff's attorneys engaging in personal attacks. It is therefore unbecoming for Barket to cloak his motives by stating, "I regret that I must inform

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<sup>2</sup> The jury abuse continues. In August 2005, one of Barket's associates descended on some of the jurors and attempted to get them to provide a statement "so that Judge Braslow will find that . . . Tankleff should be given a new trial." (*See* Lato Letter to the Court of 8/29/05 at 2).

the Court of yet another act of witness tampering/intimidation.” *Id.* ¶ 2 (emphasis added). Barket *enjoys* making personal attacks, and in his affirmation he fires his biggest salvo thus far: he accuses Warkenthien and me of taking a “position [that] is rapidly approaching what is known as the ‘big lie.’” *Id.* at 2 n.2. In his zeal and ignorance, Barket has brought *People v. Tankleff* to its lowest point in its 17-year history by referring to “The Big Lie,” a propaganda theory that Adolf Hitler coined in *Mein Kampf* and one that Hitler’s propaganda minister, Joseph Goebbels, refined and used against the Jews in Nazi Germany. According to the theory, “[C]oncentrate on one enemy at a time and blame him for everything that goes wrong; people will believe a big lie sooner than a little one; and if you repeat it frequently enough people will sooner or later believe it.” See *Big Lie*, in *Wikipedia*, [http://en.wikipedia.org/wiki/big\\_lie](http://en.wikipedia.org/wiki/big_lie); see also *In re Holocaust Victim Assets Litigation*, 319 F. Supp. 2d 301, 303 (E.D.N.Y. 2004) (finding that “[t]he ‘Big Lie’ for the Swiss banks is that during the Nazi era and in its wake, the banks never engaged in substantial wrongdoing”). And Barket accuses *Warkenthien* and *me* of “resort[ing] to slander.” (Barket Aff. of 1/25/06 at 2 n.2).

A second pattern<sup>3</sup> is one in which Tankleff’s attorneys invent “facts” and provide a false rendition of their conversations with others.<sup>4</sup> For instance, in accusing the District Attorney’s Office of another act of “intimidation and harassment,” Barket contends that a “witness”

told counsel, in the presence of his lawyer, that he knew that Creedon had committed the [Tankleff] murders based on conversations he had with Creedon days after the murders but refused to testify because, “you can’t protect me and the Suffolk police won’t.” He went on to say that he would not trade his “life for Marty Tankleff.”

*Id.* at 3 n.3. Barket’s rendition of that three-way conversation is false.

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<sup>3</sup> A third pattern involves misstating case holdings and overlooking contrary authority. See *The People’s Sanctions Opp. Mem. of 10/11/05 at 7 n.1* (citing examples).

<sup>4</sup> See, e.g., Barket Aff. of 1/25/06 at 1 n.1 (Barket fabricating that “[o]ut of approximately 70 investigators on [District Attorney Thomas] Spota’s staff, Mr. Walkenthien [sic] is the only investigator who reports directly to Mr. Spota . . . and who also worked in the homicide squad with Detective James McCready”); Lato Letter to the Court of 9/26/05 at 3 (responding to Tankleff’s attorneys’ repeated fabrication that “the District Attorney [has] argued that Tankleff was not entitled to a material witness warrant” for Todd Steurman).

On January 26 and January 27, 2006, I spoke with the attorney representing the "witness." I read to the attorney Barket's rendition of the conversation, and the attorney told me that Barket was taking "a lot of liberties" with what the witness had said. According to the attorney, the witness stated that, at about the time of the Tankleff murders, Creedon showed the witness some jewelry but did not state how he had obtained it or whether it had been stolen and did not mention any murders. According to the attorney, the witness stated that, in the witness's opinion, Creedon was "a bad guy" and was capable of murder and that, years after the Tankleff murders, Creedon said things – which the witness could not remember – that led the witness to believe that Creedon *may* have committed the Tankleff murders but that Creedon had never admitted or even implied that he had done so. According to the attorney, Barket stated that the witness could testify to the above and, when the witness responded that Barket could not protect the witness and that the Suffolk police would not, the attorney interjected that Barket knew as well as the attorney that the witness could not take the witness stand and speculate that Creedon had committed the murders, which rendered the witness's protection concern moot. The attorney also told me that, contrary to Barket's claim, the witness had not said anything about trading his "life for Marty Tankleff."

Although two persons can differ in their recollection of the substance of a conversation,<sup>5</sup> the tardiness of Barket's affirmation demonstrates that his rendition of his conversation with the witness and the witness's attorney is *knowingly* false.<sup>6</sup> Barket learned of the witness from my "Report of the People's Investigation,"<sup>7</sup> and the witness's attorney has informed me that he and the witness met with Barket in 2004, probably before the 440 hearing began. If the witness had stated what Barket claims that the witness had stated, Tankleff's attorneys would have introduced the statement at the hearing. Tankleff's attorneys could have subpoenaed the witness or the witness's attorney<sup>8</sup> – the attorney-client privilege

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<sup>5</sup> Warkenthien has reviewed my rendition of his conversations with others, and the witness's attorney has reviewed my rendition of his conversation with the witness and Barket.

<sup>6</sup> Barket's contention that "bagel store" witnesses "succumbed to the [District Attorney's] pressure" and "refused to testify," (Barket Aff. of 1/25/06 at 3 n.3), is also probably false.

<sup>7</sup> See Report of the People's Investigation of 12/18/03 at 12-13 (reporting that, according to the witness's attorney, the witness had said that Creedon had said things that that led the witness to believe that Creedon had been involved in the Tankleff murders).

<sup>8</sup> Barket demonstrated his willingness to call a witness's attorney to testify at the hearing when he attempted to call Brian Scott Glass's attorney to testify. See The People's Post-Hearing Opp. Mem. of 6/14/05 at 148 (citing Hearing Tr. of 12/6/04 at 55-57, 61).

did not cover the statements that the witness made in Barket's presence – or Barket could have had Salpeter attend a follow-up meeting with the witness and called Salpeter to testify: the Court relaxed the rules of evidence at the hearing and permitted Tankleff's attorneys to introduce hearsay and even triple hearsay.<sup>9</sup> Tankleff's attorneys did not attempt to introduce the witness's statements because the witness did not say what Barket claims the witness said.

### Conclusion

Barket's remaining complaints are a rehash of previous ones that the People addressed in their Post-Hearing Opposition Memorandum and other documents. Until the Court rules on Tankleff's motions, the Court should expect Tankleff's attorneys to continue to make frivolous arguments and personal attacks. The People again urge the Court to preclude the parties from making further submissions.

Respectfully submitted,

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<sup>9</sup> Salpeter testified that Nancy Barton had told him that "Sean" and "Scott" had told Barton what Jerry Steurman had said in Sean and Scott's presence. *See id.* at 101-02 (citing Hearing Tr. of 7/19/04 at 24-25, 28-30, 195-97).