

lawyer, I am obligated to bring to the Court's attention attempts by the prosecutor to alter a witness' testimony. *See Hemstreet v. Greiner*, 378 F.3rd 265 (2nd Cir. 2004).

4. Mr. Lato goes on to request that Mr. Tankleff's attorneys be prohibited from filing further papers with the Court in this matter. I am sure that the Suffolk County District Attorney would like to deny Mr. Tankleff access to the courts, but as Mr. Lato provides no authority for his suggestion, Marty Tankleff will retain the rights granted to him by statute and by the Constitutions of the State of New York and of the United States.

5. At issue here are attempts by the prosecution to improperly influence witnesses, and the prosecution's false allegations that the defense team has "bribed" witnesses. Mr. Lato must know that his often-proclaimed accusations of "bribery" and "inducement" by the defense are patently false. Yet, Mr. Lato repeats these allegations, made without support or evidence, at virtually every opportunity. It is clear that, given the absence of any legitimate rebuttal to the overwhelming evidence of Marty Tankleff's innocence, the prosecution has resorted to floating false theories that amount to slander. Characterize that practice any way you want, ("lie" is certainly not a misnomer) but recognize that it is the prosecution that has resorted to baseless name-calling.¹

6. Moreover, Mr. Lato continues to mischaracterize evidence and make knowingly false allegations in his reply letter. Once again, Mr. Lato implies that Billy Ram's testimony was the product of improper payments because the defense reimbursed him for the time he missed from work while preparing for and testifying before this Court. As we disclosed to the Court at

¹ One would think that the very person who referred to the defense witnesses (including a priest, a mother, and a local businessman) as "misfits," would have the good sense not to throw stones by complaining that others have engaged in name-calling. Further, Mr. Lato certainly knows that I did not compare him to the Nazis, but his history lesson of the often-used phrase "big lie" was interesting.

the outset of his testimony, Ram was reimbursed for wages lost during two specific trips to New York, which he took at the request of the defense. One trip was to meet with defense counsel to provide us with a sworn statement. He made the second trip to testify before the Court. Mr. Ram's reimbursement was based on his salary as reflected on his most recent pay stubs and the number of days he missed work, facts verified by his employer. That Mr. Lato continues to imply that this was anything but proper is further proof that he is willing to grasp at anything in an attempt to disparage Marty Tankleff's defense. His temerity is striking given Ram's insistence that he testified truthfully -- a stance that cost Mr. Ram a much more valuable "inducement" (time off a jail sentence) than the few thousand dollars. As we noted previously, had Ram lied at the hearing, he would have jumped at the chance to reduce his 15 year sentence.

7. The prosecution's argument that Warkenthien could not have tampered with Ram's testimony because Ram had already testified misses the point. Asking Ram to (1) recant his prior exculpatory testimony, and (2) falsely testify that he was bribed is clearly tampering. If Warkenthien's attempts had been successful, it would have drastically altered the record before the Court. Moreover, this is the same conduct the defense alleged that the prosecution engaged in (as substantiated by the sworn testimony of Mark Callahan) with respect to Brian Scott Glass. Mr. Glass unfortunately succumbed to the temptation to save himself time in jail in exchange for withholding evidence that would have exculpated Marty Tankleff. Thankfully, Mr. Ram proved himself to be more honorable than Mr. Glass.²

² While Mr. Lato takes the time to again point out Mr. Ram's flaws, had Ram taken the bait offered, Mr. Lato would have praised Ram as an honest man doing the right thing. Recall, Lato asked this court to believe Joey "Guns" Creedon over Robert Gottlieb; he also offered Peter Kent to the Court in an attempt to impugn Jay Salpeter. It is not the character of the witnesses that concerns Mr. Lato, it is the nature of the witnesses' testimony. Those who exonerate Marty Tankleff can count on being skewered by Mr. Lato; those who support Mr. Lato will be coddled by him -- even those, like Kent and Creedon, who participated in a murder.

8. To address the witness interviewed in his attorney's office by both myself and Mr. Pollack,³ I reaffirm my account of the conversation. We did not call this individual as a witness at the hearing because he would not reveal to us what Creedon said to him that supported his claim that he "knew" Creedon murdered the Tankleffs. I do not recall the witness mentioning jewelry, though the witness did imply that Creedon had taken something from the Tankleffs' home.⁴ I remember the substance of the conversation fairly well, however. First, the witness' phrase "trade my life for Marty Tankleff's," was very similar to Warkenthien's threat to Harris about "trading places" with Marty Tankleff. That stuck in my mind. Second, as the witness was claiming that the Suffolk County Police would not protect him against Creedon, he looked at me and asked, "You think you're above it? You think that because you're some lawyer from Nassau that he won't come after you? He (Creedon) will kill you without a thought if he thought it would help him."⁵ Of course, what Mr. Lato missed in his zeal to call me a liar is that a government witness stated that he was afraid of Joe Creedon because, "They (the Suffolk law enforcement community) won't protect me from him (Creedon)." One wonders what it is about Joe Creedon

³ The conversation was not a "three way" meeting as Mr. Lato asserted. Perhaps the lawyer simply forgot or failed to inform Mr. Lato that Mr. Pollack was also present.

⁴ Interestingly, the remark about jewelry is consistent with new evidence uncovered in recent weeks establishing that items were taken from Tankleff residence. If and when this branch of our investigation ripens, it is possible that we will indeed wish to speak to the witness again.

⁵ I have not revealed this remark previously because it was not relevant to the Tankleff defense. It is relevant now that Mr. Lato has questioned my memory/accuracy of the conversation. I recall a conversation during which a witness told me that the person I believe murdered two people in their home would kill me if he thought it in his best interest. I was reminded of the conversation again yesterday when Mr. Salpeter informed me the he was told by another witness that Creedon was actively planning on killing me. According to this witness, Creedon has taken steps to act on his intention and learned where "Barket lives with his family." The remark about my family is somewhat disconcerting,. Although I have been married for several years, it is only recently that we had our first child and thus could be described as a family. I do not doubt that Creedon made these threats. Violence and threats of violence is how he has lived his entire life. He has had Leonard Lato and Walter Warkenthien acting as his defense team for the Tankleff murders for the last 30 months. Not surprisingly, Creedon is emboldened by his new allies in law enforcement and is probably feeling that he can say or do anything without fear of prosecution.

and his relationship with the Suffolk County Police that would lead a witness, actively cooperating with the federal government, to make such a statement.

9. Mr. Lato predicts, as he has predicted in the past, that the defense will continue to impugn the integrity of his office. Meanwhile, his office has continued to engage in conduct that invites such criticism. It is difficult to imagine a more clever defense than to complain ahead of time that your adversary will make allegations of misconduct, thus taking some of the sting out of those allegations once your misconduct is uncovered. Mr. Lato misses the most obvious reason why Marty Tankleff continues to file motions proclaiming his innocence and complaining of misconduct: Marty Tankleff is innocent. Given the ample and growing body of evidence of his innocence, one would expect Mr. Tankleff to bring evidence of his innocence to the attention of as many people as he can, as often as possible.⁶ The same obvious answer can be given to explain Mr. Tankleff's motions alleging misconduct. To get at the source of the complaints, perhaps Mr. Lato should look to his investigator's conduct rather than to those who merely expose that conduct to the Court.

10. It is ironic that Mr. Lato complains bitterly about name-calling and, in his view, the over-zealous nature of Marty Tankleff's defense. It is Lato who has labeled virtually every defense witness a liar "for money, love or attention." He now adds to his list of liars, a fellow member of the bar because I have reported to the Court a conversation I had with a lawyer in Florida and an interview I conducted with a witness. It is not Marty Tankleff who attacks every

⁶ The same can be said about Mr. Lato groping for far-fetched explanations to rebut the wealth of evidence establishing Mr. Tankleff's innocence. No scheme has been devised by Marty's *pro bono* defense team in order to manufacture evidence and bribe witnesses. There is a wealth of evidence coming forth from varying sources because Marty Tankleff is innocent. We are merely bringing that evidence to the attention of the Court. In contrast, the Suffolk County law enforcement community continues to hold on to the outdated position that Marty is guilty, despite overwhelming evidence to the contrary. It has become for them an article of faith: they can't prove it, but they insist, despite all logic and evidence to the contrary, that they know it to be true.

person who disagrees with him, it is Leonard Lato who hurls insults and false allegations, not just at the witnesses, but at the investigators who locate them and the lawyers who interview them. Did it ever occur to him that perhaps he (not the witnesses attesting to Marty Tankleff's innocence) is wrong about the Tankleff murders and about Joey "guns" Creedon? Apparently not. His belief in Marty Tankleff's guilt is a rock against which all evidence and logic are shattered.

11. Marty Tankleff has developed substantial evidence of his innocence. As we told the Court on the last day of the hearing, our investigation continues. Currently, we are following up on nearly a dozen leads. Regardless of when the Court issues its decision, and regardless of the nature of the decision, we will continue to investigate this matter. When those leads ripen, we will bring the new evidence to the attention of the Court, either in the form of subsequent motions to vacate Marty's unjust conviction or at the new trial to which Marty Tankleff is statutorily and constitutionally entitled.

12. Finally, Mr. Lato's letter raised a number of factual disputes. Our motion requests that the Court hold a hearing so that these material issues of fact, central to this case, can be properly addressed and resolved. We are not afraid to have our version of events measured against Mr. Lato's. In fact, we invite such an assessment. We also invite and welcome a trial to measure the credibility of the new evidence we have produced against the credibility of the witnesses, such as Peter Kent and Joey "Guns" Creedon, on whom Mr. Lato relies to rebut that evidence.

WHEREFORE, Mr. Tankleff respectfully requests that this Court, upon this affirmation and previously filed memorandum of law, sworn affidavits, exhibits, and in the interest of justice, grant the relief requested, or, in the alternative, grant a hearing to determine sufficient facts to decide the motion.

Dated: February 1, 2006
Garden City, New York

By:

Bruce A. Barket, Esq.