

TESTIMONY OF LONNIE SOURY, CSW, AND ERIC FRIEDMAN, MARTIN  
TANKLEFF DEFENSE TEAM

NYS Senate Democratic Task Force on Criminal Justice Reform  
Senator Eric Schneiderman, Chair

Preventing Wrongful Convictions in New York State:

Systemic Reforms to Convict the Guilty and Protect the Innocent

April 11, 2008

Hello, I am Lonnie Soury, joined by Eric Friedman, part of a legal defense and advocacy team that includes some of the top law firms in New York and Washington, DC. We have been fighting for five years on behalf of Martin Tankleff, a man who was imprisoned in New York State for 17 years of a 50-Years-to-Life sentence for a murder he did not commit. Several of the lawyers have been on the case for over a decade, and two dozen of Marty's relatives, including the sisters of his murdered mother, Arlene, have proclaimed his innocence for two decades.

Thank you to Senator Eric Schneiderman and other elected officials, including Assemblyman Joseph Lentol, who are leading the effort in the state legislature to pass comprehensive legislation that might have prevented the tragedy of Martin Tankleff, and will hopefully prevent future Marty Tankleffs. 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.

This, Senators, is the true story of a false confession. Nearly 20 years ago, on September 7, 1988, Marty Tankleff awoke on the first day of his senior year in high school to discover his father dying from horrendous wounds and his mother brutally murdered. A traumatized 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 Suffolk County homicide detective who had been cited by the New York State Investigation Commission for falsely testifying in another murder trial in Suffolk County prior to Marty's case (see New York State Investigation Commission Report on Suffolk County law enforcement agencies, 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 insisted he had nothing to do with these terrible crimes and asked to take a lie detector test, which was refused. The boy was no match for seasoned detectives well versed in obtaining confessions. Marty was 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, and that a "humidity test" had proven he took a shower, supposedly to wash off blood. Finally, after hours of intense and

relentless interrogation by Det. McCready, Marty, who had been brought up to trust the police, and whose father had never lied to him, came to the only rational explanation to the set of lies presented to him: Could he have blacked out?

Detective McCready then fed Marty a few details from the crime scene and proceeded to write Marty's unsigned, unfinished, false confession for him. Most telling, nothing in the confession's narrative—the supposed details of how the murders took place—matched the crime scene. The red liquid on the kitchen knife was not blood but watermelon juice. The barbell Marty supposedly used to bludgeon his parents was squeaky clean, as was the drain trap in his shower where he supposedly washed off the blood. And so on, leading Professor Richard Ofshe, a leading expert on false confessions, to testify at Marty's hearing that the so-called confession was actually evidence of Marty's innocence.

Nevertheless, Marty was convicted and sentenced to 50-years-to-Life in prison on June 28, 1990. 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.”

Finally, last December, after 17 years, the New York State Appellate Court, Second Department, overturned Marty's wrongful conviction. In their ruling, the judges wrote, “the defendant's repudiated confession was the most compelling evidence elicited by the prosecution. Arguably, it was the linchpin of the prosecution's case.”

Among those who believe the record indicates Marty was wrongfully convicted based on a false confession are former judges, 31 former prosecutors, the National Association of Criminal Defense Lawyers, the Innocence Project, the Center on Wrongful Convictions, the Innocence Network, eminent law professors who teach the case, newspaper editorial boards and many more.

Marty sits here with us today, yet he still faces the prospect, as hard as it is to believe, of being retried. More likely, we believe, is the prospect that Attorney General Cuomo's office will, as he promised, follow the evidence wherever it leads, and finally exonerate Marty Tankleff and seek justice for his parents, Arlene and Seymour, by investigating the obvious suspects in the case.

It's important to remember that even then, one won't be able to say that the system worked in Marty's case. No, the system failed Marty Tankleff, and the only ones who can deny that are those who didn't lose their parents, their youth and 17 years of their life.

The larger meaning of Marty's case is to point out the gap in our system, which is that when there is a horrible, obvious mistake made, there is no mechanism for correcting 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. Keep in mind that if New York still had the death penalty, Marty Tankleff might be dead today. Not that the slow death of life imprisonment is any less tragic.

The answer, in part, begins with making recordings of police interrogations mandatory. Not after being Mirandized, because by that time, as in Marty's case, it's too often too late. We must videotape or record suspects in police custody from the beginning of their questioning, not at the end. If Marty's questioning had been recorded, there would have been no case against him, and he would not have spent a day in prison.

Most detectives are honest and people of good will, and they have nothing to fear and everything to gain by mandatory recording of interrogations. In fact, in those jurisdictions in which mandatory recording has been implemented, law enforcement reaction has been quite positive.

But we have to face the fact that not all law enforcement agents wear the white hat. In their 1989 investigation of Suffolk County law enforcement, the New York State Investigation Commission found "misconduct and mismanagement in homicide investigations and prosecutions," including "over-reliance on confessions," and called Suffolk's confession rate "an astonishingly high figure compared to other jurisdictions, so high, in fact, that in and of itself it provokes skepticism regarding Suffolk County's use of confessions and oral admissions." The report found "[T]he Suffolk County Police Department and District Attorney's Office engaged in and permitted improper practices to occur in homicide prosecutions, including perjury, as well as grossly deficient investigative and management practices. Because of credibility problems with prosecution testimony, including police testimony, and other defects in homicide prosecutions, guilty persons may well have been allowed to go free."

The SIC is now once again investigating Suffolk County law enforcement, specifically in its actions in the Marty Tankleff case.

While "presumption of innocence" is considered a bedrock principle of our criminal justice system, police interrogations actually begin with a presumption of guilt. As false confession expert Professor Saul Kassin of John Jay and Williams College has shown, police interrogation techniques are based on the Reid nine-step process, the first step of which is to "confront the suspect with unwavering assertions of guilt." Add to this the fuzzy process by which an "interview" becomes an "interrogation," and you're left with the judicial system depending on the good will, honesty and competence of the detective doing the interrogating in any given case. If the truth matters, record police questioning from beginning to end.

We need an innocence commission, but one that can do more than post-mortems of cases after they are resolved, as currently proposed. We believe a commission should be able to reinvestigate cases, like Marty's, in which for years there was credible and compelling evidence of a wrongful conviction, but in which it had not yet been established in court, where the bar is incredibly high, where the defense has no grand jury or subpoena power to develop evidence, and where the process takes years.

Marty's story, while exceptional, is sadly not unusual, in that there are many other victims of false confessions languishing in prison, with little or no hope for an appeal. And remember that while the innocent rot in prison, the guilty walk among us free to do more harm.

And keep in mind that false confessions and wrongful convictions harm more than the individuals who are their victims. The larger damage is that they shake the public's faith in our criminal justice system.

The restoration and maintenance of that faith begins with reform. Which is why we need our elected officials to stand up and make change happen. The legislation you are considering is so important, not only to the wrongly convicted, their families and friends, but to millions 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 will help protect the innocent, prosecute the guilty, and maintain the public's faith in our criminal justice system.

Thank you.

See: [www.martytangleff.org](http://www.martytangleff.org)