

JUSTICIA

Governor Paterson Pulls the “Final” Plug on Capital Punishment

By Suzanne Schnittman

With no fanfare and little notice, Governor David Patterson late last month removed New York State’s equipment to perform lethal injection. Previously housed in Dutchess County’s Green Haven Correctional Facility, the state’s lone death house is now officially closed.

The two-cell unit, prepared since 1995 to accept inmates on their way to lethal injection, has sat vacant because none of the seven sentenced to die made it that far. In 2004, the New York Court of Appeals deemed current capital punishment legislation unconstitutional. That made it impossible to sentence anyone to death unless new legislation was enacted. Even though the Senate passed a bill that would make cop killers eligible for execution this past spring, it is doubtful the Assembly would pass a similar bill. It is even more certain that the governor would not sign it.

Responses to the Governor’s Action:

* New York Observer editorial, 8/4/08:
“Governor David Paterson’s recent decision to shut down the state’s unused execution chamber is a welcome step away from the state’s embarrassing reinstatement of the death penalty in 1995. It is also a tacit acknowledgement that the Innocence Project has exposed horrific flaws in our judicial system.

Who knows how many people have walked the long walk to the gallows, to the electric chair, to the gurney, for a capital crime they did not commit?”

* Senator Martin Golden, Brooklyn Republican, who sponsored the recent death penalty bill, 7/28/08: “This action is another decision by fiat. Eliminating the death penalty this way violates our system of checks and balances. The legislature, not the governor, should decide this issue. This governor wasn’t elected. He’s got to let the legislators legislate.”

* Journalist Gabe Pressman, 7/28/08, welcomed Governor Paterson’s move: “Almost all European countries have abolished capital punishment. It’s been ended in most Latin-American nations. According to Wikipedia, in 2007, China led the world with at least 470 executions. Iran, Saudi Arabia and Pakistan were in second, third and fourth place. And the fifth highest number of executions were carried out in the US - 42.”

* David Kaczynski, Executive Director of New Yorkers Against the Death Penalty, 7/28/08: “Being tough on crime requires that we be smart on crime as well. As the state dismantles its death house infrastructure, hopefully for the last time, lawmakers should turn their attention to reforming criminal justice procedures to ensure that when it comes to wrongful convictions, New York can no longer say ‘We’re number one.’”

Justicia will continue to inform readers about any development in New York State’s capital punishment status as well as other criminal justice reforms. For now, we congratulate Governor Paterson on this move.

Correctional Association Report on Bedford Hills CF Reveals Deteriorating Conditions

By Joel Freedman

Located in Westchester County, Bedford Hills Correctional Facility is New York's only maximum security prison for women. The current Superintendent is Ada Perez. Members of The Correctional Association of New York's Women in Prison Project Visiting Committee conducted visits to Bedford Hills on several occasions last year. Over the course of these visits, the Correctional Association communicated with prison staff and administrators, and with more than 100 inmates.

Over the years, Bedford Hills has been praised for its college program, academic and vocational classes, Department of Labor apprenticeships, Puppies Behind Bars program (in which inmates train puppies to become seeing-eye dogs for the blind), Children's Center, parenting programs, and nursery. During their visits, Correctional Association staff received many positive comments about these programs. "We commend the Superintendent for continuing to run these valuable programs which allow inmates to build useful skills and serve themselves and the outside community in a productive way," the Correctional Association said.

But in its August 2007 "Report on Conditions of Confinement at Bedford Hills Correctional Facility," which was made public in December, the Correctional Association also expressed concern about serious shortcomings at Bedford Hills, including excessive use of force and verbal harassment by some of the correction officers, inconsistent enforcement of rules and regulations, an increasingly tense overall atmosphere, a dysfunctional grievance system, restrictive clothing policies and unsuitable footwear, the absence of needed computers in the law library, and unnecessary delays in the prison's visiting process and Family Reunion Program.

Some excerpts from the report:

* Inmates reported that a small number of correction staff consistently engaged in overly aggressive behavior and, in the most severe cases, using force not to restrain or control, but to inflict pain. Recent examples cited by inmates include: an officer who punched an inmate in the face, an officer who closed a cell door on an inmate's leg for a lengthy period of time; an officer who grabbed an older inmate forcefully by the throat; and multiple officers who had kicked, kneed, and vigorously twisted arms while restraining inmates. The view among women was also that less was being done by the prison administration to prevent

unwarranted force and respond to situations when they did occur.

* Inmates shared a general sense that front line officers and higher ranking correction staff had been instructed to adopt a more punitive stance in dealing with inmates and to refrain from taking an active role in resolving problems through talking and communication.

* Almost every woman with whom we spoke identified the use of disrespectful or threatening language by certain officers as an ongoing problem.

* Inmates reported that a small number of women officers had been overly forceful in their pat downs of breast and vaginal areas during routine pat frisks. (The issue was less problematic among male officers, who are now required to use the back side of their hands instead of their palms to conduct pat downs on female inmates.)

* Over the past year and a half, Bedford's grievance system has slowed considerably - Bedford's year-end report acknowledges that the facility has had a problem with timely and complete investigative responses, and attributes the problem to a high turnover rate for correction staff and Bedford's position as a training facility for new officers.

* Inmates reported problems with the state-issue boots they were required to wear. During our January and July visits, inmates were still wearing the same footwear and reporting that the boots were heavy, unforgiving, and uncomfortable, and often gave them swollen feet, blisters and cuts. Women also explained that the boots are not sufficiently waterproof. When it rains or snows, inmates have to sit through programs for hours with soaking wet socks and feet. This situation is particularly problematic for diabetic inmates who are supposed to wear well-fitted, comfortable, and protective shoes to prevent sores and ulcers, which can lead to infection and amputation if not appropriately treated.

* Visitors and inmates now frequently have to wait up to five hours to begin their trailer visits.

The report further criticized the prison for the lack of weather-appropriate clothing available to prisoners, for its new policy that restricts inmates from wearing personal clothing, and for removing the two computers from the law library and replacing them with typewriters. The report also pointed out the need to apply camera footage viewing policies fairly and evenly to inmates and to staff. (Last year, Bedford installed more than 180 cameras with audio/visual capabilities in store houses, recreation areas, the gymnasium, the mess hall, disciplinary hearing rooms, and all housing unit corridors and entrance ways. There are no cameras in the general population yard, visiting room or cells.)

The Correctional Association concluded that Bedford Hills' policies and practices, like those at all women's prisons, should be guided by "the specific realities of women's lives and experiences." These realities include the facts that imprisoned women are more likely than imprisoned men to have psychiatric

problems (in September 2007, the Correctional Association's report on mental health programs and services at Bedford Hills found a need for additional staff and need for a more "gender-specific, culturally sensitive, and trauma-informed approach" to be integrated into the existing programs) and to be less violent while in custody. Incarcerated women are also more likely than their male counterparts to have been primary caregivers for their children and to have been victims of physical and sexual abuse prior to coming to prison. The report noted a recent study by the National Institute of Corrections that urged all states to acknowledge that "gender makes a difference," and to develop "gender-responsive policies in all areas of prison life."

Five years ago, 15 inmates filed a class action lawsuit alleging sexual abuse of inmates at Bedford Hills. One of the allegations is described by Alan Elsner in his book *Gates of Injustice: The Crisis In America's Prisons:*

"_____ was a model prisoner at Bedford Hills, to the point that she earned a spot in the Honor Block, an area reserved for inmates with outstanding disciplinary records. Within weeks of her arrival, Officer T. allegedly began pestering her with intrusive personal questions. When she rejected his advances, he told her, "No prisoner tells me 'no'." A month later, he raped and sodomized her in the kitchen. When she sought medical help, he had her locked in her cell and threatened to remove her from the honor floor. He said it was a waste of time to complain, since no one would believe her."

Commenting on this situation, Elsner observed that "whether or not the officer was correct, the allegations showed that even in a place like Bedford Hills, filled with good-hearted, well-intentioned staff and volunteers who really care about the inmates, the awfulness and ugliness of prison life cannot be banished".

(See below for relevant testimony by former Bedford Hills Superintendent Elaine Lord to the Commission on Safety and Abuse in America's Prisons. Prison monitoring reports of the Correctional Association can be accessed at www.correctionalassociation.org.)

Statement to Commission on Safety and Abuse in America's Prisons, 11/1/05

By Elaine Lord

According to the fact sheet on the Web site of this Commission which is based on the Federal Bureau of Justice Statistics, 750,000 men and women work inside this nation's prisons and jails managing 2.2 million inmates. Although the number of correction officers has increased, it has not kept pace with the growth of the

inmate population. As a result, officers are often responsible for more inmates. Throughout the past four decades, correctional officers' jobs have not really changed significantly, nor are they viewed with any increased respect. Hans Toch, a scholar on prisons and prison violence, made this point originally in 1981, but it is just as true today:

"Prison guards are truly imprisoned. They are not physically confined but are locked into movie caricatures, into pejorative prophecies (sometimes self-fulfilling), into anachronistic supervision patterns, into unfair civil service definitions, into undeserved hostilities and prejudgments of their actions. Officers are imprisoned by our ignorance of who they are and what they do, which is the price they pay for working behind the walls." (From foreword to Lucien X. Lombardo, *Guards Imprisoned*, New York: Elsevier, p. xiv)

Prisons are institutions which rely on regimentation and elaborate disciplinary systems of rules to maintain order. In such an environment, officers are subject to the same conditions as the inmates they supervise. Officers are even subject to searches, as administrators look for a corrupted or "dirty" officer who might be smuggling drugs or other contraband into the prison. Such an approach can create feelings of injustice among officers, the vast majority of whom are honest and hard-working. Given the numbers of new officers and supervisors needed in the face of large scale system expansion and recruitment of staff so racially and culturally different from the inmates, confusion ensues when there is rapid turnover of staff in a job that has such little esteem.

Often a new officer's formal (academy) training revolves around use of force and weapons, and training for serious emergencies, including escapes, disturbances, or riots. There is too little training on interpersonal skills. Upon arrival at the prison, new officers end up receiving on-the-job training from only slightly less new officers. Experienced officers know that treating inmates fairly and consistently is the best and most effective approach, and we don't spend enough time helping inexperienced officers find this balance. However, if officers are treated poorly or believe that they are being abused, then they counterpart and treat inmates poorly. Their own lack of self-esteem leads them to tease or entice inmates into misbehavior, or they overreact to verbal abuse. This leads to similar actions by inmates in a cycle that can lead to physical contact and increasing levels of anger on the part of both inmate and officer.

There is little room for a mistake in a prison, especially in the thousand details that an officer encounters each day. One swallowed soap ball could result in serious esophageal and stomach burns and loss of tissue on the tongue of an inmate who couldn't find any other way to express his/her frustration on that particular day. An officer who is on a unit where there was an escape

attempt or where a weapon was found is going to encounter severe wrath from administrators. If the officer missed a cue, didn't notice something, missed the piece of metal during his/her search, etc. the officer can face a loss of career. It could well be his/her only error. Instead of using an incident as a learning situation, managers even in the best run prisons often go looking for the officer who did not count accurately, and they will throw the book at the officer. In the same vein, supervisors' careers are jeopardized in such lapses.

There are always a handful of officers and supervisors who believe in acting tough to show who is in control. Some officers are simply predators and respond inappropriately in a volatile setting, creating situations that are a hazard to both staff and inmates. We must arrange the prison environment so that inappropriate force is not rewarded or esteemed, so that inmates know that certain behavior will not be tolerated and will be stopped by force if necessary.

Regarding those staff persons that are not suited to working behind the walls, they are rogues and need to be dealt with quickly and appropriately. Wardens and administrators need to take a lead in identifying and dealing with predatory staff; their names appear over and over in use of force reports or complaints and grievances. Of course, this issue is complicated by the fact that inmates can lie and misrepresent, the same as anyone else. However, at some point, administrators must move beyond denying that any information from inmates can't be true because of denials by staff. Further, administrators cannot be stripped of their ability to manage or protect staff and inmates. In some jurisdictions, the level of evidence needed to remove an officer from a post for inappropriate conduct is about the same as that needed to pursue termination of the officer. In such cases, the ability of the Superintendent to manage has been eroded.

This situation leaves inmates at the mercy of predators who can perpetrate significant harm. As a system, we must develop ways to address and modify inappropriate behavior, get officers who are not fit out of contact with inmates, or when appropriate, terminate them. In addition, removal from a post may also require approval from administrators above the Superintendent. Such a situation is not in the best interests of any Department of Corrections, nor of the institution, the staff or the inmates. Prison administrators need research on correction officers, just as police officers have been studied so that we begin to understand officer dynamics better, and we know what to look for as some officer behavior escalates from verbal abuse to physical. Too often all we do is make excuses or justifications and refuse to take ownership of what may be an environmental response. Of course for those officers who are psychologically unfit, they do not belong in a setting where their actions can jeopardize many other lives.

If correctional systems want to continue to professionalize, then they need to follow the example of the police and begin requiring college degrees of staff. Officers need knowledge about psychology and sociology, as well as global ideas. They need to understand that we incarcerate more people than any other country and who these people are. Correction systems need to move to help existing staff participate in education even while they are working in the system. Civil service and organized labor have played an important role in gaining a living wage for officers, but they have also continued the trend to narrow the officer's job, usually in an attempt to increase wages for any additional work. However, the end result has been to create a situation where officers have had their responsibilities reduced and narrowed, when in times past they had a much richer role and their advice and their knowledge of an inmate was sought by others before decisions were made.

In the past four or so decades, programs offered to inmates inside many prisons have been decimated in response to public anger over "coddling" and the political response to that anger. This has been very short-sighted. Programs make good security sense, and they make an officer's job easier. Inmates who participate in programs are more oriented to the outside and to self-improvement and less apt to get into trouble or jeopardize their place in a program. By cutting programs and leaving inmates with too much time on their hands and nothing meaningful to do, we have added to the already chaotic and volatile situation of some prisons.

Over the past few decades, the numbers of mentally ill inmates have risen drastically in prisons and jails throughout this country. Today there are more mentally ill people in prisons than there are in our mental hospitals. These are people who have shown themselves as difficult to manage in prison as they are in community settings. These inmates experience many more difficulties in following prison regulations than other inmates, and they get into far more physical altercations with staff and other inmates. In Bedford Hills, by 2000, half of the inmate population was receiving mental health services, and 80% of serious incidents involved mentally ill inmates. These inmates were also involved in most cases where force was used by staff to quell a disturbance or assault. If we expect staff to deal with the complex issues presented by the mentally ill, then we must provide more education for them and appropriate programs for the inmates.

Concerns about cross-gender supervision as a precipitating factor in sex between staff and inmates have recently led to suggestions that we remove all male officers from women's prisons. Once again, this is a caricature of a far more complex reality. Male officers contribute positively to a female prison's operations, just as research suggests that female correctional officers do in male prisons. It simply doesn't make sense in today's

world to segregate employees in our prisons while integrating other areas of work, unless it is for the purpose of maintaining some semblance of privacy and to avoid humiliating the inmates, for instance around showers or infirmaries. Second, officers are not the only group that commits crimes of sexual abuse. Maintenance staff, cooks and other civilians have also been involved in greater numbers than their proportions would suggest. Third, it is inconceivable to think of being able to get rid of all the males in a prison for women. As a further complication, women staff can and do get fired and/or arrested for inappropriate sexual activities in female prisons, as well as in male prisons. Any sexual behavior by staff towards an inmate in prison is predatory and violent. These staff must be dealt with quickly and surely and not be allowed to prey on inmates. Because the mentally ill appear to be at higher risk, we must be able to provide safety. We cannot run humane systems if we continue to discount any information that an inmate provides for lack of corroboration from an employee.

Sometimes even the most experienced among us learn from “outsiders” or from history. In *Newjack*, Ted Conover quoted a legislative report written in 1851: “To become a good officer requires much more knowledge and experience than is generally supposed; and it is a long time after a new officer enters upon his [her] duty, before [s]he becomes, even under the most favorable circumstances, fully competent to discharge it. It is not like a man’s [woman’s] driving a herd of oxen or working a piece of machinery, the whole mechanism of which [s]he can learn in a short time. But it is controlling the minds of men [women], no two of which are alike – it is curbing their tempers, whose manifestations are infinitely various – it is directing their motives which are as diverse as their personal appearance or physical conformation. And it requires an intimate knowledge, if not of human nature at large, at least of the habits, tempers and dispositions of the men [women] immediately under their charge...This consideration, so evidently the dictate of good sense, seems to be entirely overlooked in the government of our prisons, and changes occur, among officers, from whim, caprice, or political motives, with a frequency that is utterly subversive of good government.”

Elaine Lord is a former superintendent of Bedford Hills (NY) Correctional Facility.



Well Attended Mentor Forum Was Supported by Area Business

By Valerie White Whittick, Mentor Coordinator

On July 29, JPC hosted a Mentor Open Forum Meeting. We had a good turnout, a full house; 21 people attended. Door prizes were donated by six local businesses and nonprofits.

The lucky winners received the following items:

- **Four all-day passes to Seabreeze Amusement Park**
- **Gift certificates from Abundance Co-Op, Marshall Street**
- **Gift certificate from Tops Markets, the Upper Falls location**
- **12 Rochester Philharmonic Orchestra tickets**
- **a yearly membership and free admission for an entire family to the Seneca Park Zoo.**

Our quest speaker was Paulette Becoates, a Drug and Alcohol counselor at the Brighton Monroe County Correctional Facility. She shared rewarding details and experiences that provided insight to our mentors and potential mentors who attended. John Mourning, our Mentor Outreach Coordinator, provided some advice about mentees who abruptly stop seeing their mentors. He stated that we can only plant a seed, and that some mentees will return when they realize the need.

Paulette explained the inmate exit-planning process and the role that the mentor can play to ensure a smooth transition.

Potential mentors and seasoned mentors shared insights about the mentoring process.

Thanks to all who attended, and a special thanks to Paulette Becoates for the dynamic and informative presentation.

Tankleff Sheds Shackles In Journey To Justice

By Joel Freedman

On September 7, 1988, 17-year-old Martin (Marty) Tankleff was about to start his senior year in high school. But Tankleff did not attend school that day. He said that when he woke up that morning, he discovered that something terrible had happened to his adoptive parents, Seymour and Arlene Tankleff, in their home in Belle Terre, Long Island. Both had been bludgeoned and stabbed. Arlene Tankleff was nearly decapitated, and it appeared that before she died she had struggled with whoever had attacked her. Marty Tankleff said he had found his father sitting in his office chair, still breathing but covered in blood. Tankleff said he immediately called 911. When waiting for the ambulance to arrive, Tankleff followed the dispatcher’s instructions to try to stop the bleeding.

Tankleff told police he suspected that Jerry Steuerman was involved in the crimes. Steuerman owed Seymour Tankleff \$350,000 and Seymour had demanded a share of Steuerman's bagel store that Steuerman wanted his son to have. Despite the hard feelings between the two men, both continued to play in a weekly poker game. On September 6, 1988, it was Tankleff's turn to host the game, which lasted past midnight. Steuerman told police he was the last person to leave. A week after the murder of Arlene Tankleff, while Seymour remained comatose, Steuerman disappeared. Detectives found him two weeks later living under an alias in Long Beach, California. Steuerman later claimed he tried to stage his death because of personal problems unrelated to the Tankleff family.

James McCready, the lead detective in this case, arrived at the Tankleff home an hour after Marty Tankleff's 911 call. Arlene Tankleff's body still lay in her room. Her husband had been rushed to the hospital. McCready found no signs of robbery or forced entry. He observed Tankleff "sitting as calm as calm could be," despite what had happened to his parents. Why was he left unharmed? Could he really have been sleeping undisturbed by the mayhem happening within earshot? McCready showed little interest in investigating Steuerman. Marty Tankleff was his prime suspect.

McCready and his partner questioned Tankleff without a lawyer present in a small windowless room. After several hours, McCready left the room for several minutes. When he returned McCready told Tankleff that he had just received a call from the hospital. His father had emerged from his coma and accused his son of the crime. Tankleff was incredulous and begged to take a lie detector test. The detectives declined his request and the interrogation continued. Tankleff began to wonder if he could have somehow blacked out and attacked his parents. Later, Tankleff allegedly made incriminating statements. McCready prepared a written confession, but Tankleff recanted his statements and refused to sign anything.

It turned out that McCready's story about the phone call from the hospital was untrue. He had used it as a ruse to try to elicit a confession from Tankleff. Seymour Tankleff had died without regaining consciousness. Tankleff was indicted for both murders, which McCready claimed was motivated by Tankleff's desire to inherit their wealth and by his anger because his parents would not buy him a new car. A year and a half later, Tankleff went on trial. A Suffolk County jury deliberated a week before reaching a verdict. The trial was one of the first trials broadcast live, and it resulted in the founding of *Court TV*.

Jurors who initially wanted to acquit Tankleff considered the lack of physical evidence to link him to the murders. If Tankleff was really guilty, wouldn't he have made sure his father was dead before he dialed 911. Instead, Tankleff took steps to try to prevent his

father from bleeding to death. Could Steuerman have been involved in the murders? None of Martin's hair nor blood was found on his parents. Although it was clear that Arlene Tankleff had fought with her attacker, Martin had no cuts or bruises when he was examined that day. A forensic team found bloody glove prints at the home, but Tankleff had not mentioned wearing gloves in his confession, and the gloves were never found. Tankleff told police he used a barbell and a kitchen knife to attack his parents, yet no blood was found on these alleged weapons when they were examined microscopically. Jurors questioned the reliability of an alleged confession given by a vulnerable teenager during a lengthy interrogation. At trial, sound experts testified that Tankleff may not have heard the mayhem and possible screaming. Because Tankleff enjoyed playing loud music in his room, his parents had his room made soundproof.

Jurors who were convinced of Tankleff's guilt wondered if Tankleff's room could have been that soundproof. If Tankleff's parents were really killed by intruders, why was nothing stolen from the home? There were no signs of a forced entry. Tankleff testified he always kept his emotions to himself, but jurors could not understand why any son would not be at least visibly agitated when he saw what had happened to his parents.

As for the discrepancies between the confession and the crime scene evidence, jurors felt that these discrepancies could be explained away because people who confess can forget about or lie about certain aspects of the crime. The fact remained that Tankleff, even though he was not physically abused or threatened during the interrogation, had admitted to police that he attacked his parents. Even though McCready lied to Tankleff when he told him that his hospitalized father had just named his son as the culprit, the fact that Tankleff confessed after McCready gave him this information was especially damning to Tankleff.

After a week's deliberation, the jury convicted Tankleff of both murders, and he was sentenced to 50 years to life imprisonment. Most of Tankleff's adoptive relatives maintained a belief in Tankleff's innocence.

In prison, Tankleff continued to maintain his innocence. He said that the interrogation by the detectives, which was not videotaped or audiotaped, was "like having an 18-wheeler driving on your chest. And you believe that the only way you can get the weight off your chest is to tell the police whatever they want to hear."

On appeal, the Appellate Division of the New York State Supreme Court affirmed Tankleff's conviction in a 3-2 decision. New York's Court of Appeals unanimously affirmed the conviction. The case went all the way to the U.S. Supreme Court. It appeared that Tankleff was destined to spend most of, if not all of, the remainder of his life in prison.

A study by Richard Leo and Richard Ofshe,

published in 1998, cited Tankleff as a classic “false confession” case (See Leo, Richard and Ofshe, R.J. 1998. “The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation.” *Journal of Criminal Law and Criminology* 88: 429-96). In his book *Innocent: Inside Wrongful Conviction Cases*, Scott Christianson, even prior to the revelations described below, concluded that Tankleff’s conviction was based on a false confession. Christianson noted that in 1989 the New York State Commission on Investigation (SIC) issued a report, “An Investigation of the Suffolk County District Attorney’s Office and Police Department,” which found “grave shortcomings in the leadership and management” of both agencies. The report concluded that the then district attorney, Patrick Henry, had “seriously failed in his stewardship as chief law enforcement officer in Suffolk County” and that “the 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.”

Even when all other avenues of appeal have been exhausted, New York will accept appeals based on newly discovered evidence not available at the time of trial, which, if it had been presented at trial, would likely have resulted in the defendant’s acquittal. After Tankleff had been imprisoned for twelve years, Jay Salpeter, a retired New York City police detective who is now a private investigator, became involved in the case. The efforts of Salpeter and a team of prominent attorneys who represented Tankleff on a pro bono basis led to the discovery of new witnesses and new evidence.

Salpeter tracked down Glenn Harris from a lead that came after Tankleff’s conviction. Harris said that one night in September 1988, he was with Joseph Creedon and Peter Kent – both who have long criminal records – when Harris drove the car to an upscale Belle Terre neighborhood to commit what he thought would be a home burglary. Harris parked the car where Creedon told him to stop. Creedon and Kent entered a home while Harris remained in the car. When they returned, Harris was surprised they had no proceeds of a burglary. Both men were very tense. Harris said he also watched Kent burn his clothes. When Harris later heard about the Tankleff murders, he put two and two together. Salpeter arranged for Harris to have a polygraph test which Harris passed. Martin Tankleff also passed a lie detector test in support of his innocence claim.

In 2005, Suffolk County Judge Stephen Braslow presided over a series of hearings to rule on Tankleff’s petition to have his conviction overturned. Tankleff suffered a set-back when his star witness, Glenn Harris, refused to testify unless he was granted immunity from prosecution for his accomplice role in the Tankleff murders. But Harris’ sworn affidavit mentioned that Creedon had gloves with him at the time of the murders.

There were glove-like prints found in the Tankleff home, but no gloves were ever found, and there was no mention of gloves in Tankleff’s alleged confession.

With Harris’ permission, Father Ron Lemmert, a Catholic priest, testified that Harris had told him the same facts contained in Harris’ affidavit. According to Father Lemmert, Harris “poured his heart out. He said he could not sleep at night. His conscience was bothering him, and he wanted to do the right thing but he was terrified.” Tankleff’s attorneys said that Harris had, indeed, been repeatedly threatened because of his affidavit. In November 2005 Harris disappeared and he has not been heard from since then.

Salpeter found other witnesses who were willing to come to court. Joe Graydon testified that he and Creedon made an earlier failed attempt to ambush Seymour Tankleff. Neil Fischer, a cabinet maker with no criminal record, testified that a year after the Tankleff murders he overheard Jerry Steuerman threaten to kill another person in his bagel shop. Steuerman reportedly shouted that he had already killed two people and wouldn’t mind killing again. Other witnesses testified that Creedon told them of their involvement in the murders. Creedon’s 17-year-old son testified that after watching a “48 Hours” broadcast about the case, he asked his father for the truth, and that his father then told him he choked and beat Seymour Tankleff while Kent fatally stabbed Mrs. Tankleff. Creedon’s son also testified his father told him he bribed Suffolk County Detective McCready “to keep his (Creedon’s) name out of it.” William Ram testified that Creedon unsuccessfully attempted to recruit him as an accomplice. Creedon reportedly told Ram that he (Creedon) was working for someone (Steuerman) who had a partner in the bagel business who needed to be roughed up. (Tankleff’s attorneys later claimed that an investigator for Suffolk County District Attorney Thomas Spoto offered to help Ram get less prison time in an unrelated case if Ram would claim he was bribed for his testimony on behalf of Tankleff. Ram refused the offer).

In the course of his investigation, Salpeter learned that Jerry Steuerman’s son Todd, a convicted drug dealer, was an acquaintance of Creedon. Salpeter believes that Jerry Steuerman made sure that he would be the last person to leave the card game before the murders and that Steuerman arranged to be in the Tankleff home to assure the entry of Creedon and Kent.

At the hearings, Assistant DA Leonard Lato’s witnesses included Peter Kent who admitted to a history of violence but who denied that he and Creedon killed Tankleff’s parents. Lato also claimed that Creedon falsely bragged about his role in the murders only to enhance his reputation for violence.

The case received national prominence beginning with a March 12, 2005 CBS *48 Hours* scrutiny of the Tankleff murders and their aftermath. Prior to the discovery of new evidence gathered by Investigator

Salpeter, I believed there was reasonable doubt based on many unanswered questions. With the new evidence available, I concluded that most of the unanswered questions could be resolved in favor of Martin Tankleff. I also corresponded with Tankleff while he was imprisoned, and I expressed my belief in his innocence in *Justicia* articles published in the May-June 2005 and March-April 2006 issues.

In a 19-page decision issued on March 17, 2006, Judge Braslow opined that Tankleff killed his parents, and that Tankleff's witnesses were "nefarious scoundrels" unworthy of any credibility. Braslow's refusal to overturn Tankleff's conviction was applauded by Lato. Less than a week after Braslow's decision, Tankleff's lawyers filed a new motion to set aside the conviction after new witnesses offered to provide testimony on Tankleff's behalf. James Moore contacted one of Tankleff's attorneys, Bruce Barket, with information that his former co-worker, Peter Kent, twice admitted to Moore his role in the deaths of Tankleff's parents. William Sullivan, another witness, used to manage a nightclub where he said he saw Steuerman socializing with Detective McCreehy as far back as 1986. McCreehy has always denied any friendship or association with Steuerman.

As Tankleff's team of attorneys prepared an appeal of Braslow's decision, Tankleff, from his cell at Great Meadow Correctional Facility, wrote me: "Now we must move onward and upward. The fight for justice will be a long and hard battle." I concluded my March-April 2006 *Justicia* article – "An attorney representing Tankleff said that what has happened to Tankleff 'creates the impression that Suffolk County justice is a train wreck'. By continuing their efforts to keep Tankleff in prison and to disregard evidence that Creedon, Kent and Steuerman are the ones responsible for the deaths of Tankleff's parents, the judicial and prosecutorial powers-that-be in Suffolk County have betrayed the cause of justice. The Tankleff case should be of concern to everyone interested in common decency, justice, and the safeguarding of the most basic rights of citizens."

Those joining Tankleff's appeal, as *amicus curiae*, included the Innocence Project, Centurion Ministries, the New York State Association of Criminal Defense Lawyers, National Association of Criminal Defense Lawyers, and even several former prosecuting attorneys from New York.

On December 18, 2007, the Appellate Division: Second Judicial Department unanimously reversed Braslow's decision and ordered that a new trial for Tankleff "be conducted with all convenient speed". The higher court's decision noted that "at the original trial, the defendant's repudiated confession was the most compelling evidence elicited by the prosecution... However, when the evidence presented at the CPL 440 hearing is evaluated against the backdrop of the trial evidence, including the defendant's confession, how the

confession was obtained, and the fact that the defendant almost immediately recanted the confession, the newly-discovered evidence is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant". However, the appellate court justices would not go so far as to vacate the guilty verdict on the basis of actual innocence.

Tankleff was released on a \$1 million bond on December 27, 2007 after serving 17 years of his sentence. Two days later, the New York Times reported that New York's State Investigation Commission had quietly been conducting an official inquiry into Suffolk County law enforcement's handling of the investigation into the murder of Tankleff's parents. On January 2, 2008, Suffolk County DA Thomas Spota announced that Tankleff would not be retried, and that the murder charges would be formally dismissed against him on January 18, 2008. But the charges were not dismissed on that date. At the request of the Suffolk County DA, Governor Eliot Spitzer asked New York Attorney General Andrew Cuomo to investigate the case as a special prosecutor. Benjamin Rosenberg, Cuomo's chief trial counsel, was appointed to head a team of three attorneys to "follow the evidence wherever it leads us".

On June 30, Rosenberg told Suffolk County Court Judge Robert Doyle that his team of lawyers and investigators had scoured thousands of pages of testimony and notes and interviewed 70 witnesses in several states, some multiple times. Rosenberg said his staff also consulted experts in forensic pathology, crime scene analysis, DNA testing and false confessions.

Rosenberg's memorandum included newly discovered evidence that a "previously unnoticed bloody imprint found on a sheet on Arlene Tankleff's bed appears to be that of a knife-presumably a murder weapon – but expert analysis shows that it does not match the knife that was identified in the confession or any other knife found in the Tankleff home." Even with renewed forensic testing, there was no biological or physical evidence that could connect Tankleff to the murder of his parents. Jerry Steuerman refused to cooperate with Rosenberg's investigators. Rosenberg also characterized the behavior of Detective McCreehy as "problematic."

But while Rosenberg said there was "a substantial question" about the admissibility and reliability of Tankleff's confession, he did not definitely discount it. Because the evidence showed no sign of a break-in, because Tankleff was unharmed, because he was the beneficiary of his parents' Will, and because Tankleff supposedly made direct confessions to some fellow inmates in prison, Rosenberg said "there is some evidence that the defendant, Martin Tankleff, committed the crimes charged."

The memorandum does not elaborate on the supposed admissions Tankleff made to fellow inmates.

The memorandum does not say these claims are credible. Moreover, long before I reviewed this case, prisoners had told me about Tankleff claiming innocence of involvement in the deaths of his parents. And these prisoners, recognizing that most innocence claims by prisoners are unmeritorious, said they believed Tankleff.

The fact that there was no break-in can be explained by the fact that Steuerman, who was the last person to leave the card party, was in a position to open the door for the intruders.

If, as Tankleff's supporters believe, Steuerman, Kent and Creedon are responsible for the deaths of Tankleff's parents, there would be no reason to kill the sleeping Martin Tankleff, who did not witness what happened. In fact, if Tankleff had shared his parents' fate, he could not have been blamed for their murder, and investigators would have been forced to more closely scrutinize Steuerman.

In asking Judge Doyle to dismiss the indictments against Tankleff, Rosenberg skips over the question of who should be held responsible for the deaths of Tankleff's parents. Instead, Rosenberg is content to conclude that "after 20 years the evidence is insufficient to conclude or prove beyond a reasonable doubt" that Tankleff committed the murders. Rosenberg said some of the newly discovered witnesses who linked Steuerman, Creedon and Kent to the murders were credible, but that some of these witnesses were unreliable. Rosenberg said his team found no forensic evidence that would conclusively link either Martin Tankleff or Steuerman, Creedon or Kent to the crimes. Therefore, Rosenberg's memorandum suggests the time has come to close the book on this case. The memorandum does not raise the issue of any unethical conduct by the Suffolk County district attorney's office.

Scott Christianson, author of *Innocent: Inside Wrongful Conviction Cases*, believes the Attorney General's Office "did a whitewash," that the state investigators did not examine all the evidence as thoroughly as they should have examined all the evidence. Since the attorney general is responsible for defending the state in any litigation before the Court of Claims, Christianson believes the appointment of the attorney general as special prosecutor created "an inherent conflict of interest". (The State Commission on Investigation has not yet released its report of its own investigation of this case.)

All charges against Tankleff have been officially dismissed, and he is now a free citizen attending college. Tankleff intends to pursue a law degree after he completes his undergraduate studies. Laura Taichman, a longtime friend of Tankleff who inspired the creation of the pro bono legal crusade to get justice for Tankleff, predicts "Marty is going to become a lawyer. He'll fight for people who are innocent, which he's probably already done in a jail system. As a lawyer, he's going to do great things."

Martin Tankleff's long ordeal has resulted in a compromise form of justice, but in the often cold, cruel and unjust world in which we live, compromised justice is better than no justice at all. When I write "Justicia" articles about people in prison who I believe are actually innocent—about five percent of the innocence claims I have evaluated fell into this category—their plight remains a part of my consciousness. For every innocent person who manages to get their wrongful conviction reversed, countless others languish in prison, including Greg Sulkey, Fred Weichel, Richard Asadoorian, Jeff Talani and Alfred Blanche, whose cases I have described in *Justicia* and in other publications. I wish I could do for them what Laura Taichman did for Martin Tankleff.

An article written by Thomas Adcock in the January 15, 2008 issue of the *New York Law Journal*, entitled "Tankleff Pro Bono Effort Born of Ex-Classmate's Law Paper," describes the important role of Taichman in the life of Tankleff.

Taichman attended high school with Tankleff. She also had a part time job working in Steuerman's bagel shop. Like many others, Taichman followed the case. As a law student at Northeastern University School of Law in Boston in the 1990's, her choice of a paper for her criminal procedure class was *People vs. Martin Tankleff*. Taichman reviewed all the court transcripts, and interviewed all the lawyers involved in the case. "I never thought Marty did it. The facts did not make sense." One of Taichman's doubts originated with a police report that Seymour Tankleff's assailant bludgeoned him, after which he performed a coup de grace commonly used by drug dealers as a warning to rivals—the so-called "Columbian Necktie," in which the tongue is pulled out from a slit throat. In the protected world in which he lived, Tankleff would have known nothing about such practices.

In the summer of 1995, while completing an internship at a law firm in Washington, DC, two of Taichman's bosses—attorneys Stephen Braga and Barry Pollack—treated Taichman to a farewell luncheon. When the subject of pro bono projects by attorneys arose, Taichman said she knew of a case that was worthy of pro bono action. Pollack read Taichman's paper and attached documents. "The more I read, the more it seemed to me there was no case against Marty Tankleff. We became convinced that it was a worthy cause," Pollack said.

Pollack would become lead counsel in a pro bono team that at various stages has included attorneys from four large national firms, including Bruce Barket, a former prosecutor with the Nassau County district attorney's office, and Scott Splittgerber, a former prosecutor with the Brooklyn DA's office. Lonnie Soury, who owns a Manhattan public relations agency, has worked pro bono for Tankleff's uncles, aunts and cousins who believe in Tankleff's innocence. Soury's

media campaign helped prompt publication of pro-defense editorials and essays in *Newsday*, the *New York Times*, and the *New York Daily News*. National and international TV crews also kept the spotlight on this case. Soury created a web site, www.martytankleff.org, that provides anonymous phone tip lines, an online forum and defense fund and the sale of "Free Marty" t-shirts.

I hope Tankleff will become a successful attorney who will include pro bono work on behalf of prisoners who have been wrongly convicted. In the meantime there are plenty of pro bono opportunities for conscientious attorneys who want to help the thousands of innocent inmates in U.S. prisons.

"The problem of wrongful convictions has reached national epidemic status," says New York State Bar Association President Bernice Leber, who recently established a task force to analyze New York cases statewide that led to wrongful convictions. I trust that the Martin Tankleff case will be one of the cases to be scrutinized. "For each wrongful conviction that surfaces, how many others are still unresolved?" Leber wonders.

A few district attorneys—far too few, unfortunately—have addressed this issue. Craig Watkins, elected in 2006 as the district attorney for Dallas County, Texas has established a "Conviction Integrity Unit," staffed by two attorneys and two investigators, to help exonerate the wrongly convicted and to train prosecutors in their obligation to disclose exculpatory evidence and to seek the truth, and not just notch another conviction on their belts. Watkins is also using a \$453,900 grant from the Justice, Equality, Human Dignity and Tolerance Foundation to pay for post-conviction DNA testing. With the help of the Texas Innocence Project, Watkins' office is reviewing hundreds of requests by inmates. Several have already been exonerated.

The Martin Tankleff case calls to mind Christianson's thoughts expressed in *Innocent: Inside Wrongful Conviction Cases*: "A wrongful conviction case serves as a microcosm of what goes on every day in the administration of justice. Often the errors are simply not caught. But sometimes a case can prove a Pandora's box, exposing all sorts of deep-seated problems, widespread corruptions, inexcusable practices, and systemic abuses. No wonder officials try to clamp a lid on such cases before a whole office or department becomes implicated." Christianson's comments could certainly also be applicable to the cases of Sulkey, Weichel, Asadoorian, Talani, Blanche, and to thousands of other wrongly convicted people in America's prisons. The fact that our system of justice works properly most of the time, or the fact that most prisoners committed the crimes for which they are incarcerated, should not be an excuse for concluding that there is no need for investigating the causes and the extent of wrongful convictions.

As Christianson concludes: "Above all, wrongful

convictions represent tragic and costly flaws in our system of justice and our society. Often these actions go largely undetected or unnoticed, except by the actual criminals and their hidden victims—the wrongly convicted. But they are not invisible, insignificant or nonexistent. As Martin Luther King Jr. said, "Injustice anywhere is a threat to justice everywhere. And punishment of the innocent makes a mockery of the law."

The JUDICIAL PROCESS COMMISSION

285 Ormond Street
Rochester, NY 14605
585-325-7727; email: info@rocjpc.org
website: www.rocjpc.org
We welcome your letters and Justicia article submissions by e-mail or postal mail.

VISION

The Judicial Process Commission envisions a society with true justice and equality for all. We understand that in a just society, all institutions will be based on reconciliation and restoration, instead of retribution and violence.

MISSION

The JPC is a grassroots, nonprofit organization that challenges society to create a just, nonviolent community which supports the right of all people to reach their fullest potential. We do this by:

- Providing support services for those involved in the criminal justice system
- Educating the public
- Advocating for changes in public policy.

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Spring Pledge Campaign Has Overwhelming Support!

Thank you to all who participated by sending us a total of \$13,927.33 over the past 3 months - 87 individuals validated our belief that if we ask, our community will respond to the needs of the ex-offenders daily re-entering our lives. Downtown United Presbyterian Church also made a generous donation, as did First Unitarian, which passed the plate for our benefit at a service. We cannot overstate the importance of your choosing to help those men and women turn their lives, and their families' lives, around. Each ex-offender who beats an addiction, volunteers in the community or gets and keeps a job has a ripple effect on community safety and economics.

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Judicial Process Commission
285 Ormond Street
Rochester, New York 14605
585-325-7727
info@rocjpc.org
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JPC APPRENTICESHIP MENTOR TRAINING

September 22 and 23

Mon. and Tues. 5:00 to 9:00 PM,
84 Scio Street

Hosted by Rochester Friends Meeting
(Near the Eastman Theatre)

Training Topics:

- Local, State and Federal representatives discuss their agencies role in the criminal justice system. Project guidelines and boundaries
- Mentor reflections and requirements.
- Active listening skills and feedback.
- Health issues.
- Employment discrimination and welfare issues.

Reservations required in advance by Friday, Sept 19, at noon. Call 325-7727 or email info@rocjpc.org. Interested volunteers should have 2 hours a week to give, be willing to commit to 1 year of apprenticeship service, attend some Monday Night Training Workshops and provide written information about the outcomes.

We asked and you provided.

- JPC registered our first voter on Thursday, Aug. 7, 2008 thanks to Rochester voting rights efforts.
- On Aug. 1 the Ormond Street Beautification Team got underway and weeded the flower bed across from the YWCA on N. Clinton. We will be weeding at that location and in Schiller Park next to the empty bus station weekly. We are planning for an organic community vegetable garden on or near Ormond St.
- Many thanks to two readers who sent us all occasion cards, birthday cards, holiday cards. Special thanks to the prisoner – we know that it was a sacrifice.
- Customers still need:
- Bus Passes
- Pens, pencils, notebooks for job searching.

Call Sue at 585-325-7727 for more info.