



Nino Lyons

Businessman's Convictions Tossed After Disclosure Federal Prosecutors Purchased Perjurious Testimony From 26 Witnesses

By Hans Sherrer

Three years after being convicted of conspiracy to distribute cocaine and crack, carjacking and trafficking in stolen merchandise, all charges were dismissed against Cocoa, Florida businessman Antonino (Nino) Lyons.

As a child, Lyons' family wasn't well-to-do and they lived in a public housing project in Cocoa, on Florida's central eastern coast. Lyons developed into a star basketball player at Cocoa's Rockledge High School, and in the late 1970s he was honored as a High School All-American. Awarded a scholarship to attend the University of Florida, Lyons graduated with a degree in Managerial Science after transferring to the Florida Institute of Technology. He also assisted his mother in raising his six brothers and sisters, five of whom graduated from college.

Lyons became a successful businessman, and by his early 40s he owned several clothing stores in central Florida and a popular nightclub in Cocoa (Brevard County). He was a community activist, and served for a time as the vice-president of the Central Brevard NAACP. He also donated money to programs intended to keep kids off the streets and drugs. One of his charitable acts was providing uniforms for kids at Cocoa's Joe Lee Smith Recreation Center.¹ Lyons's wife, Debbie, rose in her education career to being a high-school principal.

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The official Clyde Kennard website is, <http://clydekennard.org>.

Merle Evers wrote about Clyde Kennard's 1960 burglary conviction in her 1967 book, *For Us, The Living*, that detailed her life with husband Medgar Evers before his 1963 murder by a Ku Klux Klan member.

Sources:

Stevenson Team Tackles Documentary On Civil Rights Hero, By Abby Scalf, *Daily Herald* (Arlington Heights, IL), February 12, 2006.

1960 case inspires teens to take action: Stevenson High team wants Mississippi to pardon ex-Chicagoan, By M. Daniel Gibbard, *Chicago Tribune*, March 24, 2006.

Ms judge tosses 1960 conviction of black veteran, *Sun Herald* (Gulfport, MS), May 17, 2006.

Kennard v. State, 240 Miss. 488 (Miss.03-06-1961) Email from Callie McCune to the authors, dated Sept. 6, 2006.



Lyons' idyllic life was suddenly upset on December 20, 2000: His home and clothing stores were searched by agents with U.S. Customs, the Secret Service, the BATF, the Florida Department of Law Enforcement, and the Cocoa Police Department.

Lyons was indicted nine months later, in August 2001, by a federal grand jury in Orlando on a variety of charges that included conspiracy to distribute counterfeit clothing, drug trafficking, carjacking, possession of counterfeit currency, and possession of cocaine. Although Lyons had lifetime ties to the community and was a well-respected businessman who had never before been arrested or otherwise in trouble with the law, he was taken into custody on August 20, 2001, denied bail, and jailed as a federal detainee at the Seminole County Jail.

Lyons' trial began in November 2001. The government's case revolved around its theory that Lyons' clothing stores were fronts for his involvement in the drug trade and the fencing of counterfeit clothing. Since no drugs, drug related paraphernalia, or records tying Lyons to the drug trade or knowingly selling knock-off clothing were found during the searches of his home and stores or the subsequent investigation, the government's case hinged on the testimony of 26 people convicted of federal drug law violations. Those witnesses testified that Lyons sold them more than \$6 million in cocaine. However there was no independent evidence – no drugs, no non-felon witnesses, no wiretaps, no tape recordings by an undercover agent or informant, etc. – supporting the claims of the witnesses.

Nevertheless, after an 11-day trial, Lyons was convicted on November 26, 2001, of drug trafficking, carjacking, and distributing counterfeit clothing. The convictions were serious enough that he faced a sentence of up to life in prison under the federal sentencing guidelines.

Lyons's family and friends were so outraged at his conviction by specious testimony unbacked by evidence, that they set up The Committee To Free Nino Lyons. They wrote letters and made phone calls in support of Lyons, they held protests outside the courthouse in Orlando, and they set up a website, freenino.org. Lyons's wife Debbie spearheaded those efforts.

Lyons's sentencing was delayed by his motion for a new trial. The crux of Lyons's argument was that the prosecution withheld documents potentially undermining their case, and that the testimony of the 26 convicted drug felons was unreliable. Lyons alleged the testimony of those witnesses was not just unreliable because it was procured with the promise of a reduced sentence, but the prosecution presented no independent evidence to corroborate their allegations.

Furthermore, there was no mention of Lyons in any wiretap, recorded conversation, or report by any undercover agent generated during the investigation of those 26 witnesses for their convicted crimes. Most of the witnesses cooperated with the government by naming names of bigger fish in order to get a lesser sentence when they were prosecuted. Yet Lyons' name wasn't raised by any of them. Then suddenly when they were offered the inducement of a sentence reduction, they started describing Lyons as a prominent drug kingpin in central Florida, even though they had spent years in prison out of the drug trade loop. Lyons' lawyer knew how the government had procured the witness testimony, because "Lyons received letters from prisoners who said they were approached by the government, but refused to testify, because they would be lying."²

In May 2002, U.S. District Judge Gregory Presnell granted Lyons's motion for a new trial, based on prosecutorial misconduct: namely the prosecution's knowing reliance on perjurious testimony and *Brady* violations by deliberately concealing exculpatory evidence. The government appealed the judge's order.

Judge Presnell then granted Lyons bail on June 25, 2002, to be secured by a \$250,000 cash surety bond. The judge stayed Lyons's release pending the prosecution's appeal of his ruling to the federal Eleventh Circuit Court of Appeals – which subsequently reversed Judge Presnell's bail order. So Lyons remained jailed while awaiting his retrial.

Then in November 2002 the Eleventh Circuit Court of Appeals reversed Judge Presnell's order for a new trial. The Court ruled that although the prosecution withheld *Brady* discovery evidence from Lyons, their actions constituted harmless error and not reversible prosecutorial misconduct.

With the case back in Judge Presnell's court, Lyons's lawyers filed a new motion for retrial based on additional evidence of prosecutorial misconduct. In May 2003 Judge Presnell ordered the prosecutors to turn over their case notes and other materi-

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als to U.S. Magistrate David Baker. After reviewing the evidence, Magistrate Baker would make a recommendation about the motion to Judge Presnell.

At that point Lyons had languished at the Seminole County Jail for 21 months. He was trapped in the limbo land between conviction and sentencing – but with the hope of being freed.

Although the prosecutors did not fully comply with Judge Presnell's order to produce case documents, Magistrate Baker was provided with enough information to issue a 66-page report in November 2003. The report concluded Lyons had been denied a fair trial by extensive prosecutorial misconduct that included the withholding of potentially exculpatory evidence and the failure to disclose perjurious testimony by government witnesses. The report documented e.g., that Assistant U.S. Attorney (AUSA) Bruce Hinshelwood entered into secret deals exchanging a reduced sentence for prosecution favorable testimony, and then remained silent in the courtroom when those witnesses denied the existence of the deal.³ The report also documented that one of the witnesses told a federal agent, "some of the guys didn't really know Lyons but they made up stories."⁴ The report also explained that as a ruse to avoid turning over documents covered by Judge Presnell's order, AUSA Anita Cream "Said she rarely took notes in pretrial interviews, preferring to rely on memory and agents' notes. But the report noted that Cream could not remember whom she interviewed and that no records of any kind existed for one of the witnesses."⁵ Given that claim, Magistrate Baker rhetorically wrote, "The question therefore remains – how did the government know how to call [inmate] Clements as a witness? If AUSA Cream relies on agent's notes and no agent's notes exist, how could she prepare for the examination?"⁶ Concerning the ongoing failure of the U.S. Attorney's Office to comply with Judge Presnell's order to turn over all relevant case notes and documents, Magistrate Baker wrote, "The government's refusal to produce the documents despite court orders to do so, leaves the court with nothing but an inference that they indicate prosecutorial misconduct or other improprieties."⁷

Two months after Magistrate Baker's report, in January 2004, the prosecutors turned over

an additional 2,500 documents to Judge Presnell. They also acknowledged that mistakes had been made in Lyons' prosecution. Those admissions were followed in May 2004 by the U.S. Attorney's motion to vacate Lyons's drug convictions – which Judge Presnell granted on May 21, 2004. At that same hearing Judge Presnell ordered Lyons's release on bail, which was unopposed by the prosecutors. After being jailed for 2 years and 9 months, Lyons was greeted home that night by relatives, friends and well-wishing strangers.



Protestors outside Orlando's Federal Courthouse

Four months later Judge Presnell vacated with prejudice, Lyons's convictions for carjacking and selling counterfeit clothing. The documents belatedly turned over by the prosecutors supported Lyons's contention that the prosecution's case against him was not just evidentially insufficient, but had the appearance of being a phantom case contrived

out of whole cloth by federal prosecutors.

Judge Presnell didn't mince words in his dismissal order of September 30, 2004, that stated in part:

"A review of U.S. Magistrate Judge Baker's ... Report and Recommendation ... and Supplemental Report and Recommendation ... exposes the myriad violations that collectively reveal a prosecution run amuck.

... In the course of a criminal prosecution, the Government has a continuing duty to honor a defendant's constitutional rights, which, according to *Brady*, requires the Government to disclose any evidence in its possession or control that is material either to guilt or punishment. ... In this regard, the prosecutor must disclose evidence that could, in the eyes of a neutral and objective observer, alter the outcome of the proceeding. ... In this case, by some mixture of negligence, recklessness, and wilfulness, the Government utterly failed in its prosecutorial duties.

... This nation's adjudicatory system is not a tool finely tuned to obtain convictions, but a system designed to foster respectable justice. Although the Government, as the gatekeeper of certain exculpatory evidence, may contrive a case without any honest attempt to comply with its duties, the Court refuses to be the Government's rubber

stamp of single-minded injustice, however expedient that would be.

... Based on the foregoing, the Court finds that the Government committed *Brady* and *Giglio* violations material to all remaining counts in this case, and the Government's unwarranted denials and delay prejudiced Lyons and the judicial process to such a degree that dismissal of the remaining counts is appropriate."⁸

As the true story of Lyons's unfounded prosecution unfolded, his lawyer, Gregory W. Eisenmenger, said, "The story of this case is that the government should be held responsible for the manner in which they put together this prosecution. This was a case that was concocted completely on the testimony of convicted felons, telling the government what it wanted to hear. It becomes extremely upsetting and shocking that the government knew these people were not telling the truth."⁹

On the Friday night of the week the charges were dismissed, Lyons watched his son play halfback in the Rockledge-Cocoa High School football game. He told a reporter for *Florida Today*, "Being out feels great, but the idea of knowing that someone has the ability to do something of this magnitude is scary."¹⁰

As of the fall of 2006 it is unknown why businessman Nino Lyons was targeted for a fabricated federal prosecution that had him on track for spending the rest of his natural life in prison. Lyons is weighing his options for seeking compensation.

JD Note: Nino Lyons exoneration is extraordinary for two reasons. First, Judge Presnell displayed uncommon diligence in ferreting out if there was substance to Lyons' claim that federal prosecutors committed egregious prosecutorial misconduct. The judge's doggedness is particularly noteworthy because as he wrote in his dismissal order, it would have been expedient for him to have "rubber stamped" the shady illegal and unconscionable methods used by the prosecution to secure Lyons' convictions. Second, the prosecutors over-reached by promising over two-dozen jailhouse witnesses a reduced sentence in exchange for perjurious testimony. If the prosecutors had only purchased the false testimony of a couple of witnesses, the truth of what they did may have remained concealed. However, by doing that the prosecutors would have risked Lyons' acquittal, since there was no substantive evidence against him except for the false testimony of those jailhouse witnesses. Thus a large number of relatively incredible witnesses were needed by the prosecutors to overcome the fact that Lyons

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Eighteen years after the grisly double murder and sixteen years after one of the most controversial convictions in Long Island history, the case of wrongly imprisoned Martin (Marty) Tankleff has gone through more twists and turns than a long-running TV soap opera.

Not even the lawyers presently involved are capable of recounting all of the legal machinations that have occurred to date, and in-depth news reporters find themselves without sufficient time or space to recount even a bare-bones version of one of New York suburbia's juiciest crime stories. Instead of winding down, the saga keeps growing in size and intensity, with no clear end in sight. The stakes are high – not just for Marty Tankleff.

Connoisseurs of mistaken conviction rate Tankleff as one of the most memorable cases of false confession and police and prosecutorial misconduct they have encountered, notable for its incredibly complex webs of sordid intrigue and political corruption.

Chances are, if you have followed some of the many reports in the major news media or come across the dynamite blog at <http://martytankleff.org> maintained by many of Tankleff's relatives and friends, you may have already heard about it.

1988 Murders

It all started on the morning of Sept. 7, 1988, when Suffolk County police responded to a frantic emergency call from an upscale house in Belle Terre, on Long Island's North Shore. Marty Tankleff, aged seventeen, who was scheduled that day to begin his senior year in high school, blurted he had just awakened to find his father brutally bludgeoned and covered in blood. With instructions from 911, the boy helped keep his father alive until help arrived.

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was not only a well respected community activist and businessman with no criminal record – but that he was actually innocent.

Endnotes and sources:

1 Lyons a free man with clean record, by Kimberly C. Moore, *Florida Today*, October 1, 2004.

2 The Criminal Injustice System – The Nino Lyons Story, freenino.org.

3 Federal judges blast trial's prosecution, by Henry Pierson Curtis, *Orlando Sentinel*, January 17, 2004

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *U.S. vs. Lyons*, Case No. 6:01-cr-134-Orl-31DAB (D.C. M.D.F.), Order, September 30, 2004.

9 Federal Judges Blast Trial's Prosecution, *supra*.

10 Lyons a free man with clean record, *supra*.



Will The Frame-up Hold Up? The Martin Tankleff Story

By Scott Christianson

Emergency responders found Seymour Tankleff, aged 62, barely breathing and his wife, Arlene, horribly stabbed to death and nearly decapitated. Seymour, a wealthy insurance broker and entrepreneur, never came out of his coma and would die a few weeks later.

Although the slightly built youth had no criminal history, record of mental illness, or known strife with his parents, as their closest relative and lone survivor in the house at the time, the boy was quickly taken away to the police station for questioning without a lawyer present. Why would any killer have left behind a possible witness?

Despite Marty's claim that Jerard Steuerman, his father's estranged business partner in bagel stores and horseracing, owed the Tankleffs hundreds of thousands of dollars and had been the last one to leave a high-stakes card game at the house earlier that morning, the cops immediately targeted the kid as the prime suspect.

Tricked into "Confessing"

The youth denied he had done anything wrong, but the police detectives persisted. When the teenager didn't confess, one of the detectives, K. James McCready, remained within earshot and pretended to receive a telephone call telling him that Seymour Tankleff had revived under adrenaline to blame his son for the attack. McCready also said, "We also have your hair in your mother's hand, Marty, we know you did it, just tell us you did it."

Tankleff said, "Absolutely not. I'd be willing to take a polygraph, I'll do anything I can. I have nothing to do with this."

But McCready countered, "Marty, then why would your father identify you?"

Tankleff replied, "Maybe because I helped him that morning, giving him first aid."

After that, the questioning just became more hostile and more aggressive, and within minutes young Tankleff broke down and "confessed" to the experienced detectives, without signing any statement or giving a videotaped admission. Although the teen quickly recanted his statement and proclaimed his innocence, the police arrested him and the district attorney charged him with murder.

Attention Increases

The case became politicized when Tankleff's family hired as his defense lawyer Robert Gottlieb, a Democrat who was running for district attorney against the incumbent Republican. Gottlieb soon began to note that the police had no physical evidence whatsoever to support their supposed "confession." There was no bloody murder weapon, bloody gloves or clothes, or other corroborating evidence.

Tabloids reported the DA's line that Tankleff was a spoiled rich kid who had tried to eliminate his adoptive parents because he resented having to drive a "crummy Lincoln." Defenders focused on the "coerced" or "tricked" confession, which prompted law-and-order types to support the police. Greed, jealousy, mystery – reporters already saw a good crime story.

Another Suspect

But when reports circulated that Seymour Tankleff still hadn't died, and might recover, Jerry Steuerman, his business partner, suddenly turned up missing. It quickly emerged that Steuerman had faked his own death, shaved off his beard, and fled across the country using a false identity. He was later found in California, where he had changed his hair weave and acted distraught, yet Detective McCready assured the public that he "wouldn't hurt a fly" and continued to insist that the boy had done it.

Steuerman and his son, Todd, were never seriously interrogated even after Suffolk law enforcement authorities secretly learned that they had been involved in cocaine trafficking from their bagel store and that a notorious drug enforcer, Joey "Guns" Creedon, told police Todd had shot him after he refused to agree to "cut out Marty Tankleff's tongue" for Jerry Steuerman. Todd Steuerman was quietly arrested, offered a lenient plea deal, and whisked off to prison, and the allegations against the Steuermans were kept away from the Tankleff defense and the news media.

Tankleff Convicted

Instead, Marty Tankleff was tried for double murder in a high-profile trial that was televised live—a trial that attracted so much media attention it helped lead some enterprising businessmen to start Court TV.

The only member of his extended family who didn't support him was his half-sister Shari, and his brother-in-law, who gained more inheritance upon his conviction, and

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