

## Tankleff cont. from p. 9

### Suffolk Judge Backs DA

Judge Braslow ruled in favor of the DA on every motion, refused to require a special prosecutor, and denied Tankleff's bid to conduct advanced DNA tests on pieces of human skin scraped from Arlene Tankleff's fingernails after the attack.

Braslow ultimately refused to overturn Tankleff's conviction, simply concluding that he didn't find the evidence presented by the defense to have been credible, thus forcing the defense to appeal in state court.

Although it was scarcely reported in the news media, Braslow also exhibited conflicts of interest, which should have led him to recuse himself from handling the case. He and Lato worked as a team. Stories abound that Braslow's father, a local Democratic boss, helped make Spota DA and figured in Lato getting hand-picked as Spota's assistant in the case. Judge Braslow showed obvious favoritism toward the prosecution, and his final opinion in the case was also poorly reasoned and extraordinarily weak.

### Support for Tankleff Grows

Numerous legal organizations, such as the National Association of Criminal Defense Lawyers, and several high-profile legal experts supported the appeal. Said Barry Scheck, co-director of the Innocence Project, "We've taken the unusual step of writing a letter along with our motion because the facts of this case are so strong, and because the lower-court ruling that denied Marty Tankleff a new trial was so misguided and troubling."

Meanwhile, members of the news media also weighed in. The CBS program, "48 Hours" devoted three prime-time shows to the case, and an array of newspapers, magazines and broadcast media supported Tankleff's cause.

His family and friends, aided by Soury Communications in New York City, widened their campaign over the Internet and held fundraisers in a SoHo art gallery and other locations. Twenty-seven relatives said in one statement, issued in 2004 on the sixteenth anniversary of the murders: "From the beginning, any impartial observer familiar with the facts of this case—and with the sordid history of the Suffolk County criminal justice system to which it will be forever linked—has come to the same conclusion: Marty didn't do it. That's where we find ourselves, 16 years later: Marty didn't do it, and everybody knows it. Yet, Marty remains in prison."



## Jeffrey Scott Hornoff Settles Lawsuits Over Wrongful 1996 Murder Conviction

By Hans Sherrer

Jeffrey Scott Hornoff was a married 27-year-old Warwick, Rhode Island police officer when in the summer of 1989 he had two sexual encounters with 29-year-old Victoria Cushman. On August 11, 1989, Cushman was found dead in her Warwick apartment. She

had been bludgeoned to death with a 17-pound fire extinguisher.

Initial suspicion that Hornoff might be Cushman's killer was fueled when he denied to Warwick police detectives that they had been anything other than friends. The detectives knew otherwise, and within an hour Hornoff changed his story and acknowledged their two sexual encounters.

Hornoff's alibi was that he was at a party with his wife and friends the night of

### Hornoff cont. on p. 11

### Tankleff Wins Leave to Appeal

In May 2006, Justice Reinaldo Rivera of the Appellate Division, Second Department, granted leave to appeal on the main motion to vacate the conviction. Appeal was also granted on the deprived indifference motion. The DNA motion will be heard by the appellate court, because there is an automatic right to appeal on DNA issues. Appeal was denied on the disqualification motion. The decision can be found at [www.courts.state.ny.us/re...5-2006.htm](http://www.courts.state.ny.us/re...5-2006.htm). Judge Rivera's actions mean that a panel of judges will review the case.

Motions, rebuttals and oral arguments are likely to continue until February 2007 at the earliest. The Appellate Division may not rule until early summer 2007. Even then it's possible that the case may end up in the State Court of Appeals. By the time the issues are resolved in state court, even if just in this latest bout, twenty years may have elapsed since the Tankleff murders.

### Tankleff Still Imprisoned

Thus far, Marty Tankleff remains wrongly convicted and imprisoned. Now in his mid-thirties, he is bulkier and has less hair than he did when he first left the courthouse in handcuffs. He has served most of his sentence in rock-hard Clinton Correctional Facility near the Canadian border, but in 2005 was moved to Great Meadow C.F. Over the years he has become one of the sharpest jailhouse lawyers in New York, and unlike many other wrongfully convicted prisoners, his spirit remains strong and he is still confident he will be exonerated. Over the years, he has managed to make and keep an amazing number of friends and supporters. But he still locked up.

Jerry Steuerman lives the good life in a gated community in Florida. Joey Creedon continues to roam the streets of Long Island. McCready is enjoying his retirement

in South Carolina. And Tom Spota does his best to protect them all, and himself, trying to ensure that what they all did back in the old days doesn't come back to haunt them.

Although the old Republican political machine no longer rules Suffolk County with a steel grip, and many of the mobsters (including John Gotti) and political scoundrels who haunted the scene in the 1980s are either dead or retired, and coke's boom era has tapered off a bit, innocent victims of the old corrupt law enforcement system (including Marty Tankleff) remain locked up for crimes they didn't commit, all these years later. The feds and the state do nothing to intervene; they just let nature take its course.

### "Chinatown" Syndrome

Like an East Coast, present-day version of "Chinatown," Suffolk's a place that contains some awfully dark secrets. As Noah Cross says in the movie, "Politicians, ugly buildings and whores all get respectable if they last long enough."

This is a drama that is still unfolding, and the final unscripted scenes haven't yet been acted out.

Stay tuned.

In the end, Marty Tankleff may go free — and others may take his place.

Scott Christianson, Ph.D., a longtime investigative reporter and former New York state criminal justice official, has written about the Tankleff case for *The New York Times* and *Newsday*. One of his books, *Innocent: Inside Wrongful Conviction Cases* (NYU Press, 2004), is scheduled to be reissued in paperback in November 2006. *Innocent: Inside Wrongful Conviction Cases* is available from Justice:Denied's Bookshop at, <http://justicedenied.org/books.html>



## Hornoff cont. from p. 10

Cushman's murder. People at the party confirmed Hornoff's presence.

The grand jury that considered the evidence was dismissed without indicting him. The Rhode Island State Patrol took over the murder investigation in 1991. After Hornoff was indicted in December 1994, more than five years after Cushman's murder, he was fired by the Warwick Police Department.

During Hornoff's 1996 trial the prosecution brushed aside his alibi by claiming he slipped away from the party, murdered Cushman, and returned without anyone noticing either his absence, or anything unusual about the condition of his clothing. They ignored the fact that something would be visible if he had just committed a brutal and bloody murder with a fire extinguisher. His initial claim of having only been friends with Cushman was presented as circumstantial evidence that he tried to cover-up murdering her.

After the jury accepted the prosecution's argument and convicted Hornoff of murder, he told the packed courtroom at his sentencing: "Am I guilty of something? Yes I am. I broke my sacred wedding vows, and for that I will never forgive myself."<sup>1</sup>

Sentenced to life in prison, the Rhode Island Supreme Court unanimously dismissed Hornoff's arguments when it upheld his conviction in 1999. That Court confidently stated, "For the foregoing reasons, the defendant's appeal is denied and dismissed and the judgment of conviction is affirmed."<sup>2</sup> Hornoff was slated to spend the rest of his life in prison without the miraculous discovery of new exculpatory evidence.

That is exactly what happened on Friday, November 1, 2002, when 45-year-old carpenter Todd Barry walked into the office of the Rhode Island Attorney General and confessed to murdering Cushman. Barry said he was consumed with guilt over an innocent man spending his life in prison for something Barry had done. After the AG's office spent the weekend comparing Barry's confession with the known evidence and facts of the case, some of which had not been publicly disclosed, he was charged on Monday, November 4 with Cushman's murder.

The degree to which Cushman's murder investigation was mishandled is indicated by the facts pointing to Barry as a suspect when Hornoff was prosecuted for her murder. Barry lived near her, he had dated her off and on for more than a year, his name and telephone number was near the front of her Rolodex

seized by police from her home, and he was known to her friends. Yet, not only was Barry never considered a suspect, he was never even questioned about her murder, not by the Warwick PD nor by the state police.

Almost fourteen years after the fact, and only after Barry had confessed, a prosecutor publicly acknowledged, "The two had met in the summer of 1988 and developed ... "an on-again, off-again relationship" that was "primarily sexual."<sup>3</sup> Yet in spite of the trail a mile wide leading straight to Barry, he was home free once law enforcement officials erroneously decided that Hornoff was Cushman's killer. At that point all meaningful investigation into Cushman's murder ended.

Hornoff was freed on bail five days after Barry confessed to Cushman's murder. He had been wrongly imprisoned for 6 years, 4 months and 18 days. He literally had nothing but the clothes on his back. His home, his career, his possessions, and his wife who divorced him in 1996 while he was in prison, were all gone, and his three sons had been deprived of their father for over six years.

When the murder charge was dismissed on January 7, 2003, Rhode Island Attorney General Sheldon Whitehouse tried to deflect attention away from the mishandling of Hornoff's case by blaming him for his own wrongful conviction. Whitehouse said Hornoff shouldn't have made the sort of "misstatements" to police typical of someone "who is trying to hide something."<sup>4</sup> Yet the police knew all Hornoff was trying to hide was his two intimate encounters with Cushman from his wife.

In response to a lawsuit Hornoff filed in state court against the City of Warwick, in January and March 2004 respectively, a Superior Court judge ordered Hornoff's reinstatement to the Warwick PD, and awarded him back pay of \$507,591. The city obtained a stay pending its appeal of those decisions to the Rhode Island Supreme Court.

On October 21, 2005, Hornoff filed a 12-count, 32-page civil rights lawsuit in U.S. District Court in Providence, Rhode Island. The defendants were the City of Warwick, the State of Rhode Island, the RI State Police, two officers each from the Warwick PD and the State Police, and a total of 30 John and Jane Does whose identities were then unknown.<sup>5</sup> The lawsuit stated in part:

"In or about 1991, due to the documented ineptitude of the Warwick Police Department, the State Police were asked to assist in investigating the 1989 Cushman murder. ... The State Police worked with

'liaison' police officers from Warwick and, together, they began building a false case against Hornoff... Only by knowingly or recklessly destroying, suppressing and ignoring key pieces of evidence, intimidating and coercing witnesses, offering false evidence, using improper investigatory techniques and committing other misdeeds were the State of Rhode Island, the City of Warwick and various individuals able to convince a jury that Hornoff was guilty of a murder he did not commit."<sup>6</sup>

The lawsuit also alleged that because of Hornoff's wrongful imprisonment he was suffering from post-traumatic stress disorder, and back and hip problems caused by his mistreatment that included being housed in isolation naked. The lawsuit sought unspecified compensatory and punitive damages, and attorney fees.

A global settlement of the state and federal lawsuits was reached on August 15, 2006, between Hornoff and the City of Warwick. The city agreed to pay Hornoff a lump sum of \$600,000 to settle the federal lawsuit, and a work-related disability pension guaranteeing him a tax-free \$47,000 a year to settle the state suit. The pension payments are retroactive to July 18, 2006.

Under the settlement's terms neither the city nor its two detectives admitted wrongdoing. Warwick's Mayor Scott Avedisian said, "I hope that this bad chapter of city history is finally behind us, and I wish Mr. Hornoff all the best."<sup>7</sup>

The 44-year-old Hornoff will not receive any of the settlement money until a Family Court judge determines how much of the lump sum payment and the yearly pension his former wife is entitled to. She is seeking half of the settlement.

As of September 2006 the RI State Patrol has declined to settle Hornoff's federal lawsuit.

### Sources and Endnotes

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