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HEADLINE: Awaiting Next Word in 17-Year-Old Murder Case

BYLINE: By BRUCE LAMBERT

BODY:

Martin H. Tankleff was supposed to start his senior year of high school on Sept. 7, 1988. But before dawn, his parents were bludgeoned and stabbed during a rampage in their home on a cliff overlooking Long Island Sound.

Within hours he was arrested, based on a confession that was handwritten by a detective, which Mr. Tankleff promptly repudiated and never signed. Still, it sealed his fate. In 1990 a jury convicted him of double murder, and he began serving two consecutive terms of 25 years to life in prison. He appealed, in vain, all the way to the United States Supreme Court.

But when he turned 34 in August 2005, Mr. Tankleff voiced renewed hope that "this is my last birthday spent in jail." In a year and a half of sporadic hearings in Suffolk County Court, he has challenged his conviction, against the opposition of prosecutors.

Besides disputing the validity of the confession, his lawyers called 21 witnesses in a presentation of a new body of evidence, including an alternative theory of what happened that September night. Mr. Tankleff's lawyers accused his father's business partner and three former convicts of being the real killers. One admitted in an affidavit to being the getaway driver. Several witnesses said two others privately admitted their involvement, including one who told his son, "Yes, I did it."

The hearings heartened supporters who rallied to Mr. Tankleff's cause and prompted news reports, book projects, a film proposal and features on national and foreign television programs. A Web-based campaign to free him, organized by family members and others, has drawn responses from as far as Indonesia.

Criminal law experts have also focused on the case, citing it as a classic miscarriage of justice. They say it has the earmarks of wrongful conviction, with a false confession, dubious police work and a prosecutor's conflicts of interest.

"I never saw a similar case where a defendant was so obviously innocent," said Herbert A. Posner, a retired State Supreme Court justice who is following the case.

The prosecutors insist there is no merit to Mr. Tankleff's claim of innocence. They dismissed his new evidence, called his witnesses "misfits" and suggested that some had hoped to be paid for their testimony.

"No credible evidence connects anyone other than Martin Tankleff to the murders," said the latest filing from Leonard Lato, an assistant district attorney in Suffolk.

In an interview, Mr. Lato disputed all the Tankleff witnesses: "Some people are flat-out lying. Others may simply be mistaken or confused by the passage of time." He challenged the credibility of those with criminal records, drug abuse or psychiatric problems, as well as their motivation, saying they sought fame or were prompted by jealousy, revenge or other bias.

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When the hearings ended last month, the judge, Stephen L. Braslow, said he would rule soon afterward on whether the new evidence is credible and would have changed the jury's mind. If he overturns the convictions, prosecutors could then retry Mr. Tankleff, charge someone else, or drop the case.

Criminal justice experts said the obstacles to reopening a case are daunting.

Steven A. Drizin, legal director of the Center on Wrongful Convictions at Northwestern University, who studied the Tankleff case, said: "Unfortunately, in almost every wrongful conviction case, even when DNA excludes the suspect, law enforcement officers -- whether blinded by tunnel vision, whether they don't want to admit a mistake, whether from fear of civil liability -- they remain fixated on preserving a conviction, even in the face of compelling contrary evidence. That's the saddest thing in these cases."

Winning exoneration typically takes a decade and sometimes comes after the defendant dies in prison, said Samuel R. Gross, a University of Michigan law professor and co-author of a landmark study of 340 exonerations. He called them "the tip of an iceberg" of tens of thousands of such cases.

What makes the Tankleff case stand out, experts say, is that it lacks the DNA proof that has helped overturn many other convictions, yet it raises many other issues. Mr. Tankleff's lawyers make these claims: a botched initial investigation produced a false confession, new evidence identifies the real killers, the police detective in the case lied about his ties to one of the killers, the district attorney has connections to the killers, and prosecutors ignored evidence, coerced defense witnesses and shielded the real culprits.

"It's an incredible case," said Prof. Bennett L. Gershman, who lectures about it at Pace Law School. "There are so many angles. I haven't seen anything like it."

William E. Hellerstein said he had handled 300 cases as the Legal Aid Society's appeals chief in New York City, "but I never mounted what Marty has."

An Alternative Theory

The hearings, which began in July 2004, focused on the central mystery: if Martin Tankleff did not kill his parents, Seymour and Arlene, then who did?

At the outset, Mr. Tankleff accused his father's partner in a chain of Strathmore Bagel stores, Jerard Steuerman, who called himself the bagel king of Long Island. The partners had been feuding over the elder Tankleff's demands that he co-own new stores and that Mr. Steuerman repay him \$500,000 in loans. The slain couple's siblings and their siblings' children, who were familiar with the business dispute and say the police never interviewed them, say Mr. Steuerman had threatened to kill Seymour Tankleff.

On the night of the attack, Mr. Steuerman was in the Tankleff home in Belle Terre, near Port Jefferson, for a poker game and was the last player to leave. But the police ruled him out as a suspect and quickly charged the Tankleffs' son.

Mr. Tankleff, then 17, said he awoke in the morning to find his mother dead and his father gravely wounded, called 911 and gave his father first aid. When the police doubted his version of events, the youth asked for a lie-detector test, but they refused. (Later he passed two tests, he said.)

The lead detective, K. James McCready of the Suffolk County police, testified that he told Mr. Tankleff during the interrogation that his father -- who was in a coma and died a month later -- had awoken at the hospital and identified the son as the attacker, that the son's hair was found on his mother's hands and that a test proved that his shower was used that morning, which the police said showed that Mr. Tankleff may have washed off his parents' blood.

All those claims were false, the police later acknowledged, but at the time, Mr. Tankleff said he began to doubt his sanity and wondered if he could have "blacked out" and committed the crimes. He said that Mr. McCready had coaxed him to describe the attack and had written a confession for him, but that he had refused to sign it.

A week later, as his wounded partner lingered in a coma, Mr. Steuerman disappeared, shaved his beard and ended up in California using an alias. Mr. Tankleff accused Mr. Steuerman of having killed his parents and the police later located Mr. Steuerman and brought him back to New York, but the police still did not consider him a suspect.

Ultimately, Mr. Tankleff's confession -- even without his signature -- trumped all else at the trial. Lawyers who work on wrongful conviction cases said that is to be expected: The average person, and juror, has a hard time accepting that an innocent person would confess.

Even supporters concede that Mr. Tankleff hurt his cause at the trial by coming across as unemotional. Critics said he seemed to fit the image the prosecutor laid out: a spoiled young man with a motive to kill his parents for their money.

"A confession is so powerful that it forces the system to break down," said Professor Drizin, and the defendant "is less likely to get relief on appeal."

Yet false confessions are well documented. "You had cases 75 years ago where someone confessed to killing a missing person, then the supposed victim wanders into a saloon," said Peter J. Neufeld, co-founder of the Benjamin N. Cardozo School of Law's Innocence Project, which has helped to free 170 prisoners.

Today, DNA has disproved confessions, as in the Central Park jogger rape case. Reviewing DNA exonerations nationwide, Professor Gross, of the University of Michigan, found that one-fifth of the defendants had confessed.

Mr. Tankleff fit one common profile of a false confessor: an impressionable teenager, said Barry C. Scheck, the Innocence Project's other founder. One study of exonerated defendants showed that 42 percent of those under the age of 18 had given false confessions, but only 13 percent of older defendants had done so.

Another tactical misstep that leads to erroneous arrests, critics say, is when the police prematurely focus on one suspect and ignore other possibilities. "The man with the most to gain from the death of Marty's parents changes identities and flies to California -- that should not have been dismissed," Professor Drizin said.

Experts say the Tankleff confession fails the ultimate test: the facts do not fit. The parents were involved in a violent struggle, but the son had no scratches or bruises. And the supposed weapons, a barbell and a knife, had no blood on them.

The use of trickery by the police in interrogations is a legal and common technique, but critics say it invites false admissions. In Suffolk County, the State Investigation Commission found ineptitude, corruption and dubious confessions in a majority of cases in the 1980's.

But the Suffolk prosecutor, Mr. Lato, called false-confession studies an unproven science and insisted that the police statement was Mr. Tankleff's true confession.

Role Reversals

In the upside-down world of the Tankleff case, both sides reversed their traditional roles. The defense accused people of crimes and introduced evidence, and prosecutors dismissed the charges against the newly accused.

The Tankleff lawyers have made a series of allegations since 2003. They contend that the killers are the father's partner, Mr. Steuerman, and three former convicts -- Joseph Creedon, Peter Kent and Glenn Harris -- acting at his behest.

"Any prosecutor could take what we have now and indict and convict," said Mr. Tankleff's lawyer, Bruce A. Baraket. "It's an overwhelming case."

The Tankleff team says it made a breakthrough after a private investigator, Jay Salpeter, tracked down Mr. Harris, who admitted he had driven Mr. Creedon and Mr. Kent to the Tankleff home.

That account was bolstered by Mr. Creedon's son, Joseph Guarascio, who said his father had described the drive, had told of how Mr. Steuerman signaled the killers to enter the Tankleff home and recounted the ensuing attack.

The prosecutor, Mr. Lato, called Mr. Guarascio "arguably the biggest liar at the hearings." Mr. Creedon's lawyer, Anthony LaPinta, speculated that Mr. Guarascio was manipulated by his mother, who had long ago broken up with Mr. Creedon.

But another witness said Mr. Creedon had recruited him in an earlier attempt on the elder Mr. Tankleff's life. Another said the killers had visited him before the attack and had asked him to join them. Four witnesses said Mr. Creedon had told them that he was involved. One quoted Mr. Steuerman as having said he had killed two people.

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The defense lawyers say that most of the 21 witnesses whom they produced -- including a priest -- never knew the Tankleffs or one another and had nothing to gain from testifying. "If this entire picture had been presented to the trial jury, it wouldn't have convicted," said Prof. Eric M. Freedman of Hofstra Law School.

Professor Gershman of Pace said, "There is a mountain of new evidence, certainly enough to grant a new trial."

In court papers and at the hearings, Mr. Lato attacked the witnesses' truthfulness and accuracy. He accused the Tankleff team of coaching witnesses and inducing them with money, which it denies.

Credibility Is Challenged

Defense lawyers have made a central issue of Detective McCready's credibility. Before the Tankleff killings, the State Investigation Commission found that he had committed perjury in a different murder case.

After the Tankleff trial, Detective McCready opened a bar with the husband of Martin Tankleff's half-sister. The only relative who turned against Mr. Tankleff, she pushed for and got a bigger share of the estate while his case was pending.

Detective McCready testified in 1990 that he did not know Mr. Steuerman. But, in the recent hearings, a businessman testified that he had seen the detective visit Mr. Steuerman at a bagel store and quoted the detective as saying Mr. Steuerman was a client of his private construction company.

Another witness, who declined to testify but signed an affidavit, said she had worked at a bagel store for Mr. Steuerman, who had introduced her to Detective McCready as a card-playing friend.

Last month, Joseph Guarascio testified that his father, Mr. Creedon, had admitted to the murders and said he had bribed Detective McCready with \$100,000 to avoid arrest. Mr. McCready denied the allegation.

The prosecutor, Mr. Lato, called the accusations an "outrageous" ploy to smear the detective. But Professor Gershman said, "If you can show the lead detective perjured himself in the case, that is grounds for reversal in two seconds."

Was Evidence Ignored?

Mr. Barket, the defense lawyer, accused prosecutors of "a systematic attempt to stop the truth from coming out."

Prosecutors, for instance, never checked Mr. Harris's claim that before he drove the killers to the Tankleff home, they visited the home of another man, William Ram. Mr. Tankleff's investigator located Mr. Ram, who confirmed the story and said that the three men in the car had invited him to join them. Later, he said, he discussed the murders with two of them.

But the defense team claims that the district attorney's office tried to intimidate Mr. Harris, threatening him with prison and opposing immunity in exchange for his testimony, so he did not testify. The defense also said prosecutors had coddled the real killers. After being told that Mr. Harris had accused him of murder, Mr. Kent said, he cried until prosecutors reassured him, saying, "We don't believe you did this."

Mr. Lato dismissed the complaints.

"They're accusing everybody of misconduct, attempting to impugn the integrity of every person who stood in Marty's way," he said. But Professor Gershman said the prosecution's conduct could be grounds for appeal, "This is misuse or abuse of power."

The defense team lobbed harsher charges at the Suffolk district attorney, Thomas J. Spota, accusing him of multiple conflicts of interest. They sought a special prosecutor to replace him, but Judge Braslow refused.

They cited Mr. Spota's role in his previous position as a police union lawyer, when he defended the police in the state inquiry that ultimately found rampant corruption in Suffolk. Among those he defended was Detective McCready, who the inquiry concluded had committed perjury at a previous murder trial. Mr. Spota later defended Mr. McCready, who had since retired, in an assault case; he was acquitted.

The defense lawyers also cited a link between Mr. Spota's former law partner and Mr. Steuerman: the partner had defended Mr. Steuerman and his son in criminal cases, including charges that the son had sold cocaine in a bagel store.

"He just can't represent all sides," Mr. Barket said of Mr. Spota.

To distance himself, Mr. Spota assigned the case to Mr. Lato, who declared "a Chinese wall" between Mr. Spota and the case. But on the day the judge denied Mr. Harris immunity for testimony about being the driver, Mr. Spota was seen talking with Mr. Lato, then entered the courtroom by a private door and sat in the audience.

Mr. Tankleff's supporters say they are also facing a clubby atmosphere of personal and political relationships in Suffolk's courts and law enforcement community. They also said that Judge Braslow, while open about hearing evidence, has perhaps given them grounds for appeal through his rulings, especially his decisions to reject their request for a special prosecutor, immunity for Mr. Harris and subpoenas forcing additional witnesses to appear.

Mr. Lato said he would "not dignify the conspiracy stuff." Judge Braslow and District Attorney Spota declined to comment.

But last fall, in a rare public comment on the case, Mr. Spota offered intriguing opinions. Appearing on News 12 a cable television station, before he was re-elected in November, he called the crime one of "rage and passion" rather than a contract killing. (The Tankleff lawyers say the murders fit both profiles.)

But even as his office fought to uphold Mr. Tankleff's convictions, Mr. Spota sounded ambiguous. "I have never really ever said Marty Tankleff did or did not commit this murder," he said. "If the judge in the Tankleff case says he should get a new trial, then he should get a new trial."

She died at the scene. He was comatose and died a month later.

THE PUNISHMENT

That day the police arrested the couple's only child, Martin, 17. A jury convicted him in 1990. He is serving two consecutive terms of 25 years to life but insists he is innocent.

THE 1990 TRIAL

THE PROSECUTION CASE

THE MOTIVE -- Martin quarreled with his parents and wanted their money.

THE DEFENSE REBUTTAL

Martin loved them and he worked for his father's business. The will stipulated that he would not receive his inheritance until he turned 25. He called 911 and gave his wounded father first aid.

THE PROSECUTION CASE

THE WEAPONS -- A barbell and kitchen knife were used to kill and then were cleaned.

THE DEFENSE REBUTTAL

The barbell and knife had no blood on them and the knife had watermelon residue on it.

THE PROSECUTION CASE

THE CONFESSION -- Martin confessed to killing his parents, cleaning the weapons and taking a shower, then calling the police.

THE DEFENSE REBUTTAL

The police tricked him, saying his father awoke and named him as the attacker, so he wondered if he was guilty and had "blacked out." The police wrote the confession, but he disavowed it and never signed. He says he passed two lie-detector tests.

THE APPEAL

Mr. Tankleff, now 34, is claiming in Suffolk County Court:

The confession was coerced and false and did not fit the evidence.

New evidence from many witnesses implicates the real killers, led by the slain father's angry and indebted business partner, Jerard Steuerman.

One man admitted being the getaway driver. Another named the accomplices and was quoted admitting, "Yes, I did it." The lead detective, K. James McCready, knew Mr. Steuerman and excluded him as a suspect, then lied at the trial about knowing him.

District Attorney Thomas J. Spota has conflicts of interest. In private practice, he defended Mr. McCready on unrelated charges. His former law partner defended Mr. Steuerman and his son in other cases.

Prosecutors engaged in misconduct by ignoring new evidence, intimidating Mr. Tankleff's witnesses and shielding the real culprits.

THE DEFENSE'S VERSION OF WHAT HAPPENED

Seymour Tankleff had been feuding with his partner, Mr. Steuerman, demanding co-ownership of new bagel stores and the repayment of \$500,000 in loans.

Mr. Steuerman recruited a criminal, Joseph Creedon, for the killings. Mr. Creedon enlisted two other ex-convicts, Peter Kent and Glenn Harris.

Mr. Harris drove Mr. Kent and Mr. Creedon to the Tankleff home, where Mr. Steuerman was playing poker. Waiting until the other guests left, he signaled Mr. Creedon and Mr. Kent to enter and attack Mr. and Mrs. Tankleff. Martin was asleep in another wing.

A week later, Mr. Steuerman shaved his beard and left for California under an alias.

In 2003, Mr. Harris admitted being the driver.

Five people, including Mr. Creedon's son Joseph Guarascio, quoted Mr. Creedon as saying he was involved. One witness said Mr. Steuerman claimed to have killed two people.

THE PROSECUTION'S RESPONSE TO THE DEFENSE'S NEW EVIDENCE

Under oath, Mr. Steuerman, Mr. Creedon and Mr. Kent said they had no part in the murders. The other witnesses are lying or mistaken.

(pg. B6)

URL: <http://www.nytimes.com>

GRAPHIC: Photos: CHALLENGING MURDER CONVICTIONS -- Martin H. Tankleff, photographed in 2004, was convicted in 1990 of killing his parents. He turned 34 in August 2005 and has expressed hope that he will not spend another birthday in prison. (Photo by Ruby Washington/The New York Times)

Martin Tankleff after his sentencing. (Pool photo by Dick Kraus)

Jerard Steuerman, a business associate of Seymour Tankleff, in an undated file photo. (Photo by Port Jefferson Record)

Joseph Guarascio (Photo by Ed Betz for The New York Times)

Peter Kent (Photo by Gordon M. Grant for The New York Times)

Glenn Harris (Photo by 48 Hours, CBS News)(pg. B6)Chart: "The Tankleff Case: A 17-Year History"Martin H. Tankleff has been challenging his 1990 conviction for his parents' murder. Hearings on the appeal ended in December, and Judge Stephen L. Braslow will now decide whether the new evidence is credible, admissible and would have changed the jury's mind. If he overturns the convictions, prosecutors could retry Mr. Tankleff or charge others. If the convictions are upheld, Mr. Tankleff plans to appeal the decision to a higher court.THE CRIMESeymour Tankleff, 62, a prosperous businessman, and his wife, Arlene, 54, were stabbed and bludgeoned on Sept. 7, 1988, in their waterfront home in Belle Terre on Long Island.

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