

Lisker cont. from page 10

the undersigned for further proceedings.

DATED: May 4, 2006

Ralph Zarefsky

United States Magistrate Judge ¹

Zarefsky's analysis that a jury would reject Lisker's admissions of guilt as false and acquit him after considering the new exculpatory evidence was consistent with the opinion of five jurors from Lisker's 1985 trial. Those jurors have said they would have voted to acquit Lisker if they had known the evidence upon which Zarefsky relied in making his decision. While reading a *Los Angeles Times* article about the new evidence, juror Linda R. Kelly said, "It was making me sick to my stomach. I just hate to think that I was a party to this. I feel that I made a mistake. Hopefully, he will get a new trial and he can have the rest of his life." Another juror, Mary L. Tweten, said about the LAPD and the prosecution, "They didn't do their job right. They didn't present us the whole truth." She also said if the evidence had been presented during Lisker's trial, "I would not have voted guilty — absolutely not." Juror Lorraine Maxwell said in a sworn statement, "I am saddened, as well as angered, that the evidence ... was not presented to the jury," and there is "no way" she would have convicted Lisker if the evidence had been introduced during his trial. ²

Judge Phillips announced in October 2006 that she agreed with Zarefsky's "Report and Recommendation," and she accepted Lisker's habeas petition as filed timely under *Schlup's* miscarriage of justice "gateway" exception.

Having successfully demonstrated that a jury would probably acquit him based on the new evidence, the path was cleared for Lisker to be granted a new trial if he proved his habeas' claim that the alleged violations of his federal constitutional rights deprived him of his right to due process. ³

After the federal Ninth Circuit Court of Appeals denied the California Attorney General's interlocutory appeal of Judge Phillips ruling, Lisker filed an amended habeas petition with two new claims. Magistrate Zarefsky agreed with the California AG's objection that Lisker's new claims had not been exhausted in state court. Zarefsky then stayed Lisker's federal habeas on January 12, 2007, to give him the opportunity to pursue the new claims in state court.

Lisker filed what was his second successive state habeas corpus with the California Su-

preme Court on February 12, 2007. His previous writs were in 1989 and 2003. He cited four Grounds For Relief:

1. Petitioner's Conviction Violates Due Process Because it Was Based on False Evidence Material to the Verdict.
2. Petitioner Was Denied the Effective Assistance of Counsel by His Counsel's Failure to Investigate and Advance a Third-Party Culpability Defense. ("The above evidence is sufficient not only to support a third-party culpability defense, but to return a swift guilty verdict [against Michael Ryan as the person who murdered Dorka Lisker.]" p. 66.)
3. Petitioner's Sixth Amendment Right Was Violated By the State's Knowing Exploitation of An Opportunity to Confront Him Without Counsel.
4. The Cumulative Effect of the Errors Entitled Petitioner to Relief. ⁴

As of early July 2007 Lisker's state habeas is pending.

Sources and Endnotes:

A previous *Justice:Denied* article about Lisker's case is, "Not So Solved – The Bruce Lisker Story," By Amy Fisher, *Justice:Denied*, Issue 29, Summer 2005, p. 6, 38-40.

1 *Lisker v Warden*, CV 04-2687-VAP(RZ), (U.S.D.C. C.D.CA), Notice Of Filing Of Magistrate Judge's Report And Recommendation, May 4, 2006.

2 "Jurors Now Fear They Knew Too Little," By Matt Lait and Scott Glover (staff), *Los Angeles Times*, May 24, 2005.

3 "Inmate's Bid For Freedom Can Proceed, Judge Rules," By Matt Lait and Scott Glover (staff), *Los Angeles Times*, October 12, 2006.

4. *In Re Bruce Lisker*, CA Supreme Court, Memorandum of Points and Authorities, D. 1, 2, 3, and 4.



Magistrate Zarefsky's 57-page Report and Recommendation can be ordered for \$5. Lisker's 82-page Feb 2007 CA state habeas and memorandum can be ordered for \$5, or order both for \$10. Mail check, money order or stamps with a request for "Zarefsky Report" or "Lisker Habeas" to:
Justice Denied
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Zarefsky's R&R and Lisker's habeas can be viewed or printed from JD's website at, www.justicedenied.org/liskerdocs.htm

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In Memory Of Evan Zimmerman

By Mike "Pie" Piaskowski
(Exonerated of murder in 2001 after six years of wrongful imprisonment.)

Evan Zimmerman was a fellow Wisconsin exoneree and good friend of mine. Sadly, Evan passed away of cancer on June 30, 2007. He was only 61.

Evan's ex-lady friend, Kathy Thompson, was found strangled to death in February 2000 in Eau Claire, Wisconsin. Her murder was "solved" when Evan, a former police officer, was arrested about a year later. Evan steadfastly denied any involvement in her death from the time he first became a suspect. Nevertheless, he was convicted in 2001 of first-degree homicide and sentenced to life in prison.

After more than three years of imprisonment, the Wisconsin Innocence Project aided Evan's successful appeal of his conviction, and his retrial was ordered. In 2005, with the prosecution's case in shambles, the D.A. dramatically dropped all charges during the middle of Evan's retrial.

After his release from prison Evan filed a wrongful-conviction lawsuit against the Eau Claire police department. Unfortunately for Evan, in September 2006 the federal court dismissed his suit.

In June 2006 the A&E cable channel first broadcast a documentary about Evan's case – *Facing Life: The Retrial of Evan Zimmerman*.

Evan was a wonderful person and will be missed by many. Let us pray that we can all work together, in Evan's name, as well as all of the exonerees throughout the country, to help eliminate wrongful convictions and all other forms of injustice created by our justice system.

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Back issues of *Justice: Denied* can be read, there are links to wrongful conviction websites, and other information related to wrongful convictions is available. JD's online Bookshop includes more than 60 wrongful conviction books, and JD's Video shop includes many dozens of wrongful conviction movies and documentaries.