



Javier Ovando in 1998

Public Defender Malpractice Lawsuit Settled For \$750,000

Javier Ovando was 19 in October 1996 when he walked into a vacant apartment where two Los Angeles Police Department officers were conducting gang surveillance. The officers opened fire on Ovando, hitting him in his head, shoulder and hip. Ovando was unarmed, so the officers, Rafael Pérez and Nino Durden, planted a throwaway rifle near Ovando and concocted a story. They told investigators that Ovando burst into the apartment pointing the rifle at them, so they fired on him in self-defense. Ovando was paralyzed from the waist down.

During Ovando's 1997 trial he told the jury he was unarmed when the two officers gunned him down. However, Ovando was a

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of several new claims. After it was again denied by the state court, Lisker's petition was returned to federal court for a reconsideration that included the new claims.

Magistrate Zarefsky recommended for a second time in March 2009 that Lisker's petition be accepted for consideration on its merits, since he had established that "more likely than not that no reasonable juror would have convicted him in the light of the new evidence," and thus his conviction was a miscarriage of justice under the standard established by *Schlup v. Delo*, 513 U.S. 298 (1995). Zarefsky cited that Lisker had been convicted on the basis of "false evidence," his trial lawyer's failure to adequately represent him, and the cumulative effect of constitutional violations. *Lisker v Knowles*, No. CV-04-02687 (USDC CDCA, 03-02-2009).

U.S. District Judge Virginia A. Phillips agreed with the Magistrate's Second Report and Recommendation, and on August 6, 2009 granted Lisker's petition. With his conviction overturned, Lisker was released on bond seven days later, after 26 years and 5 months of incarceration. The Los Angeles DA's Office announced on September 21 that it would not retry Lisker and his indictment was dismissed.

For a copy of Lisker's 82-page California habeas petition send \$6 (stamps OK). For a copy of Magistrate Zarefsky's 69-page Report and Recommendation of March 2009 send \$6 (stamps OK). Mail request to: Justice Denied; PO Box 68911; Seattle, WA 98168

former gang member, so it was easy for the jurors to believe the testimony of Pérez and Durden that they acted in self-defense. Ovando was convicted of attempted murder and sentenced to 23 years in prison.

Ovando would have served out his sentence as just another innocent person waiting to deaf ears if it hadn't been for Pérez's greed. In August 1998 Pérez was identified as the person who checked out six pounds of cocaine from a LAPD evidence room using the name of another officer. The cocaine was not recovered. LAPD investigators believed that Pérez used his girlfriend to sell the cocaine for \$800,000. Pérez was charged with possession of cocaine with intent to sell, grand theft and forgery. After five days of deliberations a mistrial was declared with the jury deadlocked 8-4 in favor of conviction.

While preparing for Pérez's retrial, investigators identified eleven additional cocaine thefts he had masterminded. In those cases Pérez ordered cocaine from a police evidence room for transfer to another police station. He then switched Bisquick for the cocaine before checking it in at the other evidence room.



Rafael Pérez after his release from state prison in July 2001.

Facing a likely conviction with the new evidence, on September 8, 1999 Pérez agreed to a deal: In exchange for a five-year prison sentence and immunity from further prosecution, he provided information about two "bad" shootings and wrongdoing by three other officers who were members along with Pérez and Durden in the LAPD's Rampart Division – which covered eight square miles west of downtown LA. One of the "bad" shootings Pérez described was how he and Durden had framed Ovando. Based on Pérez's affidavit recanting his arrest report and trial testimony, the LA District Attorney's Office filed a writ of habeas corpus and Ovando was released on September 16, after 2-1/2 years in prison.

The initial information Pérez provided about Rampart Division corruption ultimately resulted in more than 100 convictions being overturned. Those convictions were identified as being based on bogus or unsubstantiated evidence. More than 70 Rampart Division officers were implicated in wrongdoing, and almost two dozen officers were either fired or resigned. The officers wrongdoing included: unprovoked beatings and shootings, framing suspects by planting evidence and writing inaccurate reports, stealing and dealing narcotics, bank robbery, perjury, and covering up

evidence of the officer's crimes. (See, "The Beat Goes On: The Lessons of O.J. Continue To Be Ignored," *JD* Issue 11.)

In late 1999 Ovando filed a federal civil rights lawsuit against the City of Los Angeles, the LAPD, and several police officers. On November 21, 2000 the suit was settled for \$15 million.

Pérez was released from state prison in July 2001. In December 2001 he was indicted by a federal grand jury for conspiracy to violate Ovando's civil rights and possessing a firearm with an obliterated serial number (the planted rifle). He pled guilty in 2002 and was sentenced to five years in federal prison. After his release, in 2006 Pérez legally changed his name to Ray Lopez.

In June 2002 Durden pled guilty in federal court to violating Pérez's civil rights and possessing a firearm with an obliterated serial number. He was sentenced to three years in federal prison and ordered to pay \$281,010 in restitution.

Ovando also filed a lawsuit in Los Angeles Superior Court against Los Angeles County and his appointed county public defender. Ovando alleged legal malpractice by his public defender. Among Ovando's claims was that his public defender knew Rampart Division officers had a pattern of planting evidence and falsifying reports – but he did not use that information in his defense of Ovando. The lawsuit went to trial, and in May 2005 a jury awarded Ovando \$6.5 million. In August 2005 the trial judge overturned the verdict on the basis of misconduct by one juror who lied during *voir dire* that she did not know anything about the Rampart scandal. Ovando lost his appeal of that ruling. Two weeks before the case set for retrial, it was announced on July 7, 2009 that Ovando agreed to settle the lawsuit for \$750,000.

More than 140 civil lawsuits were filed against the City of Los Angeles as a result of the Rampart scandal. It is estimated the city has paid at least \$125 million to settle the lawsuits.

The FX cable network series *The Shield*, was modeled after the Rampart Division scandal. The series about a corrupt LAPD police division was proposed to FX with the title *Rampart*. However, before being broadcast the name was changed for legal reasons. The series ran from 2002 to November 2008.

Sources:
Jury Awards \$6.5 Million in Frame-Up, *Los Angeles Times*, May 26, 2005.
\$6.5-Million Award Is Overturned, *Los Angeles Times*, August 10, 2005.
The Outcome of the Rampart Scandal Investigations, *PBS Frontline*, last updated July 2008.
LA County settles suit with man framed by police, *San Jose Mercury News*, July 7, 2009.