

Posted 8/30/09

NEVER SAY DIE

When should prosecutors quit clinging to a case?



By Julius (Jay) Wachtel. On August 13, 2009, after a decades-long battle to prove his innocence, Bruce Lisker was a free man, at least for the time being. Imprisoned at seventeen, he had served twenty-six years for murdering his mother. His release was prompted by [the findings of a Federal magistrate](#) who concluded that Lisker had been irreparably harmed by an ineffective defense, due process violations and “cumulative prejudice.” A Federal district judge agreed and [ordered that his conviction be set aside](#).

But the L.A. County D.A. wasn't done with him. Nine days after leaving State prison Lisker was re-arraigned in Los Angeles County Superior Court. A retrial (actually, re-retrial, but who's counting?) is pending.

Rewind to March 10, 1983. Only hours after Lisker allegedly found his mother stabbed and bludgeoned to death, [police were already dismissing the 911 call](#) (“Help me, please! I need an ambulance right now...Hurry!... My mom -- she's been stabbed! She's been stabbed!”) as the transparent attempt of a murderous youth to cover up his heinous deed.

There was reason to be wary of Lisker. A drug user and general n'eer-do-well with a violent temper, the high school dropout was reportedly strung out on meth when cops arrived and had to be handcuffed and confined to a patrol car. An adoptee, Lisker had spent time in a home for troubled youths and was once arrested for throwing a screwdriver at a motorist in a road-rage dispute. But what most concerned LAPD Detective Andrew Monsue was that the boy and his mother frequently argued;

indeed, at the time of her death Lisker lived alone, his apartment, car and living expenses paid for by his weary parents.

Only problem was, precious little tied him to the crime. Monsue, who had previous run-ins with the youth, considered him “a loudmouth -- an in-your-face little punk.” Examining the scene, he concluded that Lisker could not have seen his mother’s body through a window as he claimed. Rather than simply forcing the back door open, as an innocent son might have done, Lisker dismantled a window so that he could climb through. There was also a bloody footprint that police thought matched Lisker’s shoe.

Lisker demanded a polygraph. He got one. While the results aren’t admissible in court, the examiner concluded that his subject was being deceptive.

Monsue arrested Lisker for murder. Yet significant clues pointed elsewhere. Lisker had a dope-smoking, mentally disturbed friend named Mike Ryan. According to Lisker’s father, Ryan, also 17, unexpectedly came to their home the day before the murder and asked to do chores for money. The victim turned him away. Ryan soon wound up in Mississippi, where he was arrested for housebreaking. His story, [first related to Harrison County \(Miss.\) deputies](#), then personally to Monsue, was nothing short of astounding. Not only did he confirm visiting the Lisker residence just like the father said, but he admitted stabbing someone on the very day of the murder! (He insisted it wasn’t the victim -- it was another man with whom he got into a knife fight.)

Then something even more remarkable happened: Detective Monsue declared Ryan “[convincingly cleared](#)” of the killing (pg. 5). Exactly why remains hard to say. One possible reason is that Monsue missed finding Ryan’s extensive criminal record, including a conviction for *robbery with a knife* less than a year earlier, because he entered an incorrect birthdate into the police computer.

Ryan was sure fond of knives! Unfortunately he committed suicide in 1996. His mother later said that she always suspected him of being the killer.

With the evidence against Lisker so shaky, a confession would sure come in handy. Coincidentally, prison inmate [Robert Hughes](#), an unbalanced character with a history of snitching happened to be in L.A. County Jail. Hungry for a deal on his own sentence, he befriended Lisker. Soon Hughes had great news: Lisker admitted the killing!

Lisker went to trial. Within days his lawyer convinced him to plead guilty as a juvenile, making him eligible for release at age 25. Lisker reluctantly provided a

sketchy account of the crime. However, authorities soon determined that he wasn't suitable for placement at a youth facility, so he withdrew his plea and was retried.

Energized perhaps by Lisker's caving in, prosecutors aggressively went forward with their case. They hammered on the "fact" that Lisker's view of his mother's body was obstructed. They mentioned the squabbles. They introduced the bloody footprint. And they brought in jailhouse stoolie Robert Hughes.

Lisker didn't take the stand, so he never got to tell jurors that he didn't do it. What's more, the judge wouldn't let the defense point the finger at Ryan. [According to the Federal magistrate](#), the ruling could have gone in Lisker's favor had the judge been told certain things: that Ryan had a violent criminal past, that Detective Monsue caught him lying about his comings and goings on the day of the murder, that he used a phony name to check into a Los Angeles-area motel shortly after the killing, and -- this one's a real shocker -- that about the time of the murder a brief (misdialed?) call had been placed from the victim's residence to a number "nearly identical" to that of Ryan's mother (pg. 28).

Lisker's lawyer failed to challenge the prosecution about key aspects of its case. Lisker really *could* have seen the body from outside the home. The bloody footprint *didn't* match his foot. And there was more. The victim's husband testified that he gave his wife a large amount of cash, but police reported none was found in her purse. That meshed perfectly with what the jailhouse informer told the jury -- that Lisker's theft of the money precipitated the lethal argument with his mother. In fact, *the cash was still in the purse*, buried deeply. Discovered belatedly, it remains in the LAPD evidence vault to the present day, a silent witness to what in retrospect seems a tragic miscarriage of justice.

That "missing" cash haunted Lisker even after his conviction. When he came up for a parole hearing in April 1998 Detective Monsue [informed the board](#) that the man and wife who bought the victim's home found money secreted in the attic, where Lisker assumedly hid it. The husband later denied saying any such thing (pg. 2 of the link). He also mentioned that, according to Monsue, there was "some question" as to whether Lisker or a friend committed the crime.

LAPD Chief Bratton subsequently disavowed Monsue's letter to the parole board. No matter. Lisker had already spent fifteen years in prison. He would do eleven more.

In 1992, nine years after his incarceration, knowing full well that he would never be paroled unless he accepted responsibility, Lisker told board members that, yes, he

killed his mother. It didn't work. He refused to meet with the board again until 1999, at which time he proclaimed his innocence. That didn't work either.

Given the paucity of the evidence, Lisker's eventual exoneration seems a foregone conclusion. What's most instructive, however, is the exceeding vigor with which local and State prosecutors opposed his getting another bite of the apple, eventually taking more than two decades of a man's life before a Federal judge finally called a time-out.

Why be so bullheaded? Denial and fear of embarrassment must have played a part. D.A.'s are political animals, and a faux-pas this serious could be plenty threatening. Police had perhaps the most to lose. Unlike prosecutors, cops aren't absolutely immune from civil liability, and exonerations often breed sizeable lawsuits.

Prosecutors like to deflect criticism by emphasizing the need to insure the "finality of the process", meaning that once a judicial decision is made, it ought to stay made. In Lisker's case they turned to AEDPA, the "[Antiterrorism and Effective Death Penalty Act of 1966](#)," a law that's meant to bar abuse of the Federal habeas process by State inmates. Had Lisker lacked a superb legal team its intricacies would have probably been insurmountable.

Ironically, the one factor that most likely saved Lisker's bacon was the involvement of another cop. [Sergeant Jim Gavin](#), an LAPD internal affairs detective, was assigned to investigate Lisker's complaint that Monsue lied to the parole board about the money. His inquiry soon turned into a quest. And when Gavin's superiors shut it down, possibly because they didn't like what he was turning up, Gavin talked to Lisker's attorneys and the *Los Angeles Times*. [The paper's detailed, multipart account of the case](#) helped give Lisker the credibility and political legs to prevail.

What happened to Monsue over the letter? Nothing. Although Chief Bratton "withdrew" the document, declaring that it should not have been sent, LAPD cleared Monsue of wrongdoing. Not so for Sergeant Gavin, who was disciplined for leaking information. Later promoted to Lieutenant and awarded the Medal of Valor, Gavin [sued the LAPD](#) over harassment that he claimed was brought on by his work on the Lisker case. A jury rejected his suit, as Gavin knew that leaking was wrong but did it anyway.

Internal Affairs detectives can't be expected to watch over officers on a daily basis. For that there are field supervisors. So where were Monsue's? The Assistant D.A.'s? Given the consequences of making incorrect charging decisions, strong oversight is crucial, and all the more so in cases such as this, where there is scant corroboration and little forensic evidence. And the buck doesn't stop there. Assuring that justice is served isn't just a management function but the sworn responsibility of a

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community's criminal justice leaders. LAPD Chief Bratton and L.A. County D.A. Cooley were well aware of the controversy. One word from them could have spared an apparently innocent man years in prison.

Where were *they*?