

The Ghost of Willie Horton

In 1988, Willie Horton—a black lifer who raped a white woman—was used to caricature criminal-coddling liberals. Today, his legacy keeps a man who never should have been convicted locked up for life. Isn't it time to free Benjamin La Guer?

PAY PHONES IN PRISON HAVE A CERTAIN SOUND, A HOLLOW WHITE NOISE that makes a man sound tinny and distant, as if even his voice can barely escape the concrete and steel of lockup. Before Benjamin La Guer says his usual first two words—“Yo, babe”—the hissing echo of the phone gives him away. Benji telephones reporters with some regularity. During the past 15 years, he has placed thousands of collect calls to magazine writers, newspaper scribes, and television producers. In the early years, he was pitching a story.

“In the summer of 1983,” he would begin, “the most awful crime was committed in the history of the small town of Leominster, Massachusetts. A black man broke into an elderly lady’s apartment, and for eight hours he brutally raped and beat her. The photos of the victim are nightmarish to behold. You won’t believe that anyone but a brute animal would have done such a thing. It was as if”—at this point, he would drop his voice a step and slow his cadence—“she was visited by the devil himself.”

Benji had been cast as the devil. In 1984, when Benji was 20 years old, a jury of 12 white men convicted him, and a judge sentenced him to life in prison. The reason he was pestering reporters was so he could chant the most famous four words in prison: “I didn’t do it.” Reporters hear that a lot, the phrase tinny and distant on those creepy prison phone lines. What made Benji’s version different, though, was that he was telling *[Continued on page 48]*

REASONABLE DOUBTS: La Guer has an eclectic cast of supporters, from John Silber to Skip Gates.



the truth. At least that's what a lot of very bright people—including Boston University Chancellor John Silber, scores of lawyers, and a herd of journalists—have come to believe. Me, too.

So the reporters took his calls and looked at his records and interviewed him in jail. They wrote sympathetic stories under headlines such as "A Reasonable Doubt," an October 1987 *Boston Magazine* story by executive editor John Strahinich.

Later, after the first waves of stories, Benji would call with updates on his legal maneuverings: the fancy DNA test that could clear him, the charges of racism among the jurors. He never wanted to be sprung on a technicality; he wanted a new trial, one where he could prove, beyond a reasonable doubt, that he was innocent.

He never got one. Eventually, it sank in—for me, anyway, if not Benji—that

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he never would. Instead, he shifted his hopes to parole. On June 29, 1998, after 15 years in prison, he applied. The phone calls picked up again, coming twice a week, sometimes every day.

On October 21, 1998, one decade after Willie Horton became a household word, the parole board turned Benji down.

Benji didn't call for a while after that.

THIS AUGUST, BENJI BEGAN CALLING again. He'd phoned a few times during the winter and spring, but by late summer he was habitual. His case was going back to court, and Benji was rallying support for his cause. He had a new lawyers, McDermott, Will & Emery—former Governor William F. Weld's new firm, as it happens—working pro bono, and Benji believed it had a strong argument that he'd been treated unfairly at his first parole hearing.

One of the board members, Terence McArdle, the former boss of the Boston office of the Bureau of Alcohol, Tobacco, and Firearms, had resigned after admitting he had, on occasion, used racial epithets. Therefore, the argument went, McArdle could reasonably be suspected to be a bigot who would deal unfairly with a Puerto Rican inmate like Benji. Thus, Benji should be granted a new hearing

immediately rather than wait five years as the board had ordered.

The courts hadn't made a decision by press time. But it hardly matters. I've been down this road with Benji too many times, and it always comes to the same dreary dead end. Benji long ago threw his trump cards—innocence, for one, then an unfair trial—and lost. A bigot on the parole board is a lowly deuce.

In 1991, I watched a judge perform astonishing mental gymnastics to rule that racism had not infected Benji's original jury. Two jurors accused each other of calling Benji a "spic." Judge Robert V. Mulken decided to believe neither, which, ironically, meant both jurors were not credible witnesses—even though they were apparently qualified to participate in the deliberations. At the time, I wrote that, for Benjamin La Guer, "the very phrase 'justice system' is an oxymoron. The system is working fine; it's just not dispensing justice."

And there's no reason, at this late stage, to believe it will start anytime soon.

BENJI'S SPIEL IN THOSE EARLY years was neatly compressed into 90 seconds, assuming he didn't lapse into the stutter that in high school got him the nickname El Gago and in the army washed him out of communications school. Like any good tabloid writer, he condensed his life and one terrible crime into a blurb. He had to leave out a lot of details. These are the important ones.

On a warm summer night in 1983, a man broke into the apartment of a 59-year-old widow and, for the next eight hours, repeatedly raped, sodomized, and beat her. He stole her pocketbook and two rings, tied her up, and left her lying in a puddle of blood and urine with a broken jaw, broken ribs, and a broken bone under her right eye.

Later, she told police her attacker had been a tall, dark-skinned black man who spoke clearly to her throughout the assault. Heavily medicated, her right eye swollen shut, she later identified Benji—a short, stuttering Puerto Rican—from an array of photographs the detectives showed her. Benji, who had been living next door to the victim after being discharged from the army for selling \$25 worth of hash to an undercover MP, was arrested and charged.

There was no other evidence. No fingerprints, no blood or saliva samples, no trace that would indicate Benji had spent an entire evening terrorizing the widow. The police did find a white tube sock with black and yellow stripes, which was similar to socks Benji had in his dresser drawer

and, for that matter, that many young men had in their drawers in 1983. Tests on it, primitive by today's standards, were inconclusive, and it was never introduced in court.

Before his trial, in January 1984, Benji was offered a deal: plead guilty and do two years. He declined, insisting on his innocence. So the case went to a jury, albeit with several key elements missing. Benji's lawyer called only one alibi witness, and a shaky one at that, even though *Boston Magazine* later identified two who were substantially more credible. The court did not allow the victim's 14-year history of schizophrenia to be mentioned. And, finally, the prosecution failed to introduce any physical evidence for the simple reason that it didn't have any.

But the victim pointed to him in court. "There was no evidence—none of that Perry Mason stuff—that proved he was the guy," one juror, Bill Nowick, told *Boston Magazine* in 1987. "In the end, we couldn't be sure that Benji was innocent beyond a reasonable doubt."

That is where Benji's life in the justice system began, with a juror flopping the rule of law on its head.

"In prison," Benji says, "eventually you'll submit to your God or you'll submit to your devil." There's no salvation in the devil, so Benji stuck with God.

AFTER A VERDICT IS RENDERED, THE justice system is no longer concerned with issues of guilt or innocence. Appeals courts instead are concerned with mistakes, determining if an error of law or a misstep in procedure rendered a trial unfair.

Welcome to the second phase of Benji's life behind bars. By his own account, the preprison Benji was a waste of oxygen, neither a bad guy—his army hash bust was his only brush with the law—nor a good guy but thoroughly neutral. Locked up, however, he began to reinvent himself. He learned the law, then he learned how to work the media. He brought his stutter under control. He joined every prison program that would accept him, and earned a college degree.

In those early years, he was trying to find the procedural error that would gain him a new trial. He tried the new-evidence route, arguing that better tests could now be performed on that tube sock. By then, though, the sock had been sitting in an open box for five years, and the results again were muddy. *[Continued on page 52]*

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His best shot came in 1989, two years after Nowick talked to *Boston Magazine*. In one interview, he said that a juror had announced on the first day of Benji's trial, "The goddamned spic is guilty just sitting there. Look at him." Later, when someone wondered how a rape could last eight hours, the same man allegedly said, "Spics screw all day and night."

Nowick later swore to that in an affidavit. The Supreme Judicial Court then ordered the trial judge, Mulkern, to hold a hearing to determine if racial snipes had been part of the deliberations. If so, Benji would get a new trial.

During that hearing, the prosecution took a troubling tack, suggesting that Benji had enlisted *Boston Magazine* and others in a plot to massage and manipulate Nowick's guilty conscience. The very reason he'd managed to get a hearing—schmoozing reporters until they examined his case—was now being used to discredit him.

Psychologist Lawrence Hipshman says Benji "does not fit either a psychological or pathological profile of a person capable of committing this crime."

BENJI NEVER GAVE UP HOPE, though. "In prison," he likes to say, "eventually you'll submit to your God or you'll submit to your devil." There's no salvation in the devil, so Benji stuck with God and hope.

There were other attempts at winning a new trial, minor spasms of legalese that never got very far. As the nineties wore on, Benji's hopes turned toward parole, toward proving he'd been a good prisoner and building a base of supporters who would agree. These days, he sends out four pages of quotes gathered from sympathizers and advocates, snippets of editorials and magazine stories. It is a startlingly eclectic cast: John Silber, Noam Chomsky, Harvard's Henry Louis "Skip" Gates, and Charles J. Ogletree; representatives from the Nation of Islam, the Anti-Defamation League, and the Urban League; and journalists from *Boston Magazine*, *Esquire*, the *Boston Globe*, National Public Radio, and NBC News.

The most haunting quote comes from a psychiatrist appointed by the court to study La Guer's mind. "La Guer," Lawrence M. Hipshman says, "does not fit either a psychological or pathological profile of a person capable of committing this crime."

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The point of the quotes isn't so much to plead his innocence—in fact, many of them never even address that issue. Rather, they serve as character references. If the role of prison is to rehabilitate offenders, surely Benji is the poster boy. With his record of prison accomplishments and his roster of advocates, surely the parole board would smile favorably upon him.

It did not. In a one-paragraph decision issued October 21, 1998, the board denied him parole and told him not to bother it again until 2003.

The board cited five reasons. One was that, during his time in prison, "he has failed to attend programming to address the causative factors of the governing offense"—a clumsy way of saying he's not in the Sexual Awareness Program. That is true, but only because the director ruled him "therapeutically ineligible." And he has

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spent countless hours in other therapy programs. "Hour for hour," Benji jokes, "I'm neck and neck with Woody Allen."

Two other reasons: Benji "confronted the victim by impersonating a priest and wrote a letter to the victim's family." Also both true—though hardly the whole truth. In 1989, days before he expected to be granted a new trial, Benji called the nursing home where the victim was living. He wanted to hear her voice, to find out if she realized what his life had become. When the operator asked who was calling, he blurted out the first thing that came to mind: "Father Thomas from the Boston archdiocese."

The victim answered the line, and Benji asked how she was. For the next 10 minutes, he listened to a confused old woman rant about her missing cigarettes and assorted indignities of life.

Hardly anyone knew about that phone call until 1994, when Benji wrote a letter to the woman's daughter and son-in-law. "After some weeks, I realized whatever had happened to me had nothing to do with what happened to her," he wrote. "It was an important moment, because I brought myself a moment of forgiveness. I cannot explain it except in that way one feels something by faith that my destiny was my own, and your mother could not be responsible for that destiny."

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THE PAROLE BOARD OFFERED TWO MORE reasons for keeping Benji in prison. The one they listed last was that he "lied to the board and remains a high risk to the community."

The lie was not explained. Neither Benji nor his lawyers know what the board was referring to. "It's a thing from Kafka's *The Trial*," Benji says over the tinny prison phone. "They're telling me I lied, but not what I lied about."

The parole board wouldn't tell me, either.

The final reason, which is actually the first one the board listed, is the most appalling. "Mr. La Guer," the board noted, "continues to profess his innocence."

Benji doesn't have any choice. Sixteen years ago, the Commonwealth of Massachusetts put a scared, stupid kid behind bars. Believing in his innocence, proving his innocence, became his salvation. Indeed, it is the defining theme of his journey into manhood. And now the state tells him he can go free if he admits he is guilty, if he denies who he has become? Irony is rarely so cruel.

BENJI WILL GET ANOTHER PAROLE hearing. In five years, when a different governor appoints different members, he might have a chance at being released. This year or next, even if a judge orders a new hearing, the result will be the same. I hate typing those words. It's not fair. To release Benji, in the mentality of bureaucrats, is to admit defeat, to agree that he is not the savage rapist who beat and sodomized an old woman for hours on end, to concede that we kept the wrong guy locked up for his entire adult life.

And there is a terrible history entwined with Benji's future. During the 1988 presidential campaign, a black lifer named Willie Horton became a national symbol caricaturing criminal-coddling Democrats. On July 6, 1986, while serving a life sentence in Massachusetts for armed robbery and first-degree murder, Horton was released on an unsupervised 48-hour furlough. He never returned. He was eventually captured—but not before he had assaulted and raped a white woman—and is now behind bars in a Baltimore prison.

The Cellucci people, who were working on George Bush's 1988 campaign, came across the Horton story while doing opposition research—campaignspeak for digging up dirt on the other guy. It was then turned into a devastatingly effective commercial against Michael Dukakis. Fast forward 11 years: The [Continued on page 58]

AN EXISTENTIAL LIFER: In prison, La Guer has remade himself into a man of letters.

Cellucci people are now on board George W. Bush's presidential campaign. What's the likelihood they're going to risk freeing a Puerto Rican who's serving life for raping a white woman? Witness how quickly they jettisoned GOP lobbyist Sandy Tennant after the Massport booze cruise—and he was one of them, a good old boy.

Benji surely understands these things. Sometimes he hints as much, either in his writings or his musings on the phone. Still, he hopes.

One day last October in the state prison in Norfolk, Benji was scribbling a line in his journal. "In prison, some mornings I awake in Heaven, other days in Hell," he wrote, "but always a visitor in both."

As he finished, he was called to an office to be told that the parole board had turned him down.

Later, he wrote a letter, which I—and, I'm guessing, several dozen other writers and lawyers—received a few days later.

"In all this, I was equally ashamed at having let you down as well, because I know how high has been the emotional tax," he wrote. "From the depths of my heart, where I am free, I reaffirm to you that I could do no more in defending the

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truth of my life; no more in proving myself worthy of your trust and friendship; and no more in demonstrating that a gross miscarriage of justice is being done to me."

I believe that. Then Benji wrote more. At the bottom of the letter, he scrawled a short note in black ink. "I'm deeply sorry," it said. "One day I'll have good news."

Perhaps. Stranger things have happened. Lee Atwater, the Republican pitbull who promised to make Willie Horton a household name by the end of 1988, later apologized for such vicious racebaiting. Then again, he was near death at the time, expiring from brain cancer.

Here's hoping it doesn't take a deathbed conversion for the Cellucci administration to do the right thing: Free Benji LaGuer. **B**