

LaGuer Reconsidered: For 23 years, Ben LaGuer has maintained his innocence. That's only kept him in jail longer on a rape conviction. What now?

by Eric Goldscheider - August 17, 2006

On a warm and rainy October evening in 1980, three Puerto Rican teens were ambling down a side street in Leominster, having just left the YMCA. A cop called them over to ask about a burglary in the neighborhood. It seems that the home of one Kent Carluccio on Central Street had been broken into. Jose, David and Ben were not involved and they didn't know anything about it. Names were taken and, as it turned out, a notation was made on an index card kept on file at the police station that at least one of the youths, [Benjamin LaGuer](#), was a "possible suspect." No one thought much of LaGuer's first brush with the law. Not that it was much of a brush. A 17-year old responding to a police officer's inquiries is hardly the stuff of criminal records. LaGuer's primary infraction was probably just being from Puerto Rico and being on the residential blocks that envelop the Leominster business district.

LaGuer was a wide-eyed youth with a swagger that belied his stutter and his station in life as the son of a merchant marine sailor who had labored on summer road crews paving highways in and around the Bronx. His father, Luperto, retired to the gritty north central Massachusetts city known for its plastics industry to be near his daughters from an earlier marriage. One of them, Lisa Bromes, recalls LaGuer as "an outgoing and popular kid." He came up from New York when he was 15. He and his friends sometimes worked a graveyard shift in a plastic hangar factory. For a time he was president of the Latino student association at Leominster High.

Still finding his way in the world, LaGuer dropped out of school a month after the trivial and forgettable street corner encounter with the police. He joined the Army like his father before him, and was stationed in Germany.

Two and a half years later, in June, LaGuer returned to Leominster, once again a civilian. On the night of Tuesday, July 12, 1983 he slept alone in his father's one-bedroom apartment in a [converted mill complex](#). Luperto LaGuer was visiting Puerto Rico.

That night somebody brutalized the 59-year-old woman next door. Her life would never be the same. Though she would live another 16 years, Lennice Plante was severely traumatized by the crime in which the assailant purportedly spent eight hours in her apartment raping her over and over again in almost every way imaginable.

By 9 a.m. on Wednesday, July 13, the victim was in the hospital and detective Ronald Carignan, a potbellied and balding former patrolman about to turn 48, was on the case.

LaGuer, according to his own account, showered, dressed and left the building that morning without noticing any police presence. He went over to Fitchburg State College, where he hoped to use his GI Bill to enroll in computer classes. He spent that night at the home of his sister Aida, whom he had lived with before enlisting.

On Friday, July 15 he was back at his father's apartment when a knock came at the door. Carignan was there and asked if LaGuer could answer some questions about the horrific crime two days earlier. LaGuer voluntarily went to the station, where police told him that they had retrieved fingerprint evidence from the apartment and that they thought the victim could identify the assailant.

At five feet eight and 150 pounds, LaGuer cut anything but an imposing figure, but he has never been one to wilt in the presence of authority. Confident that he had nothing to hide, LaGuer voluntarily allowed Carignan to take a Polaroid head shot and a full set of fingerprints, asking only that the prints be destroyed once any suspicion was cleared up.

LaGuer bided his time in the [drab police station](#) through the noon hour, unprepared for what would happen next. Carignan returned, announced that the victim had picked LaGuer out of a photo lineup, placed the barely 20-year-old youth under arrest, hustled him in front of a judge in the courtroom one floor up and shipped him off to the Worcester County Jail.

Six months later, following a three-day trial, a jury of 12 white men took just a few hours to find him guilty. The judge imposed a life sentence.

Now, 23 years later, wizened yet remarkably chipper and with a healthy yet not overwhelming cynicism, LaGuer is still trying to unravel the events of those three days in July, 1983. He steadfastly maintains his innocence, a stance that has cost him years if not decades of freedom if you consider that prosecutors offered a plea bargain under which he could have walked (albeit branded as a sex offender) as early as 1985. He laughs and jokes easily and still refuses to be cowed by authority.

His case is in the [Supreme Judicial Court](#) for the second time. His pro bono attorney, [James C. Rehnquist](#), an Amherst College alum and son of the late Chief Justice, is asking that LaGuer's conviction be overturned. His argument is simple: a report emerged in November, 2001, more than 18 years after the fact, showing that police didn't find one partial fingerprint at the crime scene, as Carignan testified at the trial. In fact, they recovered a set of four prints from the base (not the handle!) of the Trimline phone, the cord of which the assailant used to bind Plante's wrists. They compared these prints to LaGuer's with "neg results."

This highly exculpatory piece of evidence was kept from the defense and, by extension, the jury. Equally significant, the police now can't produce the actual fingerprints taken from the phone. So to this day LaGuer has been denied the opportunity to see if they might belong to another man named by private investigators soon after the crime as a "likelier suspect."

Rehnquist is arguing that LaGuer didn't get the fair trial guaranteed by the Constitution and that he must get a new one. But there's one hitch. Four and a half years ago, genetic testing of the evidence revealed a trace amount of male DNA. And that DNA belonged to LaGuer.

Is that overwhelming evidence that the jurors got it right in spite of prosecutorial shenanigans? That's not a question for the judges, according to Rehnquist. They have an obligation to focus on

the original trial and not consider evidence developed years later. But it is a question observers of the case are bound to grapple with.

I met Benjamin LaGuer in July, 1991, when I taught a course through the now-defunct UMass Prison Education Program. LaGuer was a student and we would chat after class until it was time for him to clear the building. He was in the medium security prison in Gardner at the time. As I learned more about the case, my doubts about his guilt grew. And then there was a piece of rich if tragic irony.

The complex of two- and three-story red brick buildings surrounded by a double row of chain link fence topped by concertina wire with a dead zone in between had once been a state hospital. Lennice Plante, the victim of the horrible crime LaGuer was doing time for, had once been a patient there. Another thing the jury was never told was that she had a long history of schizophrenia. To think that she had walked these same grounds, more a prisoner of her own brain than of physical barriers! LaGuer had been convicted entirely on the strength of Plante's pointing to him in the court room. Prosecutors introduced no physical evidence whatsoever linking him to the crime. The fingerprints, which could have swayed at least one juror to believe that LaGuer wasn't guilty beyond a reasonable doubt, remained hidden.

By that time, eight years into his life sentence, LaGuer had become a cause celebre in Massachusetts. A juror had come forward to say that bigoted remarks like "Spics screw all day and all night" were raised during deliberations to explain how a 20-year-old kid with no criminal record could have violated a frail old woman in such a gruesome manner. That revelation won LaGuer a hard-fought trip to the Supreme Judicial Court, where the justices ruled in his favor. But instead of throwing out the conviction, they sent the matter back to the trial court for a finding of fact. Ultimately he would lose, but in the mean time a gaggle of journalists, collectively dubbed the "Benji Brigade," were writing about how the case against him was riddled with inconsistencies, unlikely if not impossible sequences of events and poor logic.

Then Boston Magazine writer John Strahinich, who now edits the Sunday Boston Herald, had written two feature-length stories. The first delved into many of the things that didn't add up--for example, that the assailant was said to be naked when he entered Plante's apartment (consistent with a next door neighbor theory) but that he exited through the window, and that a month later the woman's pocketbook was found three blocks away from the building. In Strahinich's second story, he admitted to having become obsessed by what seemed to be an obvious injustice. He befriended LaGuer and encouraged him to write his own story.

A headline in Worcester Magazine shouted, "Why Can't This Man Get a New Trial?" The Boston Phoenix ran several stories including one under the title "Justice Denied." Even Esquire magazine ran a long feature on the juror racism issue headlined "And the Truth Will Set Him Free, Or Will It?" In all, dozens of articles questioning LaGuer's guilt or the process that convicted him appeared, as well as hours of television coverage, including English and Spanish language documentaries.

But Worcester [District Attorney John Conte](#), a small, somewhat stooped figure whose half-hearted smile as he peers out from under his downwardly slanting hair seems to make a churlish

statement about his famously reclusive approach to the job, could never be persuaded to return reporters' telephone calls, much less take a fresh look at the conviction. Before Gov. Michael Dukakis appointed Conte in 1976 to finish an unexpired term, he had been a state senator, and before that a school teacher.

La Guer and Conte, who announced last January that he is retiring after 30 years as DA, had entered into a sick pas de deux. As LaGuer's claims of innocence continued to gain traction, it became increasingly unclear who led and who followed. As Strahanich himself commented, LaGuer's talent for attracting media attention cut two ways. It kept his plight in public view, but Conte, who seemed congenitally unable to admit to a mistake, kept digging in his heels.

Part of LaGuer's story is that of a man who became educated and even worldly behind bars. Soon after landing in prison he secured a job in the law library, where he spent countless hours learning procedure to the point where other inmates hired him to draft briefs and motions. LaGuer also took advantage of the college degree programs that were more readily available in the 1980s and '90s than they are now. In MCI Norfolk, to which he was transferred in 1994, Boston University continued its program even after Congress cut off tuition assistance to inmates.

By 1997 LaGuer had received a PEN award for his writing, earned a bachelor's degree magna cum laude, and won the admiration and even friendship of several professors.

In 1998, 15 years after his arrest, LaGuer was for the first time eligible for parole. He spoke unquaveringly into the microphone in a packed hearing room. Instead of serving up the usual fare in which prisoners muster all the contrition they can and promise to be better citizens, LaGuer continued to proclaim his innocence. The board would have none of it and gave him a five year "set back," the maximum amount of time before he'd be entitled to another hearing.

This raised the dander of an unlikely ally who in the eight years since then has proven to be one of LaGuer's most ardent champions. [Boston University Chancellor John Silber](#), a social conservative no one would accuse of being a bleeding heart and whom some Democrats blame for losing the governorship to the Republicans by running to the right of William Weld in his bid to succeed Dukakis, had heard of LaGuer's academic achievements and was in correspondence with the inmate. Silber was incensed that the parole board refused to acknowledge the man LaGuer had become, instead insisting on the one thing LaGuer said he could never do--admit to a rape he did not commit.

With Silber's endorsement a new team of lawyers, some from [McDermott, Will & Emery](#), one of Boston's top firms, started a long process aimed at finding the physical evidence and testing it for DNA.

But Conte saw to it that they would be stymied at every turn. First he virtually spat in the face of [Robert Cordy](#), then managing partner of the firm's Boston office, and now an SJC justice. Instead of responding to Cordy's entreaty to get on with setting a testing protocol, Conte issued a press release in effect accusing LaGuer's team of contaminating the evidence.

It took two years and somewhere in the neighborhood of \$1 million in pro bono billable hours, as well as tens of thousands of dollars in cash--much of which Silber and other supporters paid out of pocket--to get to that fateful day in March, 2002 when the results showed a trace quantity of LaGuer's DNA in the evidence.

I lost touch with LaGuer after teaching him in 1991. But I thought about him often, especially when driving on Route 2 near the prison where we met. I grew up with stories of my grandparents surviving German concentration camps. The saga of a man overcoming the privations of prison held a visceral appeal for me. I regarded him as an inspirational figure, but mostly his plight just depressed me. We reconnected in 1999 when he saw a photo of my family in Jet Magazine accompanying a short article about our adopting an African daughter. "I figured you'd be the only white boy I knew to show up in Jet," LaGuer wrote with his characteristic humor.

The following year, interest in his case started building again with the drive to DNA testing. I was freelancing and looking around for a book-length story to sink my teeth into. I went through channels to interview LaGuer in prison, attended his court hearings, got to know New England School of Law professor [David Siegel](#), his lead attorney, and started accepting LaGuer's weekly collect calls from the penitentiary.

The amount of procedural maneuvering Conte's office engaged in to block, delay, and ratchet up the costs of the DNA testing was astounding. The physical pieces of evidence, such as swabs, smear slides and pubic hair clippings from hospital samples, were divided between LaGuer's experts and the state's chosen lab in Maryland. When that lab couldn't find any traces of male DNA, LaGuer's team had to litigate for a year to allow the evidence to be concentrated in one lab, where eventually almost everything in the make-shift 1983 "rape kit" was pooled to gather the minimal amount of male DNA needed to get a profile. In the mean time Tamara Fisher, a young member of LaGuer's team, used the Freedom of Information Act to send document requests to law enforcement agencies.

Conte's delaying tactics may have been a saving grace for LaGuer.

In April, 2001 LaGuer got to see his Leominster police file for the first time. It contained documents which he never knew existed, and which raised troubling questions. The full significance of these papers would only become clear when the DNA results were in.

For one thing, the record of LaGuer's brief street corner encounter with police asking about a burglary just a month before he left for the Army was in there. Carignan must have looked at it soon after the woman in the apartment next to Ben's was attacked. Could Carignan have just seen a bad apple and immediately decided that no further investigation was needed? It seems like a distinct possibility. As Strahanich said in a 1989 TV interview, "I don't think it would be uncharitable to say that the Leominster police did not wear a lot of shoe leather out investigating this case."

Other than LaGuer, the victim and the building superintendent, there is no record that Carignan spoke with anybody about the crime. Highly probative pieces of potential evidence--such a knife

Plante said the assailant had and which one of the first police officers at the scene saw in the apartment, as well as a Pepsi can which, according to one police report had a fingerprint on it-- simply disappeared from the record.

LaGuer's Leominster police file contained much more. The most hair-raising document in the file was a copy of the forensic report prepared by then-state police chemist Mark T. Grant. It has a fax stripe showing it was sent from the district attorney's office to the Leominster police. On it, someone had added a handwritten notation identifying a pair of underpants as "Benjie's underwear." Other documents show Carignan delivered that item to the forensic lab on August 2, 1983, the day LaGuer was indicted and a week after Carignan delivered the initial batch of evidence. No underwear was introduced at trial. If this item had come from the crime scene, prosecutors would have paraded it in front of the jury then.

Not only that, but Grant's lab notes show that he was handling and testing "the interior crotch" of this very underwear at the same time he was processing the hospital specimens from the victim.

In our conversations before the DNA test, LaGuer shared with me the profound unease these revelations caused him. He knew the police had been in his apartment the day after the crime when he was away at his sister's. It was just dawning on him that they must have grabbed his dirty underwear along with eight tube socks that also turned up among evidence from the case with no paper trail or explanation.

But Siegel, LaGuer's attorney, advised against publicly raising concerns about the evidence chain of custody. After all, Conte had already all but accused him of contaminating the evidence. If he were now to say that evidence may have been contaminated while in police custody, the judge might well have said that if both sides are questioning the evidence's provenance, then what was the point of testing?

Doing everything he could to "streamline" the drive for DNA testing was Siegel's first tactical blunder. The second, which proved to be catastrophic for LaGuer, was not to share any of these anomalies with [Edward Blake](#), the big-name California DNA expert who was testing the evidence at considerable cost to Silber and others supporting LaGuer. The rationale was that if the expert conducted a "blind" test, that is to say without any knowledge of the crime or the evidence's previous history, his conclusions would be more credible.

Five months after LaGuer got the trove of unsettling documents from his Leominster police file, airplanes flew into the Pentagon and New York's twin towers. Two months after that, Fisher's FOIA quest yielded a document that was shocking even without additional context. Upon looking through barrels of papers slated for destruction, the state police found the front page of a multi-page fingerprint report showing that the prints LaGuer voluntarily gave Carignan just hours before his arrest did not match the set of four fingerprints police never disclosed having lifted from the telephone base.

This is the report on which Rehnquist, a partner with Goodwin Procter, another high-powered Boston law firm, is staking his claim that LaGuer was denied a fair trial. But at the start of 2002 Siegel, still focused on the drive for testing, again advised against making waves. Then came the

shocker: the DNA was LaGuer's. His world came crashing down on him yet again. He was quoted as saying he vomited at the news. Blake, his own expert, whose ignorance of the crime itself was exemplified by the fact that he termed it a "murder" in his final report, told a reporter that LaGuer must be a "flimflam artist."

Journalists, including columnists who had championed his cause, almost uniformly turned on LaGuer. Strahinich told

The Boston Globe , "I put the covers over my head, and for the next six hours, I just couldn't get out of bed." [Joseph Tovaes](#), managing producer of

La Plaza, a television news magazine that had done a documentary on the case, called LaGuer "a diabolical character, quite the manipulator." Siegel, whose tactical blunders were in part responsible for the debacle, abandoned LaGuer without even calling to say goodbye.

LaGuer vowed to press on. And I, having been following the minutia of the document trail, decided to dig until I could get some clarity on what had happened. I called or visited everybody I could who was in some way involved in the case. With the notable exception of a former state police trooper who invited me into his home for a two-hour "this conversation never happened" interview, law enforcement stonewalled me. I went to [Leominster District Court](#) for a copy of the original search warrant. There was no mention that socks or underwear were seized, though it was clear from inventories I got that police had those items. The documents started to paint a coherent picture.

Breakthroughs came slowly yet steadily. Silber agreed to meet me and immediately grasped the significance of the document trail. He testified at LaGuer's 2003 parole board hearing about "irregularities" in the handling of evidence. The board's response was to shove LaGuer's next hearing off another five years. [Richard Soden](#), a longtime contact of LaGuer's, brought the case to the pro bono committee at Goodwin Procter, where he is an attorney. It accepted the case, paving the way for Rehnquist's involvement. [Ellen Story](#), my state representative from Amherst, wrote letters to dozens of DNA experts asking them to review facts and documents related to the case.

Responses Story got constituted a harsh indictment of the proposition that DNA evidence is infallible, prompting her to tell the Springfield Republican, "From what I know about this case I think there's not much question that he's innocent."

But Rehnquist insists that the question really isn't whether his client, who has spent 23 of his 43 years on earth locked behind high walls, is guilty or innocent. In a [June, 2005 interview](#) with the Boston Herald he declined to talk about the DNA tests, saying, "It really wasn't part of my analysis of whether Ben had received a fair trial ... Like most Americans, I believe in fair trials."

The question before the Supreme Judicial Court this fall is whether or not he got the fair trial that is supposed to be a foundation of our system of justice.

LaGuer still possesses some of the swagger he had as a youth. It is characterized by an unflinching willingness to speak truth to power, yet tempered by the bitter disappointment of the many times freedom seemed within his grasp. Even his current team of lawyers was unable to convince a superior court judge and then a panel of three appeals court judges that it is not okay for police and prosecutors to withhold (and possibly destroy) critical exculpatory evidence and then expect a guilty verdict to stand.

Now that the Supreme Judicial Court has agreed to hear an appeal, Rehnquist will have another shot at making his case. Organizations of defense attorneys such as the Committee for Public Counsel Services are preparing amicus briefs to bolster his position.

The DNA as a seemingly damning indicator of guilt is not supposed to play a role in the process. But one would have to be very naive to think that it didn't enter into the calculations behind the recent lower court denials. Maybe if this time the state's high court grants LaGuer a new trial, the truth behind LaGuer's claims that contamination compromised the evidence will finally get a chance to be tested.

Ronald Carignan, the detective who, documents show, purloined socks and underwear from LaGuer's apartment in violation of the search warrant, died of cancer in 1988. I called his partner, Keith LaPrade, on his cell phone when I started investigating the case because his name appears on the warrant. He refused to talk, much less meet. I Googled him when I sat down to write this article. I came up with an obituary. Eerily, LaPrade died a couple of days before I tried searching him out around the anniversary of the crime.

Could it be that in July, 1983 Carignan looked in his file cabinet and saw that the last thing known about a kid who had just appeared in Leominster with a general discharge under honorable conditions from the Army, and who happened to be staying in the apartment next to the site of a disgusting crime, was that he was a "possible suspect" in a burglary in the same neighborhood? Could it be that Carignan decided then and there that LaGuer was guilty and made it his business to discard inconvenient evidence and ignore a likelier suspect with a history of sexual misconduct, who still lives in the Leominster-Fitchburg area and who, years after LaGuer's conviction, was charged with another rape?

Did the snowflake of suspicion snowball into a mindset that prompted Carignan to steal undergarments from LaGuer's apartment, destroy his original notes (as he admitted to doing in a post-conviction hearing), and say things on the witness stand that contradict the documentary record? This is a mystery he may have taken to the grave.

What is clear is that the Commonwealth ran roughshod over LaGuer's rights as an American and that it is now up to the Supreme Judicial Court to begin the process of setting things right. And the DNA? A jury at a new trial will hopefully have the opportunity to evaluate it in a careful, evenhanded, deliberative way.