

In Herrera v. Collins, the United States Supreme Court held that judges “sit to ensure that individual are not imprisoned in violation of the Constitution--not to correct errors in fact.” This emphasis, Adam Gopnik of the New Yorker thinks, “has led to the current mess, where accused criminals get laboriously articulated protections against procedural errors and no protection at all against outrageous and obvious violations of simple justice...You may be spared the death penalty if you can show a problem with your appointed defender, but it is much harder if there is merely enormous accumulated evidence that you weren’t guilty in the first place and the jury got it wrong.” Ben LaGuer’s epic quest over 29 years to prove his actual innocence is framed within this reality and context. “The case of Ben LaGuer is disturbing, not just because of its possible wrongful incarceration and political opportunism but because something happened to Lennice Plante,” says Professor Joy James. “And whatever happened to her was not important enough to witness with the truth about what was happening to LaGuer. During the prosecutorial phase of the case, which continues, one may pit a black man against a white woman and celebrate some Pyrrhic victory with whomever (or whose ever memory) prevails. Still, in the absence of witnessing through the construction of a narrative that brings meaning to the implications of these conflicts and traumas, social justice seems a losing proposition.”

This case deals with withheld, mislabeled, contaminated and destroyed evidence, DNA samples, errors in the DNA laboratory and analytical work, ineffective assistance of trial counsel, false testimony, conflicting witness statements, third party suspect, suggestive identification, mistaken identity, police procedures, conflict of interest, abuse of judicial discretion, prosecutorial misconduct, a strong argument of actual innocence, and more.

Ben LaGuer’s carceral experiences are among the most thoroughly documented and reported events of any Massachusetts inmate in recent history. His medical, housing and program observational and evaluative reports are in the thousands of pages. He maintains a private archive of correspondences as well as a public collection with Northeastern University. Public testimonials of individuals acquainted with LaGuer or his case are posted on the website devoted to his quest for justice and freedom. He grew up in New York and Puerto Rico until the age of 15 when he moved to Massachusetts with a sister; he grew up in a Seventh Day Adventist family. He attended high school in Leominster; elected president of Latino Student Body. He was a member of the Drama class. In 1979, he joined the Army’s elite 82nd Airborne Division, and later served with the 1st Army in Germany.

In a sentencing report Dr. Lawrence Hipshman said, “LaGuer does not fit either a psychological nor pathological profile of a person capable of committing this crime.” (Tr 610-611). Dr. Hipshman met with the twenty-year old inmate for three hours and reviewed the Department of Mental Health’s (DMH) case file. DMH psychologists had been collecting data on LaGuer since his pretrial detention. In a second report, Dr. Daniel Weiss said, “In talking with him [LaGuer] at some length and in reading the report and trying to compare the action with his own history...it seems totally out of character that this man would have done it...he is not a sexually dangerous person and I recommend no

further action on that question at this time.”¹ The Standing Population Risk Assessment, Department of Corrections, made LaGuer eligible in 2012 to participate in only 1 out of 7 programs available in prison; “not considered a need area for this offender, no recommendation required.” LaGuer attended the pre-treatment phase of the sex offender program. He was asked to leave after his inability to admit guilt. (Prosecutors often use such admission to undercut claims of innocence) He has no history of psychosis, neurosis, violence, deviance, animal cruelty or substance abuse. He has never failed drug tests routinely administered to the prison population. Has never psychologized him as volatile.

Ben LaGuer was transferred from county jail to the notorious maximum security penitentiary at Walpole on 17 February 1984. Within a week he had a highly coveted job in the prison law library. He spent days, nights, weekends and holidays on a desk. His fellow inmates asked for his legal advice, which he did with ever broadening complexity and nuance. He settled racial and tribal disputes. With the Nation of Islam Mosque adjacent to the library, disputes had a way of staying low key and calm as not to disturb services. The prison was frozen many times in the course of the day, usually when a fight broke out or any number of disturbances. Inmates took razors to their veins, some overdosed on drugs. But the library was a safe haven. The library had no clocks: only calendars to serve as reminders of court deadlines. The giant coffee pot ran hot water all day. The head inmate librarian volunteered to work in the kitchen for a few hours, and he returned at night with a cartload of whatever he could grab. On February 28, 1985 the Red Cross acknowledged LaGuer in the Walpole Times for organizing the maximum security prison population to raise funds for the Ethiopian famine in a national relief. Despite the sexual offense he stood convicted, he became president of El Comite De Confinados Latinos at MCI-Walpole through sheer force of his good character and respect of other inmates. LaGuer earned a bachelor’s degree magna cum laude from Boston University and won a first place International PEN award for an essay on his mother.

A nationally recognized evidence-based risk assessment tool -- Correctional Offender Management Profiling For Alternative Sanctions, or COMPAS, scored him as the lowest measurable risk (1 out of 10) for violence and recidivism.² Ben LaGuer had over two thousand dollars from his military separation checks. He had no reason to engage in a twelve dollar robbery that ended with him whipping her, possibly in anger with her having so small little money. He was disciplined in the military for being present when a fellow soldier sold a \$20 cube of hashish.³ Born May 1, 1963 at 4:06PM in SaintFrancis Hospital, Bronx New York, delivered by Dr. Antonio Cavalli, M.D. Mary Cruz LaGuer and Luperto LaGuer, of 506 Tinton Avenue, Apt 9D, Bronx, Post Office Zone 55. (Certificate of Birth Registration No. 63—208073.)

¹ Dr. Lawrence Hipshman, State Forensic Pathological Evaluation Report of 17 February 1984; Dr. Daniel Weiss, State Forensic Psychological Evaluation Report, Not Sexually Dangerous Report of 22 May 1984

² Northpointe Institute, Correctional Offender Management Profiling for Alternate Sanctions, Overall Risk Potential, Screener Larry Lombardi, 20 September 2010; COMPAS Department of Corrections, Risk Assessment Result of Ben LaGuer 20 September 2010.

³ Judge Robert V. Mulkern commented that LaGuer “doesn’t have a background of crime or violence.” (Tr. 617)

In January of 1984, LaGuer rejected a plea bargain that his lawyer confirmed to the Parole Board.⁴ The trial began Tuesday and ended Friday, 24-27 of January 1984. (Tr 3, 593) Jurors deliberated from 3:25 pm until 4:45 pm on Friday, then Monday from 10:11 am until reaching a guilty verdict at 11:53 am. (Tr 592, 596). He was sentenced to life. According to the United States Department of Justice website, the average time served for rape in the 1990's was 5.5 years (or 65 months). Until one factors in race LaGuer's more than 28 years (or 344 months) seems highly unusual.

On 28 April 2011, a ninth motion for new trial undercut the analytical assumptions of a March 2002 DNA result of Forensic Science Associates (FSA). DNA testing did not clear him, as it should have, because FSA matched his DNA to samples taken from his apartment – not from the original rape kit.⁵ Annie K. Demartino,⁶ a former mental health aide, now says that Plante had ties to third party suspect Jose Orlando Gomez; her use of antipsychotics and; that she had indiscriminately accused other colored men of her assault. (Ms. DeMartino is the recipient of many awards, including a Governor's award for public service and ABC News has twice named her "Person of the Week", first with Peter Jennings in 1987, then Sam Donaldson in 1989.)

Leominster Police Department Patrolman Timothy E Monahan reported that, "I asked her if she knew who [did this to her] and she stated "no."⁷ Lt. Robert Hebert reported that "she was unable to give me any description of the assailant."⁸ Patrolman Dean J. Mazzarella did not report her describing her assailant's identity. Dr. William C. Siegel says that she arrived "by ambulance stating that she was beaten and raped by an unknown assailant."⁹ She had an infection so advanced that Plante was discharging a "yellowish" pus.¹⁰ Luc Rape Crises Center counselors Linda K. Reedy and Ruth Givens' reports are not available. Dr. Edmund Meadows noted "her assailant told her that he would kill her if she told what he looked like but she denies knowing her assailant."¹¹ Monahan also reported her daughter to say that her mother "is under care by" the Herbert Lipton Mental Health Center owing to a nervous breakdown she had 14 years prior to the assault. Leominster Burbank Hospital records revealed that Elizabeth Barry reported her

⁴ Affidavit of Peter L. Ettenberg April 29, 2010 ("I have reviewed my notes related to the trial. These notes confirm...that such a sentence would have made Mr. LaGuer eligible for parole after two years, and that Mr. LaGuer would be credited for the time he had already served...I conveyed this offer to Mr. LaGuer. Mr. LaGuer was unwilling to plead guilty, contending he was innocent of the crimes charged.") (Since Lemire understood that aggravated rape was not eligible for a Concord sentence, LaGuer would have plead guilty to the lesser assault and battery, a charge for which the Grand Jury had earlier indicted LaGuer.); John Strahinich Boston Magazine of October 1987 (Ben LaGuer "could have walked out of prison in July 1985.") Letter from J.R Lemire to P.L. Ettenberg January 17, 1984 ("Per our conversation at the courthouse, this office is prepared to offer the defendant a twenty year Concord sentence in exchange of his guilty plea. The victim's family is quite concerned over her physical and mental health."); At sentencing, Lemire did not object that Probation Sentencing grids called for a minimum of three years and a lower maximum of twelve years. (Tr. 616)

⁵ Boston Herald, "Patrick Aids LaGuer" by Dave Wedge, 4 January, 2004

⁶ Sunday Sentinel and Enterprise, "DeMartino bids city council a fond farewell; board member serves Fitchburg for twenty years" by Emily Devlin 27 December 2009

⁷ Original, Investigation Report by Timothy E. Monahan 13 July 1983, pp 3

⁸ Tr. 241

⁹ Burbank Hospital records of July 1983.

¹⁰ Leominster Hospital, Lab Report of specimen from Lennice May Plante of 13 July 1983; Report Number 1, Forensic Science Associates, 15 August 2000, p 4 ("Microscopic examination of the cellular debris revealed a low to moderate number of epithelial cells and numerous yeast cells; no spermatozoa were detected from either swab even after the non sperm cells were digested away.")

¹¹ Id.

mother to be a schizophrenic. Barry “was going to call” her mother’s counselor as well as her physician at Herbert Lipton.

After a hospital bedside interview with Plante on 13 July 1983, Detective Ronald N. Carignan left the hospital with a “scant description of a black male very short and small in build.”¹² “I asked her if he was a black man and to this she said, ‘yes he was, he was very dark skinned.’”¹³ Carignan asked building super whether he knew anyone at the building who fit that description. He singled out Ben LaGuer, despite his olive-toned skin, tattoos, and other traits including a stutter of often jackhammer intensity.

Carignan recounts in a report how on 14 July 8:50 AM Barry telephoned and summons him to hospital. “At first (Plante) did not want to say anything so (Barry) told her mother that she was going to stay in the apartment herself and put herself up as bait to apprehend this subject who attacked her. At this point Plante decided to tell her daughter what happened and (Barry) called me to the hospital.” Carignan’s search warrant affidavit swears that Plante, in the presence of Barry, told him that her assailant lived next door. (At trial Plante denied Carignan’s claim and other evidence, including ADA Lemire’s decision to cut Barry from his trial witness list, support her denials.) This narrative seems incredulous on many levels and for a variety of reasons. First, mother and daughter had not been on speaking terms. Barry seldom visits. The super testified “I wouldn’t know her daughter if I saw her.”¹⁴ It appears totally out of character, when Barry was mending with her mother that she would threaten her mother to reveal her assailant’s identity—when Barry had no evidence that her mother knew his identity in the first place.

If Plante did not inculcate LaGuer in her assaults as she said, then why did Carignan target LaGuer? In April 2001, prosecutors released two previously undisclosed police reports from Carignan’s 1983 file. One report depicted LaGuer as “a possible suspect” in a residential burglary, a second noted his role in a case of domestic violence.

If these 1980 police reports had been divulged prior to trial, as they should have, the jury could have deduced that Carignan’s interest in searching LaGuer’s home stemmed from those reports, not from Plante’s purported statement. Her history of psychosis made it easier to ascribe to her whatever assertions the magistrate might demand to justify his own approval of Carignan’s search warrant application. Carignan knew that any discrepancies between his search warrant affidavit and Plante’s trial testimony would be shrugged off, particularly if the search expedition had yielded damning evidence linking LaGuer to the crime scene. (Barry never affirmed in statements to the Parole Board, or at political events, or to the media that in her presence her mother had inculpated LaGuer in statements and photos.)

At the police station, LaGuer had asked for a face to face identification instead of a photographic array. LaGuer believed that she would remember the time he helped her

¹² Follow Up, Investigative Report of July 13, 1983 by Detective Carignan. In September 1985, Carignan openly admitted that, after he typed his report, that he destroyed all his original notepads.

¹³ Id.

¹⁴ Tr. 27, 66

pull her shopping cart or him returning her key set when she often left it visibly in her door lock.¹⁵ But Carignan favored the photo lineup.

Carignan recounts in a report how on 15 July 1:00 PM Barry had again telephoned. "I told her that I wanted to show her mother some photos to see if she could identify somebody in the photos...Barry and I went to (Plante's) room and asked her if she could look at some photographs and see if she could recognize anyone." Officer Monahan stayed in the corridor. However, after meeting with Barry in private, Lemire substituted her for a handyman whom had merely called 911. One can only imagine what Barry had told Lemire to make him so quickly withdraw her from his trial witness list.

Carignan recounts how Plante told him that her assailant was totally nude except for a pair of tube socks. (A yellow and black stripe tube sock was recovered at the scene.) At first glance Carignan might be credited for focusing on LaGuer, since no one other than her neighbor would have met her in the nude. But, like so many other issues with Carignan, Lemire was not convinced. In his opening statement to the jury, Lemire said, "Lennice Plante will testify she first became aware of him he had some type of shorts on and white tube socks. During the course of this he removed his clothing." (Tr 23) Plante denied describing a totally nude assailant to Carignan. (Tr 181)

Patrolman Monahan first heard her as he stood in the foyer. He testified that her door was difficult to open because a chaise lounge chair was interiorly "leaning at an angle. When you opened the door it was caught under the door." (Tr. 225-6) He agreed the scene was "a little bit unusual" for someone who had walked out the door. Carignan testified that her door was easily openable, as if to suggest that LaGuer had returned next door. But Carignan arrived long after she was taken to the hospital. The jury was probably perplexed (as this court must equally be) over how LaGuer had left through an interiorly barricaded door. (Tr. 206, 250, 361, 362, 359, 563) The jury could have found that Gomez had hopped out her window. But Carignan incorrectly testified her window was 20 feet high, more than double its actual 8 feet height.

On the Monday before trial, Carignan again showed her a photo array. On the stand, ADA Lemire had her select his photograph. She identified LaGuer when asked to point out the culprit in court. Tr. 120, 129, 155, 159, 193. At trial, she denied describing her assailant to police as "very dark skinned" because his photograph was not of a "very dark" skinned man.¹⁶ She told police that she was hooded with a white plastic bag but the only bag near her was dark green. Tr. 373. She testified that seven of the eight males in the photographic array in front of her were white males. Tr. 178. In fact, the array consisted of eight photos of "dark skinned young males" plus a Polaroid of LaGuer.¹⁷

The MSPCL report that showed four fingerprints found on the base of the trimline telephone, the cord of which was used to bind the victim's wrists, did not match LaGuer.

Annie K. DeMartino was employed at the Herbert Lipton Community Mental Health Center ("Lipton Center") from 1982 to 1988.¹⁸ In 1983, DeMartino discovered

¹⁵ At trial, she denied that LaGuer had returned her key set or helped her with her groceries. LaGuer felt as if she wasn't able to tell him apart from her assailant. (Tr. 167, 385).

¹⁶ Tr. 191

¹⁷ Follow Up, Investigative Report of July 15, 1983 by Detective Carignan

¹⁸ Transcript of Annie K. DeMartino interview of Eric Goldscheider 13 February 2007; Valley Advocate, Tragedy Times Two by Eric Goldscheider 5 April 2007 ("If I went out in public with her," Demartino recalls, "everybody saw

that Plante had a highly abusive husband, a psychotic break for which she was hospitalized, and frequent delusions about visits from the deceased President John F. Kennedy. Plante was administered antipsychotics. On numerous occasions before and after the trial, when she saw dark skinned men, she would say “That’s the fellow who raped me.”

According to then Worcester County Assistant District Attorney James R. Lemire,¹⁹ complainant had been free of antipsychotic drugs for roughly two years. In 2003, Barry averred her mother was first institutionalized earlier in the 1950s. In 2007 DeMartino revealed that complainant was administered antipsychotics at the time of trial, including one never previously disclosed named Haloperidol.

Plante told her caretaker about her friend, a man of Hispanic origin who lived with his mother in her apartment building. He slept on her couch when his mother locked him out because of his drunkenness. Felicita Gomez, a fellow parishioner at Saint Francis Church in Fitchburg, told Demartino that she had lived at the 89-unit Waterways Apartments with her son and third party suspect José Gomez. Tr. 547, 548, 557. Ms. Gomez had moved away in December 1982,²⁰ but José was seen on the grounds seven months later.²¹ Her assailant told her that he was from Fitchburg, the town where the Gomez family had resettled.) Gomez’s blood type is consistent with the perspiration detected on the tube sock recovered at the scene. Her stolen pocketbook was found on a road toward Fitchburg. Gomez was very abusive with his future wife.²² In 2003, Barry told WGBH that her womanizing father beat her mother and locked her in closets whenever he left the house.²³ Plante might have been eager to protect her only help, Gomez, even if he was a batterer, and let Carignan focus on LaGuer. Prosecutors have always claimed that Plante did not initially identify LaGuer because he had threatened her life. But if Gomez had threatened her life, as he had his estranged wife, Plante may have identified LaGuer out of fear that Gomez might retaliate against her or her daughter.

The presence of Gomez in Plante’s life discredits a key argument: “This is very important to recall, the setup of the apartment building. Who would walk by her door that day? Who? That chap right there is the only person that would have any business walking by her door, Benjamin LaGuer.”²⁴ DeMartino, finally, proves Gomez was more than a defense phantom: “There is no evidence the Gomez family was in that apartment at the time.” Tr. 569.

who was either Spanish or black, she would be saying, that’s who did it, that’s who did it, and of course it wasn’t, because basically they were just people in the street. She was very paranoid at that time about everybody...she hated anybody dark-skinned”); Transcript of Annie K. DeMartino interview with attorneys James C. Rehnquist, Kathy Luz, Joshua Stayn of Goodwin Proctor, Boston, Along with Dr. John Silber, Professor of Law, President Emeritus Boston University 17 April 2008; Sunday Telegram, New LaGuer Trial Supported/DeMartino Raises Question of ID, by Matt Bruun 8 April 2007.

¹⁹ James R. Lemire is currently an Associate Justice of the Massachusetts Trial Court.

²⁰ Tr. 59

²¹ Tr. 91

²² Fitchburg District Court, Application for Criminal Complaint, Officer Farrell, charging Jose Orlando Gomez with rape and assault & Battery (Domestic) on 25 May 1998 (“The wife of the above Defendant stated that he grabbed and punched her as well as threatened to beat her up. The victim states she is in fear of her safety as he is very abusive. Victim also reported being raped.” Worcester Superior Court 98-0558 Gomez pleads guilty to Assault & Battery, in exchange of rape charges dismissed at the request of prosecutor. Superior Court Judge Peter A Velis sentenced Gomez to 59 days in jail. He ordered Gomez to attend Batterers program or Anger Management. Stay away from victim.

²³ Elizabeth Barry, Television Interview, Greater Boston, Hosted by Emily Rooney, WGBH July 12, 2003

²⁴ Tr. 563

The truth of Ms. DeMartino's recent statements is not in dispute. ADA Hautanen instead claims that LaGuer "waived" his right to use her exculpatory testimony because he failed to exercise reasonable due diligence to uncover Demetrio prior to trial. According to her 23 November 2011 pleadings, the defense could have found DeMartino since the Herbert Lipton Center was never a secret. (24, 26, 27pp) To suggest that DeMartino could have been discovered on the basis of Lipton is untenable because, first, a judge had denied in limini LaGuer's request to review those Lipton records. Second, Hautanen openly conceded in her opposition "Your Honor, we didn't know about her." (27p) LaGuer could not ethically ask Lipton staff to violate the confidentiality expected of psychiatric centers. LaGuer should not have had to resort to unusual methods to uncover that Lemire had lied. But, no Lipton staff would have provided what a judge had already denied LaGuer through petition. For the Supreme Judicial Court to conclude that LaGuer should have recruited the Lipton staff to spy on Plante, that criminal defendants need to solicit information that is minimally confidential from the staff of psychiatric centers, will sling the privacy rights of victims back to the Dark Ages.

The attempt of Carignan and Lemire to conceal articles not mentioned in the warrant did not negatively impact LaGuer until the defense began assessing each piece.²⁵ On September 27, 2001, a baffled Ed Blake of FSA told the Telegram, "This is very difficult evidence, there's no question about it." On February 15, 2002, after a blood previously cited as inculpatory LaGuer was genetically tied to Plante, defense lawyer David M. Siegel told the Boston Globe "It is but one more finding in a case that feels more and more like something out of 'Alice in Wonderland.' The rape kit held no inculpatory DNA.²⁶ "Since no spermatozoa and no male DNA was recovered from the Plante vaginal/rectal swabs, this evidence is not relevant to the genetic information of Plante's assailant."²⁷ The Q-Tip swab used to transfer her pubic hairs yielded no blood or sperm fractions.²⁸ LaGuer's DNA was never matched to DNA either from her body or crime scene recovered evidence.

Since no individual sample had sufficient DNA for a usable genotype, following MSPCL Gwen Boisvert Pino's November 2001 affidavit,²⁹ A judge ordered FSA to congregate nanoparticles from other samples (most previously mixed with samples from LaGuer) in a Frankensteinian stain.³⁰ The quantity of DNA used was less than 0.03 nanograms.³¹ This low scale DNA is less than DNA kit manufacturers recommend, less than validation studies recommend for optimal reliability (1 ng is usually considered the optimal quantity of most commercial kits.)

25 The Search Warrant for Ben LaGuer's apartment authorized Carignan to seize only these specific items: "Straw pocketbook with personal papers, and US currency, approximately \$12.00, 2 Silver rings one with a turquoise stone, all the property of Lennice Plante. 1 tube sock with black and yellow stripes to match one left behind in the Plante apt."

26 MSPCL Nov. '83 report, Items 18 ("No seminal fluid or sperm cells were detected on the swabs."); MSPCL Nov. '83 report, Items 15 and 16 ("No sperm cells or seminal fluid were detected on the slides."); Report Number 1, FSA, 15 August 2000, p 4 ("Microscopic examination of the cellular debris revealed a low to moderate number of epithelial cells and numerous yeast cells; no spermatozoa were detected from either swab even after the non sperm cells were digested away.");

27 Report Number 1, FSA, 15 August 2000, p.9

28 Report Number 1, Forensic Science Associates, 15 August 2000, pg 6 ("Examination of the swab from the Pubic Hair Beaker...revealed a low level of epithelial cells; no spermatozoa were detected on this specimen.")

29 Affidavit from Gwen Boisvert Pino of 6 November 2000, paragraph 15

30 Finding and Order on Defendant's Motion for DNA Testing of February 2001; further findings and order on Defendant's Motion for DNA Testing of May 2001.

31 FSA, Report 2, Table 1, Profiler Plus Genes, P4 (February 2001).

Dr. Lawrence Kobilinsky, Chairman Sciences Department John Jay College says, "The minuscule level of DNA the FSA report relies for its conclusions is of an amount that could be consistent with contamination."³² ("If you shine a flashlight at night in a darkened room, you will see these little dust particles. Most of those weigh a lot more than a billionth of a gram.")³³

Carignan averred in his police report,³⁴ search warrant³⁵ and trial testimony³⁶ that "nothing" was taken during a search of LaGuer's apartment. Lemire said a drawer of tube socks in LaGuer's bedroom was not seized.³⁷ All false. In May 2000 a state police crime laboratory (MSPCL) inventory revealed "eight" tube socks and "underclothes from suspect" linked to LaGuer's apartment.³⁸ The inventory also revealed underpants from LaGuer's apartment and a jersey shirt he had on the day of his arrest.³⁹ The lab notes reveal an analysis in the "interior crotch" of LaGuer's underpants. In her 23 November 2011 papers, Hautanen argued that tube socks in the box of evidence are from a different case. "Nothing is known about where the socks came from," she said, "or who put them in the box of evidence." (9p) But MSPCL chemist Mark T. Grant testified in May 1989 "Yes. If you notice, there's a number 686 next to the sock. Those are these socks from this case." (75p)

"If Mr. LaGuer in fact had sexual intercourse with Plante, especially over an 8 hr period, it is very possible that biological materials would have been transferred from her vagina to his penis and then from his penis to his underwear."⁴⁰ LaGuer's underpants revealed no female yeast cells, blood, vaginal secretions or feces.⁴¹

The jersey tag marks its recovery in Plante's apartment at 8:18 am 13 July 1983. In her 23 November 2011 pleading Hautanen conceded that the "yellow cotton jersey" and "yellow pullover" are "aka" of a single jersey. (5, 7, 8, 12, 13, 14, 17pp)

Hautanen's hypothesis that the jersey presently in storage is not the one LaGuer had on Friday runs afoul of Carignan's trial testimony, a Friday police mug shot showing LaGuer with his jersey as well as the improbability that Lemire would focus on a trivial tube sock as his centerpiece evidence instead of this more distinct athletic jersey. Carignan probably did not even tag the jersey, his name is misspelled as "Carri" with a double "r".

In his search warrant affidavit, Carignan asked to enter LaGuer's apartment to sift for a black and yellow striped sock to match its pair earlier found in Plante's apartment.

32 Analytical report from Dr. Lawrence Kobilinsky of May 28, 2004 to James C. Rehnquist of Goodwin Procter, Boston. Rehnquist had already filed the previous motion for a new trial on February 11, 2004.

33 Testimony of D.D. Riley (Essex 9777CR-0196) (11/24/98) p. 11

34 Follow Up, Investigative Report of July 14, 1983 by Detective Ronald N. Carignan.

35 The search warrant return has Keith LaPrade, Carignan's partner, also affirming with his signature that "nothing" was seized during the search of LaGuer's apartment.

36 Tr. 344, 379

37 Tr. 261

38 State Police, Evidence Inventory and Documentation Report of 12 May 2000 by Gwen Pino; ("Eight Socks, 1 Pair of white calf length athletic socks with 2 navy blue stripes and holes in the toe area were bounded by a rubber band.") Follow Up, Investigative Report of July 14, 1983 by Detective Carignan ("In the room where the uniforms were and papers of Benjamin LaGuer I observed several tube socks...of different stripes and there were several pair that did not match"); State Police "Record of Evidence Submitted" form of August 3, 1983

39 MSPCL Pretrial Bench notes of M.T. Grant, p.1.

40 Analytical forensic report from Wideman to state representative Ellen Story of 30 March 2006.

41 MSPCL Pretrial Bench notes of M.T. Grant, p.1; MSPCL Nov. '83 report, item No 21.

The jersey was not recovered near her because Carignan would have also asked to take custody of any sportswear of similar size, type or brand.⁴²

In May 2000 Gwen Pino found three (3) slides wrapped in a brown paper towel marked pubic, jersey, and pillow hairs.⁴³ She resealed the slides,⁴⁴ inadvertently mingling hairs from LaGuer and Plante. Cellmark found cellular material on these jersey hairs.⁴⁵ According to international guidelines, “contact between the victim and suspect samples must be avoided at all times.” **Interpol Handbook on DNA Data Exchange and Practice – Recommendations from the Interpol DNA Monitoring Expert Group – second edition 2009.** ADA Hautanen did not dispute in April 2010 that MSPCL had LaGuer’s jersey hairs: only that FSA never had a single strand of his on its workstation.⁴⁶ But Grant had jumbled crime scene evidence with LaGuer’s pilfered hairs, tube socks, underpants and underclothes in October 1983.⁴⁷

“I might run two or three cases at once in order to save time.” Grant had no manual on the handling of forensic samples.⁴⁸ Dr. Daniel L. Hartl of Harvard, says, “If it is correct that articles taken from LaGuer and/or from his bedroom were mislabeled and mixed together with actual samples taken directly from the victim, then the DNA evidence is of no value, even if the samples were mixed by mistake.”

“Serious questions have been raised concerning the handling of evidence in Mr. LaGuer’s case—questions that deserve serious consideration,” says state Senator Jarrett T. Barrios, chairman, Public Safety Committee, in a letter to Dr. Carl Selavka of the Massachusetts State Police crime lab.⁴⁹

In this case, crime scene evidence could have been compromised beyond the point of valid test results when samples from Plante and LaGuer were haphazardly mixed in boxes.

While the district attorney puts out glowing press releases and ADA Hautanen writes dashing sentences about the DNA test result, they asked the judge to ignore any claim of contamination or police misconduct because no forensic reports had yet been admitted under the rules of evidence. But, they also have opposed admission of FSA's reports. Prosecutors no doubt fear conceding that samples from LaGuer and Plante had

⁴² Carignan’s trial testimony. Tr. 347; State Police inventory and documentation report by Gwen Pino 12 May 2000 (include a “yellow cotton jersey”); State Police inventory and documentation report of Trooper William Kokocinski 17 May 1989 (include a “Yellow cotton jersey”); Leominster Police Department inventory and documentation report of Lt. Francis J. Ptak, Jr. 17 May 1989 (include a “yellow cotton jersey”)

⁴³ State Police, Evidence Inventory and Documentation Report of 12 May 2000 by Gwen Pino, item 6.

⁴⁴ Id.

⁴⁵ Report, Cellmark Diagnostics, J.J. Higgins, 5 September 2000 p.2 (“Unknown stain, morphology of cellular material not recognized for identification.”)

⁴⁶ Testimony State Parole Board 22 April 2010. (Audio tape available in attorney’s files.);

⁴⁷ Testimony of Mark T Grant 22 May 1989 “...not every single item would be listed on the chain of custody form. What would actually happen would be things would grouped into blocks and then the actual chemist, when the chemist went through the evidence, when he began to do — or he or she began to do the analysis, then they would make sure that each item, if there were any items that were listed that weren’t there, but notations would have been made but just to save time, everything was bagged together in one box, everything that came in at that particular time was in one box and then at a later time, it would be gone through to determine exactly what things constituted a block of items. In other words, victim’s clothes might contain three, four or five items.” (Tr. 68)

⁴⁸ Letter from MSPCL supervisor Gwen B Pino to state legislator Ellen Story 27 August 2003. (Ms. Pino said “the crime laboratory did not have a manual governing the handling of evidence in 1983.”)

⁴⁹ Letter, J. Barrios to C. Selavka of 15 July 2004.

been mixed, because that would explain how 0.03 nanogram of his DNA contaminated the pool of cellular material. They also fear what a public court hearing will expose about how samples from LaGuer found their way to Cellmark, through MSPCL, despite all procedural safeguards that have been put in place.

Hautanen's claim that some tube socks in the boxes are from a different criminal case, that evidence tags on certain items incorrectly describe the purported object, cast doubts over FSA's results from contaminated genetic data.

In January 2007, the State Police office of legal counsel publicly agreed to perform such review if the district attorney requested it. District Attorney Joseph D. Early refused through a spokesperson. In July 2007, in defiance of Early, Governor Deval Patrick asked his public safety chief to review the DNA evidence amidst a firestorm of controversy involving state and federal probes of the MSPCL DNA Unit.

For two years, the defense hunted a few particles in a nanostain to prove LaGuer's actual innocence through DNA science.⁵⁰ In January 2000, the court docket of his case had 85 entries spanning his 1983 arraignment, pretrial discovery, jury trial, seven complex motions for a new trial and other appeals. By the time FSA had a 0.03 DNA nanostain, in March 2002, the docket had 150 entries. The defense spent \$32,500 in lab fees. The law firm billed over 1.4 million dollars in hourly rate plus related expenses in the thousands of dollars. For prosecutors to say that the DNA fails to exonerate even if contaminated is grotesque, since LaGuer would not have agreed to test contaminated samples.

ADA Sandra Hautanen alleges that none of LaGuer's "farfetched DNA contamination theories have any foundation in fact, and even if his DNA test results were contaminated, the DNA result still fail to exonerate him, because no other male DNA was identified in the pooled sperm from the victim's kit." (Commonwealth's Opposition to Defense Motion to Stay Execution of Sentence 12 January 2012, 1p) First, the cellular morphology of this stain was never established. While the term "sperm" is used, in an August 2000 MSPCL report, "presumed fluid" is plainly on the square heading.⁵¹ Second, prosecutors argued contamination prior to the DNA testing. Their press release of 14 January 2000, said: "At best, the unsanctioned handling of the evidence by LaGuer's attorneys has disrupted the chain of custody of the evidence in the case. At worst, the evidence may well have been contaminated beyond the point of obtaining valid test results." In a 21 January 2000 ADA Joseph Reilly states, "I am informed that the manner of handling such physical evidence may affect the accuracy and integrity of scientific testing conducted on that evidence." Instead of disclosing extraneous samples

⁵⁰ "[F]orensic DNA testing rarely occurs [under] idyllic condition. Crime scene DNA samples do not come from a single source obtained in immaculate conditions; they are assortments of multiple unknown persons, often collected in the most difficult conditions. The samples can be of poor quality due to exposure to heat, light, moisture, or other degrading elements. They can be minimal or insufficient quantity, especially as investigators push DNA testing to its limits and seek profile from a few cells retrieved from cigarette butts, envelopes, or soda cans. And most importantly, forensic samples often constitute a mixture of multiple persons, such that it is not clear whose profile is whose, or even how many profiles are in the sample at all. All of these factors make DNA testing in the forensic context far more subjective than simply reporting the test results..." District Attorney's office v. Osborne, 129 S Ct 2308, 174 L. Ed. 2d. 38 at 59 (2009) quoting Erin Murphy, The Art in the Science of DNA: A Layperson's Guide to the Subjectivity Inherent in Forensic DNA Typing, 58 Emory L. J. 489, 497 (2008)

⁵¹ Report, State Police Post Conviction Evidence Assessment, Gwen B. Pino, 14 August 2000

from LaGuer prior to testing, Hautanen escalated her denouncements of any contamination in her court responses as well as through her office's spokesperson.

The charges of evidence tampering stem from attorney Robert Cordy (currently an Associate Justice of the Supreme Judicial Court) being accused of improperly accessing the courthouse storage.⁵² The defense then accused prosecutors of trying to include specimens of dubious origins.⁵³ Blake said, "You do the work blindly, you publish the work blindly—before you do the reference samples—then you do the reference samples. And the guy's either in or he's out."⁵⁴ In May 2000, ADA Reilly said: "[O]ne of the things the testing could tell us is whether or not there are signs of contamination which may lead us to conclude or may lead a court to conclude that there was tampering. It may have been advertent, it may have been inadvertent."⁵⁵ Blake obviously did not get any cautionary note. In a 2002 interview, "The time to make those claims was on Day One," Blake said.⁵⁶ In 2004, Blake was still under the mistaken belief that contamination was never a contested issue prior to the testing.⁵⁷

On May 19 2004 ADA Hautanen and Reilly asked the court to deny LaGuer a new trial because DNA evidence "in this case, which defendant himself initiated, demonstrate to a mathematical certainty that he committed the crimes of which he was convicted. As such, further litigation is unnecessary and pointless."⁵⁸

In their press release after the DNA results, "In 1984 we proved Mr. LaGuer's guilt beyond a reasonable doubt, that is to a moral certainty. In 2002, DNA testing has proved Mr. LaGuer's guilt to a mathematical certainty."⁵⁹ They erroneously conflate the "random match" probability (i.e., the probability of two men sharing LaGuer's DNA profile in the human population) with the "source probability" (i.e., probability that a stain from a crime scene originated from LaGuer.) Brief of 20 Scholars of Forensic DNA in *McDaniel v. Brown* S. Ct. 665, 670-71 (2010) pp. 11-13 (The improper conflation of random match probability with the probability of guilt is the "ultimate issue error".) FSA could not provide a "source probability" because such analytical work required FSA to do more than the "blind testing" they had agreed to do.⁶⁰ Prosecutors incorrectly equated "random match" probability as proof of guilt.

The absence of her blood on perenial swabs and smears discredits the hypothesis of a continuous vaginal, oral, and anal assault lasting 8 hours. The sexual assault alleged

⁵² District Attorney John J Conte's Press Release of 14 January 2000. ("At best, the unsanctioned handling of the evidence by Mr. LaGuer's attorneys has disrupted the chain of custody of the evidence in the case.")

⁵³ Transcript of Hearing of 15 May 2000 David M Siegel said, "Most of the things that they want to test aren't things that they're established authentication of."

⁵⁴ Telegram, "More Rely on Miracle of DNA Tests by Matthew Bruun, July 16, 2000.

⁵⁵ ADA Joseph J. Reilly, III, 15 May 2000 pg 17,19

⁵⁶ Telegram, DNA finding difficult to rebut by Matt Bruun 31 March, 2002

⁵⁷ Telegram, Conte Rejects LaGuer's Claim by M Bruun 15 February 2004

⁵⁸ Commonwealth Opposition to Defendant's Eighth Motion for a New Trial 19 May 2004, p.11.

⁵⁹ Telegram, "Conte Says DNA Match Proves Guilt" by Matt Bruun, March 27th, 2002.

⁶⁰ Telegram and Gazette DNA profile completed in LaGuer rape case by Matthew Bruun 7 February 2002 ("He's reported these results, so its absolutely clear that the work was done blindly," defense attorney David M. Siegel said explaining why FSA was presenting the analysis of the 1983 evidence before testing the reference sample from LaGuer.)

would have left on her remarkable physical and biological evidence. Tr. 333 (reporting rape as “continuously . . . all night long”). But her swabs were soaked only in biological yeast.⁶¹ The Q-Tip swab used to transfer her pubic hairs yielded no blood or sperm fractions.⁶² The absence of any blood on her swabs support Meadows’s note that her “anus showed no blood, abrasions or lacerations.” David Arnold of the *Boston Globe* interviewed a physician familiar with the case who doubted key aspects of her account.

MSPCL Grant testified that he had reviewed all police reports.⁶³ Patrolman Monahan quoted emergency room physician Siegel as reporting semen in her vagina and throat. Siegel has denied making this statement. According to Dr. Ed Blake, “Twenty years ago, scientists would not have been able to detect the evidence.”⁶⁴ How could Grant detect a 0.03 nanostain prior to DNA sequencing machines? MSPCL officials were unsure if the analysis was even performed.⁶⁵ Cellmark could not confirm if the stain was even spermatozoa.⁶⁶ Instead of serological work, Grant simply affected a police report as his own analysis.

Judge Timothy S. Hillman, who had presided over the legal proceedings and analysis, had previously been a lawyer to Plante’s family.⁶⁷ Michael Hillman, Judge Hillman’s younger brother, attended High School with Barry. Tr. 5-7 (March 13, 2000, Volume 1). Telegram, Obama nominates Judge Hillman by Bob Kievra 1 December 2011

Police photographed a scratch on his back.⁶⁸ ADA Lemire never disputed that LaGuer that had scratched himself on a picnic table.⁶⁹ Other police photos showed that LaGuer’s left hand had no abrasions consistent with her assault.⁷⁰ This evidence exculpates him.⁷¹ Plante was hit so hard on the right side of her face that reconstructive

⁶¹ MSPCL Nov. ‘83 report, Items 18 (“No seminal fluid or sperm cells were detected on the swabs.”); MSPCL Nov. ‘83 report, Items 15 and 16 (“No sperm cells or seminal fluid were detected on the slides.”); Report Number 1, Forensic Science Associates, 15 August 2000, p 4 (“Microscopic examination of the cellular debris revealed a low to moderate number of epithelial cells and numerous yeast cells; no spermatozoa were detected from either swab even after the non sperm cells were digested away.”)

⁶² Report Number 1, FSA, 15 August 2000, pg 6 (“Examination of the swab from the Pubic Hair Beaker...revealed a low level of epithelial cells; no spermatozoa were detected on this specimen.”)

⁶³ May 22, 1989 Testimony of Mark T. Grant; “Yes. Detective Carignan, the investigator, always made it a habit to submit the entire police report so I read the entire police report...” p.47

⁶⁴ T&G, “DNA Finding Difficult to Rebut” by M Bruun of March 31, 2002; Forensic Science Associates, Report 2, Table 1, Profiler Plus Genes, P4 (February 2001) (Forging a genotype with less than 0.03 nanograms)

⁶⁵ Report, State Police Post Conviction Evidence Assessment, Gwen B. Pino, 14 August 2000 p.3 (“Please note that the method used to remove the semen in 1983 from the cut pubic hairs is unclear.”); Report 1, FSA 15 August 2000, pg 6 (“Examination of the swab from the Pubic Hair Beaker...revealed a low level of epithelial cells; no spermatozoa were detected on this specimen.”)

⁶⁶ Report, Cellmark Diagnostics, J.J. Higgins, 5 September 2000 p.2 (“Unknown stain, morphology of cellular material not recognized for identification.”)

⁶⁷ Boston Herald, judge in rape trial set to be victim’s ex-lawyer by J.M. Lawrence 6 November 2004 (“The judge acknowledged he advised the victim’s daughter about her father’s estate but had little memory of the work.”)

⁶⁸ Follow Up, Investigation Report by R N Carignan of 15 July, 1983

⁶⁹ Trial Transcript, February 1984, Closing Statement by ADA Lemire

⁷⁰ A series of police photographs of Ben LaGuer on file with the Leominster police department and official descriptions of his distinctive marks also on police file.

⁷¹ The Hon. Isaac Borenstein, Interview. Greater Boston, Host Emily Rooney. PBS. WGBH, Boston. 23 March 2009

surgery was considered.⁷² (In Harper Lee's classic novel *To Kill a Mockingbird*, the argument for the accused rapist Jim Crow's innocence is the bruising on the right side of the false accuser's face; Crow had no use of his left arm owing to a childhood accident, and only a left-handed person could have dealt her those kinds of injuries.)

While LaGuer swapping his saliva with another inmate seems damning, a genuine saliva sample supported his innocence because, "the result would have provided evidence of his innocence rather than a false impression of his guilt." (Esquire May 1994) The O Type perspiration in the culprit's tube sock exonerates a B Type LaGuer⁷³. He stood only to benefit with a genuine sample.

At trial, no forensic evidence was put to the jury not because LaGuer had contaminated the serology. ADA Lemire was free to request retesting with a new saliva sample. He discarded the MSPCL laboratory and analytical work for his own reasons. The crime lab had human blood from napkins recovered at the scene, and perspiration from the assailant's tube sock. The blood had originated from a secretor of group Type B, the perspiration from a secretor of Type O.

Lemire did not expect this case to go to trial, given the plea bargain offer made to LaGuer. Lemire could not make heads or tails of the state forensic report. Plante was a Type O secretor.⁷⁴ Her bloodtype was compatible with the perspiration of the recovered tube sock and incompatible with the blood in napkins. It was illogical. All reasonable inferences had the blood in napkins as originating from Plante instead of her bloodtype matching the assailant's perspiration. LaGuer had no injuries to account for that quantity of blood.

Lemire understood that asking for a retest ran a risk. If LaGuer was Type B, then he could not be guilty--tied to the assailant's tube sock. If he was Type O, then the blood in napkins could not be tied to either Plante or LaGuer. (The reason Lemire was puzzled is that the MSPCL had botched the blood serology.) In 2000, FSA said that the blood in napkins "is the same as the genetic profile from Plante."⁷⁵ In other words, the MSPCL misreported Plante's O Type blood in the napkin as B Type, thus falsely inculcating LaGuer.⁷⁶ This error still stands.⁷⁷ In the end, Lemire knew all the twelve white jurymen needed in this case was a white woman identifying a black man of rape.

In October 1983 LaGuer had a real fear of Carignan. His lawyer had mailed him Carignan's police report and grand jury testimony. In his July report, Carignan had

⁷² Testimony, Grand Jury, R. N. Carignan, August 2, 1983.

⁷³ LaGuer's fear of submitting a saliva sample has a context of Carignan discounting, distorting, and destroying evidence. In 2007, Hautanen told the SJC that LaGuer had thwarted their ability to inculcate him with a bloodstain that she knew FSA had traced to Plante. In 2007, Hautanen's use of this report only lent credence to his fears.

⁷⁴ State Police, Crime Lab, Serological Blood Supplemental Report by Gwen Pino, 17 Feb. 1988

⁷⁵ Report number 1, FSA, August 2001, pp 10

⁷⁶ If ADA Lemire had argued that the B Type blood on the napkins inculcated LaGuer, the defense would have been granted the independent analysis it had been requesting. That analysis would have exposed the misreporting of Plante's bloodtype.

⁷⁷ Boston Globe, DNA testing faults evidence by David Arnold 15 February 2003 (For many years District Attorney John J. Conte had "insisted that the blood on the tissues belonged to LaGuer. Parole boards and appellate judges have kept LaGuer in prison partly because of that assertion. In 1991 the state's Supreme Judicial Court denied LaGuer's appeal for a new trial partly because 'The defendant's...blood type was the same as found on the tissues at the rape scene...")

quoted Plante as telling him, “All of a sudden this black guy comes into the apartment, totally nude except for a pair of white socks.” In his grand jury testimony, however, Carignan averred, “She says, ‘All of a sudden the door opened and in came Benjamin LaGuer.’” He testified the event occurred in LaGuer’s apartment; it in fact happened in her apartment. He testified that she was still in hospital and not available to the grand jury; she had in fact been from the hospital. He testified that she was lying in a puddle of blood; his own report claims one that smelled of urine.

After Carignan testified for 65 transcript pages about his grand jury testimony, 1985, the judge ruled that Carignan “acknowledged the inconsistencies discussed above, but denied any purposeful attempt to mislead the grand jury.” In effect, LaGuer had only failed to show that Carignan had deliberately lied to the grand jury.

In February 2002, responding to charges of missing evidence, DA Conte said: “Any and all evidence pertaining to this case that is held by the District Attorney’s office has been, and will continue to be preserved.”⁷⁸ But Hautanen had admitted that items previously in her office “aren’t there anymore.”⁷⁹ The culprit’s recovered tube sock and knife disappeared from custody. A series of fingerprints from a telephone and from a hair dryer disappeared.⁸⁰ A partial fingerprint from a Pepsi can disappeared.⁸¹ In 2007, the SJC held “that the Commonwealth could not place [LaGuer] in the victim’s apartment by means of any evidence, including fingerprints or any other physical evidence.”

Challenges to the Conviction

In 1991 a challenge to his conviction went to the Supreme Judicial Court which rendered a landmark ruling. In one affidavit, corroborated by the jury foreman,⁸² one juror had remarked, “The goddamned spic is guilty just sitting there; look at him. Why bother having a trial?” The SJC asked the trial judge to afford LaGuer a new trial if the allegations were “essentially true.” After three jurors openly affirmed the racism, Judge Mulkern ruled against LaGuer. When a reporter asked one of the twelve white jurymen to reflect on the trial in 2001, juror Stephen J. Martin said, “The life sentence showed the judge agree with the verdict. We saw an animal, and he saw the same animal.”⁸³ Another juror commented on the case.⁸⁴ Hautanen testified before the Parole Board April 2010, “Perhaps there may have been a little jury bias in the courtroom. I think nobody

⁷⁸ DA John J Conte’s unpublished response to a Boston Globe story entitled “Results could Lead to LaGuer’s Exoneration” 15 February 2002

⁷⁹ Transcript 9 January 2002, pp 14-15

⁸⁰ A series of photographic exhibits on file with attorney.

⁸¹ Follow Up, Investigative Report by R Cariganan, 15 July 1983, pp3

⁸² State Police Tpr. Richard D. McKeon and William Kokocinski 6/13/91 interview juror James Dalzell

⁸³ T&G, “Jurors mixed on recent findings in LaGuer case” by Matt Bruun of 13 December 2001

⁸⁴ One of the jurors who presided over this case, Gerald J. Scalton, spoke about the deliberations of this case when he was excused from duty in *Commonwealth v. Felix Torrez* (Henry, J., Worcester WORCR2006-01848) (“It all stems from years ago when I was on a criminal trial jury. It’s since become very famous. I know I did the right thing but every time it’s brought up politically or something, I have sudden doubts...I’d have to be very, very certain. I’ve had sleepless nights over it but I think I did the right thing...It was beating up and raping an older woman...It was Benji LaGuer...The victim took the stand and she swore that it was him and his attorney tried to say that it was her eyesight and she proved in my mind that her eyesight was okay...That’s why I – but every time it comes up I do have – I guess it’s human...”)(Transcript of jury empanelment of 12 August 2008, pages 112-117.)

really knows. What happens in a jury room is what happens in a jury room.”⁸⁵ “A number of reporters have concluded that at the very least, his trial was a pretty odoriferous piece of business.”⁸⁶

LaGuer Had Neglected Alibi Defense

In a pretrial investigation, Nancy Martinez and Robert Hammack of the Worcester-based Mayday Investigative Agency corroborated Ben LaGuer’s alibi with six individuals “whom we believe will be helpful and willing to cooperate in LaGuer’s defense.” These individuals had placed LaGuer miles from when Plante said she come face-to face with her assailant. In spite of conflicting timeframes, she had settled on a 9 pm to 5 am period.

Defense attorney Peter Ettenberg never interviewed these witnesses because he had already lay the grounds for LaGuer to serve an extra year in prison, with good behavior and other deductions, in a plea. But when he refused, Ettenberg had no ready defenses. He was only days in town from a long vacation to Barbados. Perhaps Ettenberg had no realistic plans of ever taking the case to trial for the five thousand dollar retainer he had requested. He had no alibi witnesses, psychiatric or forensic experts lined up.

What each alibi had to say firmly put LaGuer across town, in Litchfield Terrace, visiting Tina Pouliot’s home (ex-girlfriend) at the exact moment when Plante said a man broke in. All remembered what LaGuer was wearing, that the day had fallen to night while others recall the Tuesday. In July, the sun would have set and darkness settled after 9 pm. Elizabeth Bromes, LaGuer’s sister, testified that she left her brother in front of Cumberland Farms at approximately 9:30 pm (Tr. 443).

What happened next is not the stuff of a Law and Order episode. Prior to the first witness taking the stand, Ettenberg openly admitted that he had no defense: “Quite frankly, I really don’t have a defense other than where my client says he was his word against her word.” (Tr. 7) Then, for reasons that still mystify LaGuer, he testified that he never went to Litchfield, thus razing his alibi. He claim to telephoning Pouliot’s home from the Café, then stayed when her sister told him that Tina was not home. (Tr. 490-494). This account is demonstrably false, but consistent with what Ettenburg had told Judge Robert V. Mulkern. In an interview with the Sentinel & Enterprise 10 December 1989 Ettenberg said: “As for the alibi witnesses we knew who they were and sent investigators out to talk at all hours without paying them. Toward the end of our defense we had no more money.”

After the trial, Ettenburg released the Mayday report to his former client. With report in hand, LaGuer then prepared a motion for a new alleging that “trial counsel’s failure to call certain alibi witnesses on his behalf amounted to ineffective assistance of counsel.” LaGuer requested a hearing so Ettenberg might explain why, in light of the Mayday report, he falsely stated that he had no “defense other than where (LaGuer) says he was, his word against her word.” Why did Ettenberg let his client testify to a sequence of events he knew to be untrue? Why would his client testify to a version that left him alone rather than supported with six alibi witnesses? Judge Mulkern denied LaGuer’s

⁸⁵ Testimony State Parole Board 22 April 2010. (Audio tape available in attorney’s files.);

⁸⁶ Boston Globe, “The Best PR Man Behind Bars” by Mark Jurkowitz 9 January 1996

request for a hearing and a new trial. “The expected testimony of the four individuals now claimed to be alibi witnesses is inconsistent and contradicts defendants.” Since Ettenberg had denied an alibi defense and LaGuer had denied visiting Litchfield, Mulkern figured, these alibi witnesses were inconsistent with the trial defense.

2012 Developments

After LaGuer charged fraud with regard to the DNA, the District Attorney now alleges that a January 17, 1984 letter from then ADA James R. Lemire to defense counsel Peter L. Ettenberg is fraudulent. In support of this claim, Ettenberg has provided prosecutors with an affidavit that he first saw this letter in 2010. Ettenberg’s affidavit of September 6, 2011, is distinct from his previous affidavits and client correspondences insofar as he had always spelled “LaGuer” with the “G” capitalized, but in this document, spells it “Laguer”, as prosecutors have customarily done. (The Superior Court docket spells his name as “Benjamin LaGuer”.) It may be inferred that Ettenberg signed an affidavit drafted by prosecutors to advance their own agenda. (A four-year request of District Attorney Early’s government server should reveal their e-mail draft affidavit to Ettenberg.) In his letter to LaGuer on February 15, 2001, Ettenberg confirms to his former client, “I have reviewed the content of my files and can only locate the enclosed documents; the jury list and pretrial conference report. I can only assume that anything (sic) else in my files was sent on to the attorney after me, Michael Caplette, as I noticed a release and request from him to you that I send him my file. I do not know what the letter you refer to of October 24, 1983 contains.”

In view that Ettenberg had not seen his trial file in twenty-eight years, his affidavit that Lemire never made him a formal plea in writing seems less credible than if he simply had no recollection of said letter. In February, 2001, Ettenberg responded to LaGuer’s inquiry about a 1983 letter sent Lemire. “I do not recall any conversation I might have had with Lemire about the October 4, 1983 letter and do not have any notes about it.” Their discussions of a possible plea of 20 years in Concord is supported by other sources, including Ettenberg’s own April 2010 affidavit. The fact that his letter is unsigned is not peculiar, because the District Attorney’s office has a long history of releasing unsigned letters and court pleadings. Most recently, in ADA Hautanen’s motion to dismiss filed on the 8th day of september 2011, she included an unsigned petition to the Supreme Judicial Court. (See Exhibit 10 of Commonwealths motion to dismiss of 8 September 2011.) Further undercutting this fraud charge is Hautanen’s 2002 admission that Lemire had reviewed her office file, and told her that materials previously in those files “aren’t there anymore.”⁸⁷ If the District Attorney’s files are admittedly missing, Hautanen is hardly credible when her charge is so self-servingly aimed to have LaGuer’s motion dismissed. Prosecutors have offered no forensic document expert affidavit in support of forgery or linguistic expert testimony to support their naked charge that the unsigned letter is not stylistically consistent with its author.

This case remains one of enormous legal, scientific and political consequences. It is a model study for an Innocence Commission. The problem is still a lack of political

⁸⁷ Transcript 9 January 2002, pp 14-15

courage. The strategy of prosecutors will keep LaGuer in prison unless individuals in legal, media and academia undertake a serious investigation.

Media Excerpts

James, Joy. Symposium. April 16-17, 2009. Carter G. Woodson Institute for African-American and African Studies the University of Virginia. University of Texas and Williams College Professor in Political Science The Prosecution of Race and Rape: Framing the Case of Ben LaGuer in the 2006 Massachusetts Gubernatorial Campaign ("The controversial 2006 Massachusetts gubernatorial contest between Republican Lt. Governor Kerry Healey and her democratic rival, civil rights attorney Deval Patrick, was influenced by strategies shaped in the 1988 presidential election. Trailing in the 'white' vote, the Healey campaign sought to tie Patrick to Ben LaGuer, a black Puerto Rican man imprisoned since 1983 for an interracial rape (LaGuer maintains his innocence), and by extension to link the democratic front runner to former Massachusetts Governor Michael Dukakis and Willie Horton. Reviewing police misconduct, racial bias, and media sensationalism that led to civil rights advocates' interest in the case, Professor James explores how the racial **and** gender politics of both parties led Patrick to renounce support for a new trial for LaGuer, and enabled Patrick to become the first African American governor of Massachusetts, and one of only three black governors since Reconstruction.")

King, John. Associated Press. Rapist fights conviction with jailhouse evidence 15 November 1987. ("William Nowick of Worcester was among the jurors who convicted LaGuer...Nowick said jurors had numerous questions about the evidence that might have been answered if they knew about the schizophrenia of why LaGuer was discharged early from the Army... 'Those two things would have changed an awful lot,' Nowick said. 'How could she identify anyone? And most of us were veterans. Why didn't know why he was let of the Army and thought it probably was for rape or for attacking some girl in Germany. LaGuer was discharged from the Army three weeks before the 1983 attack because he was caught with a small amount of hashish.")

On its website, the Danielsen Institute describes its mission as promoting "the benefits of a close collaboration between psychology and religion to alleviate human suffering and enhance human growth." BU President John Silber arranged for LaGuer to receive ongoing counseling with the Danielsen Institute as part of his 1989 Parole application.

Boston Phoenix, "Oxymoronic: For Benji LaGuer, there's no justice in the system" by Sean Flynn 30 August 1991 ("The irony in the approach runs deep. In order to preserve a supposedly fair and truthful verdict, [the prosecutor] was trying to make one of the men who rendered it look feeble-minded and untruthful, thoroughly incredible as a witness to the deliberation yet eminently qualified as a participant in them.")

Conte, J John. LaGuer Evidence Remains Strong. Letter to the Editor. Telegram & Gazette A8. ("While the commonwealth may be reluctant to retry a 1983 case because of the victim's health and the death of the chief investigator, rest assured hesitation not due

to any perceived 'shakiness' in the case. The evidence against LaGuer, despite the passage of time, is extremely strong." 3 June 1991.

"After seeing his medical records, he realized that, if he had given the authorities a legitimate saliva sample, the result would have provided evidence of his innocence rather than a false impression of guilt," John Taylor, Esquire Magazine, May 1994

"Ben LaGuer is a diabolical character, quite the manipulator," says Joseph Tavares, Executive Producer PBS documentary "Last Chance DNA" WGBH 21 May 2002. "We all knew what he would say--that he was framed."

Smith, L. Abbe. Defending the Innocent 32 Connecticut Law Review 485-522 (1999-2000)

Flynn, Sean. Boston Magazine, October, 1999. ("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.")

Telegram & Gazette, Tool for justice, Editorial 6 June 2003 ("More recently the case of convicted rapist Benjamin LaGuer of Leominster illustrated how DNA evidence can debunk even the most persistent protestations of innocence.")

Statement from Deval Patrick on his role in the case of Ben LaGuer 28 September 2006 ("My sole involvement in this case was more than 10 years ago, when I wrote a letter on Mr. LaGuer's behalf. At the time, there were serious unanswered issues concerning the facts and fairness of the original trial." "On that basis, I stated my belief that the criminal justice system should have taken a further look at Mr. LaGuer's case--a view shared by The Boston Globe, John Silber, and many others in the state. DNA testing, at that time, had never been conducted." "In light of today's news stories, I have reviewed the case today and was updated on developments since my letter more than ten years ago. I understand that, in addition to other review, DNA testing was done in 2002. On the basis of my review, I believe that the right outcome has been achieved and that justice has been served.")

"We had very limited forensics; it wasn't like 'CSI,'" James R. Lemire told the Governor's Council considering his nomination for a superior court judgeship in September 2006. "The case was mostly tried on the basis of the victim's identification of LaGuer as the perpetrator."

Estes, Andrea. Boston Globe. Healey, Patrick duel on crime. 5 October 2006. ("Patrick, who also corresponded with LaGuer in the late 1990s, said yesterday, 'I am proud of what I did.' Asked whether he would still advocate on LaGuer's behalf 'knowing what you know now,' he said yes. Patrick did not elaborate. Later, an aide explained that Patrick would advocate for LaGuer again because he may not have received a fair trial.")

“Meanwhile, James Lemire, the former Worcester assistant district attorney who prosecuted the LaGuer case, was confirmed yesterday for a spot on the Superior court in a 6-1 vote by the Governor’s council. Questions about Lemire’s handling of the LaGuer case prompted the lone nay vote, from Councilor Peter Vickery (D-Amherst), Dave Wedge, Boston Herald October 5, 2006

“It’s inconceivable Patrick simply forgot repeated correspondence with a convicted rapist, so the LaGuer issue is fair game. As authorities struggle to keep our streets safe, a legitimate debate over public safety is critical, too.” Editorial, Boston Herald, October 5, 2006

Wedge, Dave. Boston Herald. 5 October 2006. (“Meanwhile, James Lemire, the former Worcester assistant district attorney who prosecuted the LaGuer, was confirmed yesterday for a spot on the Superior Court in a 6—1 vote by the Governor’s Council. Questions about Lemire’s handling of the LaGuer case prompted the lone nay vote, from Councilor Peter Vickery (D-Amherst).”

Estes, Andrea, Patrick apologizes for disclosure missteps 6 October 2006. (“Patrick told reporters he should have researched his involvement in the case before offering statements over the past week that minimized his role. ‘We screwed up in terms of how we have handled doing the homework before we answered questions about this issue, no question about that. And I take the responsibility for that.’ Patrick said he was ‘proud of what I did’ and would do it again. ‘I don’t think it was a mistake.’”)

Editorial. Boston Globe. “Patrick’s Missteps” 6 October 2006. A16. (“It would have been more surprising if Deval Patrick had not responded with interest to an appeal for support from a convicted rapist whose 1984 trial included racist remarks by a juror. Like former Boston University president John Silber, historian Elie Wiesel, and others, Patrick wrote letters on Benjamin LaGuer’s behalf. This page editorialized for a new trial in 1994. Patrick’s mistake this week was to say initially that there was only one letter, when it turned out there were more, as well as a contribution to the cost of a DNA test for the convict. The DNA test in 2002 provided evidence of LaGuer’s guilt and Patrick has said he has played no role in the case since then. LaGuer contends the DNA evidence was contaminated and still proclaims his innocence...The court in which LaGuer was tried was tilted against him. The all white jury that convicted him included one members made racist comments, according to an affidavit by a fellow juror.”)

Bruun, Matthew. Case campaign fallout embrace by LaGuer. Telegram & Gazette 6 October 2006 (“In an interview yesterday, Mr. Early said he was familiar with Mr. LaGuer’s case and had been following it in the news in recent days. He declined to speculate on whether he felt Mr. Laguer had received a fair trial, noting the issue was going to be addressed by the Supreme Judicial Court, which is expected to hear oral arguments in December. “We’ll deal with it when we get the results back, ‘Mr. Early said.”

“For whatever reason, whatever motivation, whether conscience-drive or calculated, Patrick took such a leap, lending his credibility to LaGuer back when it was theoretically plausible that the latter was the victim of a monstrous injustice...He could have stood fast, digging his heels on principle, insisting that what he did seemed right when he did it, before he had the benefit all the hindsight critics are hurling at him now...Instead, in the heat of the moment, he’s revealing what he is, ‘eloquent and thoughtful’ but just another empty suit.” Columnist Joe Fitzgerald, Boston Herald, October 7, 2006

Moynihan, Kenneth, J. Hard to believe many will buy into Kerry Healey’s attack. 11 October 2006. (“The Patrick campaign goofed by not being prepared for the LaGuer question. A number of upright citizens favored a new trial for the convicted rapist back in the 1980s, but only one of them is currently the Democratic nominee for governor in Massachusetts. Mr. Patrick was not ready for the question, and as a result gave out inaccurate information when it was first raised. It took a few costly days to do the research and set the record straight. The candidate said very correctly, “The point is, we screwed up in terms of how we handled doing our homework before we answered questions about this issue. No question about that.” T&G)

Phillips, Frank. Boston Globe. Healey keeps up attack; Patrick toughens his ad. 11 October 2006. (“Patrick’s advisers, who would not speak for attribution because they do not publicly discuss strategy, said polling data from the weekend showed that Healey’s attack ads have backfired by hurting her own standing among voters more than Patrick’s. The advisers said Patrick and his aides decided not to launch a negative counteroffensive.”)

Boston Herald 14 October 2006, Torpedo tube: Ads win Healey points/Gurus say TV assault is working by Jessica Heslam (“UMass-Boston political science professor Paul Watanabe said Healey’s TV spots are ‘classic attack ads that ‘specifically raise questions about a person.’ ‘I think for her, it makes sense because in some ways Deval Patrick has proven to be immune from being hurt by distinctions on policy issues,’ Watanabe said.”)

Editorial. DNA Truth Seeking Boston Globe 16 October 2006, A8 (“All four candidates for governor support post-conviction DNA testing, even Lieutenant Governor Kerry Healy, who has criticized Deval Patrick’s efforts to help a convicted rapist get a DNA test that might lead to a new trial.”)

“Memo to the Healey campaign: Enough of the Benjamin LaGuer case, already. The incessant harping on what should have been a brief aside in the 2006 gubernatorial race has turned a largely substance-free campaign into a mudslinging match that ill-serves the Massachusetts electorate.” Editorial, Telegram & Gazette October 17, 2006

“What concerns me is that Deval Patrick would persist in describing and complimenting a convicted rapist as eloquent and thoughtful even after DNA evidence has proven beyond all doubt that in fact, Mr., LaGuer was convicted properly,” said Kerry Healey, Boston Herald, Laura Crimialdi, October 19, 2006

“Anyone who claims to be a victim advocate or a champion for victim’s rights or even has the most remote understanding of victims’ issues would do this,” said Mary R. Lauby, executive director of Jane Doe, Inc, referring to Healey’s TV ad. Laura Crimaldi, Boston Herald, October 19, 2006.

Crimaldi, Laura. Boston Herald. 19 October 2006. (“What concerns me is that Deval Patrick would persist in describing and complimenting a convicted rapist as being eloquent and thoughtful even after DNA evidence has proven beyond all doubt that in fact, Mr. LaGuer was convicted properly,” Lt. Gov. Kerry Healey said.”

Telegram, LaGuer rape issue ignored/Healey appears in Leominster by Jason Feifer 22 October 2006 (“On Friday, her campaign more than doubled the television airtime for a controversial new ad about Mr. Patrick and Mr. LaGuer, which features a woman walking through a dark parking garage.”)

“A poll showed that the difference between Ms. Healey’s vote and Deval L. Patrick’s could be accounted for by gender. Men were supporting Healey 42 percent to 40 percent, while woman supported Mr. Patrick 63 percent to 27 percent for Ms. Healey.” Columnist Kenneth J. Moynihan, Telegram & Gazette October 25, 2006

Telegram & Gazette 25 October 2006, Latest polls say Patrick leading by 25-27 points by John J. Monahan (“The poll indicated a significant shift toward Mr. Patrick and away from Ms. Healey, compared to results of a similar poll two weeks ago that put Mr. Patrick ahead by 13 points. Suffolk University Political Research Center Director David Paleologos said the poll appeared to reflect a public rejection of the Healey campaign ads.”)

“The father of California murder victim Polly Klaas visited Boston yesterday to speak out against Democratic candidate Deval L. Patrick, saying...” “I can’t even believe that this character is running for governor of this state...Every fiber of my being cries out to beware any individual who prioritizes the rights of a violent sexual sadist like Ben LaGuer ahead of the rights of a crime victim...” By Andrea Estes, Boston Globe, Father of slain Calif, girl criticizes Patrick, October 26, 2006

Payne, Dan. Tactics for desperate times. Boston Globe 26 October 2006. (“Ka—boom! Implosion you heard is collapse of Healey candidacy. Two TV polls have her now trailing by 27 and 25 points. Her unfavorable is above 50 percent. It’s over. Kerry Healey’s lurid ad about rape of white woman in parking garage has strong racial undertones. Using reality—style surveillance camera, spot uses racial stereotype of lone white woman about to be jumped by black rapist lurking behind cars. What it reveals is a desperate Healey using fear to mug Deval Patrick in dark, offensive, and racist TV commercial. For weeks, her slogan has been ‘It’s about race, stupid.’ Washington Post blog’s review gubernatorial ads from around country called garage spot ‘as vicious as we’re seen.’”

Atkins, Kimberly. Ask her to step down as chair of violence council. Boston Herald. 31 October 2006 ("In a politically charged slap one week before the election, members of the Governor's Commission on Sexual and Domestic Violence — most hiding behind anonymity -- yesterday called for Lt. Gov. Kerry Healey to step down as the group's chairwoman. In a letter to Healey, the commission members and advisers said her attacks on Democrat Deval Patrick for backing convicted rapist Ben LaGuer create unfounded fears...'This ad perpetuates three damaging myths; first, the only women are at risk for sexual violence; second, that strangers — particularly those who come from communities of color — are those who should be feared the most ; and third, that rapist are visibly unsavory individuals,' said the letter.")

"I think our advertising spent a little too much time on Benjamin LaGuer and not enough time on the issues like, you know, the fact that income taxes are going to go up significantly under Deval Patrick," said Lt Gov. Kerry Healey's running mate Reed Hillman, blaming his team's crime focused TV ad for drooping poll numbers as election day loom." Boston Herald, Kimberly Atkins, November 1, 2006

"This just wasn't her race," said famed democratic operative Michael Goldman of Kerry Healey's gubernatorial bid. "Wrong candidate, wrong time, wrong message. It's a horrible thing to say, but look at her numbers. Ben LaGuer has higher favorability than she does," Margery Eagan, Boston Herald, November 2, 2006.

Editorial, Telegram & Gazette 9 November 2006 ("The campaign also demonstrated that how the money is spent is more important than how much. Kerry M. Healey's spending on ads linking Mr. Patrick to a convicted rapist not only was wasted, but also drove away many of the unenrolled voters and conservative Democrats on which a Healey victory hinged.")

"We conclude that, in the unusual circumstances of this case, the fingerprint evidence that was not produced has not been shown to have any bearing on the defendant's guilt or innocence and is consequently not exculpatory as to this defendant," Justice Judith Cowin wrote on behalf of the SJC, March 2007. "What is exculpatory is that the Commonwealth could not place the defendant in the victim's apartment by means of any evidence, including fingerprints or other physical evidence."

Murphy, Wendy. And Justice for Some: An expose of the lawyers who let dangerous criminals go free. Penguin, 2007. ("One thing to keep in mind is that guilty people can often persuade themselves, at least in some corner of their brain, that they're actually innocent—and that makes them very persuasive. A typical example comes from my home state of Massachusetts and involves a man named Ben LaGuer, convicted in 1984 of raping an elderly woman over an eight-hour period...LaGuer was in jail awaiting trial when police got a court order to take a swab of the inside of his mouth. They wanted to conduct certain biological tests by comparing LaGuer's saliva to evidence found at the scene (they couldn't conduct DNA test back then because it was 1983 and technology hadn't yet been developed but they could do certain on saliva, which was more sensitive than blood type alone.) LaGuer knew what police were planning to do (if his saliva was Type O, a recovered sock with Type O perspiration tied his complicity, but he

intentionally tampered with the sample by literally taking body fluid from a fellow prisoner and mixing it in his mouth so that when the swab was taken, police got a mixed result. Would an innocent or guilty man try to contaminate his own saliva with biological fluid of another person to mess up the test results? You know the answer.”)

LaGuer, Ben. A response to Professor Wendy Murphy on the publication of *And Justice for Some*. (Professor Murphy asked readers to judge me guilty on evidence never presented in court. The story of my saliva swapping with a prisoner to contaminate the test result was first revealed by me to *Esquire* magazine. Murphy surely read that article for her book. What she omitted, for reasons that betrays her bias, is *Esquire*'s analysis that with a genuine sample, “the result would have provided evidence of innocence rather than a false impression of his guilt.” (May, 1994) The culprit was unmasked as Type O through perspiration in his sock recovered at scene. I am Type B. As a lawyer, Murphy knows that innocent people can act in ways that a prosecuting spirit can spin to look hideous. She should not have been so glib in writing about a case where serious minds still seek justice.

McFarlane, Clive. *New DA faces tests on LaGuer*, *Early* may be hoping that appeal is rejected, *Telegram & Gazette* 3 January 2007 (‘Joseph D. Early, Jr. will be sworn in today as district attorney, and there is one reason why his tenure will lack a honeymoon-- Benjamin LaGuer...The important issue here, however, is whether the state, convinced of a defendant’s guilt, can manipulate the system to make that conviction stick...The disclosure of only a partial print, according to Mr. (James C.) Rehnquist, ‘is materially different than the fingerprint report’s content, which shows that four fingerprints were found and those fingerprints did not match Mr. LaGuer’s fingerprints’...Over all these years, the district attorney’s office has been asking us to believe, despite this manipulation of the process, that the defendant received a fair trial...Those of us who believe in protecting the integrity of the judicial process are waiting to see whether Mr. Early will ask us to make the same leap of faith.”)

McFarlane, Clive. *DA quickly dismisses LaGuer*, *Telegram & Gazette* Wednesday 10 January 2007. (“Less than a day after he said he did not know enough about the Ben LaGuer case to make an informed opinion, newly installed District Attorney Joseph early, Jr., boned up enough on the particulars to make it crystal clear that he supported his predecessor’s handling of the case as well as its outcome...This is the same Mr. Early who on Tuesday of last week said he had not read any of the files or briefs in the case, and was waiting until after he had been sworn in to delve into the matter...Apparently, Mr. Early found ample time among the swearing in, congratulations and the light introductory talks to get the measure of the Ben LaGuer. He did this, he said, by huddling with the lawyers, including the lead attorney working the case. He learned enough to issue the following statement later that night through his spokesman Timothy J. Connolly: “The new district attorney shares the opinion of the previous district attorney that justice was done in this case and that the right person was convicted.”)

Wedge, Dave. *New DA nixes LaGuer rape case review*. *Boston Herald* 11 January 2007 (“He believes justice has been served,’ spokesman Tim Connolly said of Joe Early. “The

evidence is very strong and compelling in the case...Early has no plans to grant LaGuer's request for a review of DNA test that linked LaGuer to the 1983 Leominster rape. LaGuer claims the 2002 tests were tainted.”)

Telegram & Gazette, Lab Exam/Handling of DNA Evidence must be Meticulous, Timely. Editorial. 19 January 2007(“State legislators should press for answers in the improper handling of DNA evidence...In this instance, State Police officials said the problem came to light before anyone was wrongly arrested. That is fortunate, but there could be other cases that have yet to be uncovered, creating a potentially huge problem for prosecutors statewide.”)

LaGuer, Ben. Worcester Magazine. Questions 25 January 2007 (“A top lawyer with the State Police recently told a reporter that a DNA review can be ordered and any such issues as improper handling uncovered. but only if the DA requests it. I have been urging this review for four years. The State Police can trace the origins of each sample in just a couple hours. So why is DA Joe Early then opposing such a review? If confirmed invalid, Mr. Early would immediately need to admit that his prosecutor's DNA arguments before the SJC were wrong. Given his haste in declaring me guilty and the public criticism he got over that, a DNA review might not be what Mr. Early wants.”)

Bruun, Matthew. Telegram & Gazette. 1 February 2007 B2. (Worcester District Attorney Joseph D. Early, Jr., said he will not request a specific audit of the Benjamin LaGuer case as investigators scrutinize the handling of DNA cases at the state police crime laboratory. . .The recent suspension of an administration at the crime lab because of improper handling of DNA proves there is a human factor that cannot be discounted, Mr. LaGuer said in a recent interview.. .Defense lawyer James C. Rehnquist sent a letter to Mr. Early last month asking him to review the case. . .'The conviction in the Benjamin LaGuer case was obtained without DNA testing by the Massachusetts State Police crime laboratory,' spokesman Timothy J. Connolly said...The state lab did not conduct the DNA analysis in his case, but Mr. LaGuer said lab personnel would have been responsible for handling and packaging material en route to testing.”)

Boston Globe, DNA chief fired over crime lab problems by Jonathan Saltzman 14 April 2007 (Robert E. Pino was terminated of his employment by the secretary of public safety.)

Telegram & Gazette, Shocking backlog/State Police lab faces new crisis (editorial) of 22 July 2007 (“The situation is intolerable and legislators and administration must continue to press for new policies and procedures. . . some aspects of the organization of the laboratory itself seem to virtually guarantee performance that is mediocre or worse. . . there was no one to alert the lab when evidence astray or, worst, if a single individual elected to delay or misrepresent it.”)

Wendy Murphy, 2007. And Justice for Some: An Expose of the Lawyers and Judges Who let Dangerous Criminals Go Free. (Sentinel Press, 2007)

Editorial. Custody concerns: Securing evidence crucial to justice system Telegram & Gazette 30 January 2008 (“The integrity of the criminal justice system depends in part on maintaining a secure chain of custody of trial evidence...Although evidence listed for some 50 cases could not be located, it has yet to be determined whether the discrepancy reflects sloppy paperwork, mislabeling of evidence boxes or the loss or theft of material...the missing evidence was from cases concluded between 1990 and 2004.”)

Ifill, Gwen. *The Breakthrough: Politics and Race in the Age of Obama*. (Doubleday, 2009)(“No democrat had held the Bay State’s executive job in sixteen years——not since Michael S. Dukakis, who gave you the job in 1991 after having run a dismal and losing 1988 presidential campaign. Patrick didn’t just win. He pounded his Republican opponent, Kerry Healey, in a landslide, garnering 56 percent of the vote in a state where African Americans make up just under 7 percent of the population. Moreover, he defeated Healey after her own attempts to point him as a weak knee sellout lawyer backfire. Central to her campaign were ads that focused on Patrick’s 2002 defense of a jailed Puerto Rican felon named Benjamin LaGuer, who was convicted of raping a fifty nine year old white woman in her Leominster apartment. Patrick contributed \$5,000 to a defense fund that paid for DNA tests intended to exonerate LaGuer. Instead, they linked him to the crime.. .The perception that Healey had run a racist campaign may also have helped Patrick in the black community, where he was largely unknown. There is nothing like a perceived attack from an outsider to make otherwise warring insiders bank together.” p180, 188.)

Manso, Peter. *Reasonable Doubt: the fashion writer, Cape Cod, and the trial of Chris McCowen*. Atria Books/Simon & Schuster, Inc., 2011. (“The few historical exceptions have been triggered by racist comments. Racial bias in the jury room is considered grounds for reversal. In 1996, a federal court of appeals overturned a conviction after a juror allegedly used the word nigger. In 1991, the Massachusetts Supreme Judicial Court ordered a hearing into controversial Ben LaGuer case, in which one juror said, “The goddamn spic is guilty.’ In response to his fellow juror speculating about how anyone could rape all night long, he replied, “spies screw all day and night.”)

Williamson, Dianne. LaGuer case is bedeviling justice again, Telegram & Gazette 22 April 2011(“The thing is, there’s no way to feel good about this case. If Ben is telling the truth, he’s lived a Kafkaesque nightmare. If he’s lying, he’s a violent psychopath who has duped a lot of well-meaning people...Regardless of his guilt or innocence, 27 years is a long time to spend in prison for rape.”)

“I truly feel he [LaGuer] believes he is the victim in this case,” son-and-law Robert Barry told Parole Board 22 April 2010

“I think he is one of the finest examples of courageous, honorable human being I’ve ever met,” Boston University President Emeritus told Parole Board of Ben LaGuer 22 April 2010

“I do not care if he is guilty or not, even though I believe he’s innocent,” John C. Archer, former Opera Boston chairman told Boston Globe 22 April 2010. “I believe in forgiveness. We do our time and move on. We don’t do our time for the rest of our lives.”

"It takes the time it takes to get to the next step," recently retired Superior Court Judge Isaac Borenstein told Massachusetts Lawyers Weekly about his handling of Ben LaGuer's case 29 June 2009, "but I would not have dedicated myself to the case and to his defense if I had not spent many months going after things meticulously and believing in it."

Murphy, Wendy J. Don't violate privacy rights. Boston Herald. 21 May 2011. ("As a former sex crimes prosecutor, prosecutor and researcher who reads hundreds of court cases each week, I can confidently say that in the vast majority of cases, DNA tells us nothing valuable about the issues in dispute at trial.")

James, Joy 2011. *The Case of Ben LaGuer And the 2006 Massachusetts Gubernatorial Election (State of White Supremacy; Racism, Governance, and the United States)*. (Stanford University Press, 2011)

Patrick, Deval. *A reason to believe: Lessons from an improbable life*. (Broadway Books, 2011) ("In another matter, I had urged Massachusetts to conduct a DNA test on a convicted rapist whose guilt seemed in doubt. So another attack ad cast me as a friend of sexual predators and played into racist fears about black men and white women: The camera followed a woman walking through a dark garage, then viewers heard an interview with me in which I described the prisoner, with whom I had exchange letters, as 'thoughtful.' The voiceover said, 'Have you ever heard a woman compliment a rapist?' (For the record, the DNA test confirmed the man's guilt.) I had a campaign staff and a cadre of energetic volunteers to help me with this nonsense, but it took its toll." pp 179)

James, Joy. *The Case of Ben LaGuer and the 2006 Massachusetts Gubernatorial Election (White Supremacy; Racism; Governance, and the United States)* (Stanford University Press, 2011 } ("In Leominster, Massachusetts, the analogy of whiteness with purity of vulnerability in the face of a perpetual Black aggressor provided an important context for understanding the conviction of Ben LaGuer, and how this crime (both the assault and the unethical trial) would be witnessed by society and prosecutors. The inability to establish a context that acknowledged a pervasive history of anti-Black animus and violation meant that twenty-three years after LaGuer's conviction, a gubernatorial campaign could use his case to fuel both conservative and liberal agendas." p172 }

Rossmo, D. Kim. *Criminal Investigative Failures* (CRC Press, 2009) (Wrongful Innocence Claims: Roger Coleman and Benjamin LaGuer ("I have not read the original police reports or trial transcripts, visited the crime scene, interviewed any parties, or reviewed any response or rebuttal from the district attorney's office, law enforcement agencies, or the state crime laboratory...Did Benjamin LaGuer receive a fair trial? I cannot answer that question. Is he factually guilty? Conjecture and theories aside, the actual evidence supports the conclusion, beyond any reasonable doubt, that he brutally raped his neighbor in 1983...The victim in this case is deceased. But one wonders, if she were still alive, what she would think of the intelligentsia who became part of the LaGuer medicine show,' people who, despite years and miles of distance from her apartment that

horrible night of the crime, 'knew' more about what had happened to her than he did."
(p256-265)

James, Joy. *Journal of Critical Sociology* 36 (1) (2010). "Campaigns Against 'Blackness': Criminality, Incivility, and Election to Executive Office." ("Early state malfeasance seems to stem from the now deceased lead detective, Ronald Carignan, whose unorthodox procedures were later supported by the District Attorney. Ben LaGuer was arrested 15 July 1983. Without physical evidence or a confession, police decided the guilt of LaGuer who shares the same race and ethnicity but not physical description of a man who may have been the perpetrator. LaGuer lived next door to the victim when the crime occurred, yet, another black Puerto Rican had also lived in the building and associated with the survivor; he had a history of mental illness and sexual assault but has to this date never been interviewed by detectives. The grand jury indictment was based on disinformation provided by Carignan who informed the grand jury that the crime had occurred in LaGuer's apartment; it in fact had occurred in the victim's apartment. The detective claimed that the victim was unable to appear at the hearing although she had already been released from the hospital. So, the detective became the sole spokesman for narrating the events of the crime. He stated that the victim identified LaGuer as her assailant to police; although she later denied [that] she did identify LaGuer as her attacker during the trial. Carignan testified that he recovered only one partial fingerprint from the scene of a crime that took place over eight hours; yet, in November 2001, a report emerged showing that four full fingerprints were retrieved from the base of a telephone whose cord had been used to bind the victim's wrists. . The prints did not belong to LaGuer and were subsequently lost (or destroyed) by the District Attorney's office. The detective, who kept the rape kit and items confiscated from LaGuer's apartment in his car trunk during his summer vacation, allegedly mixed underclothes he had taken from LaGuer's apartment with evidence collected at the crime scene. This compromised evidence used in 2002 as 'reliable' samples for DNA testing which claimed to prove 'conclusively' LaGuer's guilt.")

"Nobody in their right mind thinks that DNA is valid," District Attorney candidate Joseph D. Early, Jr., told attorney Robert E. Terk at a political event. (Fall of 2006)

Bibliographical Notes from Benjamin LaGuer Case 1983-2012

Original, Investigative Report by Lt. Robert Hebert 7/13/83 at 5:10AM (“The tenant in apartment 103 “heard whistling at about 1:00 saw 3 teenagers outside.”)

Original, Investigative Report by Timothy Monahan 13 July at 5:10AM “The Dr stated that in his medical opinion that she was raped and it was not self abuse. There was evidence of semen in the vagina and throat.)

Follow Up, Investigative Report by Det. Ronald N Carignan 13 July 8:50AM (“The Dr is Dr Siegel and he told me that the woman was severely beaten and her vagina was abused w/something as there as blood and an abrasion at the entrance to the vagina.”)

Follow Up, Investigative Report by Det. Ron Carignan 14 July 10:50AM (“She stated that all of a sudden this black guy’ comes into the apartment totally nudes except for a pair of high white socks. He then pulled the lights out and picked her up out of the chair and threw her to the ground and began punching her telling her that he hated her.”)

Internal Leominster Police Department documents: (4/17/80 Ben LaGuer assaulted by Sidney Colson, 80-3646) (10/10/80 LaGuer possible suspect in the break in of Kent Carluccio’s home, 80-10688)

Application for a Grant of Search Warrant of Ben LaGuer’s apartment by Det. Ron Carignan 14 July, for these specific items: “Straw pocketbook with personal papers, and US currency, approximately \$12.00, 2 Silver rings one with a turquoise stone, all the property of Lennice Plante. 1 tube sock with black and yellow stripes to match one left behind in the Plante apt.”

National Criminal Information Center query by Det. Ron Carignan about LaGuer 15 July at 10:34AM

Follow Up, Investigative Report by Det. Ron Carignan 15 July 10:50AM

Arrest Reports forms by Det. Ron Carignan, Det Keith LaPrade and Timothy Monahan indicating LaGuer was effectively under arrest 15 July at 1:40AM.

Privileged Notes from Atty. James J. Brady 15 July

Record of Evidence Submitted, State Police Crime Lab by Assistant Chemist Mark T. Grant C83-636 20 July. (Official report released on 7 November.)

Progress Report of Lennice May Plante by Lt. Francis Ariel 21 July

Hospital Records of Plante from her admission on 13 July at 5:30AM to her discharge 30 July at 12:45PM

Grant Jury Testimony of Ron Carignan 8/14/83 (ADA Paul F Bolton)

Original, Investigative Report by Officers Jr. Tata and R. Booth 8/14/93 (Brian B. Adams (DOB 2/16/71) found the victim's stolen pocketbook)

Alibi Affidavit of Retta Pouliot 8/1/83

Affidavit of Francis Pouliot 8/1/83

Alibi Affidavit of Russell Pouliot 8/1/83

Alibi Affidavit of Christina Basque 8/1/83

Alibi Affidavit of Wayne Dupuis 8/18/83

Alibi Affidavit of Randy Wilson

Alibi Affidavit of Raynaldo Vasque 8/3/83

Alibi Affidavit of Timothy Daniels

Alibi Affidavit of Jose Luis Nabarro 8/3/89

Interview with Cindy Granata and Raymond Benoit 7/25/83

Interview with Aida Ramos 8/2/83

Notes from Private Investigator Nancy Martinez

Notes from Private Investigator Robert Hammack

The Pretrial Conference Report 9/23/83 (amended 9/28/83)

Privileged Notes of Peter L. Ettenberg

Photographic Evidence of Exhibits & Plante on her hospital bedside State's Motion for a Saliva Sample from Ben LaGuer

Ettenberg's Motion in Opposition to Saliva

Mulkern held hearing Ordered saliva collected from LaGuer 10/21/83

Det. Carignan collects saliva sample from Ben LaGuer 10/24//83

Letter from Ettenberg to Lemire 10/24/84 (Requesting the vaginal hair clippings said to have evidence of semen for independent testing)

State Police Crime Lab Forensic Report of Mark T. Grant 11/7/83

Letter from Ettenberg to Lemire 11/29/83 (Requesting information on the facts surrounding the identification procedure and whether fingerprint evidence might be used at the time of trial)

Letter from Lemire to Ettenberg 12/13/84 (“fingerprint reports have not been received as of yet. I will provide you with a copy of the same as soon as I receive the report.”)

States List of Prospective Witnesses 1/17/84

All Motions from Defense and Prosecution

Jury Pool List, including Vitals on Prospective Jurors

Peter Ettenberg leaves on a vacation to Barbados

The trial was held from 24 January through 27 January 1984

State’s Forensic Report of Dr. Lawrence Hipshimen 2/17/84 (“LaGuer does not fit either a psychological or pathological profile of a person capable of committing this crime.”)

Sentencing was held 2/17/84

States Forensic Report that LaGuer is Not Sexually Dangerous by Dr. Daniel M. Weiss 5/22/84 (“It seems totally out of character”)

Record of Evidence Submitted to the State Police Crime, referring to eight mysterious tube socks delivered after the trial for analysis 6/21/84

Affidavit of Innocence from Ben LaGuer

Robert P. Gittens, Deputy Chief Counsel, Governor’s Office 10/11/84 “I have reviewed your affidavit and I can understand our desire to have your case investigated. Unfortunately, the Governor cannot conduct such an investigation.”

Letter from LaGuer to Mulkern requesting Funds for Forensic Testing 5/29/85

Letter from Ettenberg to LaGuer 5/22/85 “I fully understand your intentions in claiming ineffective assistance...I hold no anger or hurt feelings toward you because of this. I personally do not believe that you committed this crime and I am still haunted by the fact that a jury chose to believe a woman who was heavily medicated and who never got an adequate opportunity to view her attacker.”

Letter from Ettenberg to LaGuer 6/28/85 “It has come to my attention that you have filed a Motion for New Counsel...I believe that at this point, it is a wise decision on your part. I must say, however, that if you feel disappointed in what I have done for you, then I am equally disappointed in how you now feel. Had you been honest with me from the very beginning, and told me that you would be unable to pay for my services, then different arrangements would have been done. Instead, I received promise after promise, not only from you, but from your family that payment was forthcoming.”

Ben LaGuer Motion to Dismiss Indictments and New Trial

State’s Opposition to LaGuer’s Motion for Dismiss and New Trial 9/18/85 (“The defendant points out that Detective Ronald Carignan’s testimony to the Grand Jury included a purported statement from the victim that she had seen the defendant in the hallway coming and going from the apartment next to hers on previous occasions. At trial the victim denied ever having said this to the police. Based on this apparent contradiction the defendant request a dismissal of the indictment.”

Mulkern held evidentiary hearing on allegations that Det. Ron Carignan testify falsely before Grand Jury 9/18/85

Memorandum Denying Motion to Dismiss, per Mulkern 10/7/85 (“Detective Carignan at the evidentiary hearing acknowledged the inconsistencies discussed above, but denied any purposeful attempt to mislead the grand jury.”)

MCI Gardner Medical Records staffer Arlene Foley certified a true copy of a blood test indicting that Ben LaGuer is B-type blood 8/11/86

Motion for New Trial by Atty. Michael V. Caplette 2/19/87 Ineffective assistance of counsel based on Peter Ettenberg’s failure to (a) test LaGuer’s blood type to compare with the blood type found at the scene of the crime; (b) call certain alibi witnesses; (c) offer expert medical testimony on schizophrenia and the effect such condition might have had on the victim’s ability to identify her assailant; (d) request the State to produce the assailant’s underwear; and (e) to inform the jury that the State had failed to preserve and test the assailant semen sample.

Motion for Joint Blood Test 9/22/87

Report from Ed Drozda, University of Massachusetts Medical Center, Blood Services, confirming Ben LaGuer is B-type blood 9/25/87

Atty. Robert Terks’ Motion for ABO blood test from Lennice May Plante 11/3/87

State Police Forensic Report of 11/4/87 by Assistant Chemist Gwen B. Pino of blood taken by Det. Ron Carignan of Ben LaGuer on 9/25/87

Report from Ed Drozda, University of Massachusetts Medical Center, Blood Services, confirming Lennice Plante is O-type blood 2/2/88

State Police Forensic Report of 3/23/88 by Assistant Chemist Gwen B Pino of blood taken by Det. Ron Carignan of Ben LaGuer on 9/25/87

State Police Forensic Report of 3/23/88 by Gwen B. Pino of blood taken by Tpr. Francis Moore from Lennice Plante 2/2/88

State Police Forensic Report of 3/31/88 by Assistant Chemist Gwen B. Pino of blood taken by Det. Ron Carignan of Ben LaGuer 9/25/87

Affidavit of Psychiatrist Dr. Steven K. Hoge 6/27/88

Barry Berke and Leigh Crowford of Harvard Law School enter the case

Affidavit of Juror William P. Nowick 7/18/88

Ben LaGuer amends Motion for New Trial to include allegations of racism jury.

Prehearing Held in Superior Court in Worcester 4/27/89

State Brief in Opposition to Petition for New Trial 4/27/89

Order from Mulkern of 4/27/89 "That an evidentiary hearing be conducted on Thursday, May 11, 1984 limited to an examination by chemists of the blood samples of the defendant and the victim and matters raised in the Motion for a New Trial based on Physical Evidence."

Facsimile of 5/5/98 from State Police Crime Lab to District Attorney's offices transmitting Mark T. Grant's 11/7/83 Report and lab notes 5/5/89

Leominster Police Department Report by RJ Ptak of 5/11/89 "In regards to this complaint I received a request from Atty. Robert Terk to view ant evidence from a 1983 rape case..." At 11:30AM Terks arrived to inspect and photograph these items. After Terk left, Ptak says, he telephoned James R. Lemire at his private office in Holden. "Lemire informed me that there would be an evidentiary hearing on 5/22/89 in Suffolk Superior at 10:00Am in Boston ...the evidence would have to be taken there by someone who would have to testify to the fact that this is the evidence that was used in the trial."

State Police Tpr. William Kokocinski Report of 5/17/89 transferring fifteen (15) items of evidence from the Leominster Police Department to Assistant Chemist Caroline LeClair, State Police Crime Laboratory

Follow Up, Investigative Report, not attributed to any officer, "Officers present and that might have touched the sock are as follows along with their respective blood types."

Follow Up, Investigative Report, not attributed to any officer, “Attention Lemire/I do not have the photo’s of the array on LaGuer and I believe you still have them from the trial or the last hearing held before Mulkern/You also may have the report in refer to analysis of body fluids on the sock.”

Evidentiary hearing held in Suffolk Superior Court in Boston 5/2/89

Memorandum Denying LaGuer’s Motion for New Trial, per Mulkern 6/2/89

Ben LaGuer files for Reconsideration of Denied Motion for New Trial 7/13/89

Letter from Ben LaGuer to District Attorney John Conte requesting Use of DNA testing to vindicate claim of innocence 7/10/89

Letter from Ben LaGuer to Paul J. Liacos, then Chief Justice SJC

Motion for Reconsideration, denied per Mulkern 7/19/89

Notice of Appeal to Appeals Court 6/21/89

Atty. Robert E. Terk withdraws from the case 10/19/89

LaGuer’s Motion for Appointment of Counsel, Appeals Court 10/23/89 “Denied without prejudice to a showing of a more specific claim of alleged errors. (Brown, J.) 11/6/89

“The motion for appointment is appellate counsel is denied, not on the grounds that the defendant is not indigent (I am satisfied that he is), but because there is no basis for another round of appellate proceedings.” (Appeals Court, Brown, J.) 12/5/89

“It is hereby Ordered, after consideration by the Full Court, that the petitioner’s request for appointment of counsel be, and hereby is, denied without a hearing.” (SJC 1/5/90)

Motion for Rehearing on Assignment of Counsel, Appeals Court 2/20/90 “Upon reconsidering, it is ordered that the order of 5 December 1989 is to stand.” (Brown, J.)

LaGuer’s Petition for Rehearing on Denial of the Assignment of counsel, SJC denied 6/4/90

Motion Assignment of Counsel, Allowed SJC Chief Justice Wilkins 6/22/90

Notice of Appearance, Atty. Patricia O’Neill (CPCS) 7/17/90

Supreme Judicial Court rules that Ben LaGuer is entitled to a new trial if the allegations of racism in the jury are essentially true. It ordered Mulkern to take testimony from jurors. (410 Mass 89) 4/14/91

State Police Tpr. Richard D. McKeon and William Kokocinski 6/11/91 interview with jurors Joseph Novak and William Nowick

State Police Tpr. McKeon and Kokocinski 6/13/91 interview juror James Dalzell

After a series of hearing held on August 26, 27, and 29, per SJC, Judge Mulkern finds that the allegations of racism were not essentially true 9/10/91

Notice of Appeal

The Appeals Court Upholds Mulkern (Fine, dissenting) 2/31/94

Supreme Judicial Court Denied Further Appellate Review 5/26/94

Ben LaGuer files Motion for Revise and Revoke of Sentence 7/25/94

State's Brief In Opposition to Revise and Revoke of Sentence 9/15/94

Ben LaGuer files Response to Opposition 9/21/94

Motion for Revise and Revoke denied, per Hubert F Travers 9/19/94

Ben LaGuer files Response to Opposition 9/21/94

Letter from Ben LaGuer to Robert and Elizabeth Barry 10/6/94

Letter from Ben LaGuer to Judge Travers 10/7/94

Ben LaGuer retains Atty. Oliver Mitchell 9/16/96

Letter from Atty. Donnalyn Lynch Kahn to Ben LaGuer concerning a request for DNA testing 17 September 1996: "We will also need an order from the Worcester Superior Court to unseal the items to be retested."

Motion for DNA Testing by Oliver Mitchell and Donnalyn Kahn ("Denied without a hearing" per Judge Hubert F. Travers 11/27/96)

Ben LaGuer's files Motion for New Trial, "I belief that in the course of jury selection, trial counsel Peter L. Ettenberg engaged in gender discrimination." 5/24/97. Judge Travers "refused to act upon the motion" 9/17/97. LaGuer files notice of appeal 10/22/97

Letter from Oliver Mitchell to LaGuer withdrawing from the case 4/27/98 "I recently made a decision to leave this law firm and to move to another city."

Letter, Confidential, from Parole Board Director Barbara D. Johnson to District Attorney John J Conte 5/19/98. The letter is office marked "received" 5/21/98. "Leon, H. Quick, L.

Turcotte, Please get back to me. JJC 5/21/98.” An advisory letter that Ben LaGuer is upcoming for parole prompts DA Conte to summons three prosecutors--Leon Zitowitz, Harry D. Quick and Lynn M. Turcotte--to his office.

Leominster Police Department Dispatcher John Gianninis records message from ADA Zitowitz 5/28/98 1609HR. Zitowitz wanted Lt. F.J. Ptak to telephone him and send him copies of police reports on Ben LaGuer.

Facsimile from Zitowitz to Lt Michelle D Pellecchia 5/29/98 at 9:21AM regarding Ben LaGuer's Parole hearing. Zitowitz writes, "I would appreciate a copy of the police reports and an up to date report on he condition of the victim.

Leominster Police Department Incident Report, Dispatcher Jane Hatstat received a request from ADA Zitowitz 5/29/89 at 10:41AM for all police reports. At 11:20AM Hatstat faxed Zitowitz thirty-eight pages.

Letter from Lt. Pellecchia to the Parole Board in Opposition to Ben LaGuer being granted a parole 6/15/98

Parole Board held public hearing for LaGuer 6/29/98 from 9:30AM to 2:45PM. ADA Lynn Turcotte represented DA John Conte.

Letter from ADA Sandra P. Wysocki to Leominster Police Lt. Pellecchia requesting the Rape Kit 7/8/98. "I am particularly interested in the existence of the Items 15 to 18 on the attached Lab report sated November 3, 1983 from the Department of Public Safety...I would appreciate it if you would call me once you have determined the existence of this information so that I can determine whether any additional information is necessary."

Leominster Police Department Incident Report by Lt. Pellecchia 7/10/98 11:25AM "Our records indicated that all evidence was turned over to CPAC Tpr. William Kokocinski on 5/17/89 on request of ADA Kate McMahon by Lt. Ptak."

Letter to the Parole Board 11/23/98 "I do not believe the politics of sex and race are silent on this parole denial."

Wysocki appears at the Appeals Court for oral arguments 12/11/98 (Justice Kass, Dreden and Spina asked Wysocki why her office was opposed to DNA testing. She was not responsive.

Affidavit from Richard Slowe, a defense investigator, formerly Supervisory Special Agent of the FBI 11/18/99

Affidavit of Edward Blake, Forensic Science Associates 11/21/99

Letter from Atty. Robert J. Cordy to DA John Conte 12/27/99

Motion to DNA test from Attorneys Siegel, Goldberg and Fisher 1/13/99

Media Press Release, DA John Conte 1/14/00

State's Request for Inventory and Authentication 27 March 2000

LaGuer's Brief In Support of A Grant for Parole 4/5/00

Parole Board held second public hearing for LaGuer 4/5/00 ADA Lynn Turcotte represented DA John Conte

Affidavit of Gwen B. Pino Regarding blood typing 4/14/00

State's Supp. Memorandum Supporting its Request for Inventory and Authentication 4/18/00

Transcript of State Police Tpr. Stephen E Kelly interview of former Assistant Chemist Mark T. Grant 5/8/00

Transcript of State Police Tpr. Kelly with former Leominster Emergency Room physician Dr William C Siegel 5/8/00

Report from Tpr. Kelly to Detective Lt. Francis Moore 9 May 2000

Evidence Inventory and Documentation Report by Gwen B. Pino, Supervisor 1, State Police Crime Lab 12 May 2000

Letter from ADA Sandra L. Hautanen to Atty. Judi Goldberg 5/26/00

Affidavit of Carl M. Selavka, Director State Police Crime Lab 6/1/00

Affidavit of Sandra Hautanen 6/1/00

Affidavit from Peter Neufeld, Cardozo Law School 6/1/00

Supplemental Affidavit of Carl M. Selavka 6/7/00

Order for Visual Assessment and Quantitative Analysis of Evidence, per Superior Court Associate Justice Timothy S Hillman 24 July 2000

Letter from Ben LaGuer to James Lemire 8/6/00

Letter from Ben LaGuer to Adrian Walker 8/13/00

Post Conviction Evidence Assessment Report by Gwen B Pino 8/14/00

Letter from Ben LaGuer to Allen Fletcher 8/16/00

Cellmark Laboratory Forensic Report by Jacki J. Higgins 9/5/00

Letter from Cellmark's GM Mark D. Stolorow to Judi Goldberg 9/15/00

Ben LaGuer's Motion to Proceed with DNA testing 10/3/00

State's Memorandum on the Progress of Testing 11/6/00

Affidavit of Gwen B. Pino 11/6/00

Public Records Request of The Leominster Police Department 2/7/01

Findings and Order on LaGuer's Motion for DNA testing, per Hillman 2/15/01

Affidavit from LaGuer acknowledging destructive risk in DNA testing, as set forth in paragraph 4(d) 2/28/01

All Appellate Court Decisions in re: Commonwealth -Vs- Ben LaGuer

List of Broadcast Television Reports on Ben LaGuer

List of Published Feature Articles in Newspapers and Magazines

Memorandum from Judi Goldberg to John Silber "Summary of the Legal Proceedings relating to Benjamin LaGuer's Attempt to Obtain Access to Evidence to subject to DNA testing" 6/28/00

Worcester Court Docket Entries from 10/10/93 to 10/2/00

Draft Petition for Revise and Revoke of Sentence

Military Discharge and Academic Records

Parole Board Record of Decisions 9/27/98 and 7/25/00

Ben LaGuer's Motion to Transfer and Preserve Evidence of Documentary Reporters from Leominster Police Department, Tamara Fisher 3/15/01

Affidavit from Tamara Fisher 3/15/01

State's Motion for Clarification and Partial Reconsideration of court's 2/15/01 Order to Begin DNA testing 3/20/01

Ben LaGuer's Response to State's Motion for Clarification and Partial. Reconsideration of Hillman's 2/16/01 Order, Siegel and Fisher 3/31/01

Affidavit of Ed Blake 4/5/01

Affidavit from Michelle L Chaftiz 4/10/01

Media Press Release of District Attorney John Conte 4/25/01

Massachusetts Department of Public Safety, State Police Crime Lab, DNA Registry, collected 5/1/01/ on DNA kit number 12907

Further Findings and Order on Ben LaGuer's Motion for DNA Testing, per Hillman 5/2/01

Affidavit of Edward Blake of Forensics Associates 5/7/01

Letter from Ben LaGuer to David Siegel 5/14/01

Letter from Ben LaGuer to David Siegel 5/29/01

Letter from Tamara Fisher to Jacki Higgins of Cellmark 5/9/01

Letter from David Siegel to Ben LaGuer indicating delivery of Lennice Plante's medical records 6/6/01

Letter from Ben LaGuer to Tamara Fisher 6/7/01

Letter from Ben LaGuer to David Siegel 6/11/01

Letter from Ben LaGuer to Emily Rooney 6/12/01

Letter from Ben LaGuer to Walter Robinson of Boston Globe 6/14/01

Letter from Ben LaGuer to Dan Rea of WBZ/CBS 6/16/01

Letter from Jacki Higgins to Tmara Fisher 6/16/01

Evidence Receipt from Forensics Associates, Edward Blake 6/14/01

Public Documents Request Under Public Law Act of Assistant District Attorney Sandra L Hautanen 6/21/01

Public Documents Request Under Public Law Act of Dr Carl M Selavka, Director, Massachusetts State Police Crime Laboratory 6/21/01

Affidavit from Penny Koffa from McDermott, Will & Emery 6/28/01

State Police Report from Tpr. Marian J McGovern

Letter from Jed M. Nosal, Office of the Chief Legal Counsel, State Police, to Tamara Fisher 6/28/01 (“To the extent that you wish to pursue your public records request with the State Police Crime Laboratory rather than obtain the documents through the Worcester County District Attorney’s Office and pursuant to the Massachusetts Rules of Criminal Procedure, the Department opposes public disclosure...”)

Letter from ADA Sandra L. Hautanen to Tamara Fisher 6/28/01 (“It appears that most, if not all, of the records listed in your request are materials that your client’s former lawyers should have received through discovery or in connection with a post-conviction motions.”)

Letter from Dianne C. Roberts of US Justice Dept to Ben LaGuer 6/28/84 (“The Department of Justice is not authorized to give legal assistance to private citizens or to represent them.”)

Ben LaGuer appears before the Appellate Division of the Superior Court for a Reconsideration of Sentencing 5/14/84

Superior Court Judge Robert V. Mulkern assigns Michael Caplette to handle Ben LaGuer’s initial round of appeals 7/6/84

Letter from F. Lee Bailey to Ben LaGuer 10/11/84

Letter from Dianne C. Roberts of US Justice Dept. to Ben LaGuer 2/22/85 (“After reviewing the material, which you previously mailed, the matter you related is not covered by a federal statute which we have the authority of enforcing.”)

A habeas Corpus ad Respondendum was issued for Ben LaGuer for a hearing held in Worcester Superior Court 3/13/85

Letter from Alan M. Dershowitz to Ben LaGuer 6/4/85

A habeas Corpus ad Respondendum was issued for Ben LaGuer for a hearing held in Worcester Superior Court 7/17/85

Massachusetts Appeals Court upholds conviction 7/26/85

Letter from Michael Caplette to Ben LaGuer 7/26/85 (I know this is a bitter disappointment to you, Ben, but you should know that Brendan and I both hope you will be ultimately vindicated in this case.”)

Letter from Diane Correa of Puerto Rican Legal Defense to Ben LaGuer 8/28/85

Letter from Linda Tally of Southern Poverty Law Center to Ben LaGuer 10/14/85

Letter from Robert Hundley of Legal Defense Fund to Ben LaGuer 9/17/85

Letter from Michael J May of May Systems to Michael Caplette 2/23/87

Motion for Leave to Withdraw from case by Michael Caplette 10/22/87 “Certain difference of opinion as to tactics and strategy in handling the above case have arisen between the Defendant and his counsel which are irreconcilable and prevent the Defendant’s counsel from further representation.”

Atty. Robert E. Terk Enters the case 10/15/87

Letter from Anthony Jones of Legal Defense Fund to Ben LaGuer 12/87

Letter from Harvard Student Atty. John C. Bonifaz to Ben LaGuer 5/28/90

Letter from Gilbert P. Lima, Assistant Clerk, Appeals Court, notifying Ben LaGuer that telephone arguments will be made via telephone conference on 6/12/90 before Brown, J., Perretta, J. and Gillerman, J. 5/31/90

Notice of Appearance before SJC by Patricia A. O’Niell 7/17/90

Letter from Ben LaGuer to Judge Hubert F. Travers 8/12/94 (“For eleven years I have sought to pursue the purest truth and truest sense of justice that I could not only for myself, but the victim and both of our families...I would not choose another life if I had a chance, because I am responsible for this life and no other. I hope that I have made this one a worthy life.”

Letter from Peter Costanza of MCLS to Ben LaGuer 7/30/97

Letter from Donnalyn Lynch Kahn to Ben LaGuer 11/24/97 (“Since I have become a part of your life and struggle, I wanted to personally tell you I will be leaving Goldstein & Manello...”

Letter from Jill Fieldstein of Gotshall & Manges to John Silber 3/25/99

Letter from Judi Goldberg of Will & Emery to Ben LaGuer 6/29/99

Letter from Toni G. Wolfman of Hoag & Eliot to Ben LaGuer 6/25/99

Letter from Lizette M. Perez of Proctor & Hoar to Ben LaGuer 6/28/99

Letter from Peter J. Duffy of Holland & Knight to Ben LaGuer 6/22/99

Letter from Lizette M. Perez to Ben LaGuer 7/30/99

Patient Discharge Instruction Sheet, Jose Orlando Gomez, from HealthAlliance Hospitals, Inc 10 December 2002

Letter from Dr. Jesus Blanco, M.D. of Fitchburg, dated 10 December 2002 “Mr Gomez was hospitalized at Leominster Hospital very ill. He has acute medical illness and is not able to return to work. We advised that he applies for disability at this time.”

Massachusetts Driver’s License Card, issued to Jose O. Gomez, class D, number 021523234, Height 5’06”

Preliminary Rental Application from Jose O. Gomez for an Apartment in Riverside Village, Leominster 11 September 2001

Social Security Administration, Disability Report Adult, Application form SSA-3368, listing sister as person of contact Maria Avelino, Medical Assistance Card #0215223234, 11 December 2002

Application for Employment, Car Wash, Jose Gomez claims to have attended Leominster High School, completing 11th grade 9 August 2001

Application for Employment, Kentucky Fried Chicken, August 2001, claiming to have completed 11th grade at Leominster High School. He falsely claims that he had no felony convictions within the last five years.

Fitchburg Police Department, Booking Report 98-16733 of 26 May 1998

Fitchburg District Court, Application for Criminal Complaint, Officer Farrell, charging Jose Orlando Gomez with rape and assault & Battery (Domestic) on 25 May 1998 (“The wife of the above Defendant stated that he grabbed and punched her as well as threatened to beat her up. The victim states she is in fear of her safety as he is very abusive. Victim also reported being raped.” Mr. Efrain Agosto posted a 1500 dollar bail for Gomez to be released on 27 May at 6:30PM

Worcester Superior Court 98-0558 Jose Orlando Gomez pleas guilty to Assault & Battery, in exchange of rape charges dismissed at the request of prosecutor. Superior Court Judge Peter A Velis sentenced Gomez to one year County jail, with 59 days to serve, plus 2 years probation. He ordered Gomez to attend Batterers program or Anger Management. Stay away from victim, Yaneth Gomez

Criminal Defense Attorney Leonard J Staples BBO 542782

Letter from Public Safety staffer Marie Gross to LaGuer 12 July 2007

Letter from Public Safety staffer Marie Gross to LaGuer 11 July 2007

Record of Decision, Parole Board postpones Public hearing 8 March 2008

Letter from Ozell Hudson and Louis Elisa to Public Safety chief Thomas Rapone 17 December 1993

Letter from Stacy Amaral to Governor Patrick 18 November 2007

A critical review of another suspect's confession, a white paper from LaGuer to his lawyers September 1992

Letter from Robin Maldonado to LaGuer 25 July 1987

Letter from E. Abim Thomas to Maureen Walsh 7 January 2008

Letter from E. Abim Thomas to LaGuer 7 January 2008

Letter from Dr Susan Wadia-Ells to Governor Patrick 21 June 2007

Letter, An Open Letter, from the Free Ben LaGuer Committee cochairs Susan Wadia and John Hosty to District Attorney Joe early 18 May 2007

Letter from LaGuer to Sentinel & Enterprise editor Jeff McMenemy 6 December 2007

Letter from LaGuer to BBO chief Canstance V. Vecchione 3 September 2007

Forensic Analytic letter from Dr. Lawrence Kobilisnky to James C. Rehnquist 28 May 2004

Legal Analysis from Georgetown Professor Abbe L. Smith to state Representative Ellen Story 9 June 2005

Forensic Analytic Report from Dean A. Wideman to Ellen Story 30 March 2006

Forensic Analytic report from Dr. Theodore D. Kessis to Ellen Story 1 November 2005

Forensic Analytic report from Dr. Daniel L Hartl of Harvard University to Ellen Story 21 August 2006

Forensic Analytic report from Hans Sherrer of the Justice Institute to state representative Ellen Story 6 September 2006

Affidavit from Michelle L. Chafitz 10 April 2001

Letter from James C. Rehnquist to DA Joseph Early concerning the concerns regarding the DNA evidence 19 January 2007

Letter from State Senator Jarrett T. Barrios to State Police Crime Lab Director Dr. Carl Selavka 15 July 2004

Letter from State Senator Dianne Wilkerson to State Police crime Lab Director C. Selavka 25 August 2004

Letter from James C. Rehnquist to SJC clerk Susan Mellen concerning the DNA evidence 24 January 2007

Letter from state representative Ellen Story to State Police Crime Lab case manager Gwen Pino 13 November 2003

Petition for Executive Clemency November 2007

Letter to Governor Patrick from LaGuer 18 January 2008

Letter to Governor Patrick from LaGuer 30 January 2008

Letter to Deputy Legal Counsel E. Abim Thomas from LaGuer 3 February 2008

Letter to United State Assistant Attorney General Jeffrey L. Sedwick from LaGuer 3 February 2008

Letter to Worcester District Attorney Joseph D. Early Jr., from LaGuer 3 February 2008

Letter to Public Safety chief Kevin Burke from LaGuer 25 December 2007

Letter to Chief Legal counsel Ben T. Clements from LaGuer 30 October 2007

Letter to State Police chief counsel Eleanor Sinnott from LaGuer 15 December 2006

Letter to State Police crime lab manager Gwen B. Pino from LaGuer 22 March 2006

Letter to Governor Patrick from LaGuer 14 December 2006

Letter to Governor Patrick from LaGuer 16 November 2007

Letter to Governor Patrick from Stacy Amaral 8 February 2008

Letter from Worcester County Assistant District Attorney James A. Sullivan to Board of Pardons 7 December 2007

Letter to Lt Gov. Timothy Murray from LaGuer 18 February 2008

Letter from Board of Pardons to LaGuer 18 January 2008

Letter from US Justice Dept. Regional Audit Manager Richard A McGeary to LaGuer 10 July 2007

Letter from the Auditor of the Commonwealth A. Joseph DeNucci to LaGuer 19 July 2007

Letter to Maureen Walsh of Parole Board from LaGuer 29 February 2008

Letter from BBO chair Constance V. Vecchionae to LaGuer 24 August 2007

Letter from BBO chair Constance V. Vecchionae to LaGuer 29 August 2007

Letter from Deval Patrick to Ben LaGuer 5 August 1998

Letter from Ben LaGuer to Supreme Judicial Court Chief Justice Paul J. Liacos 18 September 1992

Letter from Center on Wrongful Conviction Rob Warden to Ben LaGuer 13 February 2008

Letter from State Rep Ellen Story, Byron Rushing, Benjamin Sawn, Kay Khan, Patricia Jehlen and Anne Paulsen to State Police Crime Lab Director Dr. Carl Selavka 13 June 2003

Letter from Massachusetts Commission on Judicial Conduct Robert J. Guttentag to Ben LaGuer 21 June 2005

Letter from Noam Chomsky to Ben LaGuer 10 March 2008

Letter from Massachusetts Association of Hispanic Attorneys President John Lozada to Associate Justice Herbert F. Travers concerning LaGuer's Motion to Revise and Revoke 10 January 1996

Letter from Christopher Lydon to Justice Travers

Letter from Esquire Magazine writer John Taylor to Justice Travers 30 May 1995

Letter from Boston University Director of Prison Programs Walter J. Silva to Justice Travers 14 October 1994

Letter from Allen W. Fletcher to Justice Travers 23 May 1995

Letter from Nation of Islam Minister Don Muhammad to Justice Travers 31 July 1995

Letter from Urban League of Eastern Massachusetts President Joan Wallace-Benjamin to Justice Travers 4 August 1995

Letter from Criminal Justice Institute's Deputy Director Abbe L. Smith to Justice Travers 24 August 1994

Letter from Boston Phoenix staff writer Tim Sandler to Justice Travers 28 July 1995

Letter from John Strahinich to Justice Travers

Letter from Richard A. Nangle of the Worcester Telegram to Justice Travers 23 August 1995

Letter from Three Pyramids President Adrian L. Ford to Parole Board 11 December 1997

Letter from BU Prison Education Program Coordinator Dan DiPiro to Parole Board 10 December 1997

Letter from former CBS producer Jill Fieldstein to Parole Board 7 February 1998

Letter from Max D. Stern to Parole Board 5 January 1998

Letter from Poets Rosanna Warren and Robert Pinsky to Parole Board 28 March 2000

Letter from Crime & Justice Foundation Director John J. Larivee to Parole Board 26 February 1998

Letter from Georgetown Law Professor Abbe Smith to State Parole Board 9 August 1997

Letter from CPCS Deputy Chief Appellate Attorney Patricia A. O'Neill to Parole Board 22 June 1998

Letter from Massachusetts Association of Hispanic Attorneys President Lucy E. Reyes 24 June 1998

Letter from Massachusetts Chapter of the National Congress for Puerto Rican Rights President Jaime Rodriguez to Parole Board 30 March 1998

Letter from Attorney Francisco Gonzales-Palacion to Parole Board 13 May 1998

Letter from PEN staff Jackson Taylor to Ben LaGuer informing that "you work, 'A Man Who Loves His Mother, Loves Women,' has won the only prize in the Memoir category of our 1997 Writing Awards for Prisoners. Congratulations!" 29 January 1998

Letter from BU Dean Romualdas Skvarcius to Ben LaGuer informing "that your name has been added to the Dean's List for the 1995-1996 academic year. Your outstanding academic performance provides a model..." 10 June 1996

Affidavit of Minister Don Muhammad of 14 July 1999

Affidavit of Dr Joan Wallace-Benjamin, Ph.D., 15 July 1999

Transcript of PI Joseph Guidetti of interviews with jurors William P. Nowick and Joseph F. Novak 14 June 1991

Application for Review of Discharge from US Army dated 25 February 2010, Case Number. AR20100011372, under Review by Army Review Boards Agency under Chief Paul A. Pett 26 March 2010

Letter from Chief Paul A. Petty indicating that the National Archives and Records Administration has notified that US Army that all records are on loan to another agency and thus previous submissions must be resubmitted in 90 days 29 March 2010

Letter from ADA James R. Lemire to the Army's National. Personnel Records Center, St Louis, Missouri, dated April 6, 1987 "particularly interested in LaGuer's blood type, medical records, and discharge information."

Letter from State Ethics Commission Enforcement Division Chief Stephen P. Fauteux to LaGuer 29 October 2004

Letter from Commission on Judicial Conduct Staff Attorney Neil P. Olson to LaGuer 5 May 2005

Letter from Commission on Judicial Conduct Executive Director Jill Pearson to LaGuer 4 January 2005

Letter from Commission on Judicial Conduct Executive Director J Pearson to LaGuer 4 November 2004

Letter from Deval L. Patrick to LaGuer 5 August 2004

Letter from Deval Patrick to Parole Board 5 August 1998

Letter from ABC News Nightline Co-Anchor Cynthia McFadden to Ben LaGuer 21 February 2007 ("Indeed, the ways in which our justice system handles and has handled DNA leaves open many opportunities for injustice. It certainly seems that there may have been mistakes in your case.")

Letter from LaGuer to Sentinel & Enterprise Editor Jeff McMenemy 6 December 2007

Letter from Dr. Susan Wadia Ells to Deval Patrick 21 June 2007

Letter from Rev. Eugene Rivers to members of the civic and cleric community appealing to support Ben LaGuer September 1991

Letter from Lawrence A. Rossello to Judge Travers 19 June 1996

Letter to Parole Board from Douglas Medina 4 September 1997

Letter to Parole Board from Poet Laureate of the United States Robert Pinsky and BU Professor Rosanna Warren 28 March 2000

Letter from Executive Clemency Coordinator Julie Pease to Ben LaGuer 1 May 2008

Grievance form from William F. Winn, CPO III, to Ben LaGuer acknowledging complaint of illegal wiretapping of legal telephone calls Grievance Number 33698, 1 May 2008

Letter from DOC Director of Public Affairs Diane Wiffin to WTKK Radio 96.9 FM host Jimmy Myers 24 April 2008

Letter from Deval Patrick to Ben LaGuer 23 December 1998

Letter from Patrick to LaGuer 3 November 1998

Letter from Patrick to LaGuer 21 September 2000

Letter from Patrick to LaGuer 3 November 1998

Letter from Michael S. Dukakis to LaGuer 25 September 2004

Letter from Richard H. Chacon to Ben LaGuer 14 May 1987

Letter from Chacon to LaGuer 23 April 1987

Letter from Peter Wagner to LaGuer 16 August 2006

Letter from Lisa J. Steele to LaGuer 28 March 2006

Letter from Peter Costanza to LaGuer 30 July 1997

Letter from Jill G. Fieldstein to John Silber 25 March 1999

Letter from Hispanic American Chamber of Commerce Executive Director, Bruce Young Candelaria, To Parole Board 14 February 2000

Letter from Sally J. Greenberg to Judge Travers 26 July 1998

Press Release by McDermitt, Will & Emery 5 April 2000

Letter from Michael S. Dukakis to LaGuer 13 April 2000

Letter from BU Leslie Epstein to Parole Board 24 March 2000

Letter from Alexander Theroux to Parole Board 12 March 2000

Letter from MIT Noam Chomsky to Parole Board 24 February 2000

Letter to Parole Board from Leslie Epstein 23 March 2010

Letter from John Silber to Joseph D. Early 14 October 2009

Letter from Alicia Lapomardo to Ben LaGuer 25 February 2010

Letter from Noam Chomsky to Ben LaGuer 11 March 2010

Letter from Harvey A. Silverglate to LaGuer 3 March 2010

Letter from Michael Dukakis to LaGuer 7 November 2010

Letter from Lorene Melvin to LaGuer 12/1/10

Letter from Elizabeth Billowitz to LaGuer 11 January 2010

Letter from Billowitz to LaGuer 21 December 2009

Letter from Stacy Amaral to Deval Patrick 8 February 2008

Letter from Stacy Amaral to Deval Patrick 18 November 2007

Letter from Ben LaGuer to Dr Deeb Salem 5 April 2010

Letter Army Review Boards Agency to LaGuer 29 March 2010

Affidavit of Peter L. Ettenberg in support of motion for a new trial

Affidavit of Peter L. Ettenberg to Parole Board 29 April 2010

Affidavit of Ben LaGuer filed in Worcester Superior Court on 19 November 1984

Affidavit of James R. Lemire 30 April 2010

Letter from Stacy Amaral to Parole Chairman Mark Conrad 8 May 2010

Letter from Stacy Amaral to Governor Deval L. Patrick .8 May 2010

Email from BU Law Professor Stanley Z Fisher to Parole Board

Email from Tufts University Prof James Jennings to PB

Email from Georgetown Professor Abbe Smith to PB

Letter from B LaGuer to Parole Chair Mark A, Conrad 10 May 2010

Letter from JR Lemire to PL Ettenberg 17 January 1984

Letter from RE Terk to Dr, Mark W. Rodehaver 23 May 1987

Letter from Carmen-Iberia Manrique to CPCS P O'Niell 2 April 1994

Letter from Bradley J. Dye to Parole Board April 2010

Letter from B LaGuer to Peter L. Ettenberg 20 May 2010

Letter from Isaac Borenstein to Parole Board 10 May 2010

Letter from John C. Archer to Parole Board 3 May 2010

Affidavit of Robert E. Terk for new.trial 29 April 2010

Email from Lisa Billowitz to Robert Terk 18 May 2010 10:59AM

Affidavit of Assistant District Attorney Joseph J. Reilly, III January 21, 2000

Affidavit of Carl A. Selavka January 1 , 2000

Suppleratal Affidavit of CL Selavka June 7, 2000

Letter from ADA Sandra Hautanen to Dr William C. Siegel April 25, 2000

Letter to Tamara Fisher from ADA S Hautanen June 28, 2001

Letter to Judith A. Goldberg from S Hautanen July 11 2000

Letter from S Hautanen to JA Goldberg May 26, 2000

Letter to T Fisher from S Hautanen November 15, 2001 Supplemental Affidavit of SL Hautanen
July 18 2000

Letter from JA Goldberg to Dr. Donovan Hommen of BU's Danielsen Institute, 185 Bay State
Road, Boston, February 9, 2000

Letter from SL Hautanen to SJC clerk January 30, 2007

Letter from PL Ettenberg to B LaGuer February 15, 2001 "I received your letter of February 4. I have reviewed the contents of my files and can only locate the enclosed documents; the jury list and the pretrial conference report. I can only assume that anything else in my files was sent on to the attorney after me, Michael Caplette as I noticed a release and request from him and you that I send him my files. I do not know what the letter you refer to of October 24, 1983 contains."

Letter from Michael Caplette to Ben LaGuer of February 26, 2001 "Some of the items you are requesting, however, do not exist and others are clearly my work product, to which you are not entitled. I will, however, comply as completely as I can." Cellmark Diagnostics, Forensic Case Form Confidential Information, Cellmark case#F001408 August 14, 2000

Letter from Judith A. Goldberg to Jackie J. Higgins of Cellmark May 9, 2001

Letter from JJ Higgins to Tamara Fisher

Letter from Judi Goldberg to ADA JJ Reilly and SL Hautanen May 24, 2000

Letter from Judi Goldberg to ADA Reilly and Hautanen May 5 2000

Letter from ADA Maurice J. O'Brien, Jr to John H. LaChance June 13, 1991

Letter from ADA O'Brien To Superior Court Judge Rovert V. Mulkern June 13, 1991

Letter from MSPCL chemist Kellie A. Bogosian to Edward T. Blake August 14, 2001

Letter from ADA James R. Lemire to Robert E Terk 22 September 1987

Letter from State Rep Ellen Story to Dr. Frederick R. Bieber May 26, 2005

Record of Decision, State Parole Board: Date of Hearing April 22, 2010; Date of Decision May 10, 2010

Fax Transmission from ADA Sandra Wysocki to Leominster Police Department of 5 pages on July 8, 1998

Letter from CPCS Scott M. Miller advise on Sex Offender Registry Board to Ben LaGuer 21 May 2010

Unpublished Letter to the Editor of Sentinel & Enterprise in response to 27 April 2010

Letter from Karen Spence to B LaGuer 26 May 2010

Letter from K Spence to Parole Chair Mark A. Conrad 26 May 2010

Affidavit from Ben LaGuer concerning discovery of the 17 January 1984 letter from Lemire to Ettenberg in Terk's file dated 27 May 2010

Letter from Sex Offender Registry Board June 2, 2010 notifying Ben LaGuer that he has been classified as a Level 3 Sex Offender. Sex Offender Number 21900. Per letter, Ben LaGuer is filing request for a hearing prior to June 28, 2010.

Letter from CPCS Scott M. Miller to Ben LaGuer 7 June 2010

Letter From S Miller to Sex Offender Registry Board member Kerry Fone 7 June 2010

Email from Eric Goldsheider to Prof James Joy June 2010

Letter from Weil, Gotshall & Manges, LLP 1 July 2010

Letter of 2nd Notification from Forensic Health Services Sexual Offender Treatment Program July 2010

Letter of Termination from SOTP to LaGuer from Stephanie Adaramola, SOTP Coordinator NCCI/Malee Preta, LICSW

Letter from Rosalyn Garbose Nasdor of Ropes & Gray on behalf of Pro Bono Committee 24 June 2010

Letter from State Parole Board "appeal Request" denied, "Prior vote to stand" 2 August 2010

Letter to Parole Board Julie Pease" Requesting DVD or VCR Tapes from All Hearing from LaGuer 21 August 2010

Letter from LaGuer to Clark University Associate Professor Ravi K. Perry, Political Science Department August 29 2010

Letter from LaGuer to Sentinel & Enterprise reporter Dan Magazu 29 August 2010

Letter from Douglas Most to Judge Timothy S. Hillman of 5 September 2002 ("I am working on a story for the 'New York Times Sunday Magazine' about Benjamin LaGuer. I am requesting to read the trial court transcript, subsequent court filings, and the most recent DNA report submitted by Dr. Edward T. Blake that proved Mr. LaGuer's guilt in the case.")

Letter from Anatoly Trofimchuk of PLAP (Harvard) to B LaGuer 25 May 2011

Letter from Clerk of Court Dennis P. McManus to Ben LaGuer Notice of Docket Entry 25 May 2011

Department of Corrections Classification Report of Ben LaGuer 27 May 2011 by John Mobley

Letter from B LaGuer to Rosanna Warren 3 June 2011

Letter from B. LaGuer to John Taylor 3 June 2011

Letter from B. LaGuer to Martin Espada 3 June 2011

Letter from B. LaGuer to Abbe L. Smith 3 June 2011

Letter from B. LaGuer to Harvey Silverglate 3 June 2011

Letter from B. LaGuer to Chris Lydon 3 June 2011

Letter from B. LaGuer to Charles ogletree 3 June 2011

Letter from B. LaGuer to Henry Louis Gates Jr. 3 June 2011

Letter from B. LaGuer to James Jennings 3 June 2011

Letter from Lisa Billowitz to B LaGuer 23 May 2011

Letter to Dr William C. Siegel, MD from B LaGuer 24 May 2011

Letter from B LaGuer to O Muhammad 24 May 2011

Letter to Terry Nagle of CPCS from Ben LaGuer 23 May 2011

Letter to John Silber from B LaGuer 23 May 2011

Letter from B LaGuer to R Contreras 14 May 2011

Letter from B LaGuer to Jonathan Saltzman 14 May 2011

Email from B LaGuer to David 'rank 16 May 2011

Letter from B LaGuer to David M. Siegel 5 May 2011

Letter from B LaGuer to James C Requist 5 May 2011

Letter from B LaGuer to Elizabeth Billowitz 5 May 2011

Letter from B LaGuer to Judi Goldberg 6 May 2011

Letter from B LaGuer to Tamara Fisher 6 May 2011

Letter from John Silber to B LaGuer 20 April 2011

Letter from John Silber to B LaGuer 27 April 2011

Emails to All Groups on Hotmail.com and GMail 20 May 2011

Emails to All Groups Hotmail and GMail accounts 13 May 2011

Letter from John Silber to B LaGuer 16 May 2011

John C. Archer meets D Patrick to discuss case 23 May 2011

John C. Archer and Susan Wadia-Ells meets with O Patrick at a fundraiser to the Mattapan Health Center 24 April 2010

Letter from Noam Chomsky to B LaGuer 6 May 2011

Letter from B LaGuer to John Silber 25 May 2011

Letter from Robert E. Terk to DA Joe early 16 May 2011

Letter from student attorney Lauren Russell to LaGuer 24 June 2010

Letter from Isaac Borenstein (through paralegal Julie L. Bellavia) to Ben LaGuer 25 January 2011

Letter from Borenstein (through paralegal Jaye L. Samuels) to LaGuer 5 November 2010

Letter from Borenstein (through Melina Neely, Legal Intern) to Ben LaGuer 21 September 2009

Letter from Borenstein to LaGuer 20 November 2008

Letter from Borenstein to LaGuer 8 October 2009

Letter to Borenstein from LaGuer 6 March 2011

Letter to John Silber from LaGuer 6 March 2011

Letter from John Silber to LaGuer 2 March 2011

Letter from Silber to LaGuer 16 February 2011

Letter from Silber to LaGuer 28 January 2011

Letter from Silber to LaGuer 28 February 2011

Letter from Silber to LaGuer 22 February 2011

Letter from Silber to LaGuer 8 February 2011

Letter from Silber to LaGuer 31 January 2011

Letter from Lisa Billowitz to LaGuer 21 December 2009 (“Isaac and I spoke at length, and we feel it would be most efficient to get your contributions after the draft is more complete. We will then come to see you, sit down, and review it together, and do one comprehensive edit.”)

Letter from Isaac Borenstein to Ben LaGuer of 20 November 2008 (“I am now familiar with the sequence of events that led to the DNA mishap. I am confident that we can argue that the DNA analysis provides evidence that actually contradicts the victim’s account, and therefore, additional exculpatory evidence for a new trial. This is an issue that may be developed in the courts, via a motion for a new trial, and in the arena of public opinion through the media. It is my judgment, based on everything I have read, that there is a very good argument to be made on your behalf that no future jury will be allowed to consider this evidence, which prosecutors have argued is reliable. It is my opinion that the DNA evidence fails to meet even basic Daubert—Lanigan admissibility criteria.”)

Letter from Melina Neely to B LaGuer 23 October 2009

Letter from B LaGuer to B Billowitz & I Borenstein 9 October 2009

Letter from Stan Fisher to B LaGuer 9 December 2010

Letter from Silber to B LaGuer 3 January 2011

Letter from Silber to LaGuer 8 March 2011

Letter from LaGuer to Silber 14 March 2011

Letter from LaGuer to Isaac Borenstein 14 March 2011

Letter from Isaac Borenstein to Dr John Silber 7 April 2011

Letter from Isaac Borenstein to Atty Robert E. Terk 7 April 2011

Ben LaGuer v. Paul Rakiey, Warden (Wor Civ Action 94-1325)

(Associated Justice of the Superior Court Barbara A. Lenk, presided over the trial. Judgment in favor of LaGuer.)

Letter from John Silber to Ben LaGuer 20 April 2011

Letter from Bennett L. Gershman to Ben LaGuer 22 April 2011

LaGuer’s Motion for a New Trial and Evidentiary Hearing 28 April 2011

LaGuer’s Memorandum In Support of Motion for New Trial 28 April 2011

Robert E. Terk’s Affidavit of Exhibits 28 April 2011

Email from Tina Rondeau to R Terk June 3, 2011 11:51AM Letter from B LaGuer to Omar Wasow of Harvard 1 June 2011 Letter from B LaGuer to Emett:G. Price of NEU

June 2011 Letter from BLaGuer to Judge Richard T. Tucker 4 June 2011 Email to Dr. Deeb Salem of Tuft's, cc Hannah M Lee, Robert E. Martell, Leslie Epstein, John Silber, Isaac Borenstein, James C. Rehnquist of 3 June 2011 Letter from B LaGuer to Isaac Borenstein 4 June 2011 Letter to Harvey Silvergiate from B LaGuer 6 June 2011 Letter to Ishrael Scott Reed from B LaGuer 6 June 2011 Letter to June Victoria Cross from B LaGuer 6 June 2011 Letter to Dr Derrick Bell from B LaGuer 6 June 2011 Letter to Shay Youngblood from B LaGuer 6 June 2011 Letter to Dr Cornel West from B LaGuer 7 June 2011 Letter to. Charles Ogletree from B LaGuer 7 June 2011 V Letter to Angela Y Davis from B LaGuer 7 June 2011 Letter to Dante Ramos from Ben LaGuer 13 June 2011 Letter to Gerald Boyd from B LaGuer 13 June 2011 Letter to Tavis Smiley from B LaGuer 13 June 2011 Letter to Tom Joyner from B LaGuer 13 June 2011 Letter to NBC's VP Lisa R. Green from B LaGuer 14 June 2011 Letter to Dick Gregory from B LaGuer 14 June 2011 Letter. to Toni Morrison from BLaGuer 14 June 2011 Letter to Charles Dutton c/o William Morris from LaGuer 13 June 2011 Letter to Rev Al Sharpton from B LaGuer 14 June 2011 Letter to Theodore Shaw from LaGuer 14 June 2011 Letter to Alvin Poussaint from B LaGuer 14 June 2011. Letter to Terrie Williams from B LaGuer 14 June 2011 Letter to Orlando patterson from B LaGuer 14 June 2011 Letter to Alfre Woodard from B LaGuer 14 June 2011 Letter to Michael Eric Dyson from B LaGuer 14 June 2011 Letter to Tina Rondeau from B LaGuer 13 June 2011 Letter to Marie Lee from B LaGuer 30 May 2011 Letter from B LaGuer to John Silber 13 June 2011

Letter to Dianne Williamson from B LaGuer 14 June 2011 Letter to Mark P. Conrad from B LaGuer 14 June 2011 Letter to Joan Wallace-Benjamin from B LaGuer 15 June 2011 Letter to Sheila Decter from B LaGuer 15 June 2011 Letter to Alex Theroux from B LaGuer 15 June 2011 Letter to Robert B. Chatelle from B LaGuer 15 June 2011 Letter to Josiah Epps from B LaGuer 15 June 2011 Letter to Tina Rondeau from B LaGuer 16 June 2011 Letter from B LaGuer to Rev Rey Harmon 13 June 2011 Letter to Tuft's Requesting B LaGuer's MRN of 17 June 2011 Commonwealth's opposition to LaGuer's Ninth Motion for a New trial and Evidentiary Hearing 15 June 2011 Defendant's Rebuttal to Commonwealth's Opposition LaGuer's

Motion for a New Trial 19 June 2011 Letter from B LaGuer to Sandra L. Hautanen 21 June 2011 Letter from B LaGuer to Mark A. Conrad 21 June 2011 Letter from B LaGuer to Don Muhammad 21 June 2011 Email to Sandra Hautanen from B LaGuer 20 June 2011 10:30AM Letter from Alex Theroux to Ben LaGuer 19 June 2011 Letter from B LaGuer to Douglas J. Tjapkes to 22 June 2011 Letter from B LaGuer to Rev James McCloskey 22 June 2011 Letter from B LaGuer to Union of Concerned Scientist Kevin Knohioch 22 June 2011 Letter to Peter Vickery from B LaGuer 23 June 2011 Letter from B LaGuer to Ron Madnick 23 June 2011 Letter from B LaGuer to Eennett L. Gershman 23 June 2011 Letter to Cary Fedêrmen from B LaGuer 24 June 2011 Letter from B LaGuer to John Reinstein 24 June 2011 Letter to Douglas Kjapkes from B LaGuer 24 June 2011 Letter from B LaGuer to Sue Huskins 26 June 2011 Letter from B LaGuer to Barb Dougan 27 June 2011 Letter from B LaGuer to Scott Hornoff 27 June 2011 Letter from B LaGuer to Juan Concepcion 27 June 2011 Letter from B LaGuer to Robert Lewis (Btn Foundation) 27 June 2011

Letter from B LaGuer to Peniel Joseph 27 June 2011 Letter from B LaGuer to Phillip L., Clay 27 June 2011 Letter from Ben LaGuer to Rubin Carter 27 June 2011 Letter from B LaGuer to Joyce Carol Oates 27 June 2011 Letter from B LaGuer to John Silber 26 June 2011 Letter from B LaGuer to Robert Terk 26 June 2011 Letter from B LaGuer to Roberto Trestan 26 June 2011 Letter to Mary Frances Berry from B LaGuer 27 June 2011 Letter from B LaGuer to Glen Cartman Loury 27 June 2011 Letter from LaGuer to Malcolm—Jamal Warner 27 June 2011 Letter from LaGuer to Mike Farrell 28 June 2011 Letter from B LaGuer to Robert Romanow 28 June 2011 Letter from LaGuer to Allen W. Fletcher 28 June 2011 Letter to Stephen L. Carter from LaGuer 28 June 2011 Letter from B LaGuer to Tina Rondeau 30 June 2011 Letter to Eugene O'Flattery from B LaGuer 28 June 2011 Letter to Tina Rondeau from B LaGuer 28 June 2011 Letter from B LaGuer to David Hall 28 June 2011 Letter from B LaGuer to Sonia Chang-Diaz 28 June 2011 Letter to Rep Kay Khan from B LaGuer 29 June 2011 Letter from B LaGuer to Byron Rushing 29 June 2011 Letter from B LaGuer to Ben Swan 29 June 2011 Letter from B LaGuer to Robert Garcia 4 July 2011 Letter from B LaGuer to Aida Ramos 4 July 2011 Letter from B LaGuer to Kelli Bromes 4 July 2011 Letter to Lou Levesque from B LaGuer 4 July 2011

Letter to Brad Dye from B LaGuer 4 July 2011 Letter to Leslie Epstein from B LaGuer 7 July 2011 Letter to James Jennings from B LaGuer 7 June 2011

Letter from John Silber to B LaGuer 21 June 2011

Letter from Rosanna Warren to B LaGuer 28 July 2011

Letter from Debra S. Krupp to B LaGuer 1 August 2011

Email to group "State Police advisory" 1 5 July 2011

Letter from John Silber to B LaGuer 2 August 2011

Letter from B LaGuer to John Silber 7 August 2011

Letter from Liza Billowitz to B LaGuer 9 August 2011

Email to group "Judge Grants LaGuer Hearing" 12 August 2011

Letter from Judi Irizzary to B LaGuer 10 August 2011

Letter to Polly A. Tatum from B LaGuer 17 August 2011

Letter to John History-Grinnell from B LaGuer 17 August 2011

Letter from Jon Silber to B LaGuer 18 August 2011

Letter from Abbe Smith to B LaGuer 16 August 2011

Letter from B LaGuer to Bennett L. Gershman 27 August 2011

Letter from B LaGuer to Carlos Linera 27 August 2011

Letter from B LaGuer to John Silber 27 August 2011

Letter from B LaGuer to Carmen Donimichie 28 August 2011

Letter from B LaGuer to Hunter Amabile 28 August 2011

Letter from B LaGuer to Elaine Kline 28 August 2011

Letter from B LaGuer to John Silber 2 September 2011

Letter from B LaGuer to James c. Rehnquist 2 September 2011

Letter from B LaGuer to Robin Rondeau 2 September 2011

Letter from B LaGuer to Emily Rooney 6 September 2011

Letter from B LaGuer to John Strahinich 6 September 2011

Letter from B LaGuer to Dianne Williamson 6 September 2011

Letter from B LaGuer to Jonathan Saltzman 6 September 2011

Letter from B LaGuer to Peter Schworm 6 September 2011

Letter to Thomas Melville from LaGuer 6 September 2011

Letter to David Boeri from LaGuer 6 September 2011

Letter to Hunter Amabile from B LaGuer 6 September 2011

Letter to Dan Rea from LaGuer 6 September 2011

Massachusetts Superior Court Judges Richard T. Tucker and James R. Lemire had a public lunch on September 9, 2011, immediately after Judge Tucker held a 90-minute courtroom session on issues involving Ben LaGuer's motion for a new trial. The motion alleged issues of prosecutorial abuses directly affecting Judge Lemire's role as a prosecutor in LaGuer's trial. Judges Tucker and Lemire were witnessed by attorney Robert E. Terk, Eric Goldsheider, John C. Archer and others. Lemire was on a witness list that Tucker had approved.

John C. Archer and Governor Deval L. Patrick privately discussed the LaGuer case at a dinner in Hamilton's prestigious and exclusive Pingree High School September 14, 2011. Patrick said he was following the case closely. He told Archer that LaGuer was lucky to have him for a friend. Archer updated him with a briefing about the September 9th hearing in Worcester courthouse.

Press Release Email 25 November 2011

Brief Rebuttal to District Attorney's Response December 2, 2011

Email to Governor Patrick in Re: District Attorney Wiretaps
Conversations between LaGuer and his lawyers 5 December 2011

Draft Motion of Discovery to Atty Robert E. Terk 22 November 2011

Undated letter to Judge Richard T. Tucker (by hand delivery) by ADA Jane A. Sullivan indicating that on December 7, 2011 at 1:32PM LaGuer "sent the attached email to three (3) named Assistant District Attorneys, among others, from "Benlaguer@gmail.com•."

Brief Amended Rebuttal to District Attorney's Response 15 December 2011

Email to Governor Patrick in Re: District Attorney Wiretaps Conversations between
LaGuer and his lawyers 7 December 2011

Letter from Ben LaGuer to Superior Court Judge Richard T. Tucker through Attorney
Robert E. Terk 24 December 2011

Letter from Texas Innocence Network to B LaGuer October 2011

Letter from Lawrence Kobilinsky to B LaGuer 5 September 2011

Letter from Bennett L. Gershman to B LaGuer 22 April 2011

Letter from Stacy Amaral to B LaGuer 8 December 2011

Innocence Project Questionnaire from Lisa Kavanaugh to Ben LaGuer 13 December
2011

Letter from B LaGuer to L Kavanaugh, Director of CPCS Innocence Project, with signed
and filled out Questionnaire 26 January 2012

Order of Court: Justice, Superior Court Richard T. Tucker 9 January 2012
("Correspondence from defendant dated 24 December 2011 not read and hereby returned
to defendant. The Court does not receive correspondence directly from either party. Said
practice by either party or attorneys shall cease immediately. The notice of compliance
has been received and filed.")

Defense Motion to Stay Execution of Sentence Pending Final Judicial Adjudication,
filed, 10 January 2012; Exhibit, Department of Corrections, MA, Correctional Offender
Management Profiling for Alternative Sanction, or COMPAS.

Lennice May Plante DOB 5/9/24

Burbank Hospital Medical Records (now known as HealthAlliance Hospital) located at 275 Nichols Road, Fitchburg, MA 01420. Hospital Records #421004-3

Garden State Hospital, 500 Colony rd , Gardner, MA 01440

Herbert Lipton Community Mental Health Center located at 10 Pleasant, Fitchburg, MA. Medical Records of Dr. James M. Bonner and James L. Kahn.

Leominster Hospital Medical Records (now known as HealthAlliance Hospital) located at 60 Hospital Road, Leominster, MA 01453 Medical Records #190340*0 25*91*47

Billing No. Veterans Insurance 000061920641

Caldwell Home (formerly Wright Nursing Home under the ownership of Leo Piro, 45 Ryefield, Fitchburg, MA 978.342.4765) located at 10 Prospect, Fitchburg, MA

Medical Records of Winchendon Health Center, Geriatric Psychiatry Program, 55 Hospital Drive, Winchendon, MA 01475

Veteran's Administration Hospital (now known as Veteran's Administration New England Healthcare System, director. at 1400 VFW Parkway, West Roxbury 02132 Tel 857.203.6000

Parole Board Supplemental Summary Report by Alicia Lapomardo of 12 April 2010

Ben LaGuer's Opening Statement to Parole Board of 22 April 2010

Letter from LaGuer to Pamela Lombardini of 26 April 2010

Letter from LaGuer to Candace Kochin of 26 April 2010

Letter to Leticia Munoz from LaGuer 26 April 2010

Letter to Cesar Archilla from LaGuer 26 April 2010 Letter to Roger Michel from LaGuer 27 April 2010 Letter from LaGuer to Thomas Merigan 26 April 2010

Letter and package of supporting documents in opposition by Sandra Hautanen and Michelle King 22 April 2010

National Black Police Association (NBPA) Statement Supporting the Release of Benjamin LaGuer of 21 April 2010 by Christopher C. Cooper.

Sex Offender Registry Board letter of Notice of Right to Submit Materials within 30 Days, Sex Offender Number 21900, dated 26 April 2010.

Letter to Tuft's Chief of Medicine Dr Deeb Salem granting him a release to speak with John Silber, Leslie Epstein and Isaac Borenstein about diagnosis and treatment at the Multidisciplinary Liver Tumor Clinic 5 April 2010

Sentinel & Enterprise, Editorial, "No 'compelling reasons to parole' Benjamin LaGuer 25 April 2010

Sentinel & Enterprise, OpEd, LaGuer seeks support during his parole hearing by Ben LaGuer 2 April 2010

Sentinel.& Enterprise, Editorial, Right where he belongs 30 November 2007

Lemuel Shattuck Hospital, Primary physician include Dr Benjamin Smith and Chief of Radiology Dr Joseph F. Polak on Medical Record Number LS00115164

Tuft's Medical Center, Primary physicians include Dr Kathy P. Theall, Lawton Shick, Richard J. Rohrer, Mark Bankoff, Walid Asaad, D.J. Magnani, PhD M.D. on Medical Records Number 00242-17-02 (Chief of Medicine Deeb Salem, M.D.)

Letter to Parole Board from BU Professor Stan Fisher

Letter to Parole Board from Georgetown Law Center Abbe L. Smith

Letter to Parole Board from John C Archer

Letter to Parole Board from Leslie Epstein

North Central Correctional Institution Health Center, operated under a Commonwealth Medicine of UMASS Worcester contract, Principle physicians are Jesse Hammond, PA., Dr Lawrence Churchville (Chief of Medicine Dr Thomas Grubolesky.)

Defense attorneys have been James J. Brady, Peter L. Ettenberg, Michael V. Caplette, Brendan P. Murray, Robert E. Terk, Leigh Crawford, Barry H. Berke, Jack Cunha, Patricia O’Niell, John H. LaChance, Syrie D. Fried, Tamara Fisher, Robert Cordy, Judi Goldberg, Mark Pearlstein, Steve W. Kasten, David M. Siegel, Marianne Kim, Kathleen Luz, Nicholas Gray III, Joshua Stayn, James C. Rehnquist, Elizabeth Billowitz, Issac Borenstein.

Judicial researchers Maximilian E. Sirianni, Aaron S. Amaral, Jaye L. Samuels, Julie A. Bellavia, Regine Theodat, Melina E. Neely, Jesse Boodoo, Jill Fieldstein, David R. Weigel, Debe Gledhill, John R. Russell, Julie A. Bellavia.

Pretrial Defense investigators Nancy Martinez and Robert Hammack; Richard D. Slowe on posttrial conviction motions.

Attorneys Nancy Gertner, John Reinstein, Abbe Smith, Williams Montross, Kimberly Hawkins, David Gibbs and Johnathan P. Cook for Lawyers Committee for Civil Rights of the Boston Bar Ass’n, & others, amici curiae.

District Attorney John J. Conte (a Dukakis appointee since 1976); Assistant District Attorneys are Eileen Jedrzynski, Paul F. Bolton, Phillip E. Shea, James R. Lemire, Lynn M. Turcotte, Kathrine E. McMahon, Sandra P. Wysocki, Linda G. Katz, Leon Zitowitz, Daniel F. Tooney, Maurice O’Brian, Harry D. Quick, Sandra L. Hautanen and Joseph J. Reilly III

District Court Judge Matthew R. McCann on arraignment; Superior Court Judge James H. Donahue on bail and pretrial motions; Judge William C. O’Neil on denial of defense request for victim’s medical records; Robert V. Mulkern on trial and postconviction motions. After Mulkern retired, in 1992, Judge Herbert F. Travers was assigned. In 1999, Judge Timothy Hillman presided over the post conviction proceedings. Since 2011, Judge Richard T. Tucker is presiding for a motion for a new trial..

Leominster Police Department (29 Church St, Leominster, MA 01453 978-534-7560) officials are Chief Alan J. Gallagher (retired); Lt. Arthur Caisse (retired); Lt. Francis Arial (retired) Lt. Robert Hebert (retired); Det. Ronald N. Carignan (deceased); Det. Keith E. LaPrade (retired); Patrolmen Timothy Monahan (retired); Roland LaPointe (retired); Charles DePerri (retired); John R. Tata (unknown) Raymond A. Booth (remains in active service, along with) John Gianninis; Jane Hatstat; Lt. Michelle D. Pelleccia and; Dean J. Mazzarella (currently Mayor of the City of Leominster)

State Police Troopers are Arthur Martin (#1428), William Kokocinski, Richard D. McKeon (#1814); Stephen E. Kelly (#2197); Lt. Ralph F. Defuria; Lt Francis Moore and Captain William P. Horgan; Marian J. McGovern; Robert O'Neil

State Police Crime Laboratory Criminalist in this case are Mark T. Grant (1983); Paul J. Malone (1983); "LJH" (1984); Gwen Boisvert (1988); Karoline M. LeClair (1989); Regina Cameron (2000); Gwen Pino; (2000); Mary K. McGilvray (2000); Carl M. Selavka (2000); Frederick Bieber (2000) and; Kellie Bogosian (2001)

Appeals Court 1996 (Kass, Dreben & Spina); Appeals Court 1994 (Kass, Kaplan and Fine); Supreme Judicial Court 1991 (Liacos, Wilkins, Nolon, O'Conner and Greaney; Appeals Court 1985 (Armstrong, Dreden and Smith)

Court Appointed Psychiatrist Lawrence M. Hipsh mire; Department of Corrections Appointed Psychiatrist Daniel M. Weiss; Department of Corrections Appointed Psychologist Marcelino DeLeon; Olga DeAlma and Department of Corrections psychiatrist Harrison O'Connor

The twelve deliberating jurors, plus one alternate, are jury foreman James W. Dalzell of Worcester (508-853-6482); Joseph F. Novak of Worcester (508-753-1856) ; William P. Nowick of Worcester; Michael Schiavone of Worcester (508-852-3385); Helmut Lelke of Southbore; Stephen J Martin of Oxford (508-987-0111); Ernest H. Rice of Lancaster; John T. Hickey of Cherry Valley; Robert M. Racicot of Uxbridge; Alan W. Harty of Barre; Claudio G. Proulz of Southbridge; Gerald Scanlon of Spencer and; Reno H. Pigalargi of Milford

The two nurses who were on staff during the hours of Plante's allege photo identification are Carol Griffin and Liza Rowe.

A Rape Crisis Counsellor from the Fitchburg Luk Agency was Linda K. Reedy (James Lemire removed her from Carignan's suggested list of witnesses) and Ruth Givens Jose Gomez is the true perpetrator of this crime: Jose Gomez, 89 Adam Street, Leominster, MA 01420 978-665-0188. Felicita Gomez, Jose's mother, lives in 143 Meadowbrook Lane, Fitchburg, MA 01420

State Parole Board members include Terrance J. McArdle, Robert Murphy, Sheila Ann Hubbard, Daniel M. Dewey, Michael J, Poramole, Maureen E. Walsh, Mary Ellen Doyle, Doris Dodrige, John P. Kivlan, Candace J. Kochin, Thomas F. Merigan, Jr., Leticia S. Munoz, Roger L. Michael, Jr., Mark A. Conrad, Cesar A. Archilla, Pamela Lombardini. Ina R. Howard—Hogan, Charlene M. Bonner, Lucy M. Soto—Abbe, John M. Bocon

Glossary of Names

Adams, Brian	One of two boys who found the victim's pocketbook by a stream two blocks away from her apartment a month after the attack and turned it over to officers Tata and Booth of the Leominster Police.
Arnold, David	A Boston Globe reporter who covered LaGuer's case.
Barry, Elizabeth	The victim's daughter.
Barry, Robert	The victim's son in law.
Basque, Christine	Potential alibi witness identified by Martinez and Hammack.
Benoit, Dennis	The maintenance man for the building where both LaGuer and the victim lived.
Berke, Barry	A Harvard Law School student who assisted LaGuer during his 1989 hearing.
Blake, Dr. Edward	The forensic scientist who derived a DNA profile.
Bogosian, Kellie Ann	State Police lab technician assigned to observe DNA testing in Blake's laboratory.
Bolton, Paul F.	The lawyer who examined Carignan during his grand jury testimony.
Bonifaz, John	MacArthur "genius" award winner who wrote to the parole board on LaGuer's behalf.
Booth, Raymond	One of the first officers at the crime scene. He also responded when the victim's pocketbook was found.
Boyer, Peter J.	Wrote a New Yorker article, "DNA On Trial: The Test is Irrefutable, so Why Doesn't it Always Work?" (1/17/00). Conte's office gave it to Hillman to impugn Blake's reputation.
Brown, Deborah	Emergency room nurse present when Dr. William Siegel examined the victim.
Bruun, Matt	Worcester Telegram & Gazette reporter who covered the hearings leading to the DNA test.

Caisse, Lt. Arthur	Officer who accompanied Carignan on July 16, 1983 to look for more evidence.
Caplette, Michael V.	Court appointed lawyer during LaGuer's first appeal. In May 2001 he sent some documents but withheld others claiming were his "work product."
Carignan, Ronald	Detective who investigated the crime and searched LaGuer's apartment. He based his police report notes he later admitted to destroying. A 25-year veteran of the Leominster Police, he testified against LaGuer.
Carluccio, Kent	The man, according to a secret file, whose house LaGuer was suspected of breaking into in 1980.
Cass, Ronald A.	Dean of the BU Law School and a LaGuer supporter.
Chomsky, Noam	MIT professor who wrote to the parole board on LaGuer's behalf.
Cochran, Raymond S.	Manager of the apartment complex where both LaGuer and the victim lived.
Coleman, Roger	A man executed in Virginia in 1992 after Blake analyzed evidence from the crime he was accused of.
Colson, Sydney	LaGuer's brother-in-law. An erroneous secret file stated he assaulted LaGuer in 1980.
Conte, John J.	The Worcester County district attorney since 1976.
Cordy, Robert	A managing partner at McDermott, Will & Emery, who would go on to the Massachusetts Supreme Judicial Court. Cordy tried to establish a protocol for doing DNA tests of the evidence in LaGuer's case.
Crowley, Dr. Francis	Leominster hospital physician who wrote the victim's discharge report.
Dalzell, James	The foreman of the jury that convicted LaGuer.
Decter, Sheila	Director of the American Jewish Congress who wrote the parole board on LaGuer's behalf.
DiPerri, Raymond	One of the first officers to arrive at the crime scene.

Dreben, Raya S.	One of three justices to hear LaGuer's 1998 appeal based on exclusion of women from the jury in 1984. She also heard LaGuer's 1985 appeal.
Dukakis, Michael S.	Former governor who appointed Conte as district attorney for Worcester County.
Epstein, Leslie	A novelist and the director of the Boston University creative writing program and LaGuer supporter.
Espada, Martin	A Puerto Rican poet and lawyer who wrote to the parole board on LaGuer's behalf.
Estebanez, Natasha	A WGBH producer who, in 1989, made an Emmy Award-nominated documentary on LaGuer called "Sentenced to Life."
Ettenberg, Peter L.	LaGuer's lawyer from July 1983 to January 1984.
Farrell, John Aloysius	Boston Globe reporter who wrote two articles in September 2000 on Roger Coleman who many people believe was wrongfully executed after Blake analyzed evidence from the crime he was accused of. Conte's office sent these articles to Hillman to impugn Blake's reputation.
Finnegan, Peter C.	Investigator who came forward in 1991 with a report that a Leominster bartender twice heard Gomez admit to attacking Plante.
Fisher, Tamara	One of four attorneys at McDermott, Will & Emery to defend LaGuer between 1998 and 2001.
Fletcher, Allen	Publisher of Worcester Magazine who supported LaGuer. He wrote to the parole board on LaGuer's behalf.
Flynn, Sean	A writer for the Boston Phoenix and Boston Magazine who called for LaGuer's release in print and in a letter to the parole board.
Gates Jr., Henry Louis	Harvard professor who wrote to the parole board on LaGuer's behalf.
Goldberg, Judi	One of four attorneys at McDermott, Will & Emery to defend LaGuer between 1998 and 2001.
Gomez, Jose Orlando	A man LaGuer's private investigators identified as a "likelier suspect" in 1983.
Grant, Mark T.	The police chemist who analyzed evidence associated with the crime. He testified at LaGuer's 1989 hearing and he provided a sworn statement on May 8, 2000 authenticating the evidence.

Grossi, Linda	A nurse who attended to the victim and who noted that the victim was being followed for schizophrenia.
Hall, David	Northeastern University provost and LaGuer supporter.
Hammack, Robert A.	A private investigator who worked with Nancy Martinez in 1983. They identified potential alibi witnesses and a “likelier suspect.”
Hatstat, Jane	Leominster Police dispatcher who faxed LaGuer's 38-page file to Leon Zitowitz in Conte's office.
Hautanen, Sandra	Assistant district attorney who handled LaGuer's efforts to get DNA tests and to obtain prosecutors' notes and files.
Hebert, Robert	A 28-year veteran of the Leominster Police was one of the first officers at the crime.
Higgins, Jacki J.	Staff DNA analyst at Cellmark Diagnostics who examined the rape kit.
Hillman, Timothy J.	The judge currently hearing LaGuer's case.
Hipschman, Lawrence	Psychiatrist who examined LaGuer before sentencing in February 1984.
Johnson, Barbara D.	Director of the parole board who wrote to Conte in 1998 to inform him of LaGuer's upcoming parole hearing. Conte’s margin notes show he summoned his three top aides the day he received her letter.
Jurkowitz, Mark	The Boston Globe media reporter who wrote about LaGuer's prowess in promoting his cause.
Kass, Rudolph	One of three justices who heard LaGuer's 1998 appeal based on exclusion of women from the jury in his 1984 trial.
Kelly, Stephen	State police trooper who compiled inventories and interviewed Dr. William Siegel and Mark T. Grant as part of authenticating the evidence in 2000.
King, John	AP reporter who corroborated statements made to John Strahinich by juror William Nowick that racist slurs were uttered by jurors in LaGuer's trial. He went on to be the chief CNN White House correspondent.

Kokocinski, William	State Police trooper who signed for evidence kept in the Leominster Police station from 1984 to 1989. He also obtained blood from the victim in 1987. And in 1991 he interviewed jurors said to have made racist comments during the 1984 trial.
L. J. H.	Initials attached to a sock in a bundle of eight socks that inexplicably appeared with the evidence. The tag, mentioned in a May 2000 inventory, is marked "COMM No 17, 6/21/84 LJH."
LaGuer, Benjamin	Convicted of raping his 59-year-old neighbor in 1983.
LaGuer, Luperto	Benjamin LaGuer's father.
LaPointe, Roland	Officer who accompanied Carignan and LaPrade to execute the search of LaGuer's apartment.
LaPrade Jr., Keith E.	Carignan's partner who helped search LaGuer's apartment. He witnessed that "nothing" was taken.
LeClair, Caroline	Police chemist who testified at LaGuer's 1989 hearing.
Lemire, James R.	Assistant district attorney who prosecuted LaGuer in 1984 and who opposed his bid to have the conviction overturned in 1989.
Lydon, Christopher	Boston journalist who wrote to the parole board on LaGuer's behalf.
Malone, Paul J.	Police chemist, "PJM", who received the hospital specimens and items from the victim's apartment that Carignan delivered on July 20, 1983.
Mandell, Andrew	An attorney, now judge. Ettenberg hired him when LaGuer accused Ettenberg of prompting LaGuer to mix Partridge's saliva with his.
Martin, Lt. Arthur	State police trooper who reported to Carignan that fingerprints found on the telephone, the cord of which had been used to tie the victim's wrists, did not match LaGuer's. LaGuer didn't see Trooper Martin's report until November 2001.
Martin, Steven J.	Juror who told Worcester Telegram & Gazette reporter Matt Bruun in 2002, "we saw an animal," referring to LaGuer's 1984 trial.

Martinez, Nancy (Dickman)	Private investigator who worked with Robert Hammack in 1983. They identified potential alibi witnesses and a likelier suspect.
Mazzarella, Dean	One of the first officers to arrive at the crime scene. He is now mayor of Leominster.
McMahon, Kate	Assistant district attorney who instructed Ptak to turn evidence over to the State Police.
Meadows, Dr. Edmund	A physician at the Leominster Hospital who saw the victim while she was hospitalized. He now lives in New Hampshire.
Mitchell, Oliver	Lawyer LaGuer paid \$8,000 in 1996 to help him access evidence for DNA testing.
Monahan, Timothy E.	A seven-year veteran of the Leominster Police and one of the first officers at the crime scene.
Muhammad, Don	A Nation of Islam minister in the Boston area and steadfast LaGuer supporter. He wrote to the parole board on LaGuer's behalf.
Mulkern, Robert V.	Judge who presided over LaGuer's 1984 trial, the 1985 hearing on Carignan's grand jury testimony, the 1989 hearings on physical evidence, and the 1991 fact finding hearing regarding alleged juror racism.
Nangle, Richard	A reporter for the Fitchburg - Leominster Sentinel and Enterprise who wrote a four-part series in 1986 and was the first reporter to raise serious doubts about LaGuer's conviction. He also wrote a letter in on LaGuer's behalf.
Neufeld, Peter	A lawyer with the Innocence Project who filed an affidavit stating that if sperm existed on only one hair in the rape kit it would constitute "deliberate indifference" not to send it to Blake for testing.
Novak, Joseph F.	Juror William Nowick identified as uttering bigoted slurs during LaGuer's 1984 trial.
Nowick, William	Juror who told Strahinich that bigoted slurs were uttered during LaGuer's 1984 trial.
Ogletree, Charles	A Harvard Law School professor who questioned the fairness of LaGuer's conviction and who wrote a letter on LaGuer's behalf to the parole board.

O'Niel, William Jr.	Judge who heard a pre-trial motion in January 1984 on the admissibility of the victim's psychiatric records. He deferred the decision on whether the records were admissible to the trial judge who never got to rule on that question because LaGuer's lawyer failed to ask him to.
Partridge, David	Prisoner with whose saliva LaGuer mixed his before submitting it for testing. According to LaGuer, Partridge was Ettenberg's client and was known to Ettenberg to have a blood type other than 'O'.
Patrick, Deval L.	Former assistant U.S. attorney general for civil rights and now general counsel to Coca Cola, he wrote the parole board on LaGuer's behalf.
Pellecchia, Michele	Leominster police officer who responded to Wysocki's 1998 inquiry, informing her that evidence she was seeking was sent to Worcester Superior Court nine years earlier.
Pino, Gwen (Boisvert)	Generated the state police inventory of the rape kit before it was sent to Cellmark Diagnostics in Maryland to be divided between them and Forensic Science Associates in California.
Pinsky, Robert	Former United States poet laureate who wrote to the parole board on LaGuer's behalf in 2000.
Plante, Lennice	The 59-year-old victim of the crime for which LaGuer was convicted.
Rondeau, Frances	Potential alibi witness identified by Martinez and Hammack.
Rondeau, Retta	Tina Rondeau sister and a potential alibi witness identified by Martinez and Hammack.
Rondeau, Tina	LaGuer's old girlfriend who was out of town when he went to see her on the night of July 12, 1983.
Ptak, Francis J. Jr.	Leominster police officer who created an inventory of evidence stored in the police station from 1984 to 1989. He contacted Lemire after LaGuer's lawyer found the evidence.
Quick, Harry	Head of the criminal division in the Worcester district attorney's office. He was summoned by Conte the day Conte received notice of LaGuer's 1998 parole board hearing.

Ramos, Aida	LaGuer's sister who was present during a speaker-phone conversation between Terk and Mandell.
Rivers, Eugene	Boston religious leader who wrote to the parole board on LaGuer's behalf.
Sandler, Tim	Boston Phoenix, and later NBC Dateline, reporter. He wrote a letter asking for a reduction in LaGuer's sentence.
Seelye, Tracy F.	Fitchburg Sentinel-Enterprise reporter who interviewed Ettenberg in December 1986.
Siegel, David	One of LaGuer's lawyers from 1999 to the present.
Siegel, Dr. William Craig	Emergency room physician who examined the victim. He also provided a sworn statement in 2000 authenticating the rape kit.
Silber, John	Chancellor of Boston University and former Democratic candidate for governor of Massachusetts who championed LaGuer's cause after visiting him in prison. Silber helped arrange for legal representation and paid much of the costs for DNA testing.
Slowe, Richard	A private investigator and former FBI special agent and prosecutor. LaGuer's team hired him in 1999 to make sure the evidence they found in the Worcester Superior court was handled properly. Slowe submitted an affidavit that the seal on the evidence was broke when he and LaGuer's lawyers found it.
Spina, Francis X.	One of three justices to hear LaGuer's 1998 appeal based on exclusion of women from his jury.
Strahinich, John	Wrote two major articles questioning the fairness of LaGuer's trial. A juror told him of racist comments uttered during deliberations. He encouraged LaGuer to write his story and shorter articles for publication, including in Boston Magazine. He also wrote to the parole board on LaGuer's behalf.
Styron, William	The Pulitzer Prize-winning author wrote to the parole board on LaGuer's behalf in 2000.
Tata, John R.	Officer responding with Booth when the victim's pocketbook was found a month after the attack.

Taylor, John	Writer of the May 1994 Esquire Magazine article about Mulkern's fact-finding hearing. His story included that LaGuer mixed saliva with another prisoner in 1983. Taylor also wrote to the parole board on LaGuer's behalf.
Terk, Robert	Fitchburg lawyer who advised LaGuer during his 1989 hearing. He found the box of evidence in the Leominster Police station which Lemire had stated in court two weeks earlier was missing.
Theroux, Alexander	A novelist and LaGuer supporter.
Tovares, Joseph	Producer of La Plaza, a television news magazine specializing in stories about the Latino community.
Travers, Herbert F.	Superior Court Judge who denied without a hearing LaGuer's 1996 request for DNA testing.
Turcotte, Lynn	Head of the appellate division, Conte summoned her the day he received notice of LaGuer's 1998 parole hearing. She was Wysocki's boss.
Walker, Adrian	Boston Globe columnist who called for DNA testing.
Weiss, Daniel M.	A prison psychiatrist who wrote in 1984 that he did not consider LaGuer to be sexually dangerous.
Weld, William	The former governor of Massachusetts who once belonged to McDermott, Will & Emery, and the law firm that took LaGuer on as a pro bono client.
Williamson, Dianne	Worcester Telegram & Gazette columnist.
Wilson, Randy	A potential alibi witness who was with LaGuer on the night of July 12, 1983.
Wysocki Capplis, Sandra P.	A former assistant district attorney who sent a 1998 letter to the Leominster Police inquiring about the whereabouts of the rape kit. She opposed LaGuer during a telephone hearing with three justices on whether LaGuer's lawyer erred in keeping women off the jury in his 1984 trial. LaGuer didn't see Wysocki's 1998 letter until April 2001.

Zitowitz, Leon	Conte's top aid who requested and received LaGuer's 38-page Leominster Police file in 1998.
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