

For immediate release  
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APPEALS COURT SET TO HEAR LAGUER'S 9TH APPEAL FOR NEW TRIAL  
WEDNESDAY, 18 NOVEMBER, 9:30 AM

The Massachusetts Appeals Court in Boston is set to review the case again on 18 November, at 9:30am. The hearing will be open to the public. It will be in courtroom 4 on the 3rd floor of the John Adams Courthouse; 1 Pemberton Square; Boston, MA 02108. John H. LaChance ([jhalachanceesq@gmail.com](mailto:jhalachanceesq@gmail.com)) will be representing Ben LaGuer. The justices hearing the case will be Associate Justices Cynthia J. Cohen, Andrew R. Grainger and Gabrielle R. Wolohojian.

At the heart of this appeal is whether of the Appeal's Court will remand the case for an evidentiary hearing. The defense had previously been granted a hearing but with less than 36 hours to prepare. Under court rules, 30 days advanced notice of any hearing is required. 30(C)(7). The court is going to look to a number of issues to determine whether LaGuer should be additionally entitled to have a fair day in court.

Ben LaGuer, 52, has spent 33 years in state prison despite a plea bargain offer that would have set him free after just 2 years. LaGuer has served most of entire time at the North Central Correctional Institution at Gardner. The facility is a former state asylum where, hauntingly, the victim was civilly committed, off and on, for years.

This 9th court appeal is necessary because once again, prosecutors concealed valuable evidence. This is a case of mistaken identity accentuated by a hasty police investigation of a convenient suspect. The first of two issues to be entered in this hearing is of how the trial prosecutor argued that the victim's identification must be credible because she saw her assailant's face for eight hours as he vaginally and rectally assaulted her. However, a forensic analysis of her vaginal and rectal swabs produce evidence that contradict her account.

These swabs had neither blood nor sperm. "Since no spermatozoa and no male DNA was recovered from the [victim's] vaginal/rectal swabs, this evidence is not relevant to the genetic information of [the victim's] assailant." (Report Number 1, Forensic Science Associates, 15 August 2000, p.9) The Q-Tip swab used to transfer her pubic hairs yielded no blood or sperm fractions. The absence of blood, where blood should have been found in great volume, had she been assaulted for hours, discredit the idea that LaGuer's identification as the perpetrator was reliable. Since the absence of her blood on these swabs disprove an eight hour assault, prompting Superior Court Judge Isaac Borenstein to say, "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."

After Associated Justice Richard J. Tucker ordered an evidentiary hearing, in September 2011, Assistant District Attorney Sandra L. Hautanen successfully interrupted a defense effort to subpoena 27 witnesses and 118 material exhibits in support of a new trial. The hearing was scheduled for 9 September at 2:00pm. On the previous day Hautanen scheduled another hearing for dismissal due to fraud 10:00am. Her papers asserted that a pretrial letter from the prosecutor to defense council, describing a 2-year plea was falsified - Warranting the dismissal for a motion for a new trial. We believe it was error for Tucker to characterize the letter as part of a "unconscionable scheme" to impair his judicial role. First, Hautanen offered no evidence of falsification. Second, she admitted in April 2015 to parole board officials that a plea was communicate do defense council.

Additionally, the court will consider a second issue. This appeal for a new trial stems from 2007 revelations of new evidence. It is for a judge to determine whether this evidence is newly discovered or previously withheld by prosecutors. In 2007 a nurse revealed facts that put in doubt statements made prior to trial about the victim's mental fitness. The prosecutors had argued that the accuser's history of schizophrenia should not be disclosed to the jury because she was "cured" and "off" antipsychotics for years. Anne K. Dimartino, the nurse, provides contradicting evidence to the prosecution's

assertions. She said the accuser was prescribed antipsychotics on the day of her trial testimony. Among the signs of her fragile mind, she had at times identified other black and Latino men of her assault. Moreover, she had told Dimartino, that President Kennedy was the father of her unborn child. She also spoke about Jose Orlando Gomez, whom she often let stay overnight. At trial she was asked about Gomez, as a foundation for the defense to establish a likelier suspect. Yet she had then denied any knowledge of Gomez. It is worth noting that Jose Orlando Gomez was arrested for rape, then plead guilty to a lesser charge, serving only 58 days in prison.

The jury had numerous questions about the evidence that may have been answered if they knew of her schizophrenia, or of why LaGuer had been discharged early from the military. In November, 1987, William P. Nowick, a deliberating juror, told Associated Press Boston Bureau Chief, John King, the following: "Those two things would have changed an awful lot. How could she identify anyone? And, most of us were veterans. We didn't know why he was let out of the Army and thought it was probably for rape, or for attacking some girl in Germany." (AP, 16 November, 1987) In 1991, State Police Trooper Richard D. McKeon investigated a claim of racism in jury deliberation. He interviewed the jury foreman. He confirmed the use of racial slurs. (Col. Richard D McKeon is currently the superintendent of the Massachusetts State Police.) The victim described her assailant to police as a "very dark skinned" man who was not of Latino heritage. LaGuer is Latino of olive hue. In spite of crediting that she heard his voice for eight hours, she did not discern any peculiarities about his speech. LaGuer has a well-documented stammer since childhood.

In a December 4, 2006 pleading to the Supreme Judicial Court, Attorney James C. Rehnquist said: "the Commonwealth's references to the lower court's findings with respect to the DNA testing merit no attention, as the courts' supposed findings are based not on any review of test documentation, but rather nothing more than the mischaracterization of the testing that the Commonwealth presented in its opposition to Mr. LaGuer's motion for a new trial."

For a period ending in May 2008 all prison telephone calls between LaGuer and his lawyers were monitored until Department of Corrections put an end (Grievance Number 33698) to this violation of attorney/client privilege. No one other than Hautanen had any interest in these wiretaps. She learnt his legal strategy. She argued the DNA, if only to poison appellate judges. In 2007 SJC Judge John M. Greaney probably spoke for others when he asked Rehnquist, "Isn't this some academic exercise, since the DNA evidence is going to sink LaGuer on retrial?"

In March 2007, the Supreme Judicial Court ruled: "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 Court's majority; "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."

"I have very serious questions about the justice of his conviction," said retired Superior Court Judge Isaac Borenstein. "When I look at the evidence, I really believe they have the wrong man."

Despite the passage of time, the search for truth and justice should be as important today as it was 33 years ago.

Attached, please find the latest Appeals Court docket entry and a description of the issues of the case. More information is available at [www.benlaguer.org](http://www.benlaguer.org)

Sincerely,  
The Ben LaGuer Defense Committee