

WORCESTER, ss.

SUPERIOR COURT  
DEPARTMENT OF  
THE TRIAL COURT

COMMONWEALTH

Criminal Action No. 83-103391 to  
83-103394

v.

BENJAMIN LAGUER

Affidavit of Counsel In Support Of  
Defendant's Motion For A New Trial

I, Robert E. Terk, hereby depose and state as follows:

1. I am counsel to defendant Benjamin LaGuer in the above-captioned matter.
2. Attached are true and accurate copies, to the best of my knowledge, of the following documents:

1. Leominster Hospital Record Report of Dr. Edmund C. Meadows of July 13, 1983
2. Leominster Hospital Record Progress Notes of Nurse Linda Gross of July 13, 1983
3. Leominster Hospital Record Report of Emergency Room Physician Dr. William C. Siegel of July 13, 1983
4. Leominster Hospital Record Laboratory Analysis of July 13, 1983
5. Leominster Police Department Report of Patrolman Timothy E, Monahan of July 13, 1983
6. Leominster Police Department Report of Detective Ronald N. Carignan of July 13, 14 and 15, 1983
7. Search Warrant Return to the Leominster District Court, Detective Ronald N. Carignan of July 14, 1983
8. Search Warrant Application to the Leominster District Court, Detective Ronald N. Carignan of July 14, 1983
9. Memorandum and Order Re: Defendant's Motion to Examine Medical Records by O'Niell, J., of January 5, 1985
10. Memorandum and Decision and Order on Defendant's Motion for a New trial by Mulkern, J., June 7, 1989
11. Memorandum and Order on Defendant's Motion for a New Trial, by Hillman, J., September 22, 2004

12. Order for Visual Assessment and Quantitute Analysis of Evidence by Hillman, J., July 24, 2000
13. State Police Post Conviction Evidence Assessment Report by Gwen B. Pino, Lab Supervisor 1, QA/OC, of 14 August 14, 2000
14. State Police Evidence Inventory and Documentation Report by Gwen B. Pino, Supervisor, May 12, 2000
15. Cellmark Diagnostics Visual Assessment and Quantitative Analysis Report by Jacki J. Higgins, Staff DNA analyst, September 5, 2000
16. Affidavit of State Police Supervisor Gwen B. Pino November 6, 2000
17. State Police Interview of Dr. William C. Siegel May 8, 2000
18. State Police Interview of criminalist Mark T. Grant May 8, 2000
19. State Police Crime Laboratory Bench Notes of Criminalist Mark T. Grant
20. State Police Crime Laboratory Report of Criminalist Mark T. Grant November 3, 1983
21. State Police Record of Evidence Submitted form July 20, 1983 by Criminalist Paul J. Malone
22. Leominster Police Department Case Report by Lt. F.J. Ptak Jr., May 17, 1989
23. State Police Crime Laboratory Request for Examination of Physical Evidence by Criminalist Kathryn M. Leclair May 17, 1989
24. Transcript of Criminalist Mark T. Grant's Testimony May 22, 1989
25. Letter from Worcester County Assistant District Attorney Sandra Wysocki to Leominster Police Department July 8, 1998
26. Leominster Police Department Incident Report responsive to Wysocki's Request for Evidence by Michele D, Pellecchia July 10, 1998
27. Affidavit of Richard Slowe of November 1999
28. Affidavit of Edward T. Blake of December 21, 1999
29. Forensic Science Associates Report I, August, 15, 2001
30. Forensic Science Associates Report II, February 4, 2001
31. Forensic Science Associates Report III, March 21, 2002
32. Forensic Case Review by DNA expert Dean A. Wideman March 30. 2006
33. Forensic Case review by DNA expert Dr. Theodore D. Kessis November 1, 2005

34. Affidavit of Trial Attorney Peter L. Ettenberg
35. Affidavit of Benjamin LaGuer
36. Affidavit of Dr William C. Siegel
37. Forensic Case Review of DNA expert Daniel L. Hartl August 21, 2006
38. Letter from State Police Case Manager Gwen B. Pino to State Representative Ellen Story August 27, 2003
39. Press Release from District Attorney's Office 14 January 2000
40. Elizabeth Barry, Television Interview, Greater Boston, Hosted by Emily Rooney, WGBH July 12, 2003
41. Transcript of Annie K. Demartino of April 17, 2008
42. Transcript of Annie K. Demartino of February 13, 2007
43. Telegram & Gazette Interview of Annie K. Demartino published April 7, 2007
44. State Police Supplemental Report by Assistant Chemist Gwen Boisvert of Whole Blood from Complainant February 17, 1988
45. State Police Supplemental Report by Chemist Gwen Boisvert of Whole Blood from Benjamin LaGner for ABO typing October 30, 1987
46. Leominster Police Department Case Report by Lt. F.J. Ptak, Jr., May 11, 1989
47. Whole Transcript of May 22, 1989 Evidentiary Hearing, Mulkern, J.
48. State Police Report from Trooper Stephen E. Kelly to Coramander of State Police Detectives Francis E. Moore May 9, 2000
49. Affidavit of Peter J. Neufeld June 1, 2000
50. Commonwealth's Memorandum In Opposition to Defendant's Motion for a New Trial April 27, 1989 by James R. Lemire, Special Assistant District Attorney, Katherine E. McMahon, Assistant District Attorney
51. Commonwealth's Memorandum In Opposition to the Defendant's Motion to Dismiss by Assistant District Attorney James R. Lemire September 18, 1985
52. Affidavit of Cellmark Diagnostics DNA analyst Jacki J. Higgins of November 6, 2000
53. Hospital Medical Records of Nurse Deborah Brown, Patient Observation Flow Sheet 5:30AM July 13, 1983
54. Letter from attorney Robert J. Cordy to Worcester District Attorney John J. Conte December 27, 1999

55. Affidavit of Fingerprint Expert Richard J. Whelan December 9, 2004
56. Letter from Appeals Court clerk that oral Arguments in absense of women in jury scheduled for December 11. 1998 (dated November 16, 1998)
57. Affidavit of Edward T. Blake April 3, 2001
58. Telegram & Gazette, DNA finding difficult to rebut by Matthew Bruun March 31, 2002
59. Telegram & Gazette, Conte rejects LaGuer claim/DNA expert says he's owed \$7,000 by Matthew Bruun February 15, 2004
60. Transcript of Evidentiary Hearing on Motion to Dismiss Indictments based on Impaired Grand Jury Integrity September 18, 1985
61. Garrett, Brandon L. "Judging Innocence", 108 Colum. L. Rev. 55 (2008).
62. Samuel R. Gross & Barbara O'Brien, "Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases", 5 J. Empirical Legal Stud. 927 (2008).
63. Boston Herald, judge in rape trial set to be victim's ex-lawyer by J.M. Lawrence 6 November 2004
64. Boston Globe, DNA testing faults evidence by David Arnold 15 February 2003
65. Telegram and Gazette DNA profile completed in LaGuer rape case by Matthew Bruun 7 February 2002
66. Letter to Ben LaGuer from Executive Office of Public Safety 12 July 2007
67. Letter to Ben LaGuer from Executive Office of Public Safety 11 July 2007
68. Telegram, Leominster Rape Scene Haunts Officer by Matt Bruun 27 March 2002
69. Telegram, Conte Says DNA Match Proves Guilt by M Bruun 27 March 2002
70. Telegram, DNA Profile Completed in LaGuer Rape Case by M Bruun 7 February 2002
71. Telegram, More Rely on Miracle of DNA by M Bruun 16 July 2000
72. Boston Herald, Judge in Rape Trial Said to be Victim's Exlawyer by JM Lawrence
73. Boston Magazine, Reasonable Doubt by John Strahinich October 1987

74. Boston Globe, DNA Testing Faults Evidence by David Arnold 15 February 2003
75. Laura A. Flashman & Michael F. Green, Review of Cognition and Brain Structure in Schizophrenia: Profiles, Longitudinal Course, and effects of Treatment, 27 Psychiatric Clinics of North America (2004)
76. Letter from Executive Office of Public Safety to Ben LaGuer 12 July 2007
77. Letter from Executive Office of Public Safety to Ben LaGuer 11 July 2007
78. William C. Thompson, et al., How the Probability of a false Positive Affects the value of DNA Evidence, Journal Forensic Science 2003, Vol. 48 No.
79. Telegram, Tests Inconclusive in LaGuer case by Matt Bruun 27 September 2001
80. Report from John A. Grossman and Sandra McCroom, Undersecretaries of Executive Office of Public Safety & Security, to Executive Office of Public Safety & Security Mary Elizabeth Heffernan 12 January 2011
81. Letter from NCCI Records Manager Collette Goguen to Ben LaGuer of 7 February 2011 responding to a Criminal Offender Record Information (CORI) pursuant to 103 DOC 153.
82. Northpointe Institute, Correctional Offender Management Profiling for Alternate Sanctions, Overall Risk Potential, Screener Larry Lombardi, 20 September 2011
83. Dr. Lawrence Hipshman, State Forensic Pathological Evaluation Report of 17 February 1984 ("LaGuer does not fit either a psychological or pathological profile of a person capable of committing this crime.") (Tr 610-611)
84. Dr. Daniel Weiss, State Forensic Psychological Evaluation Report, Not Sexually Dangerous Report of 22 May 1984 ("It seems totally out of character.")
85. Sunday Telegram, New LaGuer Trial Supported/DeMartino Raises Question of ID, by Matt Bruun 8 April 2007.
86. State Police Tpr. Richard D. McKeon and William Kokocinski 6/13/91 interview juror James Dalzell
87. Testimony State Parole Board 22 April 2010. (Audio tape available in attorney's files.);
88. Sunday Sentinel and Enterprise, "DeMartino bids city council a fond farewell; board member serves Fitchburg for twenty years" by Emily Devlin 27 December 2009

89. Robert N. Sikellis, et al., Final Report and Recommendations Regarding Vance's Operational Assessment of the Massachusetts State Police Crime Laboratory System 29 June 2007
90. Richard A. McGeary, et al., Audit Report Number GR-70-06-012 US Department of Justice Office of the Inspector General, Compliance with Standard Governing Combined DNA Index System Activities Massachusetts State Police Crime Laboratory, Sudbury, Massachusetts, 26 September 2006
91. Affidavit of Ben LaGuer filed 8 March, 2001
92. National Research Council, DNA Technology in Forensic Science 146 (1992)
93. Valley Advocate, Tragedy Times Two by Eric Goldscheider 5 April 2007
94. Sunday Telegram, New LaGuer Trial Supported/DeMartino Raises Question of ID, by Matt Bruun 8 April 2007.
95. Abshire, J., & Bornstein, B. H. (2003). Juror Sensitivity to the Cross Race Effect. *Law and Human Behavior*, 27(5), 471-480.
96. See Anastasi, J.S., & Rhodes M.G. (2006). Evidence For An Own Age Bias In Face Recognition, *North American Journal of Psychology*, 8(2), 237-257.
97. Internal Leominster Police Department reports: (4/17/80 Ben LaGuer assaulted by Sidney Colson, 80-3646)
98. Internal Leominster Police Department reports: (10/10/80 LaGuer possible suspect in the break in of Kent Carluccio's home, 80-10688)
99. National Research Council, The Evaluation of Forensic DNA Evidence Report 82 (1996)
100. Commonwealth Opposition to Descendent's Eighth Motion for a New Trial 19 May 2004, p.11.
101. Forensic Analytic letter from Dr. Lawrence Kobilisnky to James C. Rehnquist of Goodwin Procter 28 May 2004
102. Legal Analysis from Georgetown Professor Abbe L. Smith to state Representative Ellen Story 9 June 2005
103. Forensic Analytic Report from Dean A. Wideman to state Representative Ellen Story 30 March 2006
104. Forensic Analytic report from Dr. Theodore D. Kessis to state Representative Ellen Story 1 November 200
105. Forensic Analytic report from Dr. Daniel L Hartl of Harvard University to state representative Ellen Story 21 August 2006
106. Forensic Analytic report from Hans Sherrer of the Justice Institute to state representative Ellen Story 6 September 2006

107. Letter from James C. Rehnquist to DA Joseph Early concerning the concerns regarding the DNA evidence 19 January 2007
108. Letter from James C. Rehnquist to SJC clerk Susan Mellen concerning the DNA evidence 24 January 2007
109. 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
110. Medical Records of Winchendon Health Center, Geriatric Psychiatry Program, 55 Hospital Drive, Winchendon, MA 01475
111. Veteran's Administration Hospital (now known as Veteran's Administration New England Healthcare System, director. at 1400 VFW Parkway, West Roxbury Billing No. Veterans Insurance 000061920641
112. Burbank Hospital Medical Records (now known as HealthAlliance Hospital) located at 275 Nichols Road, Fitchburg, MA 01420. Hospital Records #421004-3
113. Gardner State Hospital, 500 Colony Rd., Gardner 01440
114. Worcester State Hospital, 305 Belmont, Worcester, MA
115. Herbert Lipton Community Mental Health Center located at 10 Pleasant St., Fitchburg, MA. (Dr. James M. Bonner and James L. Kahn.)
116. Leominster Hospital Medical Records (now known as HealthAlliance Hospital) located at 60 Hospital Road, Leominster, MA 01453 Medical Records #190340\*0 25\*91\*47
117. Caldwell Home (formerly Wright Nursing Home under the ownership of Leo Piro, 45 Ryefield, Fitchburg, MA) located at 10 Prospect, Fitchburg, MA
118. Medical Records of Winchendon Health Center, Geriatric Psychiatry Program, 55 Hospital Drive, Winchendon, MA 01475