

The Curious Case of Benjamin LaGuer Civil Rights Abuses and Junk Forensics: A Wrongful Conviction Case Study

“Although best known for clearing the wrongfully convicted, DNA evidence has linked innocent people to crimes. In the lab, it can be contaminated or mislabeled; samples can be switched. In the courtroom, its significance has been overstated by lawyers or misunderstood by jurors.” Los Angeles Times, 1/1/09

Ben LaGuer has been claiming actual innocence for a quarter of a century. He refused a guilty plea that could have freed him twenty-three years ago.¹ The Parole Board has denied him release based on his refusal to admit guilt. In 2007, the Massachusetts Supreme Judicial Court 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.” DNA did not clear LaGuer, a U.S. Army veteran, as it should have, because authorities matched his DNA to samples taken from his apartment – not from the original rape kit.²

This paper seeks to prove, through a trove of clear and convincing evidence, that the results from a March 2002 DNA test are incorrect. In January 2000, LaGuer urged the Court to order a DNA test, in an effort to obtain exculpatory evidence to support his innocence; the implicit assumption, of course, was that each sample tested would be genuine. The forensic request assumed that every sample had originated at the crime scene or directly from the victim’s body. It envisioned that each sample was properly collected, documented, and transferred to the crime lab. But LaGuer’s trust in the DNA test being properly handled, and thus supporting his innocence, was misplaced.

Forensic Science Associates (FSA) incorrectly relied for its conclusion on DNA extracted from clothes that LaGuer was wearing days after the crime occurred, and other samples illegally collected from his apartment. FSA incorrectly deduced that there was a link between LaGuer and a crime that took place elsewhere in his building. The results from this DNA test could, if anything, only settle any dispute over whether LaGuer was present in the apartment his father rented.

Dr. Daniel L. Hart 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.”

The lead investigator testified that three days after the crime, LaGuer was taken into custody donning a jersey.³ The 1983 lab notes indicate that “3 hairs” collected from this jersey were “mounted” on lab slides.⁴ Six years later, in 1989, a trooper collected this jersey from the local police, which was the only “yellow cotton jersey” in police custody.⁵ However in 2000, when the jersey was sent for DNA analysis, it was mislabeled as located “at the feet of the victim.”⁶

¹ Boston Magazine, November 1987.

² Boston Herald, “Patrick Aids LaGuer” by Dave Wedge, 4 January, 2004

³ (Tr. 347)

⁴ 1983 State Police lab notes of Mark T Grant, p.1

⁵ In April 2001, the Leominster Police Department 17 May, 1989 Chain of Custody transfer sheets showing, among other articles, a “yellow cotton jersey”.

⁶ State Police Inventory of 12 May 2000 by Gwen Pino, p.4, item 8

In August 2000, FSA reported, “no spermatozoa and no male DNA were recovered from Plante’s vaginal/rectal swabs.”⁷ In September 2000, a lab found “cellular material” on hairs found on the jersey.⁸ In November, officials recommended that the hairs located on LaGuer’s jersey be tested with Plante’s sterile swabs.⁹ In February 2001, the Court ordered that recommendation be adopted to catastrophic results.¹⁰

Chain of Custody Record Proven Shockingly Deceptive

In 2000, officials found articles collected from LaGuer’s apartment among the trial articles,¹¹ even though in 1983, Assistant District Attorney James R. Lemire told the Court that no articles were removed from his apartment.¹² Although the police report,¹³ search warrant,¹⁴ and police testimony¹⁵ all indicate that no articles were seized from LaGuer’s apartment,¹⁶ officials nonetheless had LaGuer’s underpants, jersey and multiple tube socks.¹⁷

DNA Evidence Contradicts Claim of Rape

“This is very difficult evidence, there’s no question about it,” Dr. Edward T. Blake said.¹⁸ One swab taken from Plante, which was found in the container along with her original pubic hairs, included no blood or even sperm fractions.¹⁹

“There is no indication of semen, sperm, or epithelial cells associated with a male donor on either the vaginal or rectal samples,” says Dr. Theodore Kessis.²⁰ “These findings contradict the alleged facts of the case, namely that the victim was raped repeatedly over a period of many hours.” The absence of her own blood on these swabs is undeniable proof that she had no vaginal or rectal lacerations consistent with

⁷ Report Number 1, Forensic Science Associates, 15 August 2000, p.9

⁸ Report, Cellmark, JJ Higgins of 5 September 2000, pp3, item “N”; Post Conviction Evidence Assessment Report by Gwen B Pino 14 August 2000 pp 2, item 5

⁹ Affidavit from Gwen Boisvert Pino of 6 November 2000, paragraph 15

¹⁰ 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, items a, b, c and n.; According to the 2007 Vance Report, an independent forensic study prepared as a result of a recent State Police Crime Lab scandal, “several DNA analysts suggested that supervisors are not consistent with their interpretations of DNA reports and protocols.”

¹¹ State Police, Evidence Inventory and Documentation Report of 12 May 2000 by Gwen Pino; 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; State Police Crime Lab Report of November 1983, item No 21.

¹² Tr. 261

¹³ Follow Up, Investigative Report of July 14, 1983 by Detective Ronald N. Carignan.

¹⁴ 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.

¹⁵ Tr. 344, 379

¹⁶ One must be leery of making assertions based on reports that lead investigator Ronald N. Carignan typed weeks after LaGuer’s arrest. In September 1985, in a post-conviction hearing, Carignan admitted that he had destroyed his contemporaneous investigative reports. (Tr. 30) By getting rid of his original notes, Carignan was able to conceal his illegal seizures from LaGuer’s apartment. By allowing the state police to rely on his deceptive reports, the agency became an unwitting actor in his scheme. (Testimony of Mark T. Grant of May 22, 1989, “Yes. Detective Carrignan, the investigator, always made it a habit to submit the entire police report so I read the entire police report...”) p.47. How can one trust lab reports that are so reliant on disgraced reports?

¹⁷ In April 2001, ADA Sandra Hautanen provided a stack of reports several inches thick. But even then prosecutors were still keeping secrets. In a June 28 2001 letter from the Office of the State Police Chief Legal Counsel, the defense was denied its “public records request directed to the [crime lab] for various documents pertaining to evidence collected in connection with” this case. (Letter, from Jed M. Nosal to Tamara Fisher of 28 June 2001.) In a December e-mail, instead of disclosing what she admits are “many files and boxes” in her office, ADA Hautanen informed the defense lawyer that she had provided “all of the information we have been able to locate that is responsive to your requests.” (E-mail, from S Hautanen to D Siegel of 3 December 2001.)

¹⁸ T&G, “Tests Inconclusive in LaGuer case” by M Bruun of 27 September 2001

¹⁹ Report Number 1, Forensic Science Associates, 15 August 2000, pp 6

²⁰ Report from T. Kessis to State Rep. Ellen Story of 1 November 2005.

the alleged facts. Faced with real evidence that Plante was not raped, prosecutors began a campaign to delay testing and even accused the defense of tampering with the physical evidence, instantly shifting the focus from all of the emerging exculpatory DNA arguments. (The Court docket, chronicling a trial and seven bids for a new trial, totaled 85 filings in the eighteen years before DNA analysis was requested. By the time DNA testing was complete, two years later, the docket had ballooned to 150 entries.)

Plante's highly probative vaginal swabs only confirmed a "rare yeast" infection so advanced that in 1983 Plante was discharging a "yellowish" pus.²¹ LaGuer underwent a full medical exam at the Worcester County Jail where he remained locked up until his trial. The fact that LaGuer was not treated for a perineal infection exculpates him, because an eight-hour rape would have left an uncircumcised male such as himself particularly contaminated.²² Dean Wideman says, "If Mr. LaGuer in fact had sexual intercourse with Ms. 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."²³ When the state police initially analyzed LaGuer's underpants, in 1983, this article revealed no female yeast cells, blood, vaginal secretions or feces.²⁴

LaGuer's Request for DNA Analysis Repeatedly Denied

In 1989, a judge denied LaGuer's request for DNA testing.²⁵ In 1996, a lawyer was even denied access to the samples.²⁶ In 1999, lawyers found the relevant evidence with the tamper-proof seals broken, and in disarray.²⁷ (These seals were affixed, by court order, across the boxes in May 1989.)²⁸ In December 1999, Robert Cordy requested testing.²⁹ District Attorney John J. Conte assailed Cordy in a press release:³⁰

"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. At worst, evidence may well have been contaminated beyond the point of obtaining valid test results."

Additionally, there is evidence that prosecutors tampered with the collected articles. ADA Sandra Wysocki had requested the rape kit and "also Benjie's underwear" in July 1998.³¹ Conte's press release of 25 April 2000 only added mystery to Wysocki's probe.³²

"During the argument before the Appeals Court regarding the absence of women on the jury, Mr. LaGuer claimed that the Commonwealth had lost the physical evidence in his case. To investigate this claim, the prosecutor checked with the Leominster Police Department, who confirmed that all

²¹ 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.")

²² Leominster Hospital records of Lennice Plante of July 1983.

²³ Analytical forensic report from Wideman to state representative Ellen Story of 30 March 2006.

²⁴ 1983 State Police lab notes of Mark T Grant, p.1

²⁵ Attorney Barry Berke of Cramer, Levin, Naftali & Frankel, LLP, New York

²⁶ Attorney Oliver C Mitchel Jr., formerly of Goldstein & Manello, PC, Boston

²⁷ November 1999 affidavit of Richard Slowe, a former FBI agent hired to supervise the defense's handling of these articles. Currently, Slowe is an assistant district attorney at the Bristol County (MA) District Attorney's office.

²⁸ Transcript of May 22, 1989 court hearing, pp. 130-131.

²⁹ Robert Cordy was a managing partner in the Boston office of McDermott, Will & Emery. A former chief counsel during the William F. Weld Administration, Cordy today is an Associate Justice of the Supreme Judicial Court.

³⁰ District Attorney John J Conte's Press Release of 14 January 2000

³¹ In a July 8, 1998 letter to Lt. Michele D. Pellicchia of the Leominster Police, disclosed in April 2001, Wysocki wrote: "I am particularly interested in items 15 to 18 on the attached Lab report dated November 3, 1983 from the Department of Public Safety." (These items correspond to the rape kit.) The lab report is scribed with "also Benjie's underwear" next to "underpants - suspect."

³² Press Release "Setting the Record Straight" of 25 April 2004

the evidence from the police department had been moved to the Clerk's Office after the 1989 blood-type hearing."

Wysocki's letter to police is dated July 8, 1998. The hearing on the absence of women from the jury was held December 11, 1998,³³ five months after she had these articles.³⁴ At the time she was searching for these critical articles in 1998, there was no court action pending.

Prosecutors Lost or Destroyed Vital Evidence In Their Custody

In February 2002, reacting to allegations of evidence mishandling, 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."³⁵ But, a month earlier, ADA Sandra Hautanen admitted in court that certain files and evidence previously in her office "aren't there anymore."³⁶ The culprit left a knife at the crime scene that mysteriously disappeared.³⁷ He left a tube sock in Plante's apartment that also disappeared. Most troubling, a set of fingerprints taken from Plante's telephone shortly after the crime disappeared as well. Fingerprints taken from her hairdryer disappeared,³⁸ as did a partial fingerprint off a Pepsi can.³⁹ On May 17, 1989, a trooper collected from the Leominster Police Department two (2) pairs of women's panties and one (1) pair of men's underpants.⁴⁰ However, five days later, Lemire presented in Court only two (2) pairs of panties.⁴¹ LaGuer's underpants were discarded to cover up their illegal seizure.⁴² (In March 2007, the SJC held, "There is no question that some evidence has been lost or destroyed.")

According to the Telegram, Conte's "penchant for paranoia and secrecy is just plain weird, and sometimes irresponsible. His office is triple-locked and stacked with television monitors."⁴³

Vital Analytical Data Was Withheld from DNA Experts

In May 2000, a lawyer says, "most of the things that [prosecutors] want to test aren't things that they're established authentication of. I mean presumably the things, the slides, the rape kit . . . were established authentication for but we haven't done that for all the other stuff. You know, maybe they don't

³³ Court of Appeals, Docket No. 98-P-68.

³⁴ In his response of July 10, 1998 Lt. Pellecchia wrote, "ADA Sandi Wysocki requested items 15, 16, 17 and 18 from us on another request for an appeal on the part of the defendant. 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. I notified ADA Wysocki of this information."

³⁵ DA John J Conte's unpublished response to a Boston Globe story entitled "Results could Lead to LaGuer's Exoneration" 15 February 2002

³⁶ Transcript 9 January 2002, pp 14-15

³⁷ Original, Investigative Report by Lt Robert Hebert, 13 July 1983 ("She was very hard to understand and not able to give me much about what took place except that the subject had a knife which I observed on a night table.")

³⁸ A series of photographic exhibits on file with attorney. The hairdryer itself is available for experts to inspect through the clerk of courts. Original, Investigative Report by Timothy Monahan, 13 July 1983 ("I went to the woman's feet and tried to untie the cord from around her feet (the cord from the hair dryer) I was unable to do so I used a knife to cut them.") Also see trial testimony of T Monahan. He testified that he used his own knife to untie her. (Tr 210)

³⁹ Follow Up, Investigative Report by R Cariganan, 15 July 1983, pp3

⁴⁰ A 17 May, 1989 Leominster Police Chain of Custody Report of Articles transfered to State Trooper William Kokocinski listed among other articles, three (3) pairs of underwear. Also see, Leominster Police Department Report by Lt Michele D. Pellecchia.

⁴¹ Transcript of May 22, 1989, court hearing, p. 7. ("These are the two underpants that were listed in the report, in the lab report, as far as any underpants that's in the evidence box.")

⁴² Massachusetts Lawyers Weekly, Gov.'s Council quizzes would be Worcester Superior Court judge by Noah Schaffer 2 October 2006 (Superior court judge candidate told members of the Governor's Council, during his confirmation hearing, that with regard to the LaGuer case, "We would never withhold exculpatory evidence." In response to Councilor Peter Vickery, Lemire said, "We had very limited forensics; its wasn't like 'CSI;'" adding that the case was tried on the basis of identification.; In October 2006, Peter Vickery said, "I was the only member of the Governors Council to vote against the appointments {of Mr. Lemire}, Why? Because the LaGuer case cast a long shadow." www.msn.us/vicker-on-LaGuer) (10/12/06)

⁴³ Telegram & Gazette, January 26, 2006

think that is as important, I don't know."⁴⁴ The risk was admittedly high that LaGuer's genotype derived from extraneous articles. In 2000, the initial crime analyst⁴⁵ and emergency room physician⁴⁶ were shown only photographs of articles (some still in brown paper bags).⁴⁷ This, combined with a terrible record of evidence handling, should have put DNA experts on alert.⁴⁸ Contributing to the problems resulting from the mishandling of the evidence was the behavior of a lab technician, who in May 1989 said, "I might run two or three cases at once in order to save time."⁴⁹

In June 2000, Peter Neufeld said: "The swabs and remaining slides have tested negative for the presence of sperm." Ed Blake later told the Telegram that he would divide other "evidence in half, if that's possible. You do the work blindly, you publish the work blindly—before you do the reference sample—then you do the reference samples. And the guy's either in or he's out."⁵⁰ In August 2000, the State Police said sperm is only the *presumed body fluid*.⁵¹

In September 2001, Blake told the Telegram "We haven't made any progress in being able to provide genetic information about a bad guy," adding that he "would need access to all of the evidence for there to be even a chance of definitive findings in the case."⁵² But combining all samples, in a single grand genome sequencing cycle, risk contamination.⁵³

As a result of a failure to double-check the chain of custody record, as they should have in March 2002, Blake failed to understand that if Plante's swabs and slides were sterile,⁵⁴ *then the only samples that could have yielded male DNA were those illegally collected from LaGuer himself*. "The time to make these [evidence mishandling] claims was on Day One," Blake told the Telegram a week after announcing his results. "If this is some concocted thing, why did we spend all this time and effort on concocted evidence? It's only concocted because Mr. LaGuer didn't like the results of the testing."⁵⁵ "Nobody took that position

⁴⁴ Transcript of Hearing of 15 May 2000.

⁴⁵ Interview with Mark T. Grant of 8 May 2000

⁴⁶ Interview with Dr. William C. Siegel of 8 May 2000

⁴⁷ The National Research Council's The Evaluation of Forensic DNA Evidence Report (1996) emphasizing "the potential of DNA evidence and the relative ease with which it can be mishandled or manipulated by the careless or unscrupulous, the integrity of the chain of custody is of paramount importance." The June 2007 Vance Report describes the State Crime Lab in 1999, when LaGuer initiated this process, as "in need of documentation mechanisms, protocols, review processes, and most elements of a quality management system."

⁴⁸ Testimony of Mark T. Grant 22 May 1989, pg. 68 ("Again, no, 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.")

⁴⁹ May 22, 1989 (Tr. 74); Letter from 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.)

⁵⁰ 7/16/00

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

⁵² 09/27/01

⁵³ Testimony, State Police analyst Grant of 22 May 1989 regarding the underpants seized from LaGuer in July 1983. ("Well, on the white underpants, the visual examination again, then to determine the presence of acid phosphatase, it would be a two stage test with sodium alphanaphthyl phosphate and a piece of filter paper in distilled water and add the chemicals to note the presence or absence of purple reaction." P.79)

⁵⁴ State Police crime lab report of November 1983, Items 18 ("No seminal fluid or sperm cells were detected on the swabs."); State Police crime lab report of November 1983, 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.")

⁵⁵ 3/31/02

prior to the testing,” Blake later told the Telegram.⁵⁶ But, in May 2000, long before the result, prosecutors decried foul play: “[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.”⁵⁷

“Had LaGuer’s lawyer in 2002 brought these facts to Dr. Blake’s and Mr. Keel’s attention as he should have at the conclusion of the blind test, it is hard to imagine that Dr. Blake could have made the highly charged and, in my opinion, uncalled for comments that he made,” says Dr. Lawrence Kobilinsky.⁵⁸ “This is especially true because the miniscule level of DNA the FSA report relies on for its conclusions is of an amount that could be consistent with contamination.”⁵⁹

DNA Analysis Revealed Clear Fraud in 1983 Forensics

Mark T. Grant read that a physician had excluded “self-abuse” because there was sperm in her vagina and throat.⁶⁰ Although this fact was pivotal to the forensic and police investigation, given Plante’s history of paranoid schizophrenia, Grant had a wholly fabricated police report. Dr. William C. Siegal, the physician who attend to Plante after the crime, told reporters in 2002 that the CSI technique to detect sperm was not even available to him in 1983.⁶¹

In 2002, DNA analysis cast further doubt over Grant’s 1983 sperm analysis.⁶² According to Dr. Ed Blake, “Twenty years ago, scientists would not have been able to detect the evidence.”⁶³ LaGuer’s genotype was sequenced with less than 0.03 nanograms of cellular material.⁶⁴ Whereas DNA technology was still decades away, officials could not be certain the sperm analysis was even performed.⁶⁵ One lab could not confirm whether the sperm was even spermatozoa.⁶⁶

DNA Analysis Revealed Errors in Previous Forensic Assumptions

In August 1986, evidence that LaGuer is B-Type⁶⁷ put at odds a report that the wearer of the culprit’s tube sock was O-Type.⁶⁸

⁵⁶ 2/15/04

⁵⁷ Testimony, ADA Joseph J. Reilly, III, 15 May 2000 pg 17,19

⁵⁸ Letter, L. Kobilinsky to J. Rehnquist of 28 May 2004.

⁵⁹ T&G, Conte Rejects LaGuer’s Claim by Matt Bruun, 15 Februray, 2004 (Dr. Tony Frudakis says if the swabs were on the same crime lab counter as LaGuer’s underwear in 1983, then the DNA is a likely false positive.); Dr. Bruce Jackson says, “The DNA testing performed by Dr. Blake was not conducted optimally and his data should be carefully reviewed and reevaluated.” Dr. Edward J. Imwinkelried says, “It will be a mistake to make this case sound as if it turns on technical DNA issues.” “Another disturbing aspect to LaGuer’s conviction is the physical evidence contradicts Plante’s claim that she was sexually assaulted vaginally and anally, much less over an eight hour period of time,” says Hans Sherrer. “Consequently, the evidence supports that LaGuer was convicted of an aggravated rape that never happened.”

⁶⁰Original, Investigative Police Report of Timothy Monahan, 13 July 1983; Transcript of May 22, 1989 court hearing, p.47. (“Yes. Detective Carrignan, the investigator, always made it a habit to submit the entire police report so I read the entire police report...”)

⁶¹ Eric Goldsheider and John Strahinich.

⁶² State Police Crime Lab Report of November 1983, item No 17

⁶³ 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)

⁶⁴ Forensic Science Associates, Report 2, Table 1, Profiler Plus Genes, P4 (February 2001).

⁶⁵ Report, State Police Post Conviction Evidence Assessment, Gwen B. Pino, Lab Supervisor I, QA/QC, 14 August 2000 p.3 (“Please note that the method used to remove the semen in 1983 from the cut pubic hairs is unclear.”)

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

⁶⁷ Lab Report, Ben LaGuer Prison Medical Record, 11 August 1986; Also, see Report, Blood Services, University of MA Medical Center, 25 September 1987

⁶⁸ State Police Crime Lab Report of November 1883, item 14.

In April 1989, Judge Mulkern asked Lemire, “If the assailant had blood type O and Mr. LaGuer has blood type B, don’t you think that presents a problem to me?”⁶⁹ Instead of asking the state police to produce the facts and science, Lemire had them arguing a theory, already in his April 27 court papers, that Plante, an O-Type, “may well have been gagged with the sock,” and bloody napkins bearing B-Type did not exclude LaGuer’s presence in her apartment.⁷⁰ In fact, a prosecutor had whispered this theory to a reporter in November 1987.⁷¹

Lemire cited a vague report that her assailant “stuffed something in her mouth and she kept gagging on her own blood.”⁷² But the State Police found neither blood,⁷³ nor saliva,⁷⁴ on the sock.

Mulkern denied a new trial, ruling that if the defense had put into evidence the Type-O perspiration on the sock and LaGuer’s B-Type blood, to disprove ownership of the sock, the bloody napkins bearing B-Type would still have linked LaGuer to the crime scene.⁷⁵ Prosecutors argued that damaging ruling in future proceedings,⁷⁶ even after DNA matched the blood on those napkins to Plante herself.⁷⁷

Prosecutors Lied About DNA Test

In May 2004, prosecutors falsely argued that LaGuer’s DNA was “found on cotton swabs used to obtain evidence from the victim’s vaginal, rectal, and oral cavities.”⁷⁸ Judge Hillman, rejecting a new trial, ruled that LaGuer’s DNA “matched the male profile found in ‘pooled sperm,’ including ‘sperm fractions’ taken from the victim’s vaginal, rectal, and oral cavities.”⁷⁹ According to FSA, “no spermatozoa and no male DNA were recovered from Plante vaginal/rectal swabs.”⁸⁰

In 1983, LaGuer switched a saliva sample. But if LaGuer had “given officials a legitimate saliva sample, the result would have provided evidence of his innocence rather than a false impression of his guilt.”⁸¹ The culprit’s tube sock, recovered at the scene, betrayed him as an O-Type secretor (a person whose blood type antigens are found in bodily fluids) from “factors in the perspiration deposited on the sock.”⁸² LaGuer, a B-Type, would have been instantly excluded in 1983.

⁶⁹ Boston Globe, “Hearing set to consider new trial in rape case” by James B Ayers, 28 April 1989.

⁷⁰ State Police Crime Lab Report of November 1983, item 4.

⁷¹ Boston Phoenix, “Toward A Reasonable Doubt” by Francis J. Connelly, 27 November, 1987. (In an off-the record- interview, one of his rare, District Attorney John. J. Conte offered an explanation for the disparity in the blood typing – an explanation that could only be made after consulting with state police crime lab officials. The Phoenix told its readers, “There is a possibility that the residue on the athletic sock is in fact not the perpetrator’s perspiration but saliva – Lennice Plante’s saliva. Certainly, if the sock had been used to gag Plante, its residue would match her blood type rather than LaGuer’s.” The state police crime lab was provided the tube sock for retesting on May 1989, after prosecutors had presented their new saliva theory in April 27 court papers.)

⁷² Follow Up, Investigative Report of 14 July 1983 by R Carignan

⁷³ Testimony of State Police Analyst Mark T Grant, 22 May 1989 pp43-44 (“Well...any stains or tears or anything like that. I didn’t notice anything at that time with regard to that analysis.”). A series of photographic exhibits are on file with state and defense lawyers.

⁷⁴ Testimony of State Police Analyst Karolyn M. LeClair, 22 May 1989 pp93. (She tested the tube sock for enzymes “found in high quantities in saliva and other body fluids but particularly saliva. All those results were negative, meaning that we were unable to detect amylase on any area of the sock.”)

⁷⁵ Memorandum and Decision Denying a New Trial by Judge Robert V. Mulkern, 2 June 1989 pp4-5

⁷⁶ In 1991, the SJC took special note of this claim. 410 Mass. 89. In 2007, the SJC did not correct this egregious error.

⁷⁷ Report number 1, Forensic Science Associates, August 2001 (“Lennice Plante can not be eliminated as the source of the female blood from the tissue.”) pp 9

⁷⁸ Commonwealth’s Opposition To D’s Motion For New Trial Of May 2004, pp. 10-11

⁷⁹ Memorandum of Decision and Order on Defendants Motion for New Trial of 22 September 2004, pg 7

⁸⁰ Report Number 1, Forensic Science Associates, 15 August 2000, p.9

⁸¹ Esquire, May, 1994

⁸² State Police Crime Lab Report of November 1983, item No 14.

New District Attorney Struggles to find a Voice

As a candidate running for District Attorney, Joseph D. Early had grave misgivings about the 2002 DNA test. Early told attorney Robert E. Terk of the Worcester County Probate Court, “Nobody in their right mind thinks that DNA is valid.” On his first day in office he announced that LaGuer would remain in prison,⁸³ with a familiar “justice has been served” slogan.⁸⁴ The Telegram made the case for a review.⁸⁵

In February 2007, Early told WGBH that his office was reviewing if evidence was mishandled.⁸⁶ On the same day, though, the Telegram reported that Early was not requesting a DNA audit because the crime lab did none of the DNA testing.⁸⁷ But the lab packaged and shipped all DNA evidence. On 30 January, a day before Early spoke to WGBH, Hautanen wrote to the SJC in response to the defense alerting the justices that prominent experts were challenging the DNA.⁸⁸ “Naturally,” she said, “the defendant is dissatisfied with the DNA results showing that he is the rapist.”

Ben LaGuer’s Physical Examination Exculpates Him In The Assault

While LaGuer was photographed with a scratch on his back,⁸⁹ ADA Lemire never argued with LaGuer’s claim that he’d scratched himself on a picnic table.⁹⁰ Surely, Lemire did not want to draw attention to other police photos. The culprit hit Plante so hard on the right side of her face that facial reconstructive surgery was considered.⁹¹ But LaGuer’s left hand had no abrasions or contusions,⁹² evidence that exculpates him.⁹³ In Harper Lee’s classic novel about racial injustice *To Kill a Mockingbird*, the best argument for innocence are bruises on the right side of the false accuser’s face, injuries from a left-handed man. Jim Crow had a bum left arm since childhood.

Fingerprint Evidence Exonerates LaGuer

⁸³ Telegram & Gazette, New DA Faces Test on LaGuer by Clive McFarlane, 3 January 2007 (“I am concerned about the chain of custody, but I am convinced that it (fingerprint report) did not change the cumulative evidence in the case,” district attorney elect Joe Early said, a day before taking office. “The evidence was compelling and overwhelming.”); Telegram & Gazette, DA Quickly Dismisses LaGuer by Clive McFarlane, 10 January 2007 (“Apparently, Mr Early found ample time among the swearing in, the congratulations and the light introductory talks to get the measure of the Ben LaGuer case. 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.”)

⁸⁴ Boston Herald, New DA nixes LaGuer rape Case Review by Dave Wedge, 11 January 2007 (“He believes justice has been served, spokesman Tim Connolly said of Early. The evidence is very strong and compelling in the case.”); Boston Globe, Patrick Apologizes for Disclosure Missteps by Andrea Estes 6 October 2007 (“Patrick said he concluded ‘justice has been served’ last week and backed off his support of LaGuer.”)

⁸⁵ Telegram & Gazette, “LaGuer Wants DNA Review” by Matthew Bruun, 17 January, 2007

⁸⁶ Joseph D. Early Jr., Interview. Greater Boston, Emily Rooney. PBS. WGBH. 1 February, 2007

⁸⁷ Telegram & Gazette, DA Won’t Seek Audit in LaGuer Rape Case, by Matt Bruun, 1 February, 2007 (“ ‘The conviction in the Benjamin LaGuer case was obtained without DNA testing by the Massachusetts State Police crime laboratory,” spokesman Timothy J. Connolly said.”)

⁸⁸ According to the 2007 Vance Report, a State Police lab supervisor said that forensic analysts were afraid to report incidents of human error, that they were “paralyzed by fear” of retribution.

⁸⁹ Follow Up, Investigation Report by R N Carignan of 15 July, 1983

⁹⁰ Trial Transcript, February 1984, Closing Statement by ADA Lemire

⁹¹ Testimony, Grand Jury, R. N. Carignan, August 2, 1983.

⁹² 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.

⁹³ The Hon. Isaac Borenstein, Interview. Greater Boston, Host Emily Rooney. PBS. WGBH, Boston. 23 March 2009

Prosecutors kept secret for eighteen years that the state police crime lab had lifted four (4) fingerprints off the base of the telephone from which the culprit had pulled its cables to tie Plante's hands. The State Police instantly notified Carignan that these prints were a nonmatch to LaGuer.

In his 1983 report, Carignan refers only to "a print off the telephone."⁹⁴ In November, Peter L. Ettenberg requested the print.⁹⁵ In December, Lemire says the print could not be matched.⁹⁶ Lemire also alluded to the fingerprint report,⁹⁷ suggesting knowledge of the concealed report.

Carignan's July 15 report refers to a second search on July 16.⁹⁸ Since he typed his police reports weeks after the State Police told him about the four (4) exculpatory prints,⁹⁹ both his report and trial testimony of "a small partial"¹⁰⁰ was perjurious. After falsely asserting that the print could not be matched, Carignan and Lemire could not release more prints without creating the impression that they had previously misrepresented real evidence, which would have affected their credibility in other reports -- in particular, a July 14th report that Plante saw her assailant in LaGuer's apartment,¹⁰¹ a statement she denied (and to which we shall return).¹⁰²

After March 2002, LaGuer was left with a claim of withheld fingerprints to bid for a new trial. But Leominster City Mayor Dean J. Mazzarella, a patrolman on the 1983 crime scene, told the Telegram that the missing telephone prints might be his, speaking as if his only purpose was to torch LaGuer's last standing issue.¹⁰³ This left most people, later to include the SJC,¹⁰⁴ focused on the damning DNA. (But two other officers, not Mazzarella, are credited in police reports with handling the telephone.)¹⁰⁵ Mazzarella violated any number of departmental directives by failing to file a police report.

In 2007, the SJC ruled that LaGuer did not suffer from the withheld fingerprints, because "the existence of fingerprints by itself, without other evidence or explanation, creates no reasonable basis for believing a third party suspect would have been revealed." But new evidence shows Plante had afforded a sex offender lodging.¹⁰⁶ Since these fingerprints from the top layer of other prints clearly exposed the culprit, this evidence was highly valuable to the defense.

Plante's Cross Racial Identification was Unreliable and Contradictory

At the crime scene, Plante told police that she did not know her assailant's identity. According to Monahan's report, "I asked her if she knew who [did this to her] and she stated "no." Lt Robert Hebert

⁹⁴ Follow Up, Investigation report by Ronald N. Carignan of July 1983, pp 2

⁹⁵ Letter from P Ettenberg to J Lemire of 29 November 1983

⁹⁶ Affidavit from P Ettenberg of 27 November 2001

⁹⁷ Letter from J. Lemire to P. Ettenberg of 13 December 1983

⁹⁸ Follow Up, Investigation Report by RN Carignan of July 15, 1983 pp 3

⁹⁹ In September 1985 Carignan admitted that he had destroyed his contemporaneous investigative reports. (Tr. 30) By getting rid of his original notes, Carignan was able to conceal his illegal seizures from LaGuer's apartment.

¹⁰⁰ Tr. 398-399, 402

¹⁰¹ Follow Up, Investigation Report by RN Carignan of July 14, 1983 pp2

¹⁰² Tr. 182

¹⁰³ Telegram, Leominster Raped Scene Haunted Officer By M. Bruun 27 March 2002

¹⁰⁴ In oral arguments this January, SJC Justice Cowin remarked: "Well of course the fingerprints would have been negative for Mr. LaGuer, as I would imagine all of the law enforcement officers would have been using that phone once they arrived at the crime scene." (www.suffolk.edu/sjc/2007/sjc_09765.html) But a telephone, whose cord had been ripped from the wall jack and off the base to bind the victim, could not be in service. This case predates the cordless. No officer could have used the phone. Plus, all of the officers were promptly ordered not to touch anything in the apartment.

¹⁰⁵ Original, Investigative Police Report of Timothy Monahan, 13 July, 1983, pp.1.

¹⁰⁶ Valley Advocate, "Tragedy Times Two," by Eric Goldsheider, 5 April, 2007.

reported that “she was unable to give me any description of the assailant.”¹⁰⁷ Her medical chart says that she arrived “by ambulance stating that she was beaten and raped by an unknown assailant.”

Dr. Edmund Meadows, her primary physician, noted “her assailant told her that he would kill her if she told what he looked like but she denies knowing her assailant.”

At the hospital, Elizabeth Barry probably admitted more than that her mother had “a nervous breakdown” fourteen years earlier and “had not been right since.”¹⁰⁸ In 2003 Barry told WGBH that her father beat her mother and locked her in closets whenever he left the house to party with other women.¹⁰⁹ He first put her in a psychiatric ward in the 1950s.¹¹⁰

By the time Carignan left the hospital early Wednesday morning, he only had a “scant description of a black male very short and small in build.”¹¹¹ “I asked her if he was a black man and to this she said, ‘yes he was, he was very dark skinned.’” The building manager later told Carignan about Ben LaGuer, a young Latino who was staying next door. At his office Carignan found an internal file, a two-sentence report dating back to November 1980, three years earlier, indicating in vague terms that LaGuer had been a “possible suspect” in a residential robbery.¹¹² LaGuer instantly became a target. From that moment on Carignan would provide false reports and fabricated testimony in the course of his investigation. Carignan himself never interviewed a single tenant other than LaGuer.¹¹³

On early Thursday morning, Carignan said he received a call from Barry indicating that her mother was ready to make a statement. Carignan afterwards reported that, in a conversation witnessed by Barry, Plante had claimed that she saw her assailant in LaGuer's apartment. Based on this alleged declaration, Carignan obtained a search warrant. Carignan's assertion is highly doubtful not only because he asked his junior officer to remain in the hospital corridor,¹¹⁴ leaving himself unconventionally without a corroborating witness, but also because Plante always vehemently denied fingering LaGuer.¹¹⁵ Barry was then mysteriously scratched off the witness list on the eve of trial.¹¹⁶ In 23 years Barry never claimed that her mother identified LaGuer in the manner Carignan had alleged in that crucial interview, despite multiple appearances before the parole board and media.

While searching LaGuer's apartment on Thursday afternoon, Carignan made no attempt to seize an army picture that was on top of his dresser.¹¹⁷ His disregard of LaGuer's photo, which any investigator would have promptly seized for a variety of reasons and purposes, exposes the fallacy of Carignan's

¹⁰⁷ Tr. 241

¹⁰⁸ Original, Investigation Report by Timothy E. Monahan 13 July 1983, pp 3

¹⁰⁹ Elizabeth Barry, Interview. Greater Boston, Host Emily Rooney. PBS.WGBH, Boston. 12 June 2003

¹¹⁰ In spite of multiple admissions in court papers, the full and true extent of her schizophrenia and treatment is protected by a 1983 order that still holds her psychiatry records impounded.

¹¹¹ Follow Up, Investigative Report of July 13, 1983 by Detective Carignan; (But LaGuer was at least five inches taller than the Plante, muscular and light-olive skinned.)

¹¹² (While walking home from school one night, a city police officer stopped LaGuer along with two of his friends. The officer collected their names and told them that they may be interviewed about a robbery in the neighborhood. LaGuer never heard from the robbery investigators. However, his name was later included in a list of possible suspects and kept in an internal secret file.)

¹¹³ Tr. 368, 369

¹¹⁴ Tr. 350, 351

¹¹⁵ Tr. 182

¹¹⁶ (Lemire had put Barry on his list of prospective witnesses. Trial Witness List from J Lemire to P Ettenberg 17 January 1984; but, when the judge read the list to the jury, Barry was the only witness scratched off. Transcript of Jury Empanelment 24 January 1984, pp4)

¹¹⁷ Follow Up, Investigative Report of July 14, 1983 by Detective Carignan.

account. Today, with the disclosure of the internal file,¹¹⁸ a jury would surely conclude that LaGuer was targeted based on Carignan's withheld file, not statements that Plante always denied.¹¹⁹

According to a Telegram columnist, Plante had "an extremely difficult time on the witness stand. I covered the trial. It was only through delicate handling by [ADA Lemire] that the woman was able to come to court and be heard."¹²⁰ In advance of trial, Lemire had her brought to the courtroom. She was shown exactly in what chair LaGuer would be seated. Carignan agreed that Plante knew that she was going to come in and point to the guy.¹²¹

In his opening, Lemire argued that the culprit had "removed his clothing,"¹²² contrary to Carignan's report of "a totally nude" culprit, initially suggesting that he (in this case, LaGuer) lived within the same building. Lemire essentially discarded Carignan's weaker theory to press that "Mrs. Plante will testify that Benjamin LaGuer entered the apartment next door to her on a number of occasions prior to this date."¹²³ In fact, Plante testified that she never saw her assailant entering LaGuer's apartment.¹²⁴ In his opening Lemire also argued that only since the crime mother and daughter were not on speaking terms.¹²⁵ But Raymond Cochran, the vigilant building manager since October, 1981, testified that he wouldn't know her daughter "if I saw her."¹²⁶ (The Barry family became advocates against Ben LaGuer, and even campaigned for District Attorney John Conte.¹²⁷ They became a huge tool of Kerry Healey's 2006 gubernatorial race.¹²⁸ But, all this political activism cannot erase them abandoning their psychotic mother while she was in serious need of medical care.)¹²⁹ (Barry died of Lou Gehrig's Disease in May, 2007.)

Contributing to this problematic identification was the fact that Plante never got a good look at her assailant. Amber lights hung along Plante's brick building, with the closest light being twenty feet away from her window. This light beamed a ray outward and downward to the backyard, not directly into her studio.¹³⁰ (Tr. 113) Plante testified her shades were half-drawn. In a 2002 Telegram article, Dean Mazzarella admits that her shades were pulled closed.¹³¹ When Plante was first shown the photographic array at the hospital in July 1983, she admittedly was "quite drugged up" and not wearing her reading glasses.¹³² She picked out LaGuer's photo only when Carignan, he testified, asked her to "pick out anybody

¹¹⁸ The defense recognized this internal police file in April 2001, when ADA Sandra Hautenan provided a stack of reports several inches thick. But even then prosecutors were still keeping secrets.

¹¹⁹ Tr. 182. Carignan triggered none of the normal procedures consistent with Plante identifying LaGuer. He did not notify a single department chief; never ordered LaGuer's apartment to be put under surveillance; never instructed roll call commanders to notify their patrolmen to be watchful for LaGuer; never put out an all points bulletin for him.

¹²⁰ Sunday Telegram, Interesting Angles in Rape Appeal by Billing B. Kingsbury 26 May 1991

¹²¹ Tr. 392

¹²² Tr. 22, 23

¹²³ Tr. 25

¹²⁴ Tr. 182

¹²⁵ Tr. 4

¹²⁶ Tr. 27

¹²⁷ Sentinel & Enterprise, District Attorney was relentless in his pursuit of justice, Political endorsement, Letter to the Editor 30 October 2002 by Robert J. Barry ("District Attorney John Conte has worked diligently and was not influenced by the press. He fought every motion on behalf of the commonwealth. Thank God!")

¹²⁸ T&G, Healy Presses LaGuer Attack As Mayor Meets With Patrick, John J. Monahan 11 October 2006. (Lt. Governor Kerry Healey yesterday tried to extend controversy by arranging a press conference with the Barry family.)

¹²⁹ Leominster Hospital records of Lennice Plante of July 1983. (Her vaginal swabs revealed a "rare yeast" infection so advanced that in 1983, Plante was discharging a "yellowish" pus.)

¹³⁰ Moreover, the fact that her windows did not face eastward suggests that, when police arrived shortly after daybreak, her studio was not as bright as others with direct morning sunlight.

¹³¹ Telegram and Gazette, "Leominster Rape Scene Haunted Officer" by M. Bruun, 27 March 2002.

¹³² Tr. 151, 152, 350, 351

she knew."¹³³ Carignan said he did not “recall if there was any other person in the room,”¹³⁴ but a nurse told private investigators that she saw Carignan showing Plante only one photograph of LaGuer. At trial, Plante denied describing her assailant to police as “very dark skinned” because the photograph she was shown in court was not of a “very dark” skinned man.¹³⁵ The culprit covered his face when he lit the bathroom light, suggesting a studio otherwise so dark that at best Plante could have only seen his silhouette. Her vulnerable ID is bolstered by her inability to describe his eyes, nose, mouth or scars.¹³⁶

After the trial, Plante began to tell a story that she was gagged with a white sock. Her story had no basis in reality. Peter Ettenberg first asked her on cross-examination “when” was a sock in her mouth, a question that implicitly assumed a fact nowhere in evidence. But, because she was so suggestable, Plante repeated that falsely implanted idea. (A state police analysis found no evidence of either blood¹³⁷ nor saliva¹³⁸ on the tube sock; providing undeniable proof that refutes the posttrial assertion that LaGuer had gagged Plante with his sock and that she had nearly choked on her own blood.)

At Assumption College, Lemire lectured about the case in 1998, saying “there was not a lot of evidence... He said there were two things that made a difference that he felt won the case; one was the victim’s testimony and two[,] the jury did not like Mr. LaGuer because he was black... Mr. Lemire said he thought the victim was mentally ill...Mr. Lemire said the victim had poor vision, either she could not see close up or far away... Mr. Lemire said that he questioned Mr. LaGuer’s guilt.”¹³⁹

Plante Had a Sex Offender in Her Midst

In a Telegram article, Mazzarella claimed that Plante “could probably tell you how many nasal hairs he had,” based on a widely held assumption that she had spent eight hours in the culprit’s presence.¹⁴⁰ But, Plante gave three very conflicting accounts. She first told police she had been hogtied for a couple of days, then she said it was only fifteen minutes. She finally settled on a man entering her studio at 9:00 pm Tuesday and leaving at 5:00 am the following day.¹⁴¹ LaGuer had a series of alibi witnesses.¹⁴² A number of tenants suggest a less than an eight hour incident. The tenant next door to Plante saw three men standing outside the building at about 1:00 am. The tenant directly underneath Plante’s studio heard “thumping & hollowing” between 1:00 am and 3:00 am.¹⁴³

Robert Hammack, a defense investigator, immediately suspected that the three (3) men standing outside were the Gomez brothers. Hammack identified Jose Orlando Gomez¹⁴⁴ as a likelier suspect. Carignan never investigated Gomez even though his mother had lived in the same apartment complex. In

¹³³ Tr. 151, 152, 350, 351

¹³⁴ Tr. 350, 351

¹³⁵ Tr. 191

¹³⁶ Tr. 372. LaGuer had a Black Panther tattoo on his left hand, and a slit right eyebrow. He spoke with a severe stutter, documented since childhood. Plante was adamant in her testimony that her assailant had a normal voice. (Tr. 173, 174)

¹³⁷ Testimony of State Police Analyst Mark T Grant, 22 May 1989 pp43-44 (“Well...any stains or tears or anything like that. I didn’t notice anything at that time with regard to that analysis.”). A series of photographic exhibits are on file with state and defense lawyers.

¹³⁸ Testimony of State Police Analyst Karolyn M. LeClair, 22 May 1989 pp93. (tested the tube sock for enzymes “found in high quantities in saliva and other body fluids but particularly saliva. All those results were negative, meaning that we were unable to detect amylase on any area of the sock.”)

¹³⁹ Affidavit of Michelle L. Chafitz, 10 April 2001

¹⁴⁰ Telegram and Gazette, “Leominster Rape Scene Haunted Officer” by M. Bruun, 27 March 2002.

¹⁴¹ Original, Investigation Report by Timothy E. Monahan 13 July 1983

¹⁴² In the summer of 1983, Robert Hammack and Nancy Dickman, private investigators of MayDay Systems, found a series of alibi witnesses “whom we believe will be helpful and willing to cooperate in the LaGuer defense.”

¹⁴³ Original, Investigative Report by Lt Robert Hebert, 13 July 1983

¹⁴⁴ DOB 04/22/58, SS# 021-52-3234

1998 Gomez was arrested and charged with rape.¹⁴⁵ A year later he violated a restraining order.¹⁴⁶ His brother, Efrain Agosto, was charged with rape in 1997.¹⁴⁷ He is a registered Sex Offender.

Manager Cochran testified that the Gomez family had officially moved out in December 1982, seven months prior to the date in question.¹⁴⁸ But maintenance man Dennis Benoit asserted that he saw Gomez in June 1983.¹⁴⁹ That testimony links Gomez to the building after his family moved out of the complex. Plante said the man also told her that he was from Fitchburg, the town where the Gomez family had moved earlier. To a Worcester Magazine reporter, juror William P. Nowick said, "He's heard from one law enforcement official who state outright that LaGuer wasn't the man...In fact, this official went on to say that they will capture this person once they find his mother..."¹⁵⁰

Plante's Caretaker Finally Speaks Out

For 25 years, prosecutors denied Plante's history of schizophrenia. To the Telegram, DA John Conte wrote: "As the Massachusetts Supreme Judicial Court noted in its recent opinion, Judge Mulhern was correct in finding that LaGuer's claim concerning the victim's mental stability was at its best, speculative."¹⁵¹

Annie K. DeMartino,¹⁵² a former caretaker, says that Plante was a paranoid schizophrenic. "A lot of her delusions were about President Kennedy," DeMartino recalls, "high powered people were always visiting with her." After the crime, DeMartino adds, Plante "hated anybody dark skinned, she would absolutely get horribly frightened."¹⁵³

On LaGuer's first appeal, in 1985, the Court of Appeals held that the "record indicates that the complainant may have suffered a nervous breakdown some fourteen years prior to the attack upon her and subsequently underwent drug treatment, which ended roughly two to two and a half years prior to the attack...LaGuer contends that the judge's examination [of the medical records in question] should have extended back in time to the alleged breakdown and the treatment immediately following, but he did not make an offer of proof as to why such medical history was not so 'remote in time' as to be irrelevant."¹⁵⁴

If the defense had known the scope and depth of Plante's illness, LaGuer's trial lawyer could have done more to admit this highly damaging evidence.

There are multiple reports from Soviet dissidents, including medical staff, on the use of Haloperidol in the Soviet Union for punitive purposes or simply to break the prisoners' will.¹⁵⁵ ¹⁵⁶ ¹⁵⁷ Notable dissidents that were administered Haloperidol as part of their court ordered treatment were Sergei Kovalev and Leonid Plyushch.¹⁵⁸ The accounts of Plyushch in the West, after he was allowed to leave the Soviet Union in 1976, were instrumental in the triggering Western condemnation of Soviet practices at the World Psychiatric

¹⁴⁵ Superior Court 98-0558-1-2

¹⁴⁶ Leominster 9961CR0442

¹⁴⁷ Fitchburg 9716CR0191

¹⁴⁸ Tr. 59

¹⁴⁹ Tr. 91

¹⁵⁰ 7/12/89

¹⁵¹ 6/3/91

¹⁵² Sentinel & Enterprise, DeMartino Won't Seek Re-Election by Brandon Butler, 28 January 2009; Telegram, 'Tired' Counselor Won't Run Again by Mathew Bruun, 28 January 2009

¹⁵³ Valley Advocate, Tragedy Times Two by Eric Goldsheider 5 April 2007.

¹⁵⁴ 480 N.E. 2d 1062 (1985)

¹⁵⁵ Podrabinek, Aleksandr (1980). Punitive Medicine. Ann Arbor Mich.: Karoma Publishers. pp. 15–20. ISBN 0897200225.

¹⁵⁶ Kosserev I, Crawshaw R (1994). "Medicine and the Gulag". BMJ (Clinical Research Ed.) 309 (6970): 1726–30. PMID 7820004.

¹⁵⁷ de Boer, S. P.; E. J. Driessen, H. L. Verhaar (1982). Biographical Dictionary of Dissidents in the Soviet Union, 1956-1975. The Hague: Martinus Nijhoff Publishers. ISBN 9024725380.

Association's 1977 meeting.¹⁵⁹ The use of Haloperidol in the Soviet Union's psychiatric system was prevalent because it was one of the few psychotropic drugs produced in quantity in the USSR.¹⁶⁰ Due to the notoriety Haloperidol gained in oppressive regimes, Nigel Rodley, a former United Nations investigator on torture, said, 'In the history of oppression, using Haloperidol is kind of like detaining people in Abu Ghraib.'¹⁶¹

DeMartino remembers whenever she "went out in public with her, everybody she seen who was either Spanish or black, she would say, 'that's who did it, that's who did it', and of course it wasn't, because they were just people in the street." *LaGuer was the only dark skinned person in the courtroom.*

Judge Mulkern ordered the defense not to refer to Plante's history of psychosis before the jury¹⁶² because, according to a false assertion by Lemire, she had had no "psychiatric problems" for at least two years prior to the crime. "I don't think it is relevant at this point, how her psychiatric history should be brought forward."¹⁶³

Plante often spoke of her friendship with a Spanish man who lived in the building with his mother. She sent him on errands. When his mother locked him out of the house for drunkenness, Plante let him sleep on her couch. The only Spanish man in that building matching that profile was Jose Gomez.

New evidence that Plante had dealings with Gomez refutes a key point in the prosecutor's closing argument. "This is very important to recall, the set up 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."¹⁶⁴

DeMartino last encountered Plante while visiting another friend at a geriatric facility in Winchendon. In a locked ward, "She was rambling, raving and talking to herself. I went over but she didn't know me, so I just kissed her and said goodbye."

His Great Escape at Dawn

At the scene, Plante told police that her intruder had a knife which was visible on the nightstand.¹⁶⁵ But the police later charged LaGuer with "unarmed robbery"¹⁶⁶ and the physical knife was never brought to court.¹⁶⁷ With the police discarding the knife, destroying a vital burglary tool, Lemire freed himself to argue that LaGuer had stolen Plante's key while in route to his apartment.¹⁶⁸ But the police found her locking assembly "jimmied."¹⁶⁹ In May 1989, her keys were discovered in her own pocketbook. She had previously misplaced her keys.¹⁷⁰ And no intruder with access to keys would have "jimmied" her door.¹⁷¹

¹⁵⁸ Wade N (November 1976). "Sergei Kovalev: Biologist Denied Due Process and Medical Care". *Science* (New York, N.Y.) 194 (4265): 585–587. doi:10.1126/science.194.4265.585. PMID 17818411.

¹⁵⁹ "Censuring the Soviets". *TIME* (CNN). 1977-09-12. <http://www.time.com/time/magazine/article/0,9171,915433,00.html>. Retrieved 2009-06-21.

¹⁶⁰ *The Children of Pavlov*, *TIME*, Jun. 23, 1980

¹⁶¹ *Washington Post*, "Some detainees are drugged for deportation" by Amy Goldstein of 14 May 2008

¹⁶² Tr. 314

¹⁶³ Tr. 4

¹⁶⁴ Tr. 563

¹⁶⁵ Original, Investigative Report by Lt Robert Hebert, 13 July 1983 ("She was very hard to understand and not able to give me much about what took place except that the subject had a knife which I observed on a night table.")

¹⁶⁶ Original, Investigative Report by R Carignan, 15 July 1983 (Charging LaGuer with "unarmed robbery" and other offenses.

¹⁶⁷ The knife does not appear on any list of trial exhibits (Tr. 127, 272).

¹⁶⁸ Tr. 563

¹⁶⁹ Tr. 359

¹⁷⁰ Tr. 64-65

¹⁷¹ Tr. 359, 563

He fled the scene by jumping 10 feet out of Plante's window to her backyard. Carignan dismissed the window theory, falsely testifying that the drop was double the actual 10 feet.¹⁷² But officers had to force their way inside because, "there was a green type lawn chair, folding chair against the door."¹⁷³ Carignan later observed "the interior of the door, by lock assembly there was a lounge chair hanging" and "an apron wrapped around the locking assembly."¹⁷⁴ No one dusted the chair for fingerprints.¹⁷⁵

Since Plante's door was barricaded from the inside, the culprit could have only escaped from her window. LaGuer could not have made that particular escape, because no less than a dozen officers would have seen a colored man running to the front of the building to reenter his apartment next door.

Chief Investigator Lied to Grand Jury

In August 1983 Carignan told a grand jury that LaGuer's apartment was the scene of this crime, even though everyone knew that Plante was assaulted in her own home. He testified that she was found lying in a puddle of blood, yet his report says one that "smelled of urine." With his report in hand, Carignan then read a statement from the victim as her saying quote "all of a sudden the door opened and in came Benjamin LaGuer." But, contrary to his testimony, his report actually reads her to say "all of a sudden this black guy comes into the apartment." Finally, Carignan testified that she could not be present to testify as she was still in the hospital. In fact, she was discharged three days earlier.

At a motion to dismiss indictments, Lemire said, "even absent this information there was certainly sufficient competent evidence presented to justify the indictment." After listening to sixty-five pages of transcript, the judge denied LaGuer a new trial. "Detective Ronald Carignan acknowledged the inconsistencies discussed above, but denied any purposeful attempt to mislead the grand jury."

In Most Recent Court Proceedings on the Case, the SJC Misstates Important Facts

In March 2007 the Supreme Judicial Court summarized the state's strongest arguments in a single paragraph. Contrary to Plante's trial testimony that she did not finger her next door neighbor LaGuer¹⁷⁶ as the man who had raped her, Justice Judith A. Cowin wrote that Plante had "consistently identified" him. "The victim's identification was supported by the fact that, when the police located the defendant in his apartment, he was wearing the same distinctive clothing as described by the victim: jogging shorts, no shirt, and white tube socks with stripes."¹⁷⁷ "In addition," Cowin adds, "despite the fact that the attack occurred in the summer, it is not typical for people to walk outside with no footwear. This strongly suggests that the assailant lived within the same apartment building as the victim."¹⁷⁸ "The victim left her keys in her lock the day of the rape,

¹⁷² Tr. 250

¹⁷³ Tr. 206

¹⁷⁴ Tr. 248

¹⁷⁵ Tr. 406

¹⁷⁶ Tr. 182

¹⁷⁷ The SJC narrative ignores that Carignan was allowed to remain in the courtroom, even though all other witnesses were sequestered at the request of the defense. The investigator was present as Plante denied a claim in his police report that the man was totally nude except for tube socks. Carignan had pressed this claim to suggest that her assailant lived within the same building. However, Lemire began his narrative with an assailant who had "removed his clothes." (Tr. 22, 23) Only after Plante testified that the man was wearing jogging shorts did Carignan claim a memory, which he surely would not have claimed if sequestered, that LaGuer was wearing shorts and socks when he answered his door. But, the idea that LaGuer was wearing a similar outfit was not argued to the jury nor presented as a fact in any of the seven previous appeals for a new trial.

¹⁷⁸ But Plante was never asked if her assailant was wearing footwear. In fact, she was hard-pressed to recall if he was wearing socks. "I don't recall," She said, "he might have had socks." The idea of a man wearing "no footwear" stems from Carignan's discredited claim of a totally nude man, a claim that even Lemire rejected. (Tr. 22, 23)

and they were never located," Cowin says, adding, "The defendant's apartment is the only unit beyond the victim's on that floor, requiring the defendant to walk by the victim's apartment in order to reach his. Thus, the jury could infer that the defendant had opportunity to obtain her keys."¹⁷⁹ "Furthermore," Cowin continues, "when the police first saw the defendant two day after the incident, he had a 'fresh' scratch across his back which was photographed, and the photograph was displayed to the jury. The victim was discovered with bloody fingernails and blood on one hand, and the jury could reasonably infer that the defendant's back was scratched by the victim during the attack. Moreover, the defendant provided differing explanations for his scratch."¹⁸⁰

¹⁷⁹ But Gomez had a better than equal opportunity to be in her hallway. While Plante did report her keys missing, as she often did, they were later located in her own pocketbook. Moreover, the police found evidence of a forcible entry.

¹⁸⁰ The only source for her having "bloody fingernails" is Carignan's false testimony. In fact, she had been bathed when he first met her at the hospital. (Tr. 216) Plante testified, "No, I don't recall scratching him at all." Finally, LaGuer did not provide a "differing explanation" for his scratch. In fact, Lemire never challenged LaGuer's testimony that he had scratched himself on a picnic table. LaGuer testified that he had scratched his back at a picnic table (Tr 508), even as he was present for earlier testimony that he had supposedly told Carrignan that he scratched himself at a local tavern. (Tr 357) While Cowin cited this scratch in the paragraph of the state's strongest evidence, Lemire never even referred to it in his opening or closing to the jury.