

A Reasonable Doubt

Benjamin Laguer was tried, convicted, and put away for life for committing a savage rape. But he has never stopped insisting that the cops and the courts got the wrong man.

BY JOHN STRAHINICH

Everyone gets a lawyer. . . . Everyone gets the best defense possible. Because they just may be telling the truth. Once in a while, someone who is guilty will walk away. But that's the price we pay. Better to err on that side than the other. It is really better to let ten guilty men go free than to convict one innocent man. Because when you go the other way, it slips. When you accept the one innocent man getting convicted, pretty soon it's ten innocent men to get one guilty man. Pretty soon it's a round-up and it gets very sloppy.

—Barry Reed, *The Verdict*

ON FEBRUARY 17, 1984, BENJAMIN LAGUER declared war on—to be honest, he wasn't exactly sure *who* he was declaring war on. For starters, there was the Leominster Police Department, the Worcester County district attorney's office, the Commonwealth of Massachusetts, and his lawyer. The more he thought about it, the longer the list got. But he was having a hard time hearing himself think just now, because of the wild alarms and screeching sirens going off inside his head.

Benji Laguer had awakened in a deeper panic than usual that morning, or at least that was how he remembered it later. This was going to be his last day in the West Boylston House of Correction, his home for

the past seven months, ever since he was arrested and charged with raping and beating a 59-year-old Leominster woman. His next stop, after the judge handed down his sentence later that morning, would be the state's maximum-security prison in Walpole. The Big House, his fellow inmates at the West Boylston lockup called it, just like in the movies. Laguer was surprised by that, because nothing else that had happened since his arrest reminded him of any movie he'd ever seen.

That morning Laguer's head was filled with war stories the other inmates had been feeding him since his conviction, in late January. At Walpole, they said, they don't like rapists, or "skinner," as they called them. At Walpole, they told him, they rape skinner and turn them into women. "You'll be someone's jeannie," one of the inmates said.

It didn't do any good telling them that he wasn't a skinner, that he hadn't raped anyone. Benji Laguer had been bleating his innocence ever since his arrest. This is all a mistake, he kept telling his family, his friends, his lawyer—anyone who would listen to him. They had the wrong man. Sooner or later, they were going to find that out. The other inmates would nod like veteran actors acknowledging a talented beginner. At the West Boylston lockup, they were all innocent.

Even later, when the guard fetched him for the short drive to the Worcester County

courthouse for sentencing, Laguer half expected to be told that it was all a mistake, that he could go home now. Instead, he was cuffed and escorted out to the sheriff's deputy, who ferried him to the courthouse.

Laguer's lawyer, Peter Ettenberg, was more downbeat than he'd been during Laguer's six-day trial, but he was going to take one more shot. He was going to ask the judge, Robert V. Mulkern, to set aside the jury's verdict. Mulkern listened attentively as Ettenberg made his lengthy argument. Then the judge denied the motion.

"I do accept the verdict of the jury," Mulkern said. "I have to. Having done that, then quite clearly this is one of the most vicious sexual assaults on a particularly fragile and vulnerable person that I have ever seen. And I am going to impose a sentence that I hope will protect—that is the purpose, [even though] he doesn't have a background of crime or violence. . . . My function in this instance is the protection of society. On the aggravated rape, life."

Laguer was whisked back to a holding cell in the West Boylston lockup. His clothes and toiletries were already stuffed inside a laundry bag for the trip to Walpole. He didn't have to wait long before the guards fetched him again, trussed him up in shackles and chains, and packed him into the back of the patrol wagon. Inside, it was as cool as a hearse.

Benji Laguer peered through the window of the patrol wagon. A dwarf winter sun brightened the landscape and lighted up the faces inside the cars and trucks that sped by on both sides of the highway.

Walpole's gray outer wall rose like a giant tombstone marking a mass grave. Laguer shuffled out of the wagon, grateful for the leg chains that made him take baby steps through a thick steel door that slid open and revealed a room with a large bulletproof window. The steel door slammed behind him. The sound reminded him of faraway thunder. *They rape skimmers and turn them into women.*

The sheriff's man unfastened the shackles and chains, motioned for Laguer to step through the metal detector, and then disappeared. A prison guard met Laguer on the other side and escorted him through two more thick steel doors that slammed shut behind him. The thunder was moving closer. Laguer was in the prison yard now. He stared across the yard at a complex of chalky white buildings. Men stared back through the bars in the windows. *You'll be someone's jeannie.* Another steel door opened and slammed behind him. And then another. A spooky wind blew a door shut somewhere inside him.

Laguer and his guard escort walked down the cavernous hallway that connected the cellblocks, their heels clicking against the cement floor. Then down a flight of stairs to an admitting room, where another guard awaited him. Laguer

*"Well, son,"
the guard said
to Laguer,
"it seems as
if this will be
your home
forever."*

was fingerprinted, photographed, strip searched, and given his prison ID card and two pairs of prison blues.

"Well, son," the guard said when he was through, "it seems as if this will be your home forever."

Afterward, Benji Laguer sat in his cell, gulping air. The alarms and sirens were screaming louder than ever. Just then an old memory shimmered into view: He was hunkered down over a radio transmitter in an enormous room that had been tricked out to resemble a forward observation post in the midst of a pitched battle. Camouflage draped the walls. Squealing bombs dropped from the sky. Incendiary blasts lit up the night. Screeching sirens sounded the alarm. The colonel handed his radio man a coded message containing the coordinates of the enemy target. Private Benjamin Laguer hunched over the transmitter, ready to call down the artillery fire that would dispatch the bastards to kingdom come, when—

His brain seized, his lips froze, his tongue locked! He hooted and howled and sputtered into the radio. "Ben," the colonel yelled, "give the coordinates. Give the coordinates!" But it was no use, and Laguer knew it. He was a savage stuttrer even in the calmest of moments. The war room had reduced him to a gibbering baboon. El Gago had struck again.

The colonel shut off the sound effects. "Ben," he said, "by the time they get this message, the war will be all over."

Benjamin Laguer couldn't afford another washout now. He was 20 years old, and if he didn't take matters into his own hands it would be another 15 or 20 years before he walked out of this place, assuming he lasted that long. Laguer sat back in his bunk, and in a din of alarms and sirens he silently drew up his articles of war.

NANCY MARTINEZ WAS IN A DICEY POSITION. That much was obvious to her now. Her cousin Aida Ramos had called her on Friday, July 15, 1983. She needed a good lawyer, Aida said. The Leominster police had just picked up her brother Benji and had charged him with raping and beating an elderly white woman who lived next door to Aida's father, Luperto Laguer, in an apartment complex on French Hill. Martinez tossed out a few names, and then suggested that Aida get in touch with a Worcester lawyer named Peter Ettenberg. Martinez, a private investigator with Maday Investigative Services, had done some legwork for Ettenberg and had found him competent and hardworking.

Aida hired Ettenberg; Ettenberg hired Maday; and Martinez's bosses at Maday turned the case over to her. After all, they said, she was the only one in the office who spoke Spanish.

Once Martinez got her hands on the police report, however, she knew she didn't want to have anything to do with the case. This was a

particularly brutal assault. It went beyond rape; it was torture. The victim told the police that she got into her night clothes on Tuesday night, July 12, and was having a cup of tea around 9, just before turning in. Suddenly, a black man—nude except for a pair of white socks—walked into her apartment. He turned off the lights, picked her up out of her chair, threw her onto the floor, and started pummeling her. He told her that he hated her and that he would murder her if she cried out.

Then the man spread her legs so violently that she thought her hips were going to pop out of their sockets. His breath smelled of rot. For the rest of the night he raped her over and over again. She was convinced he was going to murder her when he was through. At some point, he ripped two rings off the fingers of her left hand, shoved something into her mouth, and pulled a white plastic bag over her head. She gagged on her own blood.

Shortly before 5 on Wednesday morning, the man tied her hands with the telephone cord and her feet with the cord of an electric dryer. Then he snatched her pocketbook and left. The woman's shouts alerted the building maintenance man. The police arrived about 10 minutes later and found the woman lying naked in a pool of urine. The man who tortured this woman, Martinez thought, had to be a raving psychopath.

Martinez continued reading the police report. The victim was taken to a local hospital, where she was treated for multiple contusions. At the hospital on Thursday morning, police showed her an array of photos, and she identified Benjamin Laguer as the man who attacked her.

Martinez didn't know Laguer very well. She was almost seven years his senior and lived in a different town, Oxford. They weren't even blood relations. Laguer was Aida's half brother, her father's eldest child from his second marriage. Martinez and Aida were cousins on their mothers' side. Martinez recalled meeting Laguer only two or three times, and all she could remember about him was the violent stutter that had earned him the nickname "El Gago." It meant "the Stutterer."

Laguer hadn't lived in Leominster very long. His father had left his second wife and brought 15-year-old Benji back to the States from Puerto Rico. They moved in with Aida Ramos and her son and three daughters, and she raised Benji as one of her own. Benji, like Aida, had been brought up as a strict Seventh Day Adventist. Aida's home was considerably less grim, and Benji cut loose.

Benji got into the usual kid stuff in high school, Aida told Martinez. He cut classes, smoked in the bathroom, smoked grass, that sort of thing. But he wasn't rowdy, he didn't get into fights and bust things up, she said. He liked the girls, and they seemed to like him back. Despite his stutter, he was a sweet talker and liked to use big words. He was also unnervingly neat. Aida

made him iron his own pants because she could never get the crease sharp enough to suit him. He reminded her of a harried businessman, the way he was always jotting urgent notes and reminders in his appointment book.

At 17, Benji dropped out of high school and joined the army. He was going to take up communications, an odd choice for a stutterer, Aida thought. He washed out of that and ended up in air-conditioning and refrigeration. He got out of the army in late June 1983, about three weeks before his arrest, and was staying at his father's apartment while Luperto was vacationing in Puerto Rico. Aida got him an application and catalog for Fitchburg State College. He wanted to study computers. He seemed more settled down to Aida, more grown up. The army apparently had done him some good. He'd even managed to save about \$2,400 for college. That money was gone now. Aida had drained her own savings account and had hit up her two sisters, Lisa Bromes and Judy Irizarry, as well. The lawyer, Ettenberg, had asked for a \$5,000 retainer.

Nancy Martinez couldn't walk away from the case without creating bad blood between her and her family. But she wasn't going to help put a rapist back out in the street either. How could she? She wanted to be a cop herself, always had. She had an application in with the Oxford police chief. The only reason she had left her job as a campus cop at UMass/Worcester and had come to Maday was to enhance her chances. How could she help put a rapist back on the street? And from the looks of things, Benji Laguer was a rapist. The old woman had fingered him and the cops had picked him up. In Martinez's mind, the cops wouldn't have arrested Laguer unless he did it.

Martinez decided that she had to level with Aida and her sisters. They were professionals: Aida was a counselor at the state prison in Lancaster; Lisa Bromes counseled battered women in Leominster; and Judy Irizarry, a social worker, chased ex-husbands for child-support checks in Clinton. They'd have to understand.

Martinez drove out to see the three sisters. She told them she was going to conduct an objective investigation. Whatever turned up, turned up. To make sure they knew where she stood, she said in a clipped voice, "If he did this, he ought to rot in hell."

Just like Nancy, Aida thought. Cold-blooded. "If Benji is guilty," Aida assured Martinez, "he should be put away."

The first thing Martinez needed to do was talk to Laguer. She drove out to the West Boylston lockup in early August, shortly after the grand jury handed up the indictments.

Benji Laguer was a small, wiry, doe-eyed man who took obvious care in his grooming. He polished his fingernails with Colgate, for instance, to give them a high pearly gloss against his brown skin, and he used a black Magic Marker

(Continued on page 220)

*Laguer had
had a bellyful
of lawyers.
He had to
take matters
into his
own hands.*

(Continued from page 169)

to feather over a bald spot on his eyebrow left by a childhood accident. He had a tattoo of a small black panther striding down his left forearm, a hole in one earlobe left by a diamond stud, and a wide, toothless smile that made him look unintelligent. His manner was precise and delicate, almost feminine, and he seemed harmless enough. But it didn't take a great deal of muscle to terrorize an old woman.

Martinez told Laguer to tell his story. "The first time you lie to me," she warned, "I'm out of this."

IN BRISTOL BLOCK, WALPOLE, THE LONG-time inmates passed among each other like cowed monks. The new arrivals were easy to spot. They tended to walk on their toenails, eyes darting here and there, the war stories they'd heard (*You'll be someone's jeannie!*) working on their nerves.

El Gago barely spoke during his first few weeks in Bristol. That seemed the best way to go for the time being. On his first night in Walpole, a small white man walked up to the door of Laguer's cell and tried to strike up a conversation, friendly like.

"What are you in for?" he asked.

Benji Laguer sized him up in a glance, gambled that he could take him out if he got wild, and mustered his machismo.

"None of your fucking business," Laguer hissed.

The white guy shrugged and walked away.

Laguer was grateful, and mumbled a quiet thank-you that one of the seven-foot, 300-pound black cats hadn't asked him that question.

About two weeks after Laguer arrived, a Spanish inmate told him that a job was opening up in the prison library where he worked. Prison jobs paid \$1.50 a day and were hard to come by, he said. The white guys took care of each other and got the lion's share. Then came the blacks. And then the Spanish guys. Everybody took care of their own.

The head prison librarian, who was also Spanish, wanted to keep the job in the family. Did Laguer know how to read and write English? Sure, Laguer told him. He was a high school graduate. The head librarian sent word back to Laguer. The job was his.

Laguer went to work in the library a short while later. There wasn't a great deal to the job, he discovered. Most of the inmates who wandered in were browsers, killing time or looking for a quick loophole to get them back into court. Only about 15 guys actually used the library. They were the jailhouse lawyers. They spent their days writing and filing a blizzard of motions: To dismiss their indictments, to set aside their convictions, to shorten their sentences—anything to get them the hell out of this place. Some of them worked only on their own cases. Others specialized in suing the

institution: *Now comes the defendant, in the above entitled matter, namely, that the fan in my cell has not worked in a month . . .* Still others would take on another inmate's case—for a fee, of course. The really good ones charged \$1,000 to handle a case. Some guys wouldn't even talk to an inmate until they saw the color of his money. Just like it was on the outside.

Laguer had had a bellyful of lawyers. He had to take matters into his own hands. He had never been much of a reader on the outside. There always seemed to be something better to do with his time. That certainly wasn't the case anymore. Still, the library was daunting. So many books. Where to begin? He had a million questions, and he started asking them.

The head librarian, a skinner who was also doing life, was very reassuring. "Ben,

The law seemed to have less to do with ferreting out truth and meting out justice than it did with winning and losing.

the law isn't so hard to figure out," he said. "All you got to do is know where to find things."

Laguer threw himself into his legal education with a vengeance. Mornings, he would join the drift from the cellblock to the dining hall for breakfast. At 9 he shuffled off to the library and read. At 11:30, it was back to his cell for morning count and then to the dining hall for lunch. After lunch he would return to the library and read some more. And then it was back to the cell for 3 p.m. count. Then dinner, and afterward back to the library until the 10 p.m. lockup. More often than not, he'd wake up in the morning, his head resting among the casebooks, textbooks, and papers strewn on his bunk.

The other jailhouse lawyers, he noticed, would occasionally take an afternoon off and play basketball or whatever. Not Laguer. He read *Cases and Comments on Criminal Procedures; Trial Advocacy; Legal Problem Solving: Analysis, Research and Writing; Lawyer's Manual on Professional Conduct*—anything he could get his hands on. Somewhere inside these books were the words that would open the doors of this crypt.

He read casebook after casebook. Cases in which the police lied. Cases in which defendants who were obviously guilty were set free because the police hadn't read them their rights or hadn't acquired the proper search warrant or something. Cases in which the prosecution withheld evidence that would help the defendant. Cases in which eyewitness testimony convicted defendants with tighter alibis than his own. He'd been confident through most of his

trial that the jury wouldn't, *couldn't* convict him. How could they, when there was no evidence that he was inside the woman's apartment? How could they, when the woman contradicted herself and the police so often? He realized that he'd been kidding himself.

The law seemed to have less to do with ferreting out the truth and meting out justice than it did with simply winning and losing. Each case told the story of a battle fought for the hearts and minds of judge and jury. Each battle took place inside the endless war that society wages in the name of truth, justice, and fair play, and in the pursuit of order and security. The war itself might be just, but the fighting could get ugly and cruel. Tactics and strategies were devised and discarded, depending on whether they worked, not on whether they were right. The professionals who waged the war understood this, and the civilians on the home front suspected as much.

Benji Laguer read the law, and culled from it a new understanding of the way the world worked. In his own mind at least, he wasn't a convicted rapist anymore. He was a casualty of battle, a victim of friendly fire. And now he was a prisoner of war.

NANCY MARTINEZ EYED LAGUER AS HE took short pulls off several cigarettes and told his story.

His sister Lisa had dropped him off after dinner at the Cumberland Farms downtown, sometime around the night of the rape. It was a nice summer night, and Benji said he was going to walk home from there. He changed his mind and dropped in at the Plymouth Café to call up Tina Pouliot, his old high school sweetheart, on the bar pay phone. The line was busy, so he decided to walk up Central Street to Tina's place. Outside her apartment building, he ran into Tina's younger brother, Russell, and a friend. They chatted briefly, and then Laguer walked up to the apartment. Tina's younger sister, Retta, was watching a video movie with her friend Christine Basque. Retta said Tina was out of town, and they shot the breeze for about 20 minutes.

Laguer got back to the Plymouth Café at around 10 p.m., and ran into a guy he knew named Ray—he couldn't remember Ray's last name. They had a few beers together and left the bar at around 12:30 a.m. with a couple of teenagers they knew named Randy Wilson and Wayne Dupuis. Ray drove the kids home first, and then he dropped off Laguer, who turned in at about 1 a.m.

The following Friday morning the police knocked on Laguer's door. They asked him to come down to the station for questioning. Laguer said he'd heard from people in the building about what had happened to the old woman, and he told Martinez that he figured the police wanted to find out if he knew anything. At the station, they told Laguer that the woman said the man who

ries: *Commonwealth v. Stubbs*. If he could show ineffective assistance of counsel, the judge might throw out the sentence and turn the clock back on the 60-day deadline. Laguer conferred with his client.

"We got to claim ineffective assistance of counsel," Laguer said.

His client wasn't catching his drift. Laguer tried again. "Look, you told your lawyer to file this motion, right?" he said.

His client stared hard, but he still didn't get it. "Look," Laguer said, spelling it out, "you told your lawyer to file this motion, and you sent him a couple of letters to do so, right?"

His client's eyes lighted up. "Yeah, yeah, yeah," he said. "Right, right."

Laguer wrote up the motion, and his client filed it. Two months later, the judge threw out his client's sentence. Laguer filed the revise or revoke, and the judge handed down a new sentence, 9 to 12 years with credit for time already served. His client would be eligible for parole in a couple of months. Benjamin Laguer had passed the jailhouse bar. He collected his \$500 fee.

Word traveled fast in Walpole. "What's this, Ben?" some inmates would ask. "You found something?"

"Yep," Laguer would answer. "I found a way to get you into court even if you been here 10 years."

By summer 1984 Laguer's jailhouse practice was thriving. He charged clients on a sliding scale: \$500 for a "Stubbs," with a special discount for the Spanish guys; a carton of cigarettes for a legal consultation and a little research. Laguer's clients, like those of any other lawyer, got exactly what they paid for. This was the first rule of law as Benjamin Laguer had come to understand it.

Laguer also did his share of pro bono work for the indigent inmate population and favors for the prison powerbrokers. In June 1984 he filed his first motion in his own case, for a counsel to handle his appeal. The court appointed Michael Caplette, a Fitchburg lawyer, 10 days later.

Politics seemed the next logical step in Benjamin Laguer's legal career. When prison elections rolled around in July, he announced his candidacy for president of the Spanish Inmate Committee, which represented the prison's 120 or so Hispanic inmates. It was mostly a prestige position, but it did confer some power and a freer run of the place. Laguer ran on a platform of better food and better job opportunities for his Latino brothers. He urged his clients to campaign on his behalf, and promised to do some pro bono work for certain opinion makers in return for their endorsements. On election day Benji Laguer was swept into office by a landslide.

Laguer's run of luck, however, appeared to come to an abrupt end in early 1985. His intelligence network informed him that the prison honchos were going to transfer him to Norfolk state prison. Walpole was re-

served for only the hardest cases. Laguer had proved himself a model citizen in Bristol Block, and was now in danger of losing the perks and privileges his reputation had earned him.

Laguer saw one chance to turn this setback to his advantage. As long as they were intent on transferring him, he might as well go to a place of his own choosing. He had to keep his wits about him, though. He had to argue as though he were presenting a case to a judge. The decision rested with the three members of the classification board. Laguer had helped them by serving as an interpreter for newly arrived Hispanic inmates. One by one, he invited the officials to the library for coffee. One by one, he explained to them how he was trying to get his case reopened and needed to be closer to Leominster and Worcester. More to the point, Benjamin Laguer was not a troublemaker, and therefore was not likely to make them regret any decision they made on his behalf. In February 1985 the board agreed to send him to the North Central Correctional Institution, a medium-security prison. He'd argued his first case and won.

After a year in Walpole, Benji Laguer was going to Gardner. El Gago was less than 20 miles from Worcester and only 10 miles from home.

THEY'D GONE AROUND THE TABLE once and each man had had his say. Bill Nowick kept count in his head. Eight jurors appeared to be leaning toward acquittal and four toward convicting Benji Laguer. Nowick wasn't surprised. The week-long trial in late January 1984 had been exasperating so far.

On the second day of the trial, after the victim took the witness stand and told her story, half the jury was ready to put Laguer away. One of the jurors, a retired machinist with a hearing problem, was actually convinced of Laguer's guilt by the time they broke for lunch the first morning of the trial, shortly after the jury was impaneled. To Bill Nowick, these jurors gave a new meaning to the phrase "blind justice."

In Nowick's mind, the woman seemed shaky on the stand. Her eyesight was obviously bad, and the apartment had been dark except for a light in the back of the building. She also contradicted herself and the police a number of times. She'd told the police that the assailant shoved her head into a white plastic bag. But the bag the police found in her apartment was dark green. She also told the police that the assailant was totally nude when he came into her apartment. On the stand she said that he was wearing a pair of jogging shorts. Detective Ronald Carignan testified that Laguer had deep scratch marks on his back that appeared to be a day or two old. But the woman didn't remember scratching her assailant: She was too frightened to do something like that, she said.

When the woman was presented with the

array of nine photos used in the identification and asked to describe them, she identified seven of the men as white. The trouble was, none of the nine were white.

When the Leominster police took the stand, they almost blew the prosecution's case. The prosecutor, James Lemire, argued that Laguer raped and beat this poor woman for eight hours. Yet somehow the young man managed to leave no fingerprints in her apartment. The police had produced no fingerprints, no blood samples, and no semen test to link Laguer to the woman.

In his cross-examination, Laguer's lawyer, Peter Ettenberg, made Detective Carignan look like an errant schoolboy who hadn't done his homework. "Did you dust for fingerprints around the windows . . . in her apartment?" Ettenberg asked Carignan.

"I dusted many things in that apartment," the detective answered. "I may have. I don't recall."

"The man was in there eight hours, and you didn't find one print to match Benji Laguer's?"

"No," Carignan admitted.

"Did you . . . dust the security doors, anything like that?"

"No, I did not."

"The door handle?"

"No, I did not."

"Now, you were investigating a brutal rape, weren't you?"

"That's correct."

"In the course of your own investigation," Ettenberg asked Carignan, "how many people did you talk to in that apartment building . . . ? Other than Mr. Laguer?"

"Mr. Benoit," the detective said, referring to the maintenance man.

"Who else?"

"Mr. Laguer."

"That's it?"

"Correct."

At lunch that day, Nowick and James Dalzell, the foreman, were of the same mind. "How the hell can you spend that much time in a room and not leave any prints—or something—behind?"

Nowick and Dalzell spoke the same language. They were both professional men in their midfifties: Nowick was a retired Worcester banker; Dalzell, an expeditor for a Worcester electrical-supply company. They'd done business by phone for many years, but had never met face-to-face until happenstance put them into the same jury pool at the beginning of January. They'd made a habit of lunching together in the court cafeteria since then.

The other jurors were tradesmen and laborers, and all but two of them were up in years. Like Nowick and Dalzell, they were white. Nowick regarded most of them as louts, eager recruits in the war on crime, itching to put criminals away. He'd sat with one of them on an earlier case. During that trial, Nowick had seen him make a noose with his tie and dangle it at the defendant.

Ettenberg's turn came, and he blundered

raped her looked like him, and they wanted to take his photo. Laguer said he offered to go down to the hospital to clear things up, but the cops said that wasn't necessary, a picture would do. They took several shots before they got the one they wanted, one that was dark enough, he remembered them saying. Then the cops drove over to the hospital. When they returned, they booked him.

When he finished, Martinez asked him a few questions. She wanted to know if there was anything in his background that could be used against him. Laguer stared a long moment. There was one thing. The army had given him an early discharge for selling hashish to an undercover intelligence officer in Germany. He said he'd told the police all about it the day of his arrest. He wasn't a dealer, he insisted. He'd thought he was just helping out a sergeant he knew by selling his own stash—about two or three grams, he said. The army had handed him a summary court-martial, dispatched him to a correctional base in Kansas for six months, and given him a general discharge, with *honorable conditions*, he stressed. He could apply for an honorable discharge in two years, he said, as long as he stayed out of trouble.

Anything else? Martinez wanted to know.

No, Laguer said.

Laguer told her that he would do anything—take a polygraph test, a blood test, a sperm test—anything to prove he was innocent. He said he'd made the same offer to the police when they arrested him. This was all a big mistake. Martinez said she would stay in touch.

Martinez set out to corroborate Laguer's alibi, this being his first and strongest line of defense. It proved more difficult than she'd expected. The Plymouth Café, she discovered, had a reputation as a hangout for several local drug merchants. The local and state police had made a number of arrests there.

The owner and the bartender said they knew Benji Laguer, but they didn't want to get involved with the cops. Martinez tracked down Ray, who she learned was a suspected drug dealer. Ray corroborated all of the details of the night, except for the exact date, but he thought it was best not to get involved either. Martinez found another Plymouth regular who remembered seeing Laguer in the bar one night that week. But since he dealt drugs, he begged off too. The two teenagers who'd hitched a ride with Ray and Laguer were vague on the details. Martinez suspected their memory lapse had something to do with their night at the Plymouth Café too.

Russell Pouliot remembered seeing Laguer that week, but was unsure exactly which night it was. In the end, Retta Pouliot and Christine Basque were the only alibi witnesses whose testimony would hold up in court. In the face of the victim's eyewitness

identification, the two girls wouldn't count for much. Leaks were hissing from Benji Laguer's alibi.

Martinez turned next to the police investigation. Ronald Carignan, the detective in charge of the investigation, visited the victim in the hospital shortly after she was attacked. Carignan reported that the victim identified her assailant as a very dark-skinned black man. Then Carignan returned to the apartment building and asked the manager if he had any black tenants. The manager said no, but there were several Spanish people living in the complex, including a family next door to the victim—the Laguers. They were described at some length in the police report.

The next morning, the victim's daughter phoned Carignan and said her mother was ready to talk. The daughter told the victim that she was going to sit in her mother's apartment and offer herself as bait, unless her mother cooperated with the police. The woman now told Carignan that she'd seen her assailant several times before, going into and out of the apartment next door. She said her assailant told her he was 30 years old and from Fitchburg. She still insisted he was very dark-skinned and appeared to be black. Carignan got a search warrant for the Laguer apartment, but found nothing except for several striped athletic socks similar to a tube sock found in the victim's apartment. None of Laguer's socks, however, matched the tube sock that had been taken as evidence. The following morning, they picked up Laguer.

Martinez noticed that the Leominster cops hadn't worn out much shoe leather working the case. They hadn't talked to any other tenants. They hadn't even staked out the Laguer place after the woman first identified him. They'd waited a whole day before arresting him. Martinez found this odd, considering the fact that Laguer was a prime suspect in a violent crime and therefore presumably dangerous.

Martinez started nosing around. She talked to a friend who worked at the hospital. The friend said one of the hospital matrons was in the victim's room when the police came in on Friday. The matron said they showed the victim only one picture. Martinez asked if the matron would be willing to talk to her. Her friend got back to her later, and said that the matron didn't want to get involved. She might get into trouble.

That was no help. Martinez talked to some tenants and a few people she knew in town. They told her about a young Hispanic man who used to live in the apartment building with his mother. The man, they said, had a history of sexual misconduct and was once confined in Worcester State Hospital. The man's mother, they said, still lived in the building. Nobody knew where he was living. The Leominster cops apparently hadn't come across the man during their investigation. Shoddy police work offended Martinez.

She examined the police reports again, and wondered now about the victim's mental and physical state when she identified Laguer's photograph. According to the police report, her right eye was swollen shut. She was probably heavily medicated as well. Martinez also found out that she wore glasses. What's more, the woman's daughter told the police in the hospital that her mother was an outpatient at a local mental health clinic, that she had suffered a nervous breakdown 14 years before, and that she "has not been right since."

At Martinez's suggestion, Ettenberg requested the victim's medical records. Under the caption "Previous Medical History," he noted: "Schizophrenia according to daughter. Patient in varying degrees of alertness and attentiveness. Severe emotional distress."

One last thing bothered Martinez. The victim said her assailant was talking throughout her ordeal. If that was so, and the assailant was Laguer, then how come she never mentioned his stutter?

Nancy Martinez filed her last report in late fall 1983. Despite her efforts, she didn't like Laguer's chances in front of a jury. She never did make it to court. Shortly before Laguer went to trial in January 1984, Martinez went to work for the Oxford police department. It was the job she had always wanted. Later, she went to work for the Worcester County rape-crisis center. But she never changed her opinion that the Leominster cops had arrested the wrong man.

AFTER TWO MONTHS OF STUDYING, Benji Laguer was ready to try his hand at writing up a motion. He decided to do a "revise or revoke." It was a standard motion to shorten a sentence, one he would file after he had exhausted all his appeals in state court. His first drafts were shrill, and gushed with rhetoric and emotion. *This is all a big mistake.* He needed distance, objectivity. He needed practice.

Laguer got his chance shortly afterward. An inmate who was doing a 10-to-15-year stretch for an armed robbery in Dorchester approached him in the library. The inmate had done less than six years and wasn't due to come up for parole for another year. "Ben, I want to get into court," the inmate said. "I can't do all this time. I'll give you \$500. Get me into court."

The only way Laguer knew to reduce a sentence was to file a revise or revoke. But there was a hitch in this case: You had to file within 60 days of your last appeal in state court. The inmate was long past the deadline. Laguer pored through the casebooks. He was certain he would find someone who had encountered this problem before and had solved it. *The law isn't so hard. You just have to know where to find things.*

Finally he found what he was looking for, on page 96 of 446 *Northeastern, Second Se-*

badly by putting Miguel Gonzalez, a Plymouth Café regular, on the stand as Laguer's lone alibi witness. That was the consensus of the jury later. Lemire had rendered Gonzalez worthless during the cross-examination.

"Now," Lemire asked, "was that the only time you ever saw this man [Laguer] in that bar?"

"Yes, sir," Gonzalez said.

"And you didn't mark anything on the calendar that it was July 12, did you, sir?"

"No, sir."

"You're not sure it was July 12, are you, sir?"

"Am I sure it was July 12?"

"Yes."

"I just remember it was on Tuesday," Gonzalez said.

"You're there seven days a week?"

"Yes, sir."

"So, it could have been July 5, the week before July 12," Lemire pressed. "If it's a Tuesday, it could have been that night?"

"I pretty doubt that," Gonzalez said.

"Why do you doubt that, sir?"

"Why, because I usually have my certain days I go in there, and days I don't go in there, working days."

Gonzalez had been a disaster for the defense.

In the end, Nowick felt, the trial had come down to a question of style. The victim had won the sympathy vote, but the police had come across as obvious incompetents. Benji Laguer projected a clean-cut earnestness and seemed to come from a good family. But he smiled too much and seemed too confident. Ettenberg had presented an effective defense, especially on cross-examination. But he seemed too much the sharpie, and he inflamed the conservative jury members when he greeted Laguer with a black-power handshake each morning. As for Judge Mulkern, Nowick got the distinct impression that he thought Laguer was guilty.

The judge turned the case over to the jury at 3:30 Friday afternoon, the fifth day of the trial. It had taken the jurors about an hour and a half to go all the way around the room. Nowick thought he and Dalzell and the others could work on two of the jurors and swing them over to an acquittal without a lot of fuss. The two others—the machinist and the older gentleman in the polyester suit—would be tougher nuts, Nowick gathered from the way they'd talked during the trial. But they would crack too. They would just need more time, an hour or two. It all came down to the phrase, "beyond a reasonable doubt." The prosecution just hadn't come up with enough of the Perry Mason stuff to put the kid away.

At 5 p.m. the judge called the jury back into court and said it was best if they adjourn and take the case up again on Monday morning. The 12 men went home to their families for the weekend.

When the jury convened again that Mon-

day, the vote had turned against Laguer. It was suddenly 10-0 to convict, with only Nowick and Dalzell left to vote. Nowick was never able to explain the abrupt change of heart. There was so much they didn't know about the case. Lemire, for instance, had managed to work in the fact that Laguer had received an early discharge from the army, but the jury never learned why. What kind of trouble had he got into? Had he raped another white woman? What if they were putting another criminal back in the streets, a vicious rapist at that? What if he went out and raped another woman next month? The jurors couldn't say that Benji Laguer was innocent beyond a reasonable doubt.

In the end, Nowick figured that the jurors decided that putting an innocent man in prison was a lesser evil than letting a

"He's a young kid, what the hell," Nowick recalled one of the jurors saying. "He'll be out in a couple of years."

guilty man go free. At least that was Nowick's reasoning when he changed his vote. Dalzell held out for a short while but eventually bent to the will of the majority.

"He's a young kid, what the hell," Nowick recalled one of the jurors saying. "He'll be out in a couple of years."

Nowick and Dalzell never went out to lunch together after that. Nowick got the impression that Dalzell felt he had let him down. The 12 jurors sat around for a couple of days, but that was it. There were no more trials after Benji Laguer's. One of the judges, Nowick recalled, thanked the jury pool when their duty was up. The judge told them that they'd set a Worcester court record for the most criminal cases—and the most guilty verdicts—in a single month.

Bill Nowick thought about Benji Laguer a lot after the trial. "A reasonable doubt." The phrase kept coming back to him.

Nowick wished the jury had thought about the case some more. There were so many ifs. If they'd stayed at it just one hour longer that Friday afternoon; if they'd been 12 dedicated people who really wanted to delve into the case; if Ettenberg had kept that damn fool alibi witness off the stand; if Benji Laguer had a white face—Nowick was sure they never would have convicted him.

About two years later, Nowick was reading the *Worcester Telegram*, when his eyes fell upon a story about a rape in Leominster.

"Oh my God," he gasped.

He caught hold of himself. The rape wasn't really similar to the one in the La-

guer case. "Why did I say that?" he wondered.

But of course, he knew the answer to that. He was certain that he and the other jurors had put away the wrong man.

GARDNER TURNED OUT TO BE MORE OF a curse than a blessing. At Gardner, Benji Laguer turned in his prison blues for regular civilian clothes. His taste in clothes now ran to bow ties, red suspenders, penny loafers, and Izod sweaters. He was a man of the law now, and wanted to look the part.

But Gardner was unsettling. At Gardner he could take walks in the woods and see what he was missing. At Walpole the future had extended only to the next heartbeat. At Gardner the future stretched uncertainly past the barbed-wire fence and all the way out to the horizon.

At Gardner, Laguer encountered an old client from Walpole—a Cuban refugee doing two life terms with no chance for parole for shooting two men during a crap game. For six cartons of cigarettes, Laguer had looked over about 1,000 pages of transcripts from the Cuban's trial, and had suggested his lawyer argue that the Cuban hadn't been Mirandized in Spanish. At Gardner the happy Cuban said that his lawyer had done as Laguer had suggested and had gotten him a new trial, but before it got to court the lawyer pleaded down to two 18-to-20-year stretches, concurrent. The Cuban would be eligible for parole in 12 years, 3 years before Laguer.

At Gardner, for the first time since his incarceration, Laguer regretted turning down the plea arrangement his lawyer Ettenberg had worked out with the district attorney. Twenty years in Concord, a minimum-security prison, didn't sound so bad now. He'd have been eligible for parole in two years. Counting his time in West Boylston, he could have walked out of prison in July 1985.

As it was, that summer found Laguer busy preparing for his second hearing before Judge Mulkern. In March, a month after his arrival at Gardner, he'd argued three separate motions in front of Mulkern: his revise or revoke; a request for \$500 to take affidavits from five alibi witnesses; and an early release from prison, pending an appeal for a new trial, on the grounds that he hadn't had the opportunity to question the victim about her mental history.

Laguer had lost two and won one. He got the money. With it, he hired a constable to take affidavits from Retta Pouliot, Russell Pouliot, Christine Basque, Randy Wilson, and Wayne Dupuis. The Pouliots had worked on Wilson and Dupuis for more than a year, and had finally convinced them that underage drinking was a trifle compared to a life sentence for aggravated rape. Benji Laguer had patched the leaks in his alibi. All he needed now was a new trial so he could use it.