

## The Eyes of Benjamin LaGuer

As Governor Deval Patrick hurls his campaign to election day I remain in prison.

While many in the media and legal circles knew about my case for decades, the first statewide was a narrative Republican gubernatorial candidate Kerry Healey had salvaged from the ruins of the Democratic primary bid of Tom Reilly's campaign. In 2006, Patrick's bid for governor nearly ended before it began when reporters discovered letters to the State Parole Board that he had written on my behalf. They also discovered his \$5,000 donation meant to help underwrite a DNA test whose result remains in dispute. According to spyware installed on [www.BenLaGuer.org](http://www.BenLaGuer.org) website, Reilly's campaign IP address was on the Patrick page with Dave Wedge of the Boston Herald's IP. The following day, Wedge reported Patrick's correspondence. (I was not surprised to see Reilly endorse the Republican candidate, Charlie Baker, for Governor.) Healey's campaign only distilled the narrative -- a political brew of race, class, and gender with a twist of interracial rape for better combustion.

We all know how that storyline ends for most of the players.

This story though begins far and decades away from a historic political campaign; it begins in July 1983 in the plastics factory town of Leominster. I was arrested two weeks after being discharged from the US Army and charged with raping and assaulting a white woman for eight hours. There were no reports of physical or biological evidence. The victim was a paranoid schizophrenic with a history of domestic abuse. I had an alibi. I had no lacerations on my knuckles consistent with her heavily beaten face. I had a scratch on my back so minor that the prosecutor did not argue it at trial. The two year deal to plead guilty revealed the flimsiness of the case. Worcester attorney Peter L. Ettenberg, my trial lawyer, stated in a recent 2010 affidavit, "I conveyed this offer to Mr. LaGuer. Mr. LaGuer was unwilling to plead guilty, contending that he was innocent of the crimes charged."

A jury of twelve white men deliberated for less than 3 hours. The judge imposed a life sentence with parole eligibility after July 1998. The State Parole Board recently denied me parole for the fourth time for my refusal to confess.

The worst is not how the judge who presided over a possible retrial was formerly a lawyer to the victim's family. It is not the hassle of again having to complain that prosecutors withheld evidence they were obligated to reveal in 1983. (These include psychotropic drugs and real evidence that this accuser had accused other colored men, in broad daylight, of the rape for which I stood trial.) What is worse is how Governor Patrick, despite briefings and appeals for him to convene a panel of independent forensic experts to resolve a bitter DNA dispute despite proof of malfeasance, has simply watched me burn.

The first sunset in prison had me writing a letter. Over the decades I have written more than 300,000 such letters. I am self-taught in the law but hardly a jailhouse lawyer. I learned to read and write, earning a BA (magna cum laude) from Boston University. In time, a number of individuals eagerly helped me to find documents that nobody in the government discovered. People lent their hearts, hands, ears and eyes to this crime solving enterprise.

In 2006, people saw uncommon integrity when I turned away an offer of \$100,000 in exchange for my letters from Deval Patrick from the campaign of Kerry Healey. This took place in one of MCI Shirley Supermax conference rooms over pizza and soda. The pitch was hard. I was asked, "What has a Democrat ever done to help you, Benji? Democrat Deval Patrick has already said that he is not helping you. Who has ever lifted a finger to help? Were you not represented by former governor Bill Weld's law firm? Did Weld's Chief of Staff and a current SJC Justice not personally write and speak with DA Conte to get you a DNA test? Did this not end up costing that firm a million dollars in billable hours? What Democrat has ever brought you pizza and orange soda in prison?"

It was in the summer of 1989, before the murder trial of O.J. Simpson when DNA became a household word, when I first requested DNA testing.

In 2001 it was revealed that the local police knew six months prior to the trial four fingerprints from the scene matched a mysterious person. We argued and lost seven retrial petitions based on reports that prosecutors withheld evidence. Prominent individuals began to add their names in support of a new trial. There were magazine and newspaper features, websites, academic journals, film documentaries and a number of editorials favoring a retrial. People simply became fatigued of hearing complaints of withheld facts. But prosecutors withheld a myriad of details then put the onus on the defense to show its relevancy and why we could not have obtained such reports earlier. We were barred, by rules of evidence, from arguing any issues that had been previously accessible. In 2004, with an ex-lawyer to the victim's family presiding over the case, the retrial petition was denied without a hearing.

A Globe editorial in June 2010 suggested that just as possible as innocence may be the fact that "having spent decades portraying himself as wrongly convicted, he fears losing face if his story changed." The truth is that I would have a new face if supporters saw me fall to my knees in a plea for forgiveness. My better friends prefer me a free man, even if not publicly redeemed, than watch me die in prison in this battle.

After the DNA test I was described in the media as wicked, sadistic and self promoting. As one not easily beguiled, not even by publicity hype, I simply kept facing and dealing with the world. I worked for the machine and its gears to stop hurting me. When in silence, I wish I could fake contrition and be a free man. I ask myself though where could I feel free with that stench? From how many bones and ancestral spirits would I have to hide myself?

Prominent forensic experts from Harvard and John Jay College have documented examples of evidence mishandling and human errors with the DNA test. The DNA profile is controversial. Instead of matching a profile to DNA from the victim's body, a DNA profile was created by merging nano-particles from samples that had been previously mixed up with underclothes illegally collected from my apartment. Prosecutors withheld this key information not only from the defense, but the State Police crime lab.

In January 2007, a State Police lawyer told the Boston Herald on the day Governor Patrick was inaugurated that they would review the DNA if prosecutors asked them. In July, after the prosecutors had publicly refused, Patrick ordered a review despite campaign pledge not to interfere. But Patrick was in no strong position against a State Police already on the defensive and prosecutors who had sunk decades of labor and motions and public reputations in this case.

The State Police crime lab's DNA Unit erupted in scandal. State and Federal auditors cited the Unit with enough errors for the chief to resign and the Unit's supervisor to be fired. I postponed a parole hearing for two years while the review was underway. The forensic review is still not complete.

The Worcester District Attorney and Parole Board want me to confess so police and prosecutors, who have faced public claims of incompetence and worse, can breathe a sigh of relief. A confession is a trophy, a vindication, erasing all injustices done in the name of justice.

In late 2007, lawyers began to review forensic reports that carried enormous consequences. The gene analyzer detected no male DNA on the rape kit swabs, nor female DNA from blood to suggest coitus. The absence of female blood on the vaginal swabs, where blood should be detected in a vicious sexual assault of eight hours, clearly raises questions about any rape claims. While the woman was no doubt beaten and probably robbed, this is surely not why I have spent my whole life in prison.

The first real evidence for a rape is a quote in a police officer's report. The quote from the emergency room physician is that she had semen in her vagina and throat. Today the physician refutes that he even had the forensics in 1983 to detect semen. Did a simple case of assault and robbery escalate because a police officer embellished his report? The woman's personal physician reported no blood, abrasions or lacerations in her anus, despite her specific claim that she was anally raped for 8 hours.

A motion for a new trial will be unveiled this winter.

Today, every news story includes a line that supporters left me in droves after the DNA results. The truth is, a few in the periphery did, but the diminished prospect of us sharing credit and fame was more a factor than a test few understood beyond its headlines. Afterwards, many reporters left the story orphaned. Its fate was up to

editors who never credit my claim of innocence or any part of the underlying facts, and worse none could probably articulate a reason why. The same media that created an aura of actual innocence is responsible now for a sentiment of the lone wolf. Despite the continued support of Dr. John Silber, Leslie Epstein, John Archer, William Styron, Don Muhammad, Elie Wiesel and Noam Chomsky. Even those who felt they had to distance themselves kept suspicious minds (most notable Governor Patrick whose request that the DNA result be reviewed has been ignored).

All this said, I did not take this case public to count friends on Facebook. "You are dying in prison. Your case is one of these we make careers with," a prison official recently told me. What frightens me is how clear and lucid what he said rang true, always did since eons, but I was the last one to admit it out loud. I did so to expose a verdict that is false and unethical and which has so far kept to its pledge to pilfer my life. At 47, I have diabetes, high blood pressure and liver lesions that are staging for hepatocellular carcinoma. I have given this fight all I have.

It is a drowning feeling to stand trial for raping a white woman before a jury of twelve white men, with a white judge, prosecutor and defense lawyer, is nothing a black man can stand above. I was scared and dazed for months awaiting a trial. I could only faintly hear what was being said as witness after witness testified. Most of the jurors never set an eye on me. When I testified I answered the questions just as I remembered the events of the past summer.

In prison I gained strength from Willie McGee and Emmett Till. The shame I carried, the public branding of being a convicted rapist coagulated in my eyes, lungs and voice. It took me a long time to figure out what happened. I was in prison because white men in this country still suffer from sexual phobias. Prison is full of people for whom bitterness and anger feel and taste as sweet as fine chocolate. Many find a way of settling me down with a blessing of inner peace and an unwavering faith; I am master of every moment and each beat of my fighting heart.

In a few days either Deval Patrick or Charles Baker will be elected governor. The governor should ensure that the State Police and District Attorney discharge their legal obligations. A panel of independent experts should be convened in a Truth Commission model. If the Democracy cannot ensure that a prosecution be free from false evidence, then what is sacred? Is the victim's family not owed the truth? Is a US Army veteran not owed a basic right not to be kept in prison on inaccurate forensics that can easily be ordered reviewed? This was a case used as a political weapon to swing an electorate in a historic gubernatorial race. Is the Democracy not owed the truth?

Ben LaGuer is a writer at the Gardner State Penitentiary in Gardner, MA. He is a graduate *magna cum laude* from Boston University. His writing has appeared in *Boston* magazine, *Boston Poet*, *Worcester* magazine, *Columbia Review* and several anthologies. In 1998 he won a Pen Award for his memoir, *A Man Who Loves His Mother Loves Women*.