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# Opinion

## Election '06 aftermath: LaGuer issue still alive

**Susan Wadia-Ells**



Benjamin LaGuer, a black man convicted of an interracial rape in 1984, and the accused person cited in Kerry Healey's ill-fated parking garage advertisement last fall,

seems closer to receiving a new trial, now that state police have asked the FBI to help them uncover extensive mishandling by the state crime lab of DNA samples and results.

According to recent newspaper articles, the FBI has uncovered systemwide deficiencies in how lab staff mishandled DNA test samples and results since 2001. The administration of Gov. Deval Patrick has begun procedures to secure an independent management consultant to evaluate all operations at the lab.

Meanwhile, the state Supreme Judicial Court heard arguments on a motion for a new trial based on an exculpatory fingerprint report suppressed at the time of trial. Questions about a 2002 DNA test which seemed to link LaGuer to the crime also came up at the hearing.

In 1999, LaGuer and his attorneys, including Robert Cordy (now a justice of the Supreme Judicial Court), believed that a DNA test, although new to criminal proceedings, could clear LaGuer's name. LaGuer and his lawyers trusted the Worcester County District Attorney's Office and the state crime lab to submit valid DNA samples taken from the crime scene, along with LaGuer's own DNA for an independent comparison.

LaGuer and his supporters were shocked in 2002 when the DNA lab

analysis, conducted as part of a blind test by LaGuer's chosen expert in California and based on samples sent to him by the Massachusetts State Police crime lab, turned out positive. The test linked LaGuer with the crime scene.

During the lengthy wait for his DNA test results, LaGuer received equally shocking news: A police report showed that Leominster detectives had illegally and secretly taken a pair of LaGuer's dirty underpants from his apartment a day after the 1983 rape incident; the previously hidden police records indicated that the underwear was kept with evidence from the crime scene.

With this knowledge and the mishandling of other crime scene evidence, several nationally recognized DNA experts believe that the DNA samples, labeled as being from the 1983 crime scene, could easily have become contaminated with DNA from LaGuer's stolen underpants, which did not come from the crime scene — hence framing LaGuer with his DNA.

On Jan. 4 of this year, Associate Justice John M. Greaney, oblivious of the stolen underwear or of the FBI's investigation of the state crime lab, sounded openly cynical as he questioned LaGuer's chief defense attorney, James C. Rehnquist (son of the late U.S. Supreme Court chief justice) as Rehnquist argued for a new trial for his client.

"Are we just having an academic discussion today? Because at a trial, that DNA evidence would sink him," Greaney declared.

Now, just a few weeks later, with news that the FBI has been investigating the extent of the state lab's DNA debacle, Greaney should be having second thoughts about the sanctity of DNA tests, as well as the sanctity of the state crime lab. The Supreme Judicial Court is expected to issue a ruling

on LaGuer's request for a retrial sometime in the next few months.

At three different hearings since 1998, the Parole Board has offered LaGuer his freedom, with one condition: He must admit to having committed an eight-hour rape of a 59-year-old former mental patient July 12 to 13, 1983. Three times now, LaGuer has refused to admit any connection with the crime. And so, today, he remains incarcerated at the Souza-Baranowski prison in Shirley.

At his inauguration last month, Patrick reminded us that government is only as good as our individual aspirations. It is through continued civic engagement, he said, that we can make sure that our government protects each person's civil rights and offers justice to each of us, no matter what our gender, sexual preference or skin color is.

LaGuer is a model of such engagement. He continues to choose truth over freedom, trying to force the Massachusetts judicial system to get it right.

In this same spirit, we must each now face the unspeakable possibility that the Leominster police, the Worcester County DA's office and possibly even the Massachusetts State Police lab have caused the 23-year incarceration of an innocent man.

Last week, after hearing that a number of the Supreme Judicial Court justices seemed cynical when asked to consider his request for a new trial, LaGuer showed his typical spunk, commenting, "I'm going to be optimistic till the day that I die, that I will one day get a fair trial." Go, Ben, go.

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