

MASSACHUSETTS
LAWYERS WEEKLY

www.masslawyersweekly.com

Volume 37
Issue No. 45
\$8.00 per copy
June 29, 2009



The Big Picture

Corporate law, in-house lawyers and the chatter among the state's largest law firms

C'est LaGuer

The latest chapter in Benjamin LaGuer's bid to clear his name and overturn his 25-year-old rape conviction took an unexpected turn three months ago when his well-publicized cause received a jolt of hope from recently retired Superior Court Judge Isaac Borenstein.

Borenstein, who now practices at the Boston law firm of Rudolph Friedmann, became the latest high-profile figure to join the fight to exonerate LaGuer, who is serving a life sentence for raping and sodomizing a 59-year-old neighbor.

Borenstein's representation of LaGuer means that the former judge, who left the bench in 2008, has joined the likes of Gov. Deval L. Patrick, Nobel laureate Elie Wiesel and former Boston University President John Silber, who all have lent their support to the exoneration effort at one time or another.

Known in part for having overturned the convictions of Violet and Cheryl Amirault in the Fells Acre Day Care child rape case when he was a judge, Borenstein says he and co-counsel Elizabeth A. Billowitz have serious questions about the fairness of LaGuer's trial and a post-verdict DNA test that did not exculpate him.

While attorney Borenstein would not say whether his first legal move in the case would take the form of a motion for a new trial or a bid for release of his client by the Parole Board, some in the LaGuer camp alluded in March to an imminent move in the case with the ex-judge now on board.

But if the passage of time is any indicator, it does not appear that much progress has been made in overturning the conviction, which was most recently affirmed by the Supreme Judicial Court in 2007.

"The demand by some people in the public or others to see something happen immediately is not anything I can answer for them," says Borenstein. "It takes the time it takes to get to the next step, but I would not have dedicated myself to the case and to his defense if I had not spent many months going after things meticulously and believing in it."

Since taking on the defense, Borenstein, who joined the 25-lawyer litigation firm last June, says he has consulted with DNA experts and begun developing potential sources of newly discovered evidence. Those two components, he says, could become the basis of a motion for a new trial.

"I want to make clear that we are still in the process of developing the appropriate legal strategy, but I do not feel free to comment on how it is developing," he says. "One of the hardest things for people to understand — and no one understands this better and has a harder time with it than Ben LaGuer — is how long the goal of justice takes. Unfortunately, there is no timeline."