

THE BOSTON GLOBE

Sentenced to a life of argument

Lifer still fighting to clear his name

By David Arnold
GLOBE STAFF

GARDNER — It was the kind of slushy December morning in 1986 that could not decide whether to rain or sleet over the North Central Correctional Institute. But no bother, quipped Benjamin LaGuer, who was serving a life sentence for the brutal rape of an elderly, mentally ill woman, a crime he says he did not commit.

"Inside, it's another *b-b-beautiful* day at the penitentiary!" he gushed with a stammer that echoed off the cinder-block walls. He was dressed in denim blues accented with rainbow suspenders and a bow tie, accoutrements he thought would help him better connect with the "white" world.

LaGuer laid out all the reasons he believed he had been wrongly accused of the 1983 crime, first by the Leominster police, then by the victim, then by a jury that had taken just three hours to convict him.

"I'm going to win this thing. Justice will prevail, even if I am the last one standing, because I'm not going down for something I did not do," the young man stressed. And to any journalist willing to hear him out, he promised never to lie.

That was more than half a lifetime ago for LaGuer, now 38 and perhaps closer to freedom than at any time during his incarceration. Over the years, LaGuer has made himself a cause celebre for members of the news media and public figures who accepted his collect telephone calls from prison. It now appears that

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elusive "gotcha" evidence so many LaGuer supporters had sought in order to prove his innocence may be on the horizon.

LaGuer is perhaps a week away from learning DNA test results that he says will prove the sperm found on the victim was not his. There's a major caveat, however. So much time has passed since he and supporters first sought the DNA tests that the semen samples may be too few to be conclusive.

Three bloody tissues were found at the scene, all with Type B blood, according to 1983 crime laboratory tests. LaGuer is Type B; the victim was Type O. But DNA tests a year ago revealed that two of the tissues had the victim's blood on them — not LaGuer's, as the prosecution has long insisted. The third tissue is being tested now.

And last week, LaGuer's pro-bono legal team filed a motion in Worcester Superior Court for access to all crime evidence. They said they recently discovered that police had failed to inform both the court and LaGuer's attorney at the time of his 1984 trial that four sets of someone else's prints were found on an object used to bind the victim.

If the DNA doesn't spring him, the possibility of a new trial may do it as prosecutors are forced to explain, for starters, the alleged fingerprint discrepancy.

Several telephone calls seeking comment from Worcester County District Attorney John J. Conte for this story were not returned. But he recently told the Globe that the allegations against his office are "substantially incorrect. We will answer them in court at the appropriate time."

Sitting in the prison's visitor room on that gray December morning 16 years ago, LaGuer vowed to go the distance. His optimism left little room for the emotional gyrations that would mark the coming years: how, despite the embrace of the media, he would remain in his prison cell; how, as some would eventually speculate, the media attention may have worked against him in his bid for parole.

'I've never, ever done anything in my life to make God this mad.'

BENJAMIN LAGUER,
in a letter, 1988

But a bulging file folder of LaGuer's letters to the Globe and notes from telephone conversations with him over the years captures more of the nuances.

"He's a brilliant con artist. And he's got all the time in the world to perfect his scam," a relative of the victim once told the Globe.

Notes on yellowing paper — and in one case, toilet paper — suggest that if LaGuer is a fake, his act from the onset has included journeys into loneliness, humor, fatigue, and despair that would be the envy of scriptwriters. For LaGuer, the ultimate journey has been keeping resolve alive.

Jan. 20, 1987: "I am in love. With hope. Believe me, she's prettier than anything else in here."

In 1983, Laguer, a native of Puerto Rico, was just out of the Army, no stranger to local bars, and flip-flopping from one menial job to another when a mentally ill neighbor in a Leominster apartment complex was raped. When police came knocking, looking for what the victim said had been a black assailant, LaGuer complied with their every request, offering fingerprints and even posing for a Polaroid photograph that the heavily medicated victim eventually pointed at to identify her rapist.

April 10, 1987: "So many people here don't have family support. I think of my mother and father. I cry. I try not to lose composure. The most painful are the nights when I try to escape through my window on a dream. Oye, I'm learning diplomacy. 'Have a smashing day,' I tell people. Then I go back to my room and smash the wall."

LaGuer had no criminal record. There was no evidence directly linking him to the crime. He said he had trusted the system, certain that justice would prevail. But judges saw it differently, denying motions for new trials based on such allegations as juror racism and ineffective counsel.

March 3, 1988: "Hello out there. I find myself today inside the insides of this hell — in solitary confinement for taking a law book to my room. I am an animal at the

zoo, locked and exhibited. The proudest day of my life is approaching, a day I go from life behind bars to a free man. I have been waiting almost five years now. I've never, ever done anything in my life to make God this mad."

His motion for a new trial in 1988 — based on a juror's allegedly racist remarks — was denied.

LaGuer often prided himself on becoming a jailhouse lawyer by studying law in the prison library, although he has not earned a degree in law. His passion for the subject, however, was not without consequences. The following missive arrived on five small panels of prison toilet paper.

April 18, 1988: "Now it's 41 days for borrowing another law book. You're going to solitary, they told me. What luck. I thought they would be sending me to Jamaica. I'm hoping for real paper. Soon."

As news stories go, the "Benji" LaGuer tale seemed a winner.

"Here is a guy who put [Boston University Chancellor] John Silber and [MIT linguist] Noam Chomsky in the same boat, two people who normally can't agree that one plus one makes two," said Christopher Lydon, a television and radio journalist.

But just as easy as the LaGuer story was to embrace, it was just as simple to move on, when the smoking gun — the foolproof alibi witness, the confession of another — failed to surface. Closing down the loquacious Ben LaGuer was as easy as refusing a collect call or declining to answer a letter.

July 15, 1993: "It's been a decade. My life is disappearing. I send everyone, even Conte, cards of greeting. I am not going to be consumed by hate. I work so hard on my case, and still I'm in jail. Sometimes I look at the television cord and consider killing myself. It would be so easy. But then they would win. I'm so exhausted."

In the time LaGuer has been in prison — he is now in MCI-Norfolk — he has lost most of his stammer, earned a bachelor's degree, magna cum laude, from Boston University, and has become friendly with such notables as author William Styron and Harvard professor Henry Louis Gates Jr.

Luperto LaGuer, the father whose name LaGuer most wants to clear, has died. So has the victim and the chief police investigator on the case.

April 6, 1996: "So what's going on around me right now? Two guys are kissing in one corner, another guy is zoned out in another corner saying a mantra. This place could open the doors, sell tickets, and balance the state budget."

Some of the 20 lawyers who have worked, at one point or another, for LaGuer have moved on — and up. Nancy Gertner now sits on the US District Court, and Robert Cordy sits on the Supreme Judicial Court. Abbe Smith is a tenured professor at Georgetown Law School, and Charles Ogletree holds the same distinction at Harvard Law School. The attorney leading LaGuer's team at the moment is David Siegel, a professor at New England School of Law.

May 22, 1998: "You read the law books and everything sounds to the ear so good, yet in practical terms it's all theory. The prosecutor is not arguing justice because he's not rated on justice, but on how many cases he wins."

Over the years, more than 120 legal professionals have weighed in on the guilt or innocence of Benjamin LaGuer. Twice he has been denied parole, partly because he has not confessed to the crime.

He also violated prison rules by telephoning the victim once, before her death in 1999. He said he told her he was Father Thomas from the Worcester archdiocese, and that he forgave her for putting Benjamin LaGuer in prison.

Jan. 17, 2002: "When I first got to prison, I would bad mouth people. 'Get outta my way (jerk)' I would tell people on the way to the law library. I have mellowed so much. Suffering polishes the soul. I just have this obsession: I don't want to die in prison. But the truth has got to be told for my family, for me, for my father."