

*Notes from a Dissident:
Speaking about Politics, Race Justice, and
New Evidence that May Afford Him a New Trial*

by Benjamin LaGuer

Twenty-three years in prison and still searching for justice is literally the story of my life. I have never stopped making the case for my innocence since a jury found me guilty in 1984 of sexually assaulting a neighbor. There was a rush to judgment, and I became the victim of mistaken identity, and support for my case may finally be at hand in many forms.

According to Annie Demartino, a Fitchburg City Councilwoman and former caretaker of the accuser, the accuser was a paranoid schizophrenic that had been deinstitutionalized. For months before trial and for years afterwards, Demartino says that whenever she took the accuser out in public the accuser would say "That's who did it, that's who did it" whenever she saw anyone "who was either Spanish or black." This is even more relevant because I was the only colored person in the courtroom in 1984 when the accuser was asked to point out her assailant.

Currently, my lawyers are weighing a ninth motion for a new trial based on evidence that the 1984 trial prosecutor James R. Lamire, currently a superior court judge, lied about the mental history of my accuser. He also lied about a search warrant that was issued for my apartment and about the fruits of that search.

In the winter of 2000, after I had raised tens of thousands of dollars in order to have a DNA test to scientifically prove my innocence, Judge Timothy S. Hillman was given the responsibility of

overseeing this test. Hillman, an ex-lawyer for my accuser's family, should have stepped aside from my case on conflict of interest, but he did not. Once the DNA test was returned, indicating that my DNA had been found within the submitted evidence, Hillman did not question why the test used underclothes taken from my home in July of 1983, which had never been authorized for seizure under the search warrant. Clearly, in order for the DNA test to be accurate, my reference DNA sample was supposed to be matched against actual crime scene DNA samples, not DNA collected from underclothes illegally taken from my home.

On January 4, a Worcester County prosecutor argued before the SJC that my DNA test results made any new trial an academic exercise. Six days later, the prosecutor's new boss, District Attorney Joseph Early Jr., however, told a telegram, "I am concerned about the chain of custody" in my case. Early, however, has not yet ordered a forensic audit to establish whether my DNA test was based on legitimate and properly handled samples.

With the State police crime lab director having resigned, and an independent report identifying 16,000 neglected DNA cases, as well as the State Inspector General and the FBI auditing the crime lab, the need for a forensic audit in my case has never been more compelling. Yet, the odds of a criminal defendant obtaining relief from SJC, even on bedrock constitutional asserted violations, have been slim to nil in recent years. There are, however, notable exceptions: when a white Harvard law student killed an unarmed

young Latino, smaller than him, the SJC granted him relief after his parents, both lawyers, exercised the benefits of their affluence. When a white British nanny shook an interracial infant to death, the SJC granted her relief, in time for her to attend law school back home. (The recent Duke Lacrosse rape case shows how swiftly the legal protective systems gear-up for white injustice, compared to cases where race and class are damning factors.) When a black person walks into a Massachusetts Courthouse, said SJC Chief Justice Paul Liacos, "the likelihood is that they are not going to get equal justice." (*Boston Herald 9/22/94*).

In civics, we learn that in America, justice is blind. In 2001, one juror in my 1984 trial recalled, "The life sentence showed that the judge agreed with the verdict. We saw an animal, and he saw that same animal." In 1989, another juror from my 1984 trial said, in an affidavit referring to another juror, "One Joseph Nowick stated that the god damned spic is guilty just sitting there. Look at him. Why bother having a trial?" The jury foreman told the State Police later, "Racism was brought up, and I asked the jury body to knock it off."

I am beginning to wonder if our American judicial blindness is a kind of blind indifference for those of us who appear different. However, I shall continue to fight against injustice, no matter how many stand to shadow the truth of my life and divine purpose.

Benjamin LaGuer is an inmate at North Central Correctional Facility in Gardener.

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Massachusetts Chapter

National Lawyers Guild

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MEMBERSHIP MEETING

October 6, 5:30 pm

14 Beacon St., 1st Fl.
Boston

Life in Prison

For over a decade, the October issue of *Mass Dissent* has been devoted to prisoners - their human rights, their daily prison lives, and their struggles. Materials we receive from prisoners for printing express their thoughts, opinions, and feelings in the form of articles, poems, or drawings. Every year, we receive an overwhelming number of submissions, and this year was not an exception. After a thorough reading and deliberation, the editors of this issue chose three articles and three poems which present different angles of prisoners' experience.

We begin with a piece by **Susan King**, an inmate at Massachusetts Correctional Institution in Framingham, who poses essential questions on property rights, and why the imprisonment strips away the rights that are guaranteed and respected in the "outside-prison" world.

Benjamin LaGuer, in prison for the last 23 years, discusses courtroom racism and discrepancies in the ways the justice is executed depending on defendants' race and class.

The last article is from

Timothy Muise who is encouraging us to action. In Massachusetts, prison superintendents' salary is based on the number of inmates under their charge, thus there is a structural incentive to keep prisons full rather than empty. Mr. Muise challenges us to begin campaigns against the current system in order to change it, so the incentive is shifted from "filling" to emptying the prisons.

In the three poems presented in this issue, **Charlotte Boehm** (Framingham), **Louis Whitehead** (Norfolk), and **John Nikas** (Bridgewater) voice their frustrations, disappointments, and anger at the American justice system, but they also display subtle hopes for and faith in a better world.

We also include here a set of wonderful drawings sent to us by **James Riva II**, **David M. Stroyny**, **Joseph Donovan**, and **William "Edgar" Englehart**, all inmates at Bridgewater.

This is a very special *Mass Dissent*, and we hope you will be moved by its content as much as we have been.

- Editors -

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"... an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of people, to the end that human rights shall be regarded as more sacred than property interests. Our aim is to bring together all those who regard adjustments to new conditions as more important than the veneration of precedent; who recognize the importance of safeguarding and extending the rights of workers, women, farmers, and minority groups upon whom the welfare of the entire nation depends; who seek actively to eliminate racism; who work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression."

Preamble to the Constitution of the National Lawyers Guild, originally adopted February 22, 1937, and most recently amended in July 1971.

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or visit

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