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- Prosecutors failed to disclose for 18 years that four of the lone intruder's fingerprints do not match LaGuer.
- The blood evidence recovered from Plante's apartment does not match LaGuer's blood type.
- No sperm was detected on Plante's vaginal, rectal or public hair swabs, or on her panties, and no blood was detected on the rectal swab.
- The DNA testing of segregated evidence does not implicate LaGuer, and the testing of a mixture of items containing LaGuer's and/or Plante's DNA does not produce an evidentially reliable result.
- Plante had serious mental problems for many years preceding the incident in her apartment on July 12-13, 1983, and her state of mind may have contributed to her embellishment of that incident by claiming she had been sexually assaulted for eight hours. It may also have heightened her susceptibility to agreeing when shown LaGuer's picture that he was her assailant, even though he didn't match any particular of her previous vague description to the police, and she had previously told the police and hospital personnel that she couldn't identify the intruder.
- Evidence from Plante's apartment is missing that could possibly exclude LaGuer and/or identify Plante's intruder, and if fingerprint or forensic testing of that evidence has been conducted, the results have not been disclosed to LaGuer.
- After selecting LaGuer as a suspect because of his proximity to Plante's apartment and a vague police report three years earlier concerning an unrelated property crime, one or more police officers fabricated evidence and/or testimony to implicate LaGuer as the intruder.
- Prosecutors may have pursued charges against LaGuer knowing they had no reasonable basis to believe he was the intruder into Plante's apartment.

Conclusions

Benjamin LaGuer was excluded as the source of the fingerprints on the telephone from which the cord used to bind Lennice Plante's wrists was obtained. The source of those fingerprints was the intruder into Plante's apartment, and that person was not LaGuer. That explains why Plante's

identification of LaGuer was fraught with suspicious aspects and the case's physical evidence does not implicate him.

The DNA testing in LaGuer's case conducted in 2001 and 2002 is illustrative that the most advanced scientific techniques cannot be assumed to generate infallibly reliable results. Particularly due to its level of sophistication, the outcome of a DNA test is particularly subject to the old adage: 'garbage in, garbage out.' For any number of reasons, a DNA test can accidentally, or even be deliberately sabotaged to produce a false positive.

LaGuer's presumption of innocence and his due process right to a fair trial was subverted by the prosecution's concealment, and possible continued concealment of evidence supporting that he was not the intruder into Plante's apartment on July 12-13, 1983. Compounding that situation is the insidious effect of racial prejudice on LaGuer's right to a fair trial, which makes his conviction a late twentieth-century version of a nineteenth-century lynching.

Another disturbing aspect to LaGuer's conviction is the physical evidence contradicts Plante's claim that she was sexually assaulted vaginally and anally, much less over an eight-hour period of time. Consequently, the evidence supports that LaGuer was convicted of an aggravated rape that never happened.

If LaGuer was represented by competent counsel during a retrial it is nigh near inconceivable that reasonable and racially unbiased jurors would not lack reasonable doubt and vote to acquit him, after exposure to the new evidence, and the evidence as a whole.

Opposition by the prosecution to the granting of a retrial to LaGuer, and the likely subsequent dismissal of the charges against him, cannot reasonably be attributed to the prosecution's genuine belief in his guilt. It is not reasonable to think LaGuer's prosecutors are unaware the credible evidence of his guilt is on par with evidence that the Earth is flat.

The prosecution's opposition to LaGuer's retrial may be due to a combination of two factors. One, is their abhorrence to admit that LaGuer was not just wrongly convicted, but that he should not even have been considered a serious suspect. Two, is that dismissal of the charges against LaGuer opens up the prosecution's client government entity to significant civil liability, as well as exposing other government entities, agencies and employees to possible civil liability. Thus, as

long as LaGuer's conviction remains intact, the prosecution does not have to experience embarrassment or expose to civil liability the government entities, agencies and employees responsible for LaGuer's predicament of being imprisoned for 23 years for crimes the evidence substantiates were committed by someone else.

The actual perpetrator, that "someone else," was effectively granted a free pass by the prosecution from accountability for his crimes.

After reviewing a cross-section of the factors involved in Benjamin LaGuer's case, the most reasonable conclusion is his conviction was not merely a tragic error by an imperfect system, but it was a grave and avoidable miscarriage of justice.

The Justice Institute
By Hans Sherrer, President
September 6, 2006

Endnote:

1 This Review is in response to a request by Massachusetts State Representative Ellen Story, 3rd Hampshire District, to analysis the case of *Commonwealth of Massachusetts v. Benjamin LaGuer* (Case No. 83-103391) which concerns events that allegedly occurred on July 12-13, 1983, in the Leominster, Massachusetts apartment of 59-year-old Lennice Plante. The observations and opinions outlined in this review are based on case information which includes, but is not limited to, the timeline of events, police reports, statements, affidavits, evidence inventory reports, appellate court rulings, court filings, and forensic laboratory reports.



John Spirko Update

John Spirko's first-person story of being on Ohio's death row when there is evidence he was over 100 miles from the scene of Elgin, Ohio Postmistress Betty Jane Mottinger's 1982 abduction and murder, was in *Justice Denied* Issue 27, Winter 2005.

On October 6, 2006, Ohio Attorney General Jim Petro requested that Governor Bob Taft order a fifth stay of Spirko's execution. Petro's request was for a four-month stay of Spirko's execution date of November 29, 2006. A.G. Petro requested the stay to allow time to complete DNA testing of the painting tarp and duct tape wrapped around Mottinger's body, and 30 to 100 cigarette butts found near her body. for the presence of the killer's DNA. A witness has identified the killer is a house painter who the witness also claims was the tarp's owner.

If Taft agrees to the delay, it means consideration of clemency for Spirko would be by whoever is elected governor in November 2006 to replace Taft, who leaves office in January 2007.