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THE CASE OF BEN LAGUER AND THE 2006 MASSACHUSETTS GUBERNATORIAL ELECTION

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Criminal court cases appear and disappear in the public eye with the ebbs and flows of commercial or entertainment value, political advantage in electoral politics, and civil rights and fair-trial activism. Some may view the Ben LaGuer case as an anomaly or as “exceptional.” Yet, contemporary expressions of racial-sexual bias and control through the courts have historical antecedents. From the Scottsboro case in the 1930s to the 1989–2002 Central Park case, charges of interracial rape against, and convictions of, Black and Latino youths and men have proved instrumental in solidifying white racial identity embedded within deep-seated phobias and anti-Black racism and rage. What should be readily apparent in a society and state rooted in white supremacy and patriarchy, however, is often overlooked; and once brought out for our consideration, volatile issues may prove more complex than we imagine. Consider the facts of prisoner Willie Horton’s violence against a white couple, and his raping of the woman, during his work furlough release in Massachusetts. That Republican operatives and candidates could capitalize on the assaults to garner a presidential victory in 1988 speaks to the endurance of racist stereotypes and sexual fetish in the mainstream mind. Yet the reality of the rape and violence inflicted by Horton is not contested. When similar operatives and candidates attempted the same racist-sexist strategy in the 2006 Massachusetts gubernatorial race, they went down in electoral defeat; this speaks to some subtle shift in racial consciousness or political practice that we may not yet be able to fully comprehend. Is it because of credible advocates who assert the innocence of Ben LaGuer, or is it because

mainstream America has allowed itself a more public acceptance of “worthy Blacks” in service to white America, that Deval Patrick was elected Massachusetts’ first Black governor in 2006?

Racial matters and sexual violence are complicated, or at least we are told that they are so. A year before the Willie Horton campaign to elect George H.W. Bush in 1988, the Reverend Al Sharpton propelled his own political career by championing Tawana Brawley, a Black teen who falsely claimed that she had been sexually assaulted by white male officials of New York State. In the year following Bush’s election, district attorneys, journalists, and pundits promoted their careers by condemning the Black and Latino youths of the Central Park case. The pretrial (and posttrial) media convictions for a crime these youths did not commit—the brutal assault and rape of an affluent white female “jogger” in 1989—were never fully and publicly retracted. The state exoneration of the youths in 2002 has done little to correct the public record and racial memory in the mainstream mind. Few remember the specific details; few can recall the police malfeasance; few acknowledge that it was the multiracial jury, academics, and authors who rushed to judgment without material evidence, and helped to condone the incarceration of teens criminalized by their Blackness.

Elsewhere I have written about these interracial assault cases, the state that enabled social injustice to thrive, and the gender and ethnic diversity in complicity with the state’s punitive mandate (James 1996, 1997, 1999). In this chapter, I recognize the egregious ignorance and racial superstition of our national culture, and focus on one case as a form of witnessing the specific and general injustices we face when confronting racialized sexual violence. In four sections I offer a narrative around the Benjamin LaGuer case. First, I provide the specific details of an interracial rape case with which we should familiarize ourselves. The traumatized victim(s), the disturbing behavior of prosecuting officials, the opportunistic public outrage and voyeurism concerning rape, the imprisonment of a man for nearly three decades, allegedly without credible material evidence—all create a moral mandate and political imperative to witness. Second, I explore how a former advocate against injustice—and counsel or executive for corporations such as Texaco, Coca-Cola, and Ameriquest—became a politician who in order to win election as a “historic first” jettisoned the inconvenient truth that the U.S. criminal justice system is corrupt, undermined by racial, sexual, class, and national biases.¹

Third, I write of the complicated witnessing of sexual-racial violence through a century of struggle, dating from Ida B. Wells-Barnett, journalist and anti-lynching crusader. In conventional witnessing, the bodies and perspectives of Black women—who are also raped and also lynched—tend to be overlooked, or consumed in the fire of making “greater” political points. Fourth and finally, I try to get out of the way so that the imprisoned may speak for himself through his correspondence with the outside world. But before he does, it will be useful to contextualize the case, itself encased in centuries of racial-sexual mandates that have cordoned off justice.

In “The Ethical Obligations of Prosecutors in Cases Involving Postconviction Claims of Innocence,” legal scholars Judith A. Goldberg and David M. Siegel (2002) outline the obstacles facing defendants who claim that they are wrongfully incarcerated. The authors maintain:

Defendants must litigate these new claims against prosecutors whose primary objective is maintaining the integrity of the convictions, who may themselves have custody or control of both the evidence to be tested and the information concerning the evidence, and who typically have superior resources. The promise of innocence-based post-conviction relief is hollow unless prosecutors adopt new ethical obligations to guide their responses to such claims. We propose that when faced with an innocence-based postconviction claim requesting the application of “new” science to “old” evidence, prosecutors should promptly seek the fullest accounting of the truth, effect the fullest possible disclosure, and use the most accurate science. (389)

Notes in the above article indicate that Siegel, a professor of law at Boston’s New England School of Law, was “counsel of record to a Massachusetts inmate who sought post-conviction DNA testing of evidence”; that person was likely Ben LaGuer. The LaGuer case has provoked considerable controversy. His persistent claims of innocence and his ability to attract prominent supporters to his cause have garnered national attention and shaped debates about civil rights and the prosecution of rape and race in the media, courts, civil society, and electoral campaigns. During the 2006 Massachusetts gubernatorial race, one that pitted a white female Republican lieutenant governor against a Black male civil rights attorney, the Ben LaGuer case became both template and touchstone for violence and social justice, and a vehicle for losing or obtaining votes.

FRAME A CASE

Even given the heinousness of the crime, it is difficult to understand why Ben LaGuer is imprisoned today.² Until one factors in race, his more than twenty-seven years' incarceration following a 1984 rape conviction seems unusual. According to the U.S. Department of Justice website, the average sentence for those convicted of rape in the 1990s was 117 months, and the average time served was 65 months. The vast majority of reported sexual assaults are intraracial, according to FBI crime statistics; and most rape cases—with the exception of Willie Horton's interracial sexual assault, which invigorated George H.W. Bush's 1988 presidential campaign—are not sensationalized during an election.

When race makes the crime of rape even more of an atrocity, that is, when it turns the prosecution of rape into the prosecution of interracial rape, hence punishable for the violation not only of sexual mores and rights but of racial taboos, sensationalism becomes the filter through which most people encounter cases such as the *Commonwealth of Massachusetts v. Benjamin LaGuer*. The complexities surrounding LaGuer's case rarely circulate in media or in academic texts, although LaGuer and his supporters maintain a website devoted to his case, and LaGuer himself became a surrogate Horton in the campaign for the governor's mansion in 2006. (After candidate Deval Patrick issued a statement that “justice had been served” in light of the 2002 DNA test results [see later], Patrick's quotes in support of LaGuer were removed from the prisoner's website.)

A Black Puerto Rican in his early twenties, Ben LaGuer was arrested on July 15, 1983, in Leominster, Massachusetts, for aggravated sexual assault against Lenice Plante, a white woman in her late fifties. In “LaGuer Reconsidered,” western Massachusetts-based journalist Eric Goldscheider, the most knowledgeable critical writer on this case, raises important details that are inconsistent with a fair trial and just conviction.³

State malfeasance in the LaGuer case stems from the now-deceased lead detective, Ronald Carignan, whose unorthodox procedures were later supported by the district attorney, John Conte. With no physical evidence or confession, Carignan decided the guilt of LaGuer, who at the time of the crime was living in his father's apartment next door to the victim. Yet, LaGuer's supporters maintain that another Black Puerto Rican had also lived in and had access to the building, and had associated with the survivor; that he had a history of mental illness and sexual assault yet was never interviewed by

police; and that LaGuer shares the same race and ethnicity of this man, is only five years younger, and is very similar in height and build.

The grand jury, according to Goldscheider, indicted LaGuer on Carignan's disinformation. Carignan told the grand jury that the crime had occurred in LaGuer's apartment; it had in fact occurred in the victim's apartment. The detective claimed that the victim was unable to appear at the hearing, although she had already been released from the hospital. He stated that the victim had already identified LaGuer as her assailant to the chief investigator, although she denied this under oath at trial. She would, however, later identify LaGuer in court as her attacker. Carignan testified that he had recovered only one partial fingerprint from the scene of a crime that reputedly took place over eight hours. Yet, in 2001 a report generated the day LaGuer was arrested in 1983 emerged, showing that four full fingerprints were retrieved from the base of a telephone whose cord had been used to bind the victim's wrists. None of the prints belonged to LaGuer. The recovered prints were subsequently lost (or destroyed) by the district attorney's office, preventing a match with any known felon.

Plante—who died in 1999 from causes unrelated to the assault—pointed LaGuer out in the courtroom as her assailant, but the jury was not informed that she had been institutionalized over an extended period of time for mental illness, which allegedly included schizophrenia. Her mental and emotional states were never introduced at trial nor were witnesses, confessions, or credible material evidence. Only Plante's and police testimonies linked LaGuer to the assault for nearly twenty years, that is, until LaGuer's much sought-after DNA testing was permitted by the state.

Goldscheider has described a web of complex relationships surrounding Ben LaGuer.⁴ In 1998 (and again in May 2010), LaGuer was eligible for parole but was denied because he would not admit to the crime. Despite lengthy incarceration and vilification, LaGuer nonetheless managed to mobilize influential supporters. James C. Rehnquist, son of the late U.S. Supreme Court chief justice William Rehnquist, was his former attorney. Currently, his new legal team consists of Isaac Borenstein, who spent sixteen years as an associate justice of the Superior Court of Massachusetts, and his former law clerk, Lisa Billowitz.

Over the years, prominent intellectuals and academics such as Elie Wiesel, William Styron, Henry Louis Gates Jr., Noam Chomsky, and John Silber have lent their support for a fair hearing or review for LaGuer. While imprisoned, LaGuer earned a bachelor's degree with honors from Boston University and a

prestigious Pen Award. When U.S. senator Jessie Helms effectively terminated the use of Pell grants for the education and rehabilitation of inmates in 1994, Boston University president John Silber kept the university's prison education program afloat. Although an outspoken conservative Democrat who had opposed progressive intellectuals such as Noam Chomsky and Howard Zinn (years earlier, Silber had tried to fire Zinn, a popular Boston University professor and antiwar activist), Silber joined progressives in supporting LaGuer's right to a fair review. The eloquent prisoner had become a cause célèbre.

For years, LaGuer and his advocates had positioned juror racism as the key factor mandating a new hearing and trial. When the parole board rejected Ben LaGuer's appeals, Silber met with LaGuer in prison. He then contributed substantial funds to the DNA testing. David Siegel subsequently became involved in the case.

A founding member of the New England Innocence Project (created in 1992 by Barry Scheck and Peter Neufeld), Siegel serves on its Case Review Committee and directs the Criminal Justice Project of the New England Law School's Center for Law and Social Responsibility. He had earlier served as public defender in Nashville, Tennessee. According to Goldscheider, Siegel worked on the LaGuer case pro bono and was instrumental in assisting LaGuer's claim of rights to DNA testing. (LaGuer had admitted to having tampered with a saliva sample ordered by the court in order to determine his blood type while in prison—because of his distrust of the government.) Siegel and former FBI agent, attorney Richard Slowe, found missing trial evidence in the clerk's office in the county courthouse. Although it was noted that the clerk had handed them a box with a broken seal, they went forward with DNA testing despite the possibility of tampered or compromised evidence.

In April 2001, through the Freedom of Information Act, Ben LaGuer was able to see his Leominster police file, which included a fax of the original forensic police department report. On the fax was written "Benji's underwear." Critics allege that without a warrant, Detective Carignan had taken LaGuer's underwear from his family's apartment and mingled it with evidence taken from the crime scene. (Years after the trial, Leominster police presented to the courts evidence that was never officially preserved.) The detective also kept the rape kit in the trunk of his car for a week during the summer before delivering it to the state police laboratory. No physical evidence was introduced at the trial that convicted LaGuer in 1983, but compromised evidence would be used in 2002 as "reliable" samples for DNA testing to cement that conviction.

Two labs were selected for the DNA review. One could not find any male DNA evidence; the other offered a DNA profile report authored by Ed Blake, which was based on a miniscule and, it is argued, contaminated sample. Neither rape kits nor DNA testing are exact sciences. The quality of the evidence and the quality of the examiner determine outcomes used to exonerate or incarcerate. The scientific verdict of LaGuer's guilt proved sufficient to drive away many supporters—including civil rights attorneys and politicians seeking high office.

In 2002, disputed DNA results established the only physical evidence indicating LaGuer's guilt. However, in 2006, forensic consultant Dean Wideman's *Forensic Case Review of Commonwealth of Massachusetts v. Benjamin LaGuer* heavily criticized the 2002 report done by Ed Blake. Conducting his review at the request of Massachusetts state representative Ellen Story, Wideman argued that the samples taken from the nearly twenty-year-old evidence were too miniscule and compromised by contamination for accurate or conclusive results. Wideman's tests would also indicate that no semen or blood were detectable on the vaginal or anal swabs or underwear of the victim following what court transcripts recorded as an eight-hour ordeal of violent rape and sodomy.

The *Forensic Case Review* was issued months before the 2006 Massachusetts vote to replace conservative Republican governor Mitt Romney. However, the review received little mention on the campaign trail; neither the candidates nor the media expressed much interest in the March 2006 report. Opposition to Democrat Deval Patrick's candidacy singled out his past support for Ben LaGuer's right to an impartial hearing or parole. A decades-old interracial sexual crime and conviction seemed to derail the campaign for Massachusetts' first Black governor as individuals involved in the case began to surface as opponents of Deval Patrick.

WIN AN ELECTION

In the 1988 presidential contest between Republican vice president George H.W. Bush and Democratic Massachusetts governor Michael Dukakis, Republican National Committee strategist Lee Atwater infamously boasted that he would make convicted Black murderer and rapist Willie Horton Dukakis's running mate. While on work furlough in a program sponsored by then Governor Dukakis, Horton had brutalized a white couple, raping the woman. The sexual assault was sensationalized the most in the negative campaign ads.

Nearly twenty years later, trailing in the polls, Lt. Governor Healey tried to position Ben LaGuer in the public's mind in a similar shadowy relationship to Deval Patrick. Patrick's past support for parole for LaGuer seemed a perfect opportunity for his opponents to recycle the Horton strategy. On the campaign trail Patrick was sufficiently able to differentiate himself from LaGuer, although he was less than candid, or his memory was flawed, as the candidate claimed. Initially, Patrick denied supporting LaGuer, failing to remember his past support in letters (excerpted in the *Boston Globe* and other press during the campaign⁵) and by way of financial assistance for DNA testing. For the voters, and as a defense against his critics, Patrick finally in effect pronounced Ben LaGuer guilty as charged months before the election.

Racially driven negative advertisements, attributed by some to Atwater mentee Karl Rove, became biofuel for the Republican gubernatorial campaign. However, perhaps having witnessed firsthand their governor's 1988 presidential defeat by smear tactics—which included false rumors that his wife, Kitty Dukakis, had burned an American flag while participating in radical student protests in the 1960s—Massachusetts voters appeared largely unimpressed in 2006 by similar tactics. When Kerry Healey attempted to portray Patrick as a sympathizer of rapists, she would derail her campaign. However, the animus against Patrick was fed by various private and public personas.

In 1983, a young police officer, Dean Mazarrella, was among the first to arrive at the scene of the crime. Apparently, he was the only police officer who rode with the victim in the ambulance to the hospital. Over twenty years later, in September 2006, Massachusetts media reported that Leominster mayor Dean Mazarrella believed that if Deval Patrick were elected governor, he would grant LaGuer “preferential treatment.” In the following weeks, through the media, including incendiary local talk radio, Mayor Mazarrella attacked LaGuer and Patrick's past support for a review of the case. According to journalist Goldscheider, Mazarrella's aired descriptions of the victim's brutalization fed hostilities towards both Black men—prisoner and candidate. During the campaign, when the Leominster mayor demanded a meeting with candidate Patrick, he complied. (Later, Governor Patrick would appoint Mazarrella to a special commission on Massachusetts towns and cities.)

According to Goldscheider, Plante's son-in-law, Robert Barry, echoed Mazarrella's 2006 airwave attacks on Patrick. Barry would repeat gruesome details of the assault while fundraising on air for medical treatment for his

(now deceased) wife, Elizabeth Barry, who suffered from Lou Gehrig's disease. When Robert and Elizabeth Barry demanded an official apology from the Democratic candidate, Patrick called to offer his sympathy for the pain caused by the recent publicity. Robert Barry publicly rebuked him for not issuing a stronger disavowal of LaGuer; he then invited television crews into their home. At a later press conference, with Elizabeth Barry wheelchair-bound and suffering from the crippling disease, the Barrys endorsed Kerry Healey.

On television and radio, the Barry family and the Healey campaign denounced Patrick for his past support for LaGuer and heralded Healey as the champion of victims' rights, visually rendered as white lower-middle-class or working-class victims against Black predators. Neither the Republican nor the Democratic campaigns addressed the reality of *Blacks* victimized by a racist criminal justice system. The media recorded no memory of a historical context of racially and sexually driven violence against Black bodies. Given his years of service as an attorney for the National Association for the Advancement of Colored People (NAACP) and in the civil rights division of the Clinton administration, Patrick was very familiar with racial and class bias in the judicial system. Yet when Healey's campaign postured that racial bias in prosecution and sentencing were irrelevant to mainstream or white America, thus distancing the campaign from fair-trial advocacy for LaGuer, Patrick concurred.

Patrick's 1998 letter written on behalf of LaGuer's petition for parole, and resubmitted at a 2000 hearing, did not sway the review board. During the campaign, media and opponents began to widely quote from Patrick's letter(s) to the parole board: "He [LaGuer] appears well prepared to make a positive re-entry and important contribution to the community of responsible citizens." After Patrick denied having made a financial contribution to LaGuer's exoneration or release, the media revealed that Patrick had written a check for five thousand dollars in support of LaGuer's quest for DNA testing.

Patrick's gubernatorial campaign appeared to unravel under the weight of public condemnation. His vulnerabilities included his lack of executive experience and generalities in his policy positions. Those limitations, along with his race, did not alienate substantial numbers of voters dissatisfied with the Republican administration. As a result, Patrick's other vulnerabilities would come to dominate the press and the Healey campaign's press releases, which focused on two examples of moral failing in the view of the opposition: Patrick had helped to fund LaGuer's DNA testing, and he had misinformed the

public about this when questioned. Civil rights advocacy and critiques of racial bias in policing and prosecution—witnessing of injustice, demanding redress—became a handicap for the politician; thus they were jettisoned in order to craft a winning strategy.

Understanding political vulnerability, the Republicans began airing commercials decrying Patrick’s “affinity” for criminals. The Healey campaign unveiled a television advertisement attacking Patrick, who while working for the NAACP, had successfully represented a (white) Florida man on death row for killing a police officer, reducing his sentence to life in prison. Massachusetts attorneys and the Massachusetts Bar immediately condemned Healey, who is not an attorney, for the “guilt by association” attack; many lawyers serve as public defenders, or do pro bono work on behalf of (or accept fees from) criminal defendants.

Still, radio and television outlets continued to portray Patrick as indifferent to rape solely on the basis of his support for Ben LaGuer. Unlike in the smear campaign against the Massachusetts Democratic contender in 1988, Patrick’s Blackness forced him into closer proximity with the stereotyped sexual predator than Dukakis would ever have experienced. Dukakis’s whiteness gave him distance; that representational distance from the Black convict rapist eluded a Black male candidate. For potential voters who were unclear about racial guilt by association, Healey campaign volunteers organized a pseudo-vigilante group, dressed in prison garb to picket the home of Patrick’s campaign manager, the self-proclaimed “Inmates for Deval.”

After running an ad that focused on Patrick’s misleading statements about his relationship with LaGuer, the Healey campaign pulled ahead of Patrick among white male voters. She continued to trail among white women. Seeking to close that gender gap, the Republicans released an advertisement that inadvertently destroyed Healey’s campaign and, to some extent, her public reputation. The attack ad—which can no longer be located on the Internet—used Patrick’s statements, made years earlier, which echoed the sentiments of Boston University president Silber and others about LaGuer’s eloquence and thoughtfulness. Patrick’s comments appeared in a television commercial in which a nervous (white) woman walks through a dimly lit parking garage with the voice-over: “Have you ever heard a woman compliment a rapist? Deval Patrick—he should be ashamed, not governor.”

The ad was released simultaneously with a *Boston Herald* article suggesting that Patrick had helped shield his brother-in-law from registering as a sex

offender when he moved to Massachusetts. The marital rape of Patrick's sister had taken place twenty years earlier; the couple had sought counseling and reunited, never informing their children about the domestic violence. After the media went public with the family trauma, Patrick immediately called a press conference to passionately denounce the Healey campaign tactics as "pathetic": "This is the politics of Kerry Healey and it disgusts me and it has to stop." The following week, the majority of polled voters expressed a negative view of the Republican candidate.

Months later, Deval Patrick made history, becoming the second Black governor to be elected since the end of Reconstruction.⁶ Patrick also emerged in national politics as cochair of the Barack Obama campaign. Patrick's 2006 ordeal provides insightful instruction into campaign mandates. Both campaigns featured lesser-experienced Black male politicians embattled against seasoned white female politicians. In the case of the 2008 Democratic primaries, the campaign lacked the gravitas of the incarceration of a possibly innocent person, and the psychosexual politics of interracial rape, yet Obama faced a white female opponent (who would later become his secretary of state) whose claims to being "tougher" on crime led him to distance himself from critiques of institutional racism in the policing of Black bodies; that is, to reject witnessing. Patrick and Obama, both Harvard Law School graduates, mirror each other in political trajectories, language, and reform agendas. Patrick's experiences on the campaign trail likely proved useful to his presidential counterpart. Despite whatever "change mandates" Black ivy-educated elites (who are well versed in respect for the law) may represent or advocate, such politicians remain embraceable to majority white voters only as long as they do not offer narratives of antiracist, social justice advocacy. Such silence or speechlessness problematizes past, present, and future analyses of lynching and rape.

**WITNESSING AMERICAN VIOLATIONS:
CONTEXTS FOR THE CASE OF BEN LAGUER**

To truly witness violence and violation, one must remember, locate, and relate the atrocity. When the very culture that provides context and meaning to individual trauma is itself rooted in violations of whole peoples designated as "minorities" and stereotyped as primitive, such witnessing becomes very complicated. Whatever registers as atrocity in a society dictates immediate action on the part of citizenry and government. Whatever enables a such

a crisis is, logically, desperately redressed, for a crisis left unaddressed will disaggregate the social order. In our society, only some violence against some bodies registers as such. Yet if violence against some bodies is thus considered mundane and commonplace—and the state is presumed to inflict not violence but justice against unworthy (racially fashioned) aggressors—how does one witness from the collective perspective of the criminalized, the racially fashioned, the sexually deviant? That is, how does one witness from the site of Blackness?

Academic interventions, lurid crime tales, fair-trial advocacy, forensic reports—all are forms of testimony and witnessing. However, if done without reference to or claims about the social and historical context of race, sex, and violence that encircles every interracial rape case, the result is a partial narrative leading to false witnessing and fabricated testimony. That which is incomplete is not the truth, the whole truth, and nothing but the truth.

Along with economic wealth, racial and gender dynamics shape the power differentials that alter outcomes in criminal justice, the rule of law, and social presumptions of innocence. Simply put, the power dynamic is this: White life is a positive; Black life, a negative. Whites are to be protected, and Black life is to be contained in order to protect whites and their property (both personal and public or institutional). From cradle to grave, in foster care removals, juvenile detention centers, drug sentencing, police surveillance and harassment, and in executions, disproportionality in confinement is driven by race. The state disproportionately removes Black children from their families, mandating them as wards of the state in foster care, even though Black families are no more violent or dysfunctional than white families, according to legal scholar Dorothy Roberts (2002). The state is eight times more likely to incarcerate Blacks than whites for the same offense, according to the Washington-based Sentencing Project. Those convicted of murdering whites are four times more likely to receive the death penalty, particularly if they are “colored,” than those convicted of murdering “non-whites.” Antisocial behavior is criminalized. So too is Blackness, and it is regulated as such in social life in the Americas and in Europe, where whites have historically punished a racial formation they themselves created in opposition to whiteness.

In the American antebellum years, the majority of lynch victims were white. The majority of rape victims were not. Following the dismantling of Reconstruction, the majority of lynch victims were now Black, while rape

remained a privatized, undocumented violation, as no crusader (such as Ida B. Wells) would painstakingly, and painfully, gather the data.

The disappearances, mutilations, and deaths of Blacks through the convict prison lease system led to no civil or criminal litigations for damages. The emancipated became the racial wards and victims of civil society and the state: Blacks remained captive to sovereign whiteness. Whites terrorized Blacks through lynching; males terrorized females (and other males and children) through rape. Whiteness in men was a shield from prosecution. Whiteness in women permitted a surrogate phallic protection; enforced by white males, this protection usually did not work for white women against the interests of the enforcers. Meanwhile, Black women had no power by proxy.

How then should the victims of sexual and racial violence witness the case of Ben LaGuer?

A century ago, indifference to anti-Black lynching and to rape (except, that is, for interracial sexual assault against white women) seemed the norm for government and “mainstream” society. Apologists for lynching exerted little effort to ascertain facts, to uphold democratic ideals when the atrocity was considered necessary to ensure public (white) safety. When the mob relinquished its role to the state, the sanitized court reenactments of lynch victimizers and victims appeared so mundane as to become nearly invisible to white America.

In the late nineteenth century, Ida B. Wells, while excoriating lynching, created and expanded upon a moral and political template contesting racist violence. As a journalist and newspaper publisher—before being forced by a lynch mob to flee the South—Wells risked her life to investigate and write about racial murder and sexual obsession. Wells documented atrocities in her 1892 pamphlet *Southern Horrors: Lynch Law in All Its Phases*.⁷ She bore witness by organizing editorials, economic boycotts, and Black out-migration, all around a distinct view of racial terror being enacted by sheriffs and judges who mingled with mobs. Half a century later, Black activists sought to bring witness to anti-Black violence as a human rights violation before the international community. William Patterson and the Civil Rights Congress compiled and published *We Charge Genocide* in 1951, presenting this book-length petition, rife with its own forms of sexism and gender repression, to the United Nations. Signed by such radical notables as W.E.B. Du Bois and Paul Robeson, *We Charge Genocide* documented state-sponsored racist violence and state complicity in the destruction of

Black political, economic, and cultural life in the United States. The manuscript's most visceral photographs were of tortured Black men in multiple lynchings. Yet despite the "embarrassment" felt by the state and its desire to suppress the publication—which circulated widely under International Publishers' ties to the Communist Party's extensive information and propaganda network during the cold war era—the work of lynching apologists continued largely unabated, for legal lynching and racially driven prosecution had replaced mob rule.

Traumatized by *it*—the riot, the racial rage, the sexual psychotic—one remembers and so is forced to some measure or degree to witness. The legal system with its layers of complexity and specialized languages encourages you to forget. Those who have seen images, or heard the stories, of bodies swinging from limbs, dismembered in the char of campfires, soaked and bloated beyond recognition in Mississippi waters, know that they have seen violation and "victim."⁸ Dispersing the mob and enabling the judicial system to render verdicts on Black life and culpability, the state brought order; it dismissed the spectacle, and recognition of violence dissipated.

Even as historical racial victims disappear in discourse, their historical victimizers claim—without the vulnerability of racial stigma—their narratives. National Public Radio's February 1, 2009, coverage of the murder of Oscar Grant, under the title "Court of Public Opinion," offered the following quote from attorney Steve Meister, who represents police accused of misconduct and brutality: "This whole case, the way the DA has proceeded, the way the civic leadership has proceeded, and the way the civic activists and the citizens have proceeded—the whole thing strikes me as a politically correct lynch mob."⁹ Meister was defending Johannes Mehserle, a twenty-seven-year-old white Oakland transit police officer who shot and killed Grant, a twenty-two-year-old African American, on January 8, 2009. At the time he was killed, Grant was lying facedown, handcuffed, and subdued by police on a subway platform.¹⁰ Transit passengers witnessed the execution and captured it on their cell phones. The images circulated on the Internet and in the media, and protestors demanded justice. News reports relayed the statements of attorney and former police officer Michael Rains that citizen clashes with police—following the delay of Mehserle's arrest after killing the unarmed Grant—constituted a "legal lynching." (On July 9, 2010, a Los Angeles court tried Mehserle for murder and convicted him of a lesser charge, involuntary manslaughter.)

The aggrieved white (or conservative Black man, such as 1991 Supreme Court justice nominee Clarence Thomas decrying a “high-tech” lynching in the face of allegations of sexual harassment of Anita Hill, a Black woman) asserts him- or herself as violated, using the language forged in antiracist struggles. Sovereign whiteness remains indignant and defensive in the face of its critics. When the role of victim resides with whiteness in interracial conflicts, evidence that does not substantiate the metanarrative of white vindication can be viewed as secondary, if not marginally relevant. If Blackness is presumed to have little innocence, Black rights are easily lost, and defendants’ claims to innocence are rarely seen as compelling.

What transpires in witnessing when the contextual meaning determines the value of specific events? For example, whether Emmett Till actually whistled at Carole Bryant in her family store is irrelevant in the restoration of context and meaning in witnessing the specific event within the larger narrative. The fourteen-year-old Black Chicagoan visiting his relatives in 1955 Mississippi was already a lynch victim in waiting. The trigger for the actual assault was the word of any white person who stated that an assault (a whistle on a dare or in flirtation) had or would take place. The trigger exists prior to any utterance: the first instigation to punish is the appearance of the Black wherever racial victimization has been analogized as whiteness.

In Leominster, Massachusetts, the analogy of whiteness with purity of vulnerability in the face of a perpetual Black aggressor provided an important context for understanding the conviction of Ben LaGuer, and how this crime (both the assault and the unethical trial) would be witnessed by society and prosecutors. The inability to establish a context that acknowledged a pervasive history of anti-Black animus and violation meant that twenty-three years after LaGuer’s conviction, a gubernatorial campaign could use his case as bio-fuel for conservative or liberal agendas.

Violence, such as lengthy incarceration, is considered by some to be the only form of communication that quells the *bête noire*—the stereotypical Black rapist whose desire for white females stimulates and violates her male kin.¹¹ Fictive kinship encompasses white civil society, multicultural white supremacists, and the state. Such kinship based on repression establishes relationships among those who deny institutional anti-Black violence and seek solidarity against an alleged Black aggression. But that saves no one from sexual aggression, for Black existence and predatory behavior are not synonyms although racism has presented them as such for centuries.

Rape is an underpoliced and underpunished offence in the United States. Sexual violence is pandemic; it is widely experienced in the home, school, workplace, public spaces, and recreational sites such as sports arenas and parks. Yet in major cities, such as Los Angeles, thousands of rape kits have remained unopened and untested for years; this despite federal funds to assist in processing, and the painful, painstaking collecting of evidence from the bodies of victims who assume they are helping to protect themselves and others.¹²

The case of Ben LaGuer is disturbing, not just because of its possible wrongful incarceration and political opportunism but because something happened to Lenice Plante. And whatever happened to her was not important enough to witness with the truth about what was happening to LaGuer. During the prosecutorial phase of the case, which continues, one may pit a Black man against a white woman and celebrate some Pyrrhic victory with whomever (or whose ever memory) prevails. Still, in the absence of witnessing through the construction of a narrative that brings meaning to the implications of these conflicts and traumas, social justice seems a losing proposition.

THE CORRESPONDENCE OF BEN LAGUER

“Breaking” the Ben LaGuer case—proving absolute innocence or guilt—is compelling. Yet the legal process does not actually prove guilt or innocence. Rather, it illuminates a process, overt and covert, by which certain crimes (and social castes) are punished.

The testimonies of police, courts, media, politicians, advocates, and DNA testers are not objective. Nor is the testimony of the convicted and incarcerated. However, a more complete telling of this case requires the witnessing of Ben LaGuer himself. The following correspondence and state documents sent by Ben LaGuer do not provide “evidence” or “proof” of a legal lynching. Nonetheless, in addition to previously shared information, they frame this case as highly problematic. They trouble the reader. They request or demand the burden of social scrutiny and analysis in a criminal case that became a political commodity. This case, like countless others shaped by bias and institutional prejudice, resides in the cold container of past, present, and future violations that we will either witness or ignore as our democracy, and the legal system which enables it, unfolds.

www.BenLaGuer.com

6/24/07

Dear Joy (if I may)

I hope you are enjoying your summer. I got word of your interest in the case obviously from Eric. My sole purpose in writing today is purely introductory; for me to say how happy I am that a person of your spirit and academic curiosity would notice me from the road you was travelling. These 23 years in prison have been quite a burden to carry, but not in the sense most people might think. When you carry the weight of history and biography the body and spirit start to gain enough muscle to carry that weight. One can carry as much as one's hope and dreams. I have witnessed, as well as felt in the deepest places of the heart how race, gender and affluence destroy some and build others. The politics of race and class have never been silent in any discussion pertaining to my guilt or innocence. In 2001, a juror in my case told a newspaper, "The life sentence showed the judge agreed with the verdict. We saw an animal, and he saw the same animal." This juror makes it quite clear that I was no peer of his. At a deeper level, near the realm of Dred Scott, what "animal" has rights "which the white man was bound to respect[?]" I want you to know that I want to help/cooperate in what truths you are seeking in the journey of your life. I am enclosing a couple of articles for your own interest. I hope, when it all ends, you may end liking me as a person too. Write me when you are ready. Be well.

Peace & Blessings (of course)

Ben

Figure 7.1 LaGuer Letter

6/24/07

Dear Joy (if I may)

I hope you are enjoying your summer. I got word of your interest in the case obviously from Eric. My sole purpose in writing today is purely introductory; for me to say how happy I am that a person of your spirit and academic curiosity would notice me from the road you was travelling. These 23 years in prison have been quite a burden to carry, but not in the sense most people might think. When you carry the weight of history and biography the body and spirit start to gain enough muscle to carry that weight. One can carry as much as one's hope and dreams. I have witnessed, as well as felt in the deepest places of the heart how race, gender and affluence destroy some and build others. The politics of race and class have never been silent in any discussion pertaining to my guilt or innocence. In 2001, a juror in my case told a newspaper, "The life sentence showed the judge agreed with the verdict. We saw an animal, and he saw the same animal." This juror makes it quite clear that I was no peer of his. At a deeper level, near the realm of Dred Scott, what "animal" has rights "which the white man was bound to respect[?]" I want you to know that I want to help/cooperate in what truths you are seeking in the journey of your life. I am enclosing a couple of articles for your interest. I hope, when it all ends, you may end liking me as a person too. Write me when you are ready. Be well.

Peace & Blessings (of course)

Ben

21 January 2008

Dear Professor James

Greetings, good sister. I just wanted to write and share with you the news that the Governor's Advisory Board of Pardons sent the governor their report. The letter I wrote is pretty self explanatory. I think there may still be a chance that a public hearing [will] be afforded. While I did not write this down, I now remember that there was another case to draw a comparison. I was denied a clemency hearing because I have a impending parole hearing. However Gerald Amirault, a white man convicted in the infamous Falls Acres child molestation case, was granted a clemency hearing despite his impending parole. The only

difference between us is that Amirault is white and I am not. I hope you are well, good sister. I would like to read your essay on the case whenever you are ready to make it public.

Peace & Blessings

Ben

The Commonwealth of Massachusetts
Executive Office of Public Safety
Advisory Board of Pardons
January 18, 2008
Benjamin LaGuer, W40280
c/o North Central Correction Institute
P.O. Box 466
500 Colony Road
Gardner, MA 01440

RE: Commutation Petition

Dear Mr. LaGuer:

After reviewing the materials you provided, including the December 13, 2007 supplemental submission, and following careful objective analysis, the unanimous membership of the Advisory Board of Pardons denied your request for a commutation hearing by a vote of (6–0).

In reaching its decision, the Advisory Board of Pardons noted that you have an administrative remedy available through the parole process in June 2008, therefore, you do not meet the threshold requirements set forth in the 2007 Governor's Guidelines.

A copy of the Board's report will be forwarded to His Excellency, the Governor, for review.

Sincerely,

Julie Pease

Advisory Board of Pardons
Executive Clemency Coordinator

18 January 2008
Governor Deval Patrick
State House
Boston, MA 02133

*In Re: A Response to the Governor's Advisory Board of Pardons Report Of 18
January 2008*

Dear Governor Patrick

Around the time of this past Thanksgiving I filed a petition for executive clemency with your administration based on actual innocence. Despite your pledge on the WBZ radio program, hosted by Dan Rea, that a hearing would be granted to me on that petition, a forum that was expected to expose police and prosecutorial abuses, today the Advisory Board of Pardons voted to deny me the very hearing you pledged.

It does not seem possible that the Advisory Board of Pardons could be capable of confusing the governing criteria for executive clemency based on a claim of actual innocence with a request for a commutation of sentence, which requires merely a petitioner to have . . . “made exceptional strides in self development and self improvement” rather than establishing a clear and convincing case of actual innocence, but that error is plain for you to reverse.

The Board of Pardons denied me a “commutation hearing” but I had specifically requested executive clemency.

How could the Board of Pardons mistake a request for executive clemency under the US Supreme Court ruling of *Herrera -Vs- Collins* with a request for commutation of sentence is baffling, since these are separate processes even under the Parole Board guidelines.

A request for executive clemency based on actual innocence, under *Herrera*, envisions that the Board of Pardons will afford petitioner a public hearing to collect evidence of his or her claims to report on their merit to the governor. In the absence of a hearing to collect the facts that tend to either support or negate that claim of actual innocence. How can the Board of Pardons have written a credible report addressing the merit of the specific claim?

The Board of Pardons, in its letter dated 18 January 2008 “noted that you have an administrative remedy available through the parole process in June 2008, therefore, you do not meet the threshold requirements set forth in that

2007 Governor's Guidelines." The letter also states that "the Advisory Board of Pardons denied your request for a commutation hearing by a vote of (6-0)."

But a clemency petition based on actual innocence, if granted under the Herrera definition, would bring about a determination of actual innocence, thus obliterating any need for a parole. Why should the state have an innocent citizen on lifetime parole?

But this is also a catch 22. The Parole Board, which considered this petition as the Advisory Board of Pardons, has denied me parole on three occasions. Each time the Board cited this assertion of actual innocence. When I come up again for parole in June 2008, Governor, will the Parole Board cited again the petitioner's claim of actual innocence? Will the Parole Board chairman say to me, as chairpersons have in the past, "Mr LaGuer, we are not here to retry the facts of your trial." Will the Parole Board forget that I requested a proper and legal process for establishing the evidence of actual innocence, for establishing evidence of police and prosecutorial abuses, but they chose not to grant me "a commutation hearing" which, in a better day, should have been a clemency hearing.

Governor, this is a comedy of errors. I have been fighting for justice for 24 years, despite the fact that I could have accepted a guilty plea and been out 22 years ago. (In the presence of John Strahinich of the Boston Herald, my trial attorney Peter L Ettenberg read from his notes, confirming the deal that I had been offered. Strahinich wrote about this deal in the November 1987 issue of Boston Magazine.)

What the courts and parole board of this state have done against me is simply outrageous. I am more sad than disillusioned that your administration is playing political games with my life and biography. I require no special treatment of favors on account of our personal history. I seek no special favors or treatment from any governmental agency. But a group of prominent forensic experts have publicly stated that County prosecutors provided the wrong samples to the State Police crime lab for DNA analysis, which resulted in the wrong result in March 2002. I have written your public safety chief four letters for him to double check the provenance of the sample which County lawyers provided the state police crime lab.

This report from the Advisory Board of Pardons cannot possibly be considered legitimate, since the Board held no hearing to collect any facts. The Advisory Board of Pardons also applied a "Commutation of Sentence" criteria for

judging a petition specifically filed under Herrera's analysis for "Executive clemency based on actual innocence."

The Advisory Board of Pardons cannot be said to have discharged its duties to your office, in the absence of a hearing to collect the facts. A hearing will ensure that all parties including the Worcester County District Attorney Joseph D Early, are provided ample opportunity to support or rebutte [sic] these claims of actual innocence and prosecutorial abuses.

Whether I am eligible for parole in June 2008 is totally irrelevant to whether I am actually innocent, since I can legally avail myself of a grant of executive clemency based on actual innocence, which would make a parole unnecessary.

Finally, the report from the Advisory Board of pardons should be rejected. This improperly denied petition should be immediately returned to the Advisory Board of Pardons for them to hold a hearing on the merits of a claim of actual innocence, as the US Supreme Court set forth in *Herrera*. If this report is allowed to stand, Governor, history will judge this process as a farse of liberal overcompensation. Too many people in office today are afraid of acting on behalf of the truth out of the perception that defending the innocent may cost too high a price. What the Advisory Board of Pardon did today was a travesty that needs to be corrected by returning the clemency petition to them for a real public hearing.

With peace and blessings,

Sincerely

Ben LaGuer

cc

E Abim Thomas, Deputy Legal Counsel
Office of the Governor's Legal Counsel
Kevin Burke, Secretary of Public Safety
Executive Office of Public Safety

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
INMATE GRIEVANCE FORM**

FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)

Name LAGUER BENJAMEN Grievance# 33698 Institution NCCI GARDNER
 Commit No. W40280 Housing THOMPSON-3 Date Of Incident 20080501 Date Of Grievance 20080501

Complaint For a number of years I have had the telephone number of attorney James C. Rehnquist, a partner at the Boston Law firm Goodwin, Procter, LLP, installed on the system as my attorney of record. Recently, I began to notice how the telephone system was announcing "This call may be recorded or monitored," a sure sign that our privileged conversations have been recorded against all legal and regulatory DOC doctrine. Other attorney numbers, when dialed, are repsonded with a "Please hold" comment and the system proceeds to connect the telephone call. This is a serious breach of attorney/client privilege. I recently requested that the telephone number of State Representative Ellen Story be installed, a State House number, and these conversations are also being announced as "recorded or monitored." I have offered proof that both Rehnquist and Story are members of the court. Ms. Story is a member of the Commonwealth of Massachusetts General Court.

Remedy Requested I am requesting that these conversations not be recorded or monitored. I am requesting to ascertain how long have these conversations been recorded in specific terms. I wish to ascertain if any of these conversations are in storage, and whether these conversations have been shared with any governmental agency.

Staff Recipient Winn William F CPO III
 Staff Involved _____
 Signature _____

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received 20080505 Decision Date _____
 Signature _____
 Final Decision _____
 Decision _____
 Signature _____ Date _____

Denied grievances may be appealed to the Superintendent within 10 working days of Institution Grievance Coordinator's decision.

INMATE RECEIPT

Name LAGUER BENJAMEN Institution NCCI GARDNER
 Commit No. W40280 Grievance# 33698 Date Received 20080505
 Signature Winn William F CPO III

Figure 7.2 Grievance Form

Commonwealth of Massachusetts
Department of Correction
Inmate Grievance Form
Forward to Institutional Grievance Coordinator (IGC)
Name LAGUER BENJAMEN
Grievance # 33698
Institution NCCI GARDNER
Commit No. W40280
Housing THOMPSON-3
Date of Incident 20080501
Date of Grievance 20080501

Complaint

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Deval L. Patrick
Governor
Timothy P. Murray
Lieutenant Governor
Kevin M. Burke
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety
ADVISORY BOARD OF PARDONS

12 Mercer Road
Natick, Massachusetts 01760

Telephone # (508) 650-4500
Facsimile # (508) 650-4599



Maureen E. Walsh
Chairman
Donald V. Giangioppo
Executive Director

May 1, 2008

Benjamin LaGuer, W40280
c/o North Central Correction Institute
P.O. Box 466
500 Colony Road
Gardner, MA 01440

RE: Commutation Petition

Dear Mr. LaGuer:

As you know, on **January 18, 2008**, the Advisory Board of Pardons recommended to Governor Deval Patrick that he deny your request for executive clemency. Pursuant to Section IV(2) of the Governor's Executive Clemency Guidelines, since the Governor has neither disapproved of nor taken any other action on that recommendation within 90 days, it is presumed that the Governor concurs in that adverse recommendation. Accordingly, your petition has been denied without prejudice.

Please be advised that you may not submit an application for a pardon until **April 18, 2009**, one year from the date the petition was denied.

A copy of this letter has been forwarded to the Office of the Governor's Chief Legal Counsel.

Sincerely,

Julie Pease
Advisory Board of Pardons
Executive Clemency Coordinator

Figure 7.3 Pardons Letter

The Commonwealth of Massachusetts
Executive Office of Public Safety
Advisory Board of Pardons

May 1, 2008

Benjamin LaGuer, W40280
c/o North Central Correction Institute
P.O. Box 466
500 Colony Road
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A copy of this letter has been forwarded to the Office of the Governor's Chief Legal Counsel.

Sincerely,

Julie Pease
Advisory Board of Pardons
Executive Clemency Coordinator

POSTSCRIPT: THE RELUCTANT WITNESS

The last words were to be Ben LaGuer's, but he is facing his third decade of incarceration. In 2010, when LaGuer was denied parole (again), prison authorities and media expressed contempt that he—a convicted Puerto Rican politicized as Black—had for decades felt “entitled” to justice, education, employment, family, love, liberty. This sense of “entitlement” damned him before the parole board and press; it thus became a punishable offense, as it has historically been for even the most apolitical of us. Punishment, though, does not always create passivity.

For several years, Ben LaGuer has written to me, despite my sporadic, brief, and formal responses infused with an academic reluctance to “get involved.” Violations familiar to captives who resist only *seem* familiar to the outside witness. Yet, witnessing oppression without the power to end it presents a trigger that once released offers a gift: greater intimacy with violence and the resistance to it, which one is always free to join. Even the most reluctant witness can appreciate an intimate: just recall ancestor Lady Day's delicate, devastating rendering of the production of strange fruit.

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