



COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE  
DISTRICT ATTORNEY  
MIDDLE DISTRICT

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June 19, 2003

Maureen E. Walsh, Chairman  
Massachusetts Parole Board  
27 Wormwood Street, Suite 400  
Boston, MA 02210-3271

RECEIVED

JUN 23 2003

J. C. REHNQUIST

Re: Benjamin Laguer (DOB 5/1/63)

Dear Chairman Walsh and Members of the Board:

In response to requests by the Board at Mr. Laguer's parole hearing on June 12, 2003, the Office of the District Attorney for the Middle District submits the following information and materials:

1) Mr. Laguer was not offered a reduced sentence before trial.

At the June 12<sup>th</sup> hearing, Mr. Laguer repeatedly told the Board that, in exchange for his pleading guilty before trial, the Commonwealth offered to recommend a sentence that would have resulted in his being incarcerated for two years. This claim is false.

At sentencing after trial, Assistant District Attorney James Lemire recommended "a sentence of imprisonment for life." (See trial transcript pages attached as Exhibit A, at 615). The trial judge (Mulkern, J.) imposed a life sentence on the aggravated rape conviction, stating that "this is one of the most vicious sexual assaults on a particularly fragile and vulnerable person that I have ever seen." (Exh. A at 617).

According to Assistant District Attorney Lemire, the Commonwealth made no pre-trial recommendation of any reduced sentence in exchange for a guilty plea in Mr. Laguer's criminal case, because of the vicious nature of the crimes involved, and because the victim insisted on testifying at trial. Mr. Laguer's trial counsel, Attorney Peter Ettenberg, has confirmed that the Commonwealth made no plea offers to Mr. Laguer before trial.

2) In 1994, the Massachusetts Appeals Court affirmed the trial judge's findings that Mr. Laguer and his supporters had "baited and hooked" a juror into signing a false affidavit alleging ethnic bias.

At the June 12<sup>th</sup> parole hearing, Mr. Laguer repeatedly raised the issue of alleged ethnic bias among the jurors at his trial. Mr. Laguer failed to mention that, in 1991, the trial judge heard testimony from the jurors and found this claim to be untrue. The Appeals Court affirmed the judge's findings in 1994.

Over ten years ago, Mr. Laguer filed a Motion For New Trial with an affidavit signed by a William P. Nowick, one of the jurors at his trial, claiming that the jury was tainted by ethnic bias against Hispanics. (See attached Exhibit B at 1-4, "Memorandum of Decision On Defendant's Motion For New Trial," dated 9/3/91; Exhibit C, *Commonwealth v. Laguer*, 36 Mass. App. Ct. 310, 311 (1994); and Exhibit D at 1, "Commonwealth's Opposition To Application For Further Appellate Review," dated 5/2/94).

The trial judge (Mulkern, J.) held an evidentiary hearing in 1991 to determine whether "the revelations or disclosures in Mr. Nowick's affidavit of ethnically oriented statements having been made by one or more of the jurors [were] essentially true." (Exh. B at 1). After seeing several drafts of the juror's affidavit and hearing testimony from the jurors -- and from Mr. Laguer, who admitted that he himself had written the first draft of the juror's affidavit based on his own "notes," which had somehow been lost (see generally Exh. D) -- Judge Mulkern found that "those statements [of alleged ethnic bias in the juror's affidavit] [were] not essentially true." (Exh. B at 1-6).

Based on the evidence at the hearing, the judge found that:

. . . Nowick became convinced, after serious lobbying by advocates for LaGuer, (which included, on his testimony, a showing of a photograph of the 'actual rapist') that the guilty verdict was error.

In that circumstance it was not overly difficult to obtain his signature to an affidavit

containing wildly exaggerated and uncorroborated allegations. Nowick stated in a court authorized interview with an investigator [that] he "felt like he had been baited and hooked."

(Exh. B at 5). The Appeals Court affirmed Judge Mulkern's denial of Mr. Laguer's new trial motion in 1994 (Exh. C, 36 Mass. App. Ct. at 311-15), and the Supreme Judicial Court denied further appellate review. *Commonwealth v. Laguer*, 418 Mass. 1103 (1994).

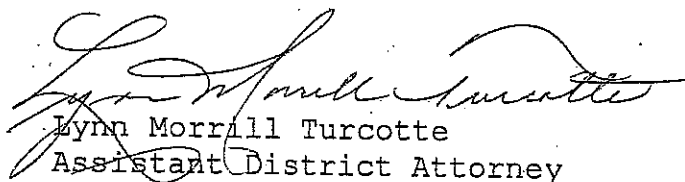
Last year, after the DNA testing by Mr. Laguer's expert showed that Laguer's DNA profile matched the rapist's DNA profile, juror Nowick told a reporter that "the DNA results affirmed his faith in the verdict handed down. 'I feel more comfortable. . . . It's over.'" (See Exhibit E at 3, Matthew Bruun, *Juror Sure LaGuer Is Guilty*, Worcester Telegram & Gazette, Mar. 26, 2002, [http://www.telegram.com/news/page\\_one/laguer1.html](http://www.telegram.com/news/page_one/laguer1.html)).

3) Mr. Laguer has sent numerous unsettling letters and cards to prosecutors.

Attached for the Parole Board's information are samples of the fifty to sixty letters and cards that Mr. Laguer sent to the trial prosecutor, Assistant District Attorney James Lemire, during the 1980s and 1990s (Exhibit F), and a letter that he sent to Assistant District Attorney Lynn Morrill Turcotte, an appellate prosecutor, in 1994. (Exhibit G).

Based on the above-cited information and materials, and the reasons stated by the witnesses from the District Attorney's Office and by the victim's family at the June 12<sup>th</sup> parole hearing, the Office of the District Attorney for the Middle District opposes Benjamin Laguer's release on parole.

Very truly yours,

  
Lynn Morrill Turcotte  
Assistant District Attorney

✓ enclosures

cc: James C. Rehnquist, Esq. (w/ enclosures)



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June 10, 2003

Massachusetts Parole Board  
27 Wormwood Street, Suite 400  
Boston, MA 02210-3271

Re: **Benjamin Laguer (DOB 5/1/63)**

Dear Chairman and Members of the Board:

The Office of the District Attorney for the Middle District opposes the parole of Benjamin Laguer, who was convicted by a jury in 1984 of aggravated rape, assault and battery, breaking and entering, and robbery. Two representatives of the District Attorney's Office will be appearing for the Commonwealth at the parole hearing at 10:00 a.m. on June 12, 2003: Assistant District Attorney Lynn M. Turcotte and Assistant District Attorney Joseph J. Reilly, III.

In support of this opposition, the District Attorney submits the following documents:

**1) Evidence examined by the Department of State Police Crime Lab in 1983:** The report prepared by Assistant Chemist Mark T. Grant of Department of Public Safety crime lab in 1983 listed the following items:

- Item 4. Tissue from couch
- Item 12. Tissue with blood
- Item 14. Black and Yellow striped tube sock
- Item 15. Anal smear slides
- Item 16. Smear slides
- Item 17. Pubic hairs
- Item 18. Swabs.
- Item 22. Saliva from Benjamin Laguer

Mark T. Grant examined the evidence and reported that: he found Type "B" blood on Item 4, the tissue from the couch, but was unable to determine the blood group on Item 12, the tissue with blood; his "[t]esting indicated that the wearer of the sock [Item 14]" had blood Type "O" in "perspiration deposited

in the sock"; he found "[n]o sperm cells or seminal fluid" in the swabs or slides listed as Items 15, 16, and 18; his testing of Item 17, the pubic hairs, revealed "sperm cells and seminal fluid" on the matted hairs; and his testing of Item 22, Mr. Laguer's saliva sample, "proved inconclusive" as to blood type.

2) Blood tests conducted in the late 1980s showed that Mr. Laguer had Type "B" blood, which was present on a bloody tissue and a tube sock found in the victim's apartment. In his post-conviction filings, Mr. Laguer repeatedly raised claims that the Commonwealth had allegedly destroyed "semen samples" taken from the victim, and had allowed them to "deteriorate" by failing to bring them immediately to the crime lab for testing. Mr. Laguer also repeatedly claimed that his trial counsel was ineffective for failing to conduct blood type tests on his blood before trial.

Blood type tests were conducted in the late 1980s, and showed that Mr. Laguer's blood type was Type "B" and that the victim's was Type "O". (See attached pages of *Commonwealth v. Laguer*, 410 Mass. 89, 91-92 (1991)). After an evidentiary hearing in 1989, in 1991, the Supreme Judicial Court affirmed the trial judge's findings that the tube sock used to gag the victim bore traces of both Type "O" and Type "B" blood types: Type "O" from the victim's saliva, and Type "B" from the rapist's perspiration on the sock. *Id.* Because in 1983, Mark T. Grant also had found Type "B" blood on a tissue taken from the victim's couch (see Item 4 in Grant's Department of Public Safety report), the SJC held that the trial judge properly found that if Mr. Laguer's trial counsel had presented evidence at trial showing that Mr. Laguer had Type "B" blood, this would have made the Commonwealth's case against Mr. Laguer "more compelling." *Laguer*, 410 Mass. at 92.

3) Mr. Laguer has admitted that he tampered with his court-ordered saliva sample before trial in 1983 to "confuse" the blood-type results. In a 1994 *Esquire* article that he himself filed in court (as one of many articles about himself that he attached as exhibits to his pro se "Petition For Revision Of Sentence," filed on July 25, 1994), Mr. Laguer admitted that he intentionally contaminated the court-ordered saliva sample that was submitted to Mark T. Grant at the Department of Public Safety crime lab in 1983. (See attached petition and the article by John Taylor, *And The Truth Shall Set Him Free. Or Will It?* *Esquire*, May, 1994, at 97). Specifically, Mr. Laguer told the *Esquire* writer that, "at the suggestion of someone he knew, he mixed another inmate's saliva with his own to confuse the results" of the blood-type testing ordered by

the court. (emphasis added). *Id.* Mr. Laguer told the *Esquire* writer that he mistakenly thought he had Type "O" blood, the blood type that Mark T. Grant found on the tube sock found in the victim's apartment.

4) "Report 1" from Forensic Science Associates ("FSA"), dated August 15, 2001. In the fall of 1999, before filing any motion or notice of appearance, and without any notice to the District Attorney's Office, several lawyers and an investigator representing Mr. Laguer conducted an "inventory" of the physical evidence in Mr. Laguer's case stored at the Worcester Superior Court Clerk's Office. This evidence included the "pubic hairs" (Item 17), the slides (Items 15 and 16), the swabs (Item 18), and the bloody tissues (Items 4 and 12) that Mark T. Grant had examined in 1983.

In January of 2000, Mr. Laguer's lawyers filed a motion to obtain DNA testing of this evidence, to be paid for by Mr. Laguer's supporters. The DNA testing was conducted in 2001 and 2002 by Mr. Laguer's chosen DNA expert, Dr. Edward T. Blake of Forensic Science Associates ("FSA") in California. In response to orders issued by the Worcester Superior Court (Hillman, J.), FSA issued three reports, (see attached Reports 1, 2, and 3) describing FSA's testing procedures and test results.

In "Report 1," dated August 15, 2001, Dr. Blake described FSA's testing of the following evidence: portions of the material on two vaginal/rectal swabs taken from the victim (FSA's Item B-1); portions of a bloody tissue found on the victim's couch (FSA's Tissue D); portions of a bloody tissue found on the floor under the victim (FSA's Tissue F); and a beaker or flask containing a clump of the victim's matted pubic hair (FSA's Item H). (Report 1 at 2-6). FSA obtained the female victim's DNA profile from the genetic material on the swabs, tissues, and pubic hair. (Report 1 at 8-11). In Report 1, FSA noted that the victim had Type "O" blood, and that in 1983 the Department of Public Safety crime lab had found evidence of Laguer's blood type, Type "B," on Tissue D, the tissue taken from the victim's couch. (Report 1 at 11-12). As such, FSA recommended further testing of the tissues to look for male blood. (Report 1 at 11-12). Because FSA had found only about fifty (50) spermatozoa in the biological material on the matted pubic hairs (Report 1 at 5-6) -- a number insufficient for DNA testing -- Dr. Blake concluded that, "to have a reasonable expectation for a successful DNA typing analysis on the small quantity of spermatozoa from the matted pubic hairs #H . . . ., the spermatozoa from all the remaining matted pubic hairs and [from the] original cell debris slide [along with material rinsed from inside the flask or beaker,

and material on the other genital slides] should be combined [or "pooled"] into one preparation." (Report 1 at 6, 11).

5) "Report 2" from Forensic Science Associates ("FSA"), dated February 4, 2002. Alan Keel of FSA, in the presence of Kellie Bogosian from the Massachusetts State Police Crime Laboratory, conducted further PCR-based DNA testing on the "pooled sperm" that FSA had extracted from the multiple items of evidence sent to FSA, including: the remaining portions of the vaginal/rectal swabs; all the matted pubic hairs; the flask that contained the pubic hairs; and eight (8) individual slides containing biological material taken from the victim after the rape. (See Report 2 at 10).

According to FSA, the combined biological material, or "pooled spermatozoa," that FSA extracted from the various items of evidence contained "a balanced mixture of DNA from a male and a female" that was sufficient to yield one female DNA profile and one male DNA profile. (Report 2 at 10-12, 14). The DNA profiles each consisted of nine (9) alleles, or genetic markers, plus a genetic marker called amelogenin indicating male or female. (Report 2 at 9, 16). FSA concluded that the array of possible genotypes found in the non-sperm material (blood and epithelial cells) in the **female DNA profile "occurs in significantly less than one out of 100,000 members of the population,"** and "it is unlikely that more than one human being has ever possessed this particular genotype array." (Report 2 at 10) (emphasis added). FSA also concluded that the female DNA profile likely to belong to the victim. (Report 2 at 14).

According to FSA, the **male DNA profile** derived from the "pooled spermatozoa" yielded "[a] **highly discriminating genetic profile**" that "**occurs in less than one out of 100 million members of the Caucasian and Black populations.**" (Report 2 at 11, 14, 16) (emphasis added).

In addition, FSA found tiny amounts of "[m]ale DNA at the threshold of detectability" in the **non-sperm portions** of material on two of the slides. (Report 2 at 12). These "trace levels" of DNA matched Alan Keel's DNA profile. According to FSA, "[i]t is likely that . . . a few dozen epithelial cells from Mr. Keel were inadvertently deposited on these slides while [he was] speaking near or over them." (Report 2 at 12).

Further DNA testing of additional cuttings from the bloody tissue found on the victim's couch (Tissue D), on which Laguer's blood type, Type "B," was found in 1983, yielded "[a] trace level of DNA from a male" who possessed genetic marker

vWA 17,18. (Report 2 at 12-14,16). The genetic marker vWA 17,18 was one of the nine genetic markers found in the male DNA profile derived from the "pooled spermatozoa." (Report 2 at 13,14,16).

Because a male DNA profile had been developed from the "pooled spermatozoa," the next step was to test the "reference samples" of DNA taken from the victim and Benjamin Laguer, "to determine whether or not [the victim] c[ould] be eliminated as the source of the blood and epithelial cells from this evidence and whether or not LaGuer c[ould] be eliminated as the source of the spermatozoa." (Report 2 at 15).

6) "Report 3" from Forensic Science Associates ("FSA"), dated March 21, 2002. The final round of DNA and blood-type testing conducted on the bloody tissues found in the victim's apartment yielded a finding of blood type (Type "O") and a female DNA profile that matched the blood type and DNA profile of the female victim. FSA also found Laguer's blood type, Type B, on the tissues, along with a trace level of male DNA that shared one genetic marker (vWA type 17,18) with the male DNA profile derived from the spermatozoa taken from the victim. (See Report 3 at pages 1-3,5,9).

FSA also concluded that the male genotypes (or DNA profile) found in the "pooled spermatozoa," which occurs in **fewer than 1 out of 100 million** Black and Caucasian people (Report 3 at pages 2,8) (emphasis added), matched the genetic markers in Laguer's DNA profile. (Compare the genetic markers listed in Report 2 at 16 and Report 3 at 8, with Laguer's genetic markers listed in Report 3 at 7).

Based on the DNA test results, Dr. Blake concluded that Benjamin Laguer's DNA profile "**possess[es] all of the obligate genotypes and/or alleles**" identified in the DNA profile found in the sperm taken from the victim, and "**fails to support Benjamin Laguer's claim of factual innocence.**" (Report 3 at pp. 8,9) (emphasis added).

7) Mr. Laguer recently has raised a new claim, that the Leominster Police Department allegedly took sperm from his underwear in 1983 and applied it to the tissues, slides, swabs and pubic hair that were tested by FSA -- a theory that Mr. Laguer's own DNA expert, Dr. Edward T. Blake, says "**defies credibility.**" (See attached article from the *Worcester Telegram & Gazette* dated March 31, 2002). Calling Mr. Laguer "a master manipulator and a flimflam artist," Dr. Blake told a reporter that twenty years ago in 1983, even scientists would not have been able to detect the small number of sperm FSA



extracted from the residue in the "pooled spermatozoa." Dr. Blake also said that "60 percent of the convicts who request DNA testing are further implicated by the results," and that rapists ask for DNA testing because of the bias against rapists in the "culture of prison," and because they can't admit to their families that they are guilty of rape.


8) Mr. Laguer has "convinced himself" that he did not rape the victim. Mr. Laguer recently told a reporter that, after learning of the DNA test results, he spent the night questioning himself, but "[by] the next morning . . . he had convinced himself that he was not the person responsible for the attack on his neighbor on July 12, 1983." (See attached article from the Telegram & Gazette dated June 8, 2003).

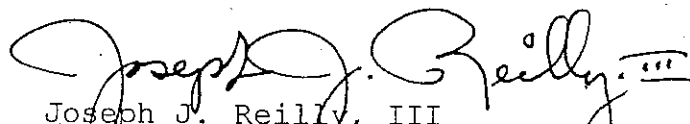
In light of the evidence detailed above, and because Mr. Laguer has exhibited no remorse and has refused to accept responsibility for the vicious crimes he committed in 1983, despite the overwhelming DNA evidence showing that his DNA profile matches the DNA profile derived from the sperm taken from the victim, his release on parole would be "incompatible with the welfare of society." G.L. c. 127, § 130. Therefore, the Office of the District Attorney urges the Board to deny parole to Benjamin Laguer in the sound exercise of its discretion.

Very truly yours,

John J. Conte  
District Attorney

By:

  
Lynn M. Turcotte  
Assistant District Attorney

  
Joseph J. Reilly, III  
Assistant District Attorney