


	COMMONWEALTH OF MASSACHUSETTS	
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May 3, 2010

Mark A. Conrad, Chairman  
Massachusetts Parole Board  
12 Mercer Road  
Natick, MA-01760

Re: **Benjamin Laguer, W40280**  
Hearing on April 22, 2010

Dear Chairman Conrad and Members of the Parole Board:

This letter is to supplement the information provided to the Board at Benjamin Laguer's most recent parole hearing held on April 22, 2010.

At the April 22<sup>nd</sup> hearing, Benjamin Laguer testified yet again -- as he did at his 2003 parole hearing -- that the Commonwealth had offered him a plea before trial that would have resulted in his serving a two-year sentence. This claim is not true. The trial prosecutor never made any plea offer to Benjamin Laguer, because the victim insisted on testifying against her attacker at trial.

Enclosed is an affidavit from the trial prosecutor, James R. Lemire, who is now an Associate Justice of the Superior Court sitting in Worcester. (See **EXHIBIT 1**, "Affidavit of James R. Lemire" dated April 30, 2010).

In his affidavit, Judge Lemire states that he "never made any plea offer to Attorney Ettenberg [Benjamin Laguer's trial counsel] because the victim insisted on testifying at trial," and that at a meeting with the victim and her son-in-law, Robert Barry, shortly before trial, the victim said that she "wanted to testify because her attacker should not get away with what he did to her." (**EXH 1**, Affidavit at ¶¶ 12 & 13).

Judge Lemire also states that the office protocol in 1983 and 1984 was that "all plea offers made in Superior Court cases had to be approved by the District Attorney, John J. Conte," and that Judge Lemire "never asked District Attorney Conte to approve a plea offer in the Laguer case, because the victim insisted on going to trial." (**EXH 1**, Affidavit at ¶¶ 14 & 15).

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Judge Lemire further states that, pursuant to office protocol, he did consult with the District Attorney about the life sentence that the Commonwealth recommended after trial. (EXH 1, Affidavit at ¶¶ 14 & 15).

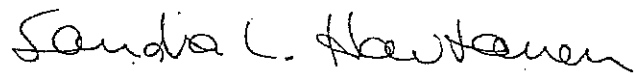
At sentencing, as the trial transcript shows, Attorney Ettenberg asked the trial judge (Mulkern, J.) "to consider the lower end of the Guidelines," which "cal[ed] for a minimum . . . of [a] three year sentence and a maximum lower penalty of eleven years and something months." (See EXHIBIT 2, trial transcript at pp. 615-17). When the Commonwealth asked for a life sentence after trial, if the prosecutor previously had offered Benjamin Laguer the equivalent of a two-year prison commitment, Attorney Ettenberg presumably would have told the judge about this lenient plea offer -- he did not, because no plea offer was made.

Finally, Benjamin Laguer also failed to mention any plea offers in the *pro se* motions and affidavits he filed just months after his 1984 trial. (See, e.g., EXHIBIT 3, *pro se* "Motion to Stay Execution of Sentence" and supporting affidavit filed Nov. 19, 1984, and denied Mar. 13, 1985).


In short, as reflected by the record in this case, the Commonwealth made no plea offers to Benjamin Laguer.

Very truly yours,

Joseph D. Early, Jr.  
District Attorney



By Sandra L. Hautanen  
Assistant District Attorney



By Michelle R. King  
Assistant District Attorney

cc: Isaac Borenstein, Esq.