October 31, 2014

Benjamin LaGuer, W40280
P.O. Box 466
Gardner, MA 01440

Constance V. Vecchione
Office of the Bar Counsel
99 High Street
Boston, MA 02110

Dear Ms. Vecchione:

I am writing to file a formal complaint against Attorney Saundra L. Hautanen, BBO # 225965 and Attorney Joseph J. Reilly III, BBO # 415885, Assistant District Attorneys for the Middle District.

In January 2000, through counsel, I requested certain physical evidence from the prosecution to assess the feasibility of DNA analysis. This complaint stems from Hautanen and Reilly misrepresenting the provenance of that evidence that was eventually sent for testing. Hautanen and Reilly knew that certain fabrics had originated from my apartment, not the crime scene, because that is where a police narrative had noted the very first observation of these items. Massachusetts State Police Crime Laboratory (MSPCL) Assistant Chemist Mark T. Grant admitted in 1989 that evidence taken from Plante and her apartment were run together with fabrics seen on me and in my residence.[1] Analyst Grant said "everything was bagged together in one box."[2] To create a genotype of the presumptive culprit, FSA used samples previously enmeshed with hairs, tube socks, underpants and other fabrics from me, including "unspecified" [3] samples not authorized by the court-approved protocol. In 1989, Mr. Grant identified eight socks he was asked to analyze prior to trial.[4] The police had previously denied seizing the fabrics, in a raid of my bedroom, because they had no search warrant for those particular underclothes.

On 17 May 1989, Leominster Police Lieutenant Francis J. Ptak and Trooper William P. Kokocinski signed a receipt for three (3) underpants.[5] In court, James R. Lemire, the trial prosecutor, only presented only two (2) pairs.[6] Lemire never disclosed the third "cotton" underpants. Judge Mulkern concluded: "The only underwear in this case consist of two pairs of clearly feminine underwear found at the victim's apartment." [7] In 1988, other prosecutors requested "also Benjie's underwear" in

[1] Testimony of Mark T. Grant 22 May 1989. (Tr. 68, 74)
[2] Testimony of Mark T. Grant 22 May 1989. (Tr. 68, 74)
[3] FSA Report 2, 4 February 2002, pp. 6-7
[4] State Police, Evidence Inventory and Documentation Report of 12 May 2000 by Gwen Pino; Follow Up, Investigative Report of July 14, 1983 by Detective; State Police "Record of Evidence Submitted" form of August 3, 1983; MSPCL Nov. '83 report, item No 21.
[5] Dated 17 May, 1989 Leominster Police Chain of Custody Report of Articles transferred to State Trooper William Kokocinski. Also see, Leominster Police Department Report by Lt Michele D. Pellecchia.
[6] Transcript of May 22, 1989, court hearing, p. 7.
[7] Memorandum and Decision Denying a New Trial by Judge Robert V. Mulkern, 2 June 1989 pp9

a letter Leominster PD.[8] In May 2000 the MSPCL catalogued a parcel of “underclothes from suspect”.[9] Hautanen also admitted “obviously there were men’s underwear in this case.”[10] Mr. Grant’s MSPCL pretrial analysis revealed in examination in the “interior crotch” of “underpants – suspect”[11] indicating no female secretions.[12]

In May 2000 the State Police had a slide of hairs from a "yellow pullover," a different name for a "yellow jersey" LaGuer was donning when arrested. In November 2011, Hautanen said, no less than nine times in a single filing, that the "yellow pullover" in Grant's benchnotes is the “yellow jersey” described in all other reports.[13] This hair slide was sent for DNA extraction, sequencing and comparison on August 2001. In November 2011, Hautanen admitted that certain fabrics were "incorrectly" labeled,[14] a fact that she should have admitted when arguing the validity of the DNA evidence to the Supreme Judicial Court.[15]

On 19 May 2004 Hautanen and Reilly urged the trial court to deny a new trial because DNA evidence “demonstrate to a mathematical certainty that he committed the crimes of which he was convicted.” The district attorney had earlier put out a press release: “In 1984 we proved LaGuer’s guilt beyond a reasonable doubt, that is to a moral certainty. In 2002, DNA testing has proved Mr. LaGuer guilt to a mathematical certainty.”[16] Hautanen and Reilly presented that statistical evidence as if to suggest (falsely) the likelihood of guilt rather than the odds of that genotype randomly repeating in a sample. The 100 million to one is the odds that a second person shares my genotype, not proof that demonstrates “with mathematical certainty” guilt. Hautanen and Reilly should have been well familiar with this error.

Attorneys Hautanen and Reilly argued that LaGuer’s DNA was “found on cotton swabs used to obtain evidence from the victim’s vaginal, rectal, and oral cavities.” This representation is demonstrably false. “Since no spermatozoa and no male DNA was recovered from the Plante vaginal/rectal swabs, this evidence is not relevant to the genetic information of Plante’s assailant.”[17] The Q-Tip swab used to transfer her pubic hairs yielded no blood or sperm fractions.[18] Subsequently, Hautanen argued that a “preparation of ‘pooled sperm’ was used to get the 100 sperm needed to generate a DNA profile.” This representation is also demonstrably false. In fact, there is not a single reference to 100 sperm on any forensic report. The actions of these prosecutors have been extremely prejudicial to those who have tried to fairly adjudicate the question of my guilt or innocence.

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[8] In a July 8, 1998 letter to Lt. Michele D. Pellecchia of the Leominster Police, disclosed in April 2001.
[9] State Police “Record of Evidence Submitted” form of August 3, 1983
[10] S.L. Hautanen, Parole Board testimony, April 25, 2010
[11] MSPCL Pretrail Benchnotes of M.T. Grant, p.1; MSPCL Nov. ‘83 report, item No 21.
[12] MSPCL Pretrial Bench notes of M.T. Grant, p.1; MSPCL Nov. ‘83 report, item No 21; Analytical forensic report from Wideman to state representative Ellen Story of 30 March 2006.
[13] Commonwealth’s Response to the Supplemental Memorandum in Support of LaGuer’s Ninth Motion for a New Trial. 23 November 2011 (5, 7, 8, 12, 13, 14, 17pp)
[14] Commonwealth’s Response to the Supplemental Memorandum in Support of LaGuer’s Ninth Motion for a New Trial. 23 November 2011, pp. 6-8.
[15] Letter from James C. Rehnquist to Supreme Judicial Court 24 January 2007.
[16] Bruun, Matt. Conte Says DNA Match Proves Guilt. Telegram. 27 March 2002
[17] Report Number 1, FSA, 15 August 2000, p.9
[18] Report Number 1, Forensic Science Associates, 15 August 2000, pg 6 (“Examination of the swab from the Pubic Hair Beaker...revealed a low level of epithelial cells; no spermatozoa were detected on this specimen.”)

In a December 4, 2006 pleading to the Supreme Judicial Court, Attorney James C. Rehnquist expressed a dire warning: “the Commonwealth’s references to the lower court’s findings with respect to the DNA testing merit no attention, as the courts’ supposed findings are based not on any review of test documentation, but rather nothing more than the mischaracterization of the testing that the Commonwealth present[ed] in its opposition to Mr. LaGuer’s motion for a new trial.” In rejecting a motion for a new trial, the SJC held: “we have not considered the fact that a deoxyribonucleic acid (DNA) test, performed after the trial at the defendant’s request and conducted by an independent forensic scientist of the defendant’s selection, apparently ‘pointed directly to the defendant’s guilt’” 448 Mass. 585, n6 and n34 (2007).

By intentionally submitting to the Supreme Judicial Court and lower courts, under pains and penalties of perjury, facts which she knew to be false, Hautanen engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Massachusetts Rules of Professional Conduct 8.4(c); conduct prejudicial to the administration of justice, Rule 8.4(d)(h); conduct that adversely reflects upon her fitness to practice law, 8.4(h). Hautanen and Reilly guilty of Obstruction of Justice/Misleading a Jury/Judge/Prosecutor and Defense Lawyer under M.G.L. c. 268 s. 13B.

There can be no doubt that the intent of Hautanen and Reilly was to obstruct justice. Joseph D. Early, Jr., the DA from the Middle District, has not responded to repeated requests to correct the record under Rule 3.3(a)(4), stating that “if a lawyer has offered...material evidence and the lawyer comes to know of its falsity, the lawyer shall immediately take reasonable remedial measures.”. Instead of correcting the record as he should, the staff of the District Attorney have essentially doubled down on these false representations. Not only have I offered DA Early a stream of e-mails and evidence, but the late Boston University President, Dr. John Silber, once offered to personally share his case file. DA Early dismissed Dr. Silber with deliberate indifference.

The provenance of DNA evidence is always a key factor in evaluating its probative value. Any attempt to eschew the extraneous source of DNA from articles taken from my apartment naturally would have led to the distortion of the genomic data.

In conclusion, I believe that a reasonable remedy pursuant to Rule 3.3(a)(4), should be for Hautanen and Reilly to take immediate actions to correct the record with respect to all of their foregoing misrepresentations, by writing a letter to the Chief Justice of the Supreme Judicial Court. Upon request, I would be more than happy to supply all of the documentation, or the locations where all of the documentation may be independently obtained.

Sincerely,

Benjamin LaGuer

CC: John LaChance
Ralph Gants
Phillip Rapoza
Martha Coakley