

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT

COMMONWEALTH

Criminal Action No.  
83-103391-94

v.

BEN LAGUER

**Motion for Discovery and Production of Tangible Evidence**

Now comes the defendant, Ben LaGuer, through his counsel, and respectfully moves this Court pursuant to Rule 14 of the Massachusetts Rules of Criminal Procedure, for an order requiring the district attorney's office to permit LaGuer or his assignee to inspect, copy or photograph any and all books, papers, documents, tangible objects or portions of any said material in the possession of the district attorney or within the control of any and all agents or agencies acting on behalf of the district attorney;

(a) which relate to any conversation, meetings, conferences, emails, audio or visual recordings between any agent or agency of the district attorney or between staff members of the district attorney's office<sup>1</sup>;

(b) which relate to any police report, medical records, grand jury testimony, physical evidence, progress reports, pretrial statements of prospective witnesses, bill of particulars, affidavits, transcripts, briefs, memoranda,

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<sup>1</sup>District Attorney John J. Conte; Assistant District Attorneys are Eileen Jedrzynski, Paul F. Bolton, Phillip E. Shea, James R. Lemire, Lynn M. Turcotte, Kathrine E. McMahon, Sandra P. Wysocki, Linda G. Katz, Leon Zitowitz, Daniel F. Tooney, Maurice O'Brian, Harry D. Quick, Sandra L. Hautanen and Joseph J. Reilly III

evidence or exhibit inventories, investigative notes, crime scene photographs, crime scene diagrams or drawings, scientific experiments, receipts of payment to any individual or agencies linked to this prosecution, letters from the district attorney's office to any individual or agencies linked to this case, letters from any individual or agencies to the legal staff of the District attorney's office, including, but not limited to, any other tangible material within the possession or control of the district attorney's office.

(c) which relate to any result or data of any scientific tests, examinations or experiments made in connection with this case, including specific tests made, the methods and proceedings used and samples of the material tested.

(d) which are owned by, or were in the actual or constructive custody of LaGuer, and were obtained by the district attorney either voluntarily, by seizure, or by process during a police search of LaGuer's apartment on Thursday afternoon of the 14th day of July 1983.

(e) obtained by the district attorney either voluntarily, seizure or process from LaGuer, the Leominster Police Department<sup>2</sup> or any of its employees, Massachusetts State Police or any of its employees<sup>3</sup>, Massachusetts Attorney General, Massachusetts

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<sup>2</sup>Leominster Police Department (29 Church St, Leominster, MA 01453 978-534-7560) officials are Chief Alan J. Gallagher (retired); Lt. Arthur Caisse (retired); Lt. Francis Arial (retired) Lt. Robert Hebert (retired); Det. Ronald N. Carignan (deceased); Det. Keith E. LaPrade (retired); Patrolmen Timothy Monahan (retired); Roland LaPointe (retired); Charles DePerri (retired); John R. Tata (unknown) Raymond A. Booth (remains in active service, along with) John Gianninis; Jane Hatstat; Lt. Michelle D. Pelleccia and; Dean J Mazarella (currently Mayor of the City of Leominster)

<sup>3</sup>State Police Troopers are Arthur Martin (#1428), William Kokocinski, Richard D. McKeon (#1814); Stephen E. Kelly (#2197); Lt. Ralph F. Defuria; Lt Francis Moore and Captain William P. Horgan; Marian J. McGovern; Robert O'Neil. State Police Crime Laboratory Criminalist in this case are Mark T. Grant (1983); Paul J. Malone (1983); "LJH" (1984); Gwen Boisvert (1988); Karoline M. LeClair (1989); Regina Cameron (2000); Gwen Pino; (2000); Mary K.

Executive Office of Public Safety, Burbank Hospital (currently HealthAlliance Hospitals) Medical Records of one Lennice May Plante, United States Armed Forces concerning the military service of Ben LaGuer between 1979 and 1983, Worcester County (MA) Sheriff's Jail and House of Corrections Medical Records of Ben LaGuer between 15 July 1983 and February 1984, Federal Bureau of investigations, Massachusetts Office of Inspector General, United States Office of Homeland Security, United States Department of Justice, including, but not limited to, any other individual or agencies known to the district attorney's office.

(f) obtained by the district attorney either voluntarily or process about Ben LaGuer in connection to this case from the Massachusetts Department of Corrections or any of its employees, the Massachusetts State Parole Board or any of its employees, including, but not limited to, any reports or notes of telephone calls, emails, reports, letters, photos or other tangible material.

(g) the defense of Ben LaGuer demands that the office of the district attorney itemize any and all tangible documents whether or not these materials have been put in evidence, including but not limited to, any and all descriptions of physical evidence obtained either voluntarily or seizure regardless of whether the district attorney in this case used or intends to use said materials in future posttrial proceedings or new trial.

(h) the defense of Ben LaGuer demands that the office of the district attorney locate all individuals who previously worked for the district attorney and order them to search all of

their personal possessions for documents or tangible evidence which relate or in any way pertain to the indictment or criminal investigation either pretrial, trial, posttrial or future proceedings, including a new trial.

(i) the defense of Ben LaGuer demands that the office of the district attorney locate all individuals or agencies called upon to provide assistances in connection with their prosecution and to release any and all documents or tangible evidence which relate or in any way pertain to the criminal investigation either pretrial or posttrial.

(j) the defense of Ben LaGuer demands that the office of the district attorney locate, secure and preserve any and all data from any and all individuals and agencies of the state and federal government, any private consultants aiding in whole or part of their prosecution, which is stored in any electronic device including, but not limited to iPhones, iPads, Blackberrys, Androids, WebOs, Symbian, Windows Phones, Palm Pre, Kindles and any other device that operate with proprietary software, specifically any and all data stored in the internal or external computer servers of the district attorney's office.

In conclusion, the items requested are highly critical to counsel's effort to effectively represent and defend meritorious claims of actual innocence. This motion is necessary because Ben LaGuer has been the victim of a habitual game, the district attorney's office has withheld exculpatory evidence over the course of three decades and nine previous motions for a new trial. The failure of prosecutors to disclose material in a timely manner substantially impeded LaGuer's earlier efforts to develop a clear narrative of particulars, and thus the strength of his legal and factual arguments were not as meritorious as they should have been augmented by the additional material. Each piece of evidence in a criminal proceeding has the potential to

cue, intimate or identify other facts critical to a potential defense, chain of events or other consequences vital to the innocent. Each fact is part of a jigsaw puzzle that may potentially put at risk the liberties of the innocent.

Respectfully submitted,

BENJAMIN LAGUER

By his counsel,

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Robert E. Terk, esq  
Dated: April 28th 2011

#### Certificate of Service

I hereby certify that a copy of this Motion for Discovery and Production of Tangible Evidence was served by first class mail and e-mail on Worcester County District Attorney Joseph D. Early Jr. personally to his hand for the Commonwealth on this 16th day of March, 2012.

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Robert E. Terk, esq