


	COMMONWEALTH OF MASSACHUSETTS	
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April 22, 2015

Dr. Charlene Bonner, Chairperson
Massachusetts Parole Board
12 Mercer Road
Natick, MA 01760

Re: **Benjamin Laguer, W40280**
Hearing on April 23, 2015 at 12:00 p.m.

Dear Chairperson Bonner and Members of the Parole Board:

The District Attorney's Office for the Middle District opposes Benjamin Laguer's current request to be paroled from his life sentence for Aggravated Rape, for the following reasons: Laguer's continuing refusal to admit to his crimes and his refusal to engage in sex offender treatment; his possession of explicit, adult pornography in 2009 and in 2006; his consistent refusal to follow the rules in prison as shown by the fact that over the years he has received more than thirty (30) Disciplinary Reports; his dishonesty and refusal to follow the rules of court, as shown in the "Commonwealth's Motion to Dismiss Laguer's Ninth New Trial Motion Due To 'Fraud on the Court'"; his arrogance and insistence on having control and being the "boss," as shown by the "Commonwealth's Motion to Clarify Representation" and his self-promoting letters, e-mails, and writings; the defiance, anger, frustration and vengeful hostility he displays when anyone fails him, opposes him, or thwarts him, as reflected in his written attacks against judges, police officers, crime lab personnel, his former lawyers, his own DNA expert, past and present employees at the District Attorney's office, and, most disturbingly, the late victim and members of her family, while insisting that he is the

victim of a broad conspiracy; and the extremely violent nature of his vicious, eight-hour sexual assault on a fragile victim, which caused her severe injury and life-long trauma. For all of these reasons, there is no reasonable probability that, if released, Benjamin Laguer will live and remain at liberty without violating the law or that his release would be compatible with the welfare of society and the demands of public safety. 120 C.M.R. 300.04 (1). Benjamin Laguer remains a risk to the community. He should not be released on parole.

PROCEDURAL BACKGROUND

After a jury trial in 1984, Benjamin Laguer was convicted in Worcester Superior Court of: (1) Unarmed Robbery; (2) Breaking and Entering in the Nighttime with Intent to Commit a Felony; (3) Assault and Battery; and (4) Aggravated Rape. (Indictment Nos. 83-103991 to -94). He was sentenced to 12-15 years in prison on the convictions for Unarmed Robbery and Breaking and Entering, and to life in prison with the possibility of parole for Aggravated Rape. His Assault and Battery conviction was placed on file.

The Parole Board denied Laguer's request for parole in 2000, in 2003, and again in 2010, most recently finding that his failure to engage "any significant in sex offender treatment," "his failure to take responsibility for his actions in spite of significant inculpatory evidence," "his willful failure to make productive use of the wide range of rehabilitative programming opportunities . . . , his overall poor disciplinary record, the combative demeanor and dishonesty he evinced at his hearing, and his prior record, including his military record," all showed that "his release on parole [was] not consistent with the demands of public safety." (EXHIBIT 1, "Record of Decision," 6/11/10).

From 2000 through March, 2002, pursuant to a series of procedural orders issued by Superior Court Judge Timothy S. Hillman (now a federal magistrate), DNA testing of the "rape kit" evidence taken from the victim and evidence from the crime scene -- testing that was requested by Benjamin Laguer and paid for by his supporters -- was conducted by Laguer's chosen DNA expert, Dr. Edward Blake of Forensic Science Associates (FSA), who often works with the Innocence Project. The DNA results showed that **the** only male DNA profile found in sperm taken from the victim in 1983, which occurs in fewer than "1 in 100 million members of the Caucasian and Black populations," matched Laguer's DNA profile. (EXHIBIT 2, "LaGuer DNA a match,"

Telegram & Gazette, 3/23/02; “DNA Testing Backfires for Convicted Rapist,” *Boston Globe*, 3/24/02).

When Dr. Blake released the DNA test results on March 21, 2002, Laguer refused to accept the results (“It’s not true; It’s not true”) and immediately began to attack Dr. Blake and the District Attorney’s Office in media interviews and in an eleven-page, single-spaced letter, complete with footnotes, addressed to the judge who oversaw the DNA proceedings, Judge Timothy S. Hillman. (EXHIBIT 3, Laguer’s letter to Judge Hillman). Laguer was distributing this letter to the media the same day the DNA results were announced. (EXH 2). Desperate to explain the damning DNA evidence, Laguer claimed that in 1983, “a low volume of sperm was rinsed [by someone at the State Police crime lab] from the[] ‘Underpants - suspect’” that the Leominster police had secretly “pilfered” from Laguer’s bedroom while executing a search warrant two days after the rape, and that his sperm “then [was] amateurishly splashed only on the matted pubic hairs” in the victim’s rape kit. (EXH 3, Laguer’s letter and item 21 on chemist Mark Grant’s lab report). Laguer, however, knew that the “sperm splashing” and “forensic fiddling” alleged in his 2002 letter was not true, because he was present, and also argued, at a new trial hearing held in May, 1989, where the “underpants - suspect” were examined in open court and shown to be “women’s underpants” collected by the police from the victim’s apartment. (EXH 3, excerpts from 1989 Motion Hearing transcript). And according to Laguer’s own DNA expert, Dr. Blake, the claim of a “broad conspiracy [in 1983] that foresaw by decades the development of DNA testing” was “only possible at the fringes of one’s imagination.” (EXH 2).

After the Supreme Judicial Court affirmed the denial of Laguer’s **eighth** new trial motion in 2007, *Commonwealth v. Laguer*, 448 Mass. 585 (2007) (EXHIBIT 4), in 2011, Laguer filed his **ninth** new trial motion in Worcester Superior Court, challenging the results of his DNA testing, in part based on his false “sperm-splashing” scenario, and claiming that he had “newly discovered evidence” about the victim’s mental health. After a hearing held on September 9, 2011, where Laguer insisted on arguing for himself (EXHIBIT 5), the Commonwealth filed a fact-based “supplemental” opposition to the ninth new trial motion (EXHIBIT 6), after filing a “Motion to Dismiss . . . Due To ‘Fraud on the Court’” (EXHIBIT 7), because defendant, through his lawyer, had filed a

fraudulent, unsigned “plea offer” letter as an exhibit to the new trial motion. (EXH 7, *see* “Exhibit 1”).

On February 27, 2012, Judge Richard T. Tucker (Judge Hillman having been appointed to the U.S. District Court) denied Laguer’s ninth new trial motion (EXHIBIT 8, “Memorandum of Decision”), finding “no evidentiary support” for Laguer’s DNA claims. (EXH 8 at 6).

Judge Tucker also allowed the Commonwealth’s “Motion to Dismiss . . . Due To ‘Fraud on the Court,’” finding that the unsigned “plea offer” letter was “unauthentic,” and that by (1) filing the “unauthentic” letter in court in 2011, (2) admittedly tampering with his court-ordered saliva sample before trial in 1983 by mixing another inmate’s saliva with his own, which resulted in an “inconclusive” blood-type result so that no forensic evidence was introduced at trial (*see* EXH 3, item 22 on chemist Mark Grant’s lab report), and (3) coercing an elderly juror into signing an affidavit (originally drafted by Laguer) with “wildly exaggerated and uncorroborated allegations” of ethnic bias on the jury, which the trial judge found in 1991 “were not essentially true,” (EXHIBIT 9, “Memorandum of Decision” by Mulkern, J. dated Sept. 3, 1991), Laguer had “clearly demonstrate[d] a pattern of behavior . . . [intended] to perpetrate ‘a fraud on the court.’” (EXH 8 at 17) (emphasis added). Laguer’s appeal from Judge Tucker’s decision is now pending at the Massachusetts Appeals Court, *Commonwealth v. Laguer*, Appeals Court No. 2012-P-1785.

Laguer also filed two lengthy *pro se* “Petitions for Executive Clemency,” in 2012 and in 2014, both raising claims of “actual innocence” that did not meet the existing guidelines for commutation of his sentence.

REASONS THAT THE BOARD SHOULD DENY PAROLE

(1) Benjamin Laguer was convicted of an extremely violent sexual crime.

The facts at trial showed that, after stealing the 59-year old female victim’s keys and creeping into her studio apartment in an elderly housing complex at 9:00 p.m. on July 12, 1983, for the next eight hours 20-year-old Benjamin Laguer repeatedly raped, sodomized, punched, dragged, jumped on, and tried to suffocate the victim, while saying “I hate you” and asking her, “Don’t you like sex?” He ripped two rings from the victim’s

fingers and stole her purse, and after threatening to kill the victim if she told anyone who he was, fled to his father's empty apartment next door at around 5:30 a.m., wearing at most "jogging shorts" and one tube sock (the other sock was found at the crime scene). (EXH 4, *Laguer*, 448 Mass. at 586-90). This extremely violent sexual crime caused the victim severe physical injuries and life-long trauma, and caused the trial judge (Mulkern J.) to sentence defendant to life in prison for "one of the most vicious sexual assaults on a particularly fragile person that I have ever seen." (Trial Tr. at 617-18).

(2) **Laguer possessed explicit, adult pornography in June, 2009, and in 2006.**

At Disciplinary Board hearings held in October, 2006, and in June, 2009, inmate Laguer pleaded guilty to possessing "numerous pages" of **explicit, adult pornography**, specifically "photographic . . . material and/or unauthorized publications depicting explicit sexual acts and/or nudity." (EXHIBIT 10, D-Report Nos. 90658 and 16612 and pornographic photos). In 2007, when he wanted a transfer from Souza-Baranowski to NCCI-Gardner, Laguer minimized the significance of a convicted rapist being found with explicit pornography, claiming that "[a] recent d-report for possessing a photography [i.e., pornographic photographs] in violation of the rules is hardly a reason to cite against [my transfer to] NCCI [Gardner]." (EXH 10, Classification Report, 6/5/07).

(3) **Laguer refuses to participate in Sex Offender Treatment Programs (SOTP).**

Although prison counselors, Classification Boards, and this Board have consistently recommended that Benjamin Laguer attend Sex Offender Treatment Programs (SOTP), he has refused to do so, repeatedly insisting that he is innocent. (See EXHS 1 & 10). In his 2007 Classification Appeal (EXH 10), Laguer acknowledged that "if I do not complete SOTP the Parole Board is going to deny me a parole . . .," but he made this acknowledgment only to manipulate prison officials into transferring him to NCCI-Gardner, where SOTP was available. Laguer also has refused to seek counseling or participate in the Transition Planning Program, believing that he won't face any "big obstacles" living in the outside world after over thirty years in prison.

(4) **Laguer refuses to admit his guilt or take responsibility for any wrongdoing.**

From the beginning, Benjamin Laguer has refused to admit his guilt or take responsibility for any wrongdoing -- even after the 2002 DNA test results. (EXH 2). A 1984 report states: "He claims it is a case of mistaken identity and denies any criminal

responsibility,” and “asserts his confidence that his conviction will be overturned.” (EXHIBIT 11, document from MCI-Walpole). Similarly, in 2009: “Subject states that he had nothing to do with the offense and that his case is currently under appeal.” (EXH 11, Classification Report, 5/29/09).

Laguer’s continuing refusal to admit guilt shows his unwillingness to be rehabilitated, and has “a negative effect on . . . [his] parole application.” *Quegan v. Massachusetts Parole Bd.*, 423 Mass. 834, 837-38 (1996) (holding that because a prisoner “may elect either not to seek parole or to seek parole and not admit his guilt,” he is not compelled to furnish evidence against himself in violation of the Fifth Amendment or art. 12). See *McKune v. Lile*, 536 U.S. 24, 33 (2002) (accepting responsibility for sex crimes is a critical component of sex offender treatment that can reduce recidivism), cited in *Smith v. Sex Offender Registry Bd.*, 65 Mass. App. Ct. 803, 812 (2006); *Ainsworth v. Stanley*, 317 F.3d 1, 5 (1st Cir. 2002) (“the admission of crimes is ‘widely believed to be a necessary prerequisite for successful treatment’ of sex offenders”).

(5) **Laguer has received over 30 disciplinary reports.**

Inmate Laguer has accumulated more than **30 disciplinary reports** while in DOC custody (EXHIBIT 12), and at least five since March of 2009. He has had two D-Reports for possession of pornography in the last ten years (EXH 9), and his six-part file includes D-Reports for insolence, disobeying an order, threatening, stealing, lying, being out of place during counts, fighting, disruptive conduct, smoking in his cell, use of obscene/abusive language, unauthorized possession of items such as library books, “homebrew,” and a female scarf, and, in 1994, for “smashing a ceramic mug into a barrel which resulted in a C.O. being struck by a fragment.”

His disciplinary records show that, from the beginning in 1984, Laguer has exhibited a complete disregard for institutional rules, as evidenced by his continuous receipt of D-reports for the same offenses, for example, for being out of place again and again, most recently on July 3, 2014. (EXH 12). If Laguer will not follow the rules in a controlled environment like prison, he will not follow the rules of society if released out into the community, and therefore remains a risk to society.

- (6) In his letters, e-mails, and internet postings, Laguer has repeatedly attacked and threatened police officers, judges, his former lawyers, crime lab personnel, his own DNA expert, past and present employees at the District Attorney's office, and the victim and her family, and presented himself as the victim of a broad conspiracy in this case.

Under G.L. c. 127, § 136, the Parole Board must examine an inmate's attitude toward society, including, but not limited to, toward the judge who sentenced him (or denied his motions), the District Attorney who prosecuted him, and the prosecutors who continue to oppose his motions, and the police who arrested him. Laguer's attitude toward those who oppose him, thwart him, or fail him, is narcissistic, arrogant, and angry, and he continues to portray himself as the victim in this case. He routinely bombards his targets with unsolicited copies of his sarcastic, often vitriolic, writings and uncorroborated claims, as shown by the letters and e-mails attached to the Commonwealth's Motion to Clarify Representation" (EXHIBIT 13), and the self-authored writings posted on his website, www.benlaguer.org (EXHIBIT 14, website postings), specifically, Laguer's self-serving, single-spaced, 55-page narrative entitled "In the Matter of Ben Laguer's Actual Innocence" (EXHIBIT 15), in which Laguer identifies the victim by name over 200 times; minimizes the impact of his own wrongful actions, including his release from the military, his more than 30 disciplinary reports, and his tampering with evidence (EXH 15 at 23, 47, 53); celebrates his own popularity and his many accomplishments, including the fact of his birth (EXH 15 at 20, 22, 33); attacks Judge Tucker for denying Laguer's ninth motion for new trial and finding that Laguer had committed "fraud on the court" (EXH 15 at 52-53, 55); relies on and quotes from the "unauthentic" plea offer letter (EXH 15 at 51 & n.189, 53); and disgracefully denigrates the victim and her immediate family. (EXH 15 at 7, 11, 39).

Additional e-mails and letters from Laguer (EXHIBIT 16) -- including the appalling letter he wrote to the victim's family in 1994, admitting that he had telephoned the victim in a nursing home and said he was a priest; a complaint he sent to the Ethics Commission about Judge Hillman; and an obsequious letter he sent to writer Joy James, who wrote about Laguer's involvement in the 2006 gubernatorial campaign -- reveal his grandiose, manipulative, angry, and controlling behavior.

(6) Laguer's need to bring attention to himself and his achievements has added incriminating evidence to the case.

By boasting to the press and the public, and to DNA experts, about his theories and accomplishments, good and bad, Laguer has added substantial incriminating evidence to the record in his case.

For example, in 1994 -- years after the six-year statute of limitations had run on possible charges of criminal contempt or obstruction of justice, *see* G.L. c. 277, § 63 and *Commonwealth v. Gallarelli*, 372 Mass. 573, 580 (1977) -- Laguer admitted to a writer from *Esquire* magazine that, before trial in 1983, he had tampered with a court-ordered saliva sample by mixing another inmate's saliva with his own, with the result that the Commonwealth introduced no blood-type evidence at his trial. (EXHIBIT 17, pages from *Esquire* Magazine). Laguer then filed the *Esquire* article, and other articles about himself, in Worcester Superior Court in support of a *pro se* motion. (EXH 17, Petition for Revision of Sentence, 7/25/94). At his 2003 parole hearing, Laguer admitted to this tampering under oath. His intentional destruction of evidence shows consciousness of guilt.

In 1997, Laguer won first prize in an American Pen memoir-writing competition, and his memoir, entitled "A Man Who Loves his Mother Loves Women," is posted on his website in the "Articles" section. (EXH 14, "Articles"). In his memoir, Laguer describes how, after his mother found stains from "venereal disease" in his father's underpants, Laguer saw his mother bring "a giant of a man" into her bedroom, where he watched them having sex. (EXH 14 "Articles"). Laguer's memoir finally provided a motive in his case, and explained why a 20-year-old man raped a woman old enough to be his mother, while repeatedly telling her, "I hate you," and asking her, "Don't you like sex?" (Trial Tr. 115-17, 131, 168, 173 182-83).

And in 2009, Dr. D. Kim Rossmo of Texas State University published a book entitled Criminal Investigative Failures. (EXHIBIT 18). In a chapter about "Wrongful Innocence Claims," Dr. Rossmo explains how Laguer's supporters contacted him for an opinion about Laguer's DNA claims and the "sperm-splashing" scenario as described in a document called "Errors in the Ben LaGuer DNA Analysis By Benjamin Laguer." (EXH 18 at 260, 262). Dr. Rossmo, however, described Laguer's writings as "biased and

misleading,” and wrote that Laguer’s “actions in mixing another inmate’s saliva with his own . . . demonstrates his tendency to manipulate, and weakens his credibility.” (EXH 18 at 262-63). Dr. Rossmo also concluded that even if the DNA evidence had been contaminated, “the results still failed to exonerate” Laguer, “as no other male DNA” was in found the victim’s rape kit. (EXH 18 at 262).

(7) Laguer’s childish, defiant, and retaliatory responses to the Commonwealth’s success in having the victim’s name removed from Laguer’s appellate brief and having the brief removed from Laguer’s website, prove that he is not ready for parole.

On August 8, 2014, after Laguer’s appellate counsel filed Laguer’s brief in his appeal from Judge Tucker’s denial of the ninth new trial motion, the Commonwealth moved to strike Laguer’s brief in part for “repeatedly refer[ring] to the victim by name, . . . sometimes multiple times on a single page, in direct violation of G.L. c. 265, § 24C.” (EXHIBIT 19, “Commonwealth’s Motion to Strike,” ¶ 3). On August 14, 2014, the Appeals Court ordered that “Defendant’s counsel shall make appropriate redactions to the brief in all copies on file with the Clerk’s Office” (EXH 19, Appeals Court Order, Paper #28). On August 15, 2014, the Commonwealth notified Laguer’s appellate counsel that his unredacted brief, which included the victim’s name, was posted on Laguer’s website, and asked counsel to have the brief removed from the website in compliance with the Order from the Appeals Court. (EXH 19, Aug. 15, 2014 letter). Laguer’s unredacted brief soon disappeared from his website.

Eleven days later, on August 26, 2014, Laguer sent a three-page letter to the District Attorney for the Middle District, naming the victim nine (9) times. After admitting that his appellate brief had named the victim, Laguer then directly and repeatedly attacked the victim’s daughter and son-in-law, complaining about their involvement in his case, before signing his letter, “Cheers, Ben.” (EXH 19, Aug. 26, 2014 letter). A “revised and corrected” version of this letter is posted on Laguer’s website. (EXH 14).

Soon after this, Laguer for the first time posted on his website the victim’s marriage records, her divorce records, and her Army service records (EXH 14) -- personal information that has nothing to do with Laguer’s case.

In late August, Laguer served the Commonwealth with a *pro se* “memorandum” in support of his third “Petition for Executive Clemency,” and the Commonwealth submitted its written opposition to the Advisory Board of Pardons on September 4, 2014. (EXH 19, Sept. 4, 2014, “Commonwealth’s Supplemental Opposition”). In its opposition, the Commonwealth informed the Board that, in his *pro se* “memorandum,” Laguer “intentionally refer[red] to the rape victim by name, often by her full name and once by her maiden name, at least 181 times, apparently to protest a recent order from the Appeals Court . . . ,” and that “his petulant behavior . . . reflect[ed] his continuing refusal to follow the rules.” (EXH 19, “Comm’s Supp. Opposition” at 2 & 3) (emphasis added). Laguer’s *pro se* “memorandum” also included more “baseless attacks” against “the deceased victim, her deceased daughter, and her son-in-law and granddaughter.” (EXH 19, “Comm’s Supp. Opposition” at 3).

On October 31, 2014, Laguer filed a complaint with the Board of Bar Overseers against the two prosecutors who spent two years drafting the Commonwealth’s proposed procedural orders for Laguer’s DNA testing. (EXH 14, “Letter to the Board of Bar Overseers (BBO)”). One of these prosecutors was the person who caused Laguer’s brief to be removed from his website. (EXH 19, “Commonwealth’s Motion to Strike”). On November 7, 2014, the BBO rejected Laguer’s Complaint. (EXH 14, “Reply from the BBO”).

On November 24, 2014, Laguer sent a three-page letter to the Chief Justice of the Supreme Judicial Court, complaining about the same two prosecutors named in his complaint to the Board of Bar Overseers. (EXH 14, “Chief Justice Gants . . .”). Laguer optimistically described this letter on his website as “Chief Justice Gants requesting BBO to take Ben Laguer’s complaint.” (EXH 14, “Chief Justice Gants . . .”).

Laguer continues to intentionally refer to the victim by name whenever possible. One example is “In the Matter of Ben Laguer’s Actual Innocence” (EXH 15), where Laguer mentions the victim’s name over 200 times. As the Commonwealth stated in 2014, Laguer’s “defiant, excessive, and unlawful repetition of the rape victim’s name . . . proves that he ‘has not made exceptional strides in self-development and self-improvement and would [not] be a law abiding citizen . . . if released.’” (EXH 19, “Comm’s Supp. Opposition” at 2). Laguer’s recent defiant and childish behavior shows

that he will retaliate when he doesn't get his way, and serves as proof that his release would not be compatible with the welfare of society.

CONCLUSION

For all of the reasons set forth above, Benjamin Laguer should not be released to live in the community. Therefore, the Office of the District Attorney urges this Board to deny parole for the safety of society.

Very truly yours,

Joseph D. Early, Jr.
District Attorney

By Sandra L. Hautanen
Assistant District Attorney

By Michelle R. King
Assistant District Attorney

April 22, 2015