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April 21, 2015

The Honorable Ralph Gants  
Chief Justice, Supreme Judicial Court  
1 Pemberton Square, Suite 2500  
Boston, MA 02108

Dear Chief Justice Gants:

Please note that this is the third letter that I have sent regarding this most serious matter. On 31 October 2014, I requested that the Board of Bar Overseers investigate specific violations of the Massachusetts Rules of Professional Conduct by Attorneys by Saundra L. Hautanen, BBO # 225965 and Joseph J. Reilly III, BBO # 415885, both Assistant District Attorneys for the Middle District. On 7 November, Assistant Bar Counsel Ellen M. Meagher advised that her office does “not have initial jurisdiction over claims of professional misconduct; such claims should first be addressed by the Court...if any issue you raise to the Court results in a decision by the Court suggesting misconduct by an attorney, please bring this matter to our attention again at that time.” As Chief Justice, you should remand this complaint to the Bar Overseer for a thorough, factual vetting. This letter provides more than enough factual basis for such referral.

In January 2000, through counsel, I requested certain physical evidence from the prosecution to assess the feasibility of DNA analysis. To create a genotype of the presumptive culprit, Forensic Science Associates (FSA), a California genomic testing firm, used samples previously enmeshed with hairs, tube socks, underpants and other fabrics from me, including “unspecified”<sup>1</sup> samples not authorized by the court-approved protocol. This complaint stems from Hautanen and Reilly misrepresenting the provenance of that evidence. Hautanen and Reilly knew that certain fabrics had originated from my apartment, because of a withheld police narrative. Massachusetts State Police Crime Laboratory (MSPCL) Assistant Chemist Mark T. Grant admitted in 1989 that evidence taken from complainant and her apartment was run together with fabrics seen on me and in my residence.<sup>2</sup> Analyst Grant said “everything was bagged together in one box.”<sup>3</sup> In 1989, Mr. Grant identified eight socks he was asked to analyze prior to trial.<sup>4</sup> The police had denied seizing the fabrics, because they had no 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.<sup>5</sup> In court, only two (2) pairs of underpants were presented.<sup>6</sup> The trial prosecutor, now Chief Justice in Worcester, never disclosed the third “cotton” underpants.

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<sup>1</sup> FSA Report 2, 4 February 2002, pp. 6-7

<sup>2</sup> Testimony of Mark T. Grant 22 May 1989. (Tr. 68, 74)

<sup>3</sup> Testimony of Mark T. Grant 22 May 1989. (Tr. 68, 74)

<sup>4</sup> 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.

<sup>5</sup> 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. Pellicchia.

<sup>6</sup> Transcript of May 22, 1989, court hearing, p. 7.

(An Appeals Court has already noted that the trial prosecutor did not disclose certain evidence. “A criminal trial is not a game. The objective of prosecutors must be the fair administration of justice, and not just obtaining a conviction.”<sup>7</sup>) The trial judge concluded: “The only underwear in this case consist of two pairs of clearly feminine underwear found at the victim’s apartment.”<sup>8</sup> In 1988, other prosecutors requested “also Benjie’s underwear” in a letter Leominster PD.<sup>9</sup> In May 2000 the MSPCL catalogued a parcel of “underclothes from suspect”.<sup>10</sup> Hautanen elsewhere admitted “obviously there were men’s underwear in this case.”<sup>11</sup> A pretrial forensic analysis of the “interior crotch” of the suspect’s underwear<sup>12</sup> indicated no female secretions.<sup>13</sup>

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, no less than nine times in a single filing, Hautanen said that the "yellow pullover" in Grant's benchnotes is the “yellow jersey” described in all other reports.<sup>14</sup> This hair slide was sent for DNA extraction, sequencing and comparison on August 2001. In November 2011, Hautanen further stipulated that certain fabrics were "incorrectly" labeled.<sup>15</sup>

Hautanen and Reilly also argued that LaGuer’s DNA was “found on cotton swabs used to obtain evidence from the victim’s vaginal, rectal, and oral cavities.” Their claim 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.”<sup>16</sup> The Q-Tip swab used to transfer her pubic hairs yielded no blood or sperm fractions.<sup>17</sup> Subsequently, Hautanen argued that a “preparation of ‘pooled sperm’ was used to get the 100 sperm needed to generate a DNA profile.” In fact, there is not a single reference to 100 sperm on any forensic report. In a December 4, 2006 pleading to the Supreme Judicial Court, Attorney James C. Rehnquist said: “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 his summary to the jury, Assistant District Attorney Lemire said “that man’s face is imprinted in that woman’s brain. It will be there for the rest of her life. She saw that man for eight hours. She’ll remember that face until dies.” (Tr. 567) In an interview with a reporter, juror Stephen J. Martin said: “It’s a question of who you believe. I believed her. If I was in a room with someone for that length of

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7 65 Mass. App. Ct. 623 (2006)

8 Memorandum and Decision Denying a New Trial by Judge Robert V. Mulkern, 2 June 1989 pp9

9 In a July 8, 1998 letter to Lt. Michele D. Pellecchia of the Leominster Police, disclosed in April 2001.

10 State Police “Record of Evidence Submitted” form of August 3, 1983

11 S.L. Hautanen, Parole Board testimony, April 25, 2010

12 MSPCL Pretrial Benchnotes of M.T. Grant, p.1; MSPCL Nov. ‘83 report, item No 21.

13 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.

14 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)

15 Commonwealth’s Response to the Supplemental Memorandum in Support of LaGuer’s Ninth Motion for a New Trial. 23 November 2011, pp. 6-8.

16 Report Number 1, FSA, 15 August 2000, p.9

17 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.”)

time, I think I'd remember the person. She was very, very emphatic."<sup>18</sup> Her account that a man had forced her to engage in coitus for eight hours emboldened defense forensic consultants. The rape specimens alone, it was presumed, would have produced copious amounts of DNA data. But, her rectal and vaginal Q-Tip swabs had no evidence of spermatozoa and no male DNA. The absence of her own blood on the swabs corroborated Burbank Hospital physician Edmund C. Meadows's notes that her "anus showed no blood, abrasions, or lacerations."<sup>19</sup> Superior Court Judge Isaac Borenstein said of my case, "I am confident that we can argue that the DNA analysis provides evidence that actually contradicts the victim's account, and therefore, additional exculpatory evidence for a new trial."<sup>20</sup>

There is no dispute that this is a single eyewitness identification case. While the chief detective alleged that I was put in custody because the victim had identified me as her assailant, in the presence of her daughter, the victim denied implicating me in her trial testimony. The trial prosecutor, then casting further doubt removed the victim's daughter's name off the witness list. I was offered an opportunity to plead guilty in exchange for a sentence that could have seen me released from prison decades ago.

The question of guilt or innocence is thus very much in play. Justice demands resolution of my foregoing allegations of prosecutorial abuse, and is all the more necessary because of the tenuous means of identifying me as the alleged culprit.

By intentionally submitting facts which they knew to be false, Hautanen and Reilly 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 their 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.

In conclusion a reasonable remedy pursuant to Rule 3.3(a)(4), should require Hautanen and Reilly to correct their misrepresentations as required by the rule. 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: District Attorney Joseph D. Early, Jr.  
Colonel Timothy P. Alben  
Attorney General Maura Healy  
Chief Justice Philip Rapoza  
Chairwoman of the Parole Board, Dr. Charlene Bonner

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<sup>18</sup> Bruun, Matthew. Telegram. Jurors Mixed On Recent Findings In LaGuer Case. 13 December 2001. B1.

<sup>19</sup> Burbank Hospital records of July 1983.

<sup>20</sup> Letter from former Superior Court Judge Isaac Borenstein to Ben LaGuer 20 November 2008.  
<http://www.benlaguer.org/documents/Judge%20Isaac%20Borenstein%20Evidence%20Memo.doc>