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Massachusetts Parole Board
Paul M. Treseler
Charlene Bonner
Tonomey Coleman
Sheila Dupre
Ina Howard-Hogan
Tina M. Hurley
Lucy Soto-Abbe

Dear Chairman Treseler:

On July 1 2015 the Parole Board denied me a parole while I lay on a bed at Boston Medical Center recovering from chemotherapy for hepatocellular carcinoma. This is an appeal pursuant to 120 CMR 304.02 (a) (b) (c) (d) (e). The factual narrative does not accurately reflect the case file nor my carceral experience. The Board did not place sufficient weight on a number of favorable factors. I am requesting a new hearing or, in the alternative, a permit granting me parole.

On August 3, I requested by e-mail and followed up in writing for an extension of time for filing this appeal. I am battling serious health issues. In the past 30 days, I was hospitalized on 3 separate occasions. On July 1, when other inmates received their parole notices, I was hospitalized at Boston Medical Center. I was undergoing chemoembolization for liver cancer. On July 27, the prison's health care provider sent me to the emergency room of Gardner's Heywood hospital for health issues relating to men of a certain age. On Thursday, 30 July I was again admitted to Heywood Hospital. On Tuesday, 26 August, I began to bleed internally as a result of ascites, esophageal varices, and liver decomposition. Heywood physicians transferred me to UMass Medical Center in Worcester. Physicians performed an upper endoscopy to repair ascites. Other physicians performed a paracentesis, extracting six liters of fluid through a needle.

In the future, I may need a liver transplant. According to Dr. David Nunes of Boston Medical Center, a primary care hepatologist, “after discussion with the liver transplant service, this is not thought to be a viable option as obtaining liver transplants for incarcerated individuals is currently not a realistic option.” What could have ended three decades ago with a 2-year plea bargain has atrophied into a potential death sentence.

In the midst of these health trials, I had to consult whenever possible with Attorney John H. LaChance. He had a deadline for a brief which was due at the Massachusetts Court of Appeals. Preparing for those consultations left me emotionally and intellectually spent.

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In 2015 the parole staff culled its facts from the judicial narratives of Commonwealth v. LaGuer, 65 Mass. Ap. Ct. 612 (2006) and Commonwealth v. LaGuer, 448 Mass 585 (2007). However, a judicial narrative is usually written to focus on the unique particulars of a legal dispute; a judicial narrative is not meant to be interpreted as a biography – a historical, political, economic and psychological analysis of a man's life.

In the 2015 Record of Decision, the parole denial, the panel does not refer to any of the evidence-based assessment tools scoring a low recidivism risk. Nor state forensic exams from Bridgewater State Hospital psychiatrists. Nor the trial judge's sentencing comments that I had no history of crime or violence.

The LaGuer family is devoutly Seventh Day Adventist. Both parents are Puerto Rican. The family is part first wave 1950s migration to New York City. Maria Garcia worked for the garment industry. Luperto LaGuer worked for a pavement construction company. Luperto had three daughters and she had two sons from previous marriages. At age twelve, I began earning allowance for sweeping and mopping a tenement building my dad managed. After an assault left dad partially paralyzed, we moved to Puerto Rico. I held various jobs at the Rotary Club, starting on the dishwasher and ending as a waiter. I held positions at a local movie house, ending as assistant film projectionist. I lived with two aunts on a shanty deep in upper town of Guayama, with an outhouse six trees up from its rear plank. We lived on a diet of breadfruit, yams, and plantains and free range game. My uncles were guitar makers. In 1979 my parents divorced. I returned to Leominster.

I was president of the High School minority student body. I held a nightshift job at a plastics factory as well as a janitor part time at Digital Corp. I also apprenticed with a photographer in 1980 before joining the Army. As former guidance counselor Lee Aves testified in 1998 to the Parole Board, I was very popular.

After I was honorably discharged in June 1983, I had a job offer from the Leominster Bus Company. I was entering Fitchburg State College's fall semester. But I was arrested on July 15, 1983.

On February 28, 1985 the Red Cross acknowledged me in the Walpole Times for organizing the maximum security prison population to raise funds for the Ethiopian famine in a national relief. I was involved in many efforts on behalf of the minority population. I believe the prison administrations considered me a moderate voice who could resolve conflicts and diffuse tensions. I was president of El Comite De Confinadors Latinos. I assisted in organizing a number of interfaith conferences. I became a local chapter member of the Lawyers Guide, CLUM and numerous other groups. I was enrolled in various college courses. I published articles, essays and poems. My writings have appeared in Boston Magazine, Worcester Magazine, Boston Poet, Telegram and Gazette, Sentinel and Enterprise, Valley Advocate, Angolite, Mass Dissent, Phantom, Prison Voices, and other publications including the Columbia Journal. I served as editorial director and associate publisher of the Gardner Press Newsletter. My writings have been anthologized in several books of prose and poetry. I earned a bachelor's degree magna cum laude from Boston University and won a first place International PEN award for an essay. I became an avid prison (letter and telephone) correspondent to ordinary and future prominent community

figures. As chief public relations officer at MCI Norfolk Inmate Council, I organized regular policy conferences. The 2015 parole narrative is not a fair portrait of my journey. The most startling fact that emerged in April 2015, that a pretrial plea had been discussed, is not even noted in the record of decision.

At a June 2003 parole hearing, I testified that prior to trial I was offered a 2-year state prison sentence in exchange for a guilty plea. The terms of that plea made me immediately eligible for minimum security status and parole beginning in July, 1985. In response, then-prosecutor Lynn Morrill Turcotte said "[A]ccording to Assistant District Attorney Lemire, the Commonwealth made no pretrial recommendation of any reduced sentence in exchange for a guilty plea in Laguer's criminal case, because of the vicious nature of the crimes involved, and because the victim insisted on testifying at trial. Mr. Laguer's trial counsel, Attorney Peter Ettenberg, has confirmed that the Commonwealth made no offer to Mr. Laguer before trial." (Turcotte provided no attribution for these statements.)[1] In April 2010, I again asserted that I was offered a plea before the Parole Board.

Former Superior Court justice Isaac Borenstein provided the panel a letter as well as an affidavit from Ettenberg dated 29 April 2010: "I have reviewed my notes related to the trial. These notes confirm my recollection that before LaGuer's trial, I discussed with the prosecutor, James Lemire, the possibility of a plea agreement." Ettenberg added: "Mr. Lemire and I discussed an offer for a joint recommendation after a guilty plea, of a sentence to MCI-Concord of twenty years in state prison. My understanding was that such a sentence would have made Mr. LaGuer eligible for parole after two years, and that Mr. LaGuer would be credited for the time he had already served. I conveyed this offer to Mr. LaGuer. Mr. LaGuer was unwilling to plead guilty, contending that he was innocent of the crime charged.[2] (Turcotte could not be correct in her earlier claim that Ettenberg had "confirmed that the Commonwealth made no plea offers to Mr. LaGuer before trial.") Judge Borenstein characterized the defense counsel's trial notes as proof that "he did receive and communicate to his client an offer from prosecutor James Lemire … precisely as Mr. LaGuer testified at the hearing".[3]

After reviewing Ettenberg's papers, Assistant District Attorney Sandra L. Hautanen prepared an affidavit for Lemire and a letter repeating her earlier denials of a plea bargain.[4] Hautanen had Lemire aver in a 30 April affidavit that he offered no plea "because the victim insisted on testifying at trial." Hautaned had culled this phrase from Turcotte's earlier 2003 letter. Turcotte had never asked Ettenberg about his trial notes, nor did she ask him to provide an affidavit rebutting a 2-year plea. In fact, Lemire had long left to set up his own law firm (after the District Attorney had reneged on a pledge to put him in charge of the murder unit). His law partner was then indicted for embezzling client accounts. Moreover, his criminal clientele began to shrink when the roaring 80s and 90s drug trade hit a recession.

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[1] http://benlaguer.org/documents/Prosecution%20parole%20post-hearing%20opposition%202003.pdf
[2] Affidavit of Peter L. Ettenberg April 29, 2010.
http://www.benlaguer.org/documents/Affidavit%20Of%20Peter%20Edenberg.pdf
[3] http://benlaguer.org/documents/Bornstein%20Letter%20To%20Parole%20Board.pdf
[4] She e-mailed him that affidavit from her own e-mail account.

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In Hautanen's attempt to discredit the 2-year plea offer, she did not dispute the integrity of Ettenberg's trial notes. She nonetheless urged parole officials to credit the affidavit she had dictated for Lemire over Ettenberg's contemporary trial notes. Lemire had no records because parts of his trial file, he had earlier told Hautanen "aren't there anymore." (Lemire was no more diligent in ensuring the accuracy and integrity of the affidavit he had signed for Hautanen than his embezzling law partner.) Hautanen's use of false or questionable material in Lemire's affidavit – now celebrated by virtue of the fact that he is a chief justice – presents integrity questions of the highest order. In April 2015, Hautanen finally stipulated to parole officials that Lemire had indeed discussed a plea bargain with Ettenberg. But her initial lie is fermenting still in appellate courts.

The Appeals Court will preside over oral arguments in early November.[5] In September 2012 an unsigned letter describing a 2-year plea bargain from Lemire to Ettenberg prior to trial became the subject of another controversy. On September 9th, Hautanen argued that fraud must be inferred on the basis that the letter was unsigned. The judge agreed.[6] (Tr. 51) Hautanen never asked Lemire if the letter was legitimate. She never asked him to provide an affidavit that the letter was falsified; obtained a forensic document examiner; obtained a linguistic expert to compare the text of the alleged fraudulent letter to Lemire's writing samples. Hautanen could not explain how I obtained a typewriter that reproduced a document similar to those her office had generated in style decades earlier. Moreover, the prosecution had put in exhibit a long list of unsigned documents. In fact, Hautanen had put in exhibit an unsigned letter from defense counsel Ettenberg in papers to the Supreme Judicial Court

In sworn 23 April 2015 testimony to the Parole Board, Saundra L. Hautanen acknowledged that the trial prosecutor and the defense attorney held a pretrial plea discussion. [7] The parole board should have taken note of such a discrepancy. Lemire would have not offered a 2-year plea but for unreliable eyewitness and flimsy police procedural.

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While some may argue that the evidence against me is strong enough, the Supreme Judicial Court in 2007 made the following assessment: "What is exculpatory is that the Commonwealth could not place the defendant in the victim's apartment by means of any evidence, including fingerprint evidence or other physical evidence." (448 Mass. 585) Lemire told the Governor's Council that "We had very limited forensics; it wasn't like 'CSI'," and that "The case was mostly tried on the basis of the victim's identification of LaGuer as the perpetrator."

I had been living with my father since I was discharged from the army three weeks earlier. The victim lived next door. According to police, I returned to his apartment after eight hours. But a lounge chair was reclined, tied under her knob, stalling the police effort to rescue her. They had to push her door to access her. This reclined chair left a partially open window for her assailant to exit, a seven-foot drop to her yard. When interviewing the neighbors, a police

[5] http://benlaguer.org/documents/Court%20Docket.pdf
[6] I was denied the right to argue for a new trial. Her legal maneuvers stalled the politically sensitive inquiry involving that court's Chief Justice.
[7] Sworn testimony of Sandra L. Hautanen, State Parole Board, 23 April 2015.

supervisor saw no blood trial that led next door, none on the walls, door, or knob. The police had a black and yellow striped sock her assailant left behind. They obtained a search warrant to find its pair. A State Police analysis revealed no inculpating stains on the soles of eight recovered socks from my bedroom; proof those socks had not come in contact with her urine or bloodstained carpets. Other underclothes also had no inculpating stains.

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According to the 2015 Record of Decision, "The police collected numerous pieces of physical evidence from the victim's apartment, many of which were stained with blood. Several items in the apartment were also dusted for fingerprints. None of the physical evidence linked LaGuer to the crime." In a turn to the editorial dark side, the ruling adds, "[a]lthough LaGuer's saliva was tested to see if his blood type matched any blood found at the scene or sperm cells or seminal fluid on the victim's pubic hair, the tests were inconclusive. Unbeknownst to the Commonwealth at the time of trial, LaGuer had intentionally tampered with his court ordered sample by mixing his saliva with that of another inmate."[8] To any ordinary layperson, this ruling more than suggests (falsely) that I had initially deprived prosecutors of a saliva sample that inculpated me. The facts tell a different story. The truth is prosecutors still have not argued how the saliva denyed to them inculpates me. The trial prosecutor first requested a saliva sample from the defense to extrapolate bloodtype. A tube sock recovered from the scene had ABO O-Type perspiration. According to Esquire Magazine, a legitimate saliva sample would have shown evidence of innocence rather than a false impression of guilt.[9] (In fact, the O-Type perspiration found on the culprit's recovered sock links Jose Orlando Gomez, the third party suspect the jury was asked to consider. More details about Gomez later in this paper.)

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While I first admitted in a letter dated 6 October 1994 that I had spoken with her mother, telling her that I had falsely identified myself as Father Thomas from the Boston Archdiocese, the letter tells the following: "I thought of our conversation for a very long time … she never knew who I was … I realize whatever had happened to me had nothing to do with what had happened to her. I also realized, many more months afterward, that what I was in search of was some explanation or some sense of apology for her turning my life into a nightmare. In the way she had spoken, I was certain as one knows one is alive that she knew not what she had done … it was an important moment, because I brought myself a moment of forgiveness … in the end, I can only swear before God and my honor as a human being that I am not responsible for what happened to your mother." This letter was provided to the Parole Board in 1998 and again in 2015. It was put in the hands of a prosecutor who used it in ways that I never intended. In the final words I expressed a sentiment that better captures what I initially intended, "I hope I have made a difference in your lives with these few paragraphs, because forgiveness and truth has made a difference in what remains of mine." The full text of that October 1984 letter is available.[10]

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[8] http://www.mass.gov/eopss/docs/pb/lifer-decisions/2015/laguerbenjamin7-1-15denied.pdf
[9] http://benlaguer.org/pdf/Esquire%20May%201994.pdf
[10] http://benlaguer.org/documents/Letter%20from%20Ben%20LaGuer%20to%20Robert%20and%20Elizabeth%20Barry.pdf

The 2015 Record of Decision, the panel made a vague attempt to set the record straight. "The Board's 2010 decision incorrectly states that LaGuer's 2010 parole hearing was his fourth. It was actually LaGuer's third hearing before the Parole Board, as he had chosen to postpone his hearing in 2008." For the record, I should know, the first parole hearing was held in 1998, a second in 2000, a third in 2003, a fourth in 2010 and a fifth in 2015. Assuming this decision is not reversed, after 38 years in prison, I am scheduled for a sixth review in April 2020.

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Until recently, the United States Supreme Court held that inmates had a right to sexually explicit publications, thus prison cells have images of models of every variety. (Prison regulations strictly forbid a wide range of prohibited images, such as nude children or sexual images of humans engaging in sexual acts with animals.) All publications entering the prison had to be approved through the mailroom officer to ensure compliance to U.S. laws. Recently, I had seen a selfie of presidential candidate Hillary Clinton with Kim Kardashian, most famous in the universe for pornographic video. I believe that resurrecting a 2006 "reprimand" for possession of sexual images is a smear campaign to justify a predetermined result. The situation where this material was found was unique.[11] It is hypocritical for this panel to sanction me again to 5 additional years in prison for sexual images that prison officials have allowed American publishers to mail inmates for 150 years.

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In the 2015 Record of Decision, the victim's trial testimony is misrepresented. According to ER physicians Edward C. Meadows and William C. Siegel, the woman related that "her assailant told her that he would kill her if she told what he looked like but she denies knowing her assailant." She never said she was too afraid to identify me. In fact, she denied ever observing her assailant leaving or entering the my father's apartment. (Tr. 182) Her description of a "very dark skinned" assailant supports mistaken identity. One compelling fact is her trial testimony that she heard no stammer in his speech despite hearing him for eight hours. I have stuttered since childhood.

According to Annie K. Demartino, an employee of Fitchburg's Herbert Lipton mental Health Center, the victim was deceptive about a third party suspect. She denied any knowledge of Jose Orlando Gomez. His possible complicity was suggested to the jury. The trial prosecutor said no evidence linked Gomez's presence in the vicinity. According to Demartino, the woman let Gomez stay in her studio. Her denial of Gomez raises the prospect that she was afraid of revealing her true assailant's identity. In fact, Lemire said she was initially afraid to tell her story. It is significant that a crime scene recovered tube sock had ABO O-Type perspiration. Gomez is an O-Type secretor. (I am a B-Type secretor.) A pretrial defense investigator, who was later hired by the District Attorney's office, believed that the police should have focused on Gomez. He was later charged with breaking and entering the home of his exwife through a window, raping, then threatening to kill her. It was a crime eerily familiar to how the assailant had acted on the night of the crime for which I stand convicted.

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[11] Crimaldi, Laura. Boston Herald. LaGuer tries again; 4th parole bid. 23 April 2010 ("He said the pornography found in his cell in October 2006 was delivered among piles of hate mail generated during the 2006 gubernatorial campaign. LaGuer said the porn was in a sealed envelope he never opened.")

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At trial, Lemire said that the victim was "cured" of schizophrenia and "off" antipsychotics for three years prior to the crime. While the victim identified me in the courtroom as her assailant, her attending nurse recently revealed startling details that put her account in grave doubt. In spite of her trial testimony that she knew no man named Jose Gomez, her nurse revealed that Gomez had been a guest of the victim. The victim told her nurse prior to trial an impossible tale that President Kennedy had impregnated her. She had falsely accused dark skinned men of rape. The prosecutors do not dispute that she was prescribed a regimen of antipsychotics, including some (such as Haldol) never disclosed prior to trial. Not only is Lemire guilty of not disclosing her antipsychotic prescription, but his statement that she was "cured" of schizophrenia amplified his deception. Lemire, who is currently the chief justice, has made no attempt to correct the record.

According to a 14 July 1983 police report by Leominster Detective Ronald N. Carignan, the victim first identified me as her assailant to her daughter. Elizabeth Barry called the investigator for a statement. In his second interview, Carignan had Barry witnessing that her mother had inculpated me. On the basis of such reportage, Lemire prominently placed the daughter on the witness list a month prior to trial. "Carignan testified at trial that the victim told him that she had observed the defendant several times going in and out of the apartment next to her," ADA Lemire said in court papers "Even though the victim denied making this statement to the officer, this alone does not mean that a deliberate falsehood was presented to the grand jury."[12] After Lemire learns that her mother had never inculpated me in her presence – that Carignan was mistaken in his earlier representations, Barry's name is promptly removed from the witness list. (In her many public statements, including several before this parole board, Barry never said her mother had inculpated me to police in her presence.)

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The 2015 parole narrative relies heavily on a set of alleged statements in a police report, namely a set of declarations in which the victim is said to have inculpated me to chief investigator Carignan. One must bear in mind that the victim denied the inculpating attributed to her and Carignan admittedly withheld a series of facts and provided myriad inaccurate testimony. In October 1985, the trial judge concluded that Carignan "acknowledged the inconsistencies discussed above, but denied any purposeful attempt to mislead the grand jury." Carignan told the grand jury her assault had occurred in my apartment. He did not disclose a forensic analysis showing that the "underclothes from suspect" had no inculpatory evidence. These fabrics had been illegally taken then, because these underclothes were not mentioned in the warrant affidavit, Carignan had to cover-up his procedural errors.

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In 1994 dissent, Associate Justice of the Appeals Court Edith Fine said jury racism warranted a new trial. A juror told the Telegram in 2002 that I am an "animal" who can withstand the daily savage treatment of prison. Many people believe that black men cope better in prison than whites. Not true. In her June 2010 parole testimony, ADA Hautanen said racism had penetrated the sanctity of jury deliberation despite her earlier parole testimony that such claim had no basis in truth. In May 2015 ADA Hautanen argued to the Appeals Court that racism in the jury had no basis in truth.

[12] Commonwealth's Memoranda in Opposition to Defendant's Motion to Dismiss, 18 August 1985, p3.

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According to GQ contributing editor Sean Flynn, "The irony in the approach runs deep. In order to preserve a supposedly fair and truthful verdict, [the prosecutor] was trying to make one of the men who rendered it look feeble-minded and untruthful, thoroughly incredible as a witness to the deliberation yet eminently qualified as a participant in them."[13] Hautanen stipulated a level of bias: "Perhaps there may have been a little jury bias in the courtroom. I think nobody really knows. What happens in a jury room is what happens in a jury room."[14]

The 2015 Record of Decision says that I falsified DNA evidence. "LaGuer also admitted to contaminating a court-ordered saliva for DNA testing, saying he did so because his 'true sample' would have proven that there was no link between him and a sock found at the crime scene." This is not accurate. First, the prosecutor has never accused me of tampering with DNA specimens. The allegation that I provided another inmate's saliva for comparison is not settled. (Tomoney Coleman, a parole member, elicited impertinent answers on behalf of prosecutors despite the panel chairwoman asking him to refrain. Mr. Coleman will not be reappointed when his term expires. Therefore, his effort could only be interpreted as him jockeying for a job. Coleman may not be aware that District Attorney Joseph D. Early has never hired a black prosecutor. (For the record, I did not say that I swapped a saliva "again at his hearing before this board on April 23, 2015.")

For 33 years, prosecutors have sworn that chief investigator Carignan had found a black and yellow tube sock in the victim's studio. After my father's apartment became a target of the chief investigator, the search warrant entitled Carignan to recover a similar sock. He observed many socks in the raid, but none that matched. Carignan's police report and trial testimony indicate that none of the fabrics seen in the apartment had been seized. In her June 2010 parole testimony, combined with earlier disclosures that eight tube socks first observed in my father's apartment had been secretly kept in police storage, discredit Carignan. These socks and underwears reflect only part of what Carignan had illegally seized from my father's apartment. The initial state police forensic analyst admitted in 1989 that "everything was bagged together in one bag" including evidence taken from the victim and my home. Numerous experts believe that DNA contamination cannot be excluded as the source of a positive result.

Hautanen's 2010 admission that police had recovered some male fabrics as well as other admissions in subsequent legal proceedings, despite previous denials, demands a reexamination of the DNA test result.

The most prominent reason for not granting me parole is failure to attend a sex program. In May 2015, the sex offender treatment program (SOTP) no longer requires participants to admit guilt. "Sex Offender Management" 103 DOC 446.00 effective 14 May 2015. This substantial change in policy became effective after the 24 April parole hearing, thus "relevant information in existence but not known to the parole hearing panel at the time of the hearing" pursuant to 120 CMR 304.02(d). If the admission of guilt is no longer a compelling factor for prison officials charged with providing SOTP, parole officials should adhere to the same policy.

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[13] Boston Phoenix, "Oxymoronic: For Benji LaGuer, there's no justice in the system" by Sean Flynn 30 August 1991

[14] Sworn Testimony to Parole Board, Saundra L. Hautanen, 22 April 2010.

There are no empirical data supporting the view that a parole candidate's public admission of guilt lowers his recidivism risk. This concept was best discredited in the Salem Witch Trials.

Until one accounts for the racial bias, my more than 33 years (405 months) is extremely atypical. According to the United States Department of Justice website, the average time served for rape in the 1990s was 5.5 years (or 66 months.) In a recent Department of Justice report, the authors show that black defendant's on the average serve 20% more time in prison than whites for similar offenses. [15] This parole agency has treated minority parole candidates less fairly than other racial groups.

Gerald Amirault, a white sex offender, never had to participate in sex therapy despite legally upheld verdicts against children. Prior to his parole proceedings, the Advisory Board of Pardons had recommended commutation of his sentence because his codefendants had been released. (None of the panel's members afforded me a similar courtesy. I have stood before this panel and nobody noted the unconscionable gap between the 2-year plea discussion prior to trial and the 38 years I will have served before my next review. After Governor Jane Swift rejected the panel's recommendation for commutation, Mr. Amirault was paroled. The Amiraults had a legion of supporters who believed in their assertions of innocence.)

In the 2015 parole memorandum, quoting a 2010 Record of Decision, the contrast is stark: "Indeed, since his last parole hearing in 2003, Mr. LaGuer has not been involved in any significant rehabilitative programming of any kind; rather, he has focused all of his energy on his appellate efforts. While this may be a reasonable strategy in view of Mr. LaGuer's manifest strong belief in his innocence, it also precludes the Parole Board from undertaking any meaningful inquiry into the question of Mr. LaGuer's suitability for community supervision." Amirault's parole panel leaded over his claim of innocence to easily find him suitable. Is parole suitability for Afro-Puerto Ricans more difficult to determine than Irish Americans? In 2014 the Board released Josepf Donovan, a white murderer who had no rehabilitative programs to his credit. The ruling was exceptionally generous.

It said Donovan "did not undertake reform through the traditional means of programs, organized activities, employments, formal education or religious." Donovan spent 4 years in segregation for assaulting two correctional officers. In those years, the Board added, "he pursued self-education through extensive reading and art (primarily drawing). Once released to general population, he continued with his commitment to reading and art." In 2008, the Board released Dominic Cennelli despite a cabinet bursting with his crime files.

Mr. Cennelli's evidence-based risk assessment tool ranked him amongst the highest risk. He executed Woburn police officer John Maguire in a jewelry store robbery. The Governor ordered the entire parole board fired. Cennelli's story illustrated how minority candidates are less favored. Cennelli was kin to police officers. The Board may be angry that I was quoted in the Boston Herald: "The blood of Officer Maguire is now on the hands, faces and hearts of each member of the Parole Board… I cannot help but call attention to the arbitrary nature of how the

[15] Palazzolo, Joe. Wall Street Journal. Racial Gap in Men's Sentencing 15 February 2013, A3 ("Prison sentences of black men were nearly 20% longer than those of white men for similar crimes in recent years, an analysis by the US Sentencing Commission found.")

board operates." (Boston Herald, 8 January 2011) (I made that comment mustering every ounce of moral conviction, fully understanding that I would gain no fans within this agency. I can only hope you have no hostility toward me for speaking out. After all, this panel would now be elsewhere had the Governor not fired the previous members.)

Board member Lucy Abbe-Soto asked why I had not attended CRA, Emotional Awareness, Jerico Circle. These programs are not even available at NCCI Gardner. The sex offender program will take over three years to complete. This is more time than I would have served if I had initially pled guilty. The sex offender program was never part of the 2-year pretrial plea discussion. The prosecutor was satisfied that I had no history of crime nor violence. The fact was made clear when state psychiatrist, Dr. Lawrence Hipshman, delivered his report prior to sentencing.

I have no history of psychosis, deviance or animal cruelty. In three decades I have provided thousands of specimens for urine drug tests. I have never tested positive. I have never had a demerit for disrespecting the female staff. During review for a parole hearing, Eric J. Crane, Parole Policy Analyst, used the Reentry from Corrections System to Community Science of LS/CMI – Risks and needs Assessment Tool[16] (8 April 2015) and scored me as a "Medium" category client with 13 of 43 possible adverse points. My most adverse score was "Leisure/Recreational" with 2 of 2 points, because I do not participate in prison programs. My second most adverse score was "Educational/Employment" with 5 of 9 possible points, because I do not have a valid prison job assignment. When my scores are averaged with other risk assessment tools, a "low" score ranges between 5 and 10 points and a "medium" ranges between 11 and 21, I place toward the lower end with less than 13 points. For example, I scored 0 of 4 points in the "Antisocial" category, 1 of 4 points (low) in the "Procriminal Attitude/Orientation" category and 0 of 8 (very low) points in the "Alcohol/Drug Problem" risk factor. Other nationally recognized evidence-based risk assessment tools replicate my suitability. The Northpointe fact-based risk assessment evaluators, as well as the Department of Corrections Personalized Program[17], rank me among the lowest trace metrics for recidivism, violence, substance abuse, criminal thinking, anger, education, cognitive behavior, and thus are "not considered a need area for this offender."[18]

According to a 2012 Massachusetts Department of Corrections report, the recidivism rate for sex offenders is 17%, less than all other categories of violent crime.[19] The sex offender program exists only so bureaucrats can say that rehabilitation is offered in prison. There are no

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[16] The LS/CMI (Level of Service/Case Management Inventory) is a General Risk/Need Assessment that provides and offender's ciminogenic needs and prosocial strengths, helps determine an appropriate risk score and classification, aids program placement decisions based on risk factors, covers the nuts and bolts of case management and covers details for successful completion of probation/parole. The Reentry from Corrections System to Community, Science of the LS/CMI - A Risk and Needs Assessment Tool is wholly owned by Multi-Health Systems Incorporated (MHS), a private company. http://www.mhs.com/Info.aspx?id=About

[17] http://benlaguer.org/documents/Department%20of%20Correction%20Personalized%20Program%20Plan.pdf

[18] Northpointe Institute, Correctional Offender Management Profiling for Alternate Sanctions, Overall Risk Potential, Screener Larry Lombardi, 20 September 2010; COMPAS Department of Corrections, Risk Assessment Result of Ben LaGuer 20 September 2010 http://benlaguer.org/documents/Ben%20LaGuer%20COMPAS%20Results.pdf.

[19] http://benlaguer.org/documents/Recidivism%20rates%202015.pdf

empirical data relating to the efficacy of SOTP. The curriculum of SOTP is totally unrelated to sex offense. I would be willing before my next hearing to submit to an independent psychological evaluation by an expert chosen by the board. I have no doubt that I have paid a high price for asserting actual innocence.

A RAND Corporation report has found that, in general, inmates who participate in education programs such as the one I distinguished myself in with Boston University are 43% less likely than other inmates to return to prison within three years of release. This is consistent with other reports, including US Department of Justice figures.

The trial judge assigned independent psychiatrist Dr. Lawrence Hipshman to perform a psych and medical exam of me. "LaGuer does not fit either a psychological nor pathological profile of a person capable of committing this crime." (Tr 610-611). When I was a twenty year old inmate, Dr. Hipshman met with me for three hours and reviewed the Department of Mental Health's (DMH) case file. DMH psychologists had been collecting data on me since my pretrial detention. I had over two thousand dollars from my military separation checks; I had no reason to whip her in anger over twelve dollars. Dr. Daniel M. Weiss of the Bridgewater Treatment Evaluative staff found me "Not Sexually Dangerous" in a report cited by a number of agencies. "In talking with him at some length and in reading the report and trying to compare the action with his own history….it seems totally out of character that this man would have done it…he is not a sexually dangerous person and I recommend no further action on that question at this time."[20] In 1998, Prison Chief Psychologist Marcelino DeLeon wrote a favorable letter on behalf of his former clerk of many years.

In 2012 the Advisory Board of Pardons credited me with significantly more program involvement than the 2015 parole panel: "Mr. LaGuer's continues to participate in the following institutional structured activities: Chapel services, Narcotics Anonymous; Alcoholics Anonymous meetings, inmate general library, weight-gym, and recreation yard. This report further states that Mr. LaGuer's prior programming included Spanish Narcotics Anonymous, college courses and one-on-one counselling."

I am requesting that the Board grant me parole.

A five-year setback is too harsh of a setback given the foregoing. On July 1st, the Board decreed that I should not be eligible again for five years. Because the governing date of the offending sentence is 15 July 1983, the application of MGL chapter 127 section 133A (providing for a five-year review date instead of the maximum three-year review allowable under the statute in 1983) violates the ex post facto clause of both state and federal Constitutions.

Respectfully,

[20] Dr. Lawrence Hipshman, State Forensic Pathological Evaluation Report of 17 February 1984; Dr. Daniel Weiss, State Forensic Psychological Evaluation Report, Not Sexually Dangerous Report of 22 May 1984

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