



COMMONWEALTH OF MASSACHUSETTS

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Maureen E. Walsh, Chairman
Massachusetts Parole Board
27 Wormwood Street, Suite 400
Boston, MA 02210-3271

J. C. REHNQUIST

Re: Benjamin Laguer (DOB 5/1/63)

Dear Chairman Walsh and Members of the Board:

In response to requests by the Board at Mr. Laguer's parole hearing on June 12, 2003, the Office of the District Attorney for the Middle District submits the following information and materials:

1) Mr. Laguer was not offered a reduced sentence before trial.

At the June 12th hearing, Mr. Laguer repeatedly told the Board that, in exchange for his pleading guilty before trial, the Commonwealth offered to recommend a sentence that would have resulted in his being incarcerated for two years. This claim is false.

At sentencing after trial, Assistant District Attorney James Lemire recommended "a sentence of imprisonment for life." (See trial transcript pages attached as Exhibit A, at 615). The trial judge (Mulkern, J.) imposed a life sentence on the aggravated rape conviction, stating that "this is one of the most vicious sexual assaults on a particularly fragile and vulnerable person that I have ever seen." (Exh. A at 617).

According to Assistant District Attorney Lemire, the Commonwealth made no pre-trial recommendation of any reduced sentence in exchange for a guilty plea in Mr. 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 plea offers to Mr. Laguer before trial.

2) In 1994, the Massachusetts Appeals Court affirmed the trial judge's findings that Mr. Laguer and his supporters had "baited and hooked" a juror into signing a false affidavit alleging ethnic bias.

At the June 12th parole hearing, Mr. Laguer repeatedly raised the issue of alleged ethnic bias among the jurors at his trial. Mr. Laguer failed to mention that, in 1991, the trial judge heard testimony from the jurors and found this claim to be untrue. The Appeals Court affirmed the judge's findings in 1994.

Over ten years ago, Mr. Laguer filed a Motion For New Trial with an affidavit signed by a William P. Nowick, one of the jurors at his trial, claiming that the jury was tainted by ethnic bias against Hispanics. (See attached Exhibit B at 1-4, "Memorandum of Decision On Defendant's Motion For New Trial," dated 9/3/91; Exhibit C, *Commonwealth v. Laguer*, 36 Mass. App. Ct. 310, 311 (1994); and Exhibit D at 1, "Commonwealth's Opposition To Application For Further Appellate Review," dated 5/2/94).

The trial judge (Mulkern, J.) held an evidentiary hearing in 1991 to determine whether "the revelations or disclosures in Mr. Nowick's affidavit of ethnically oriented statements having been made by one or more of the jurors [were] essentially true." (Exh. B at 1). After seeing several drafts of the juror's affidavit and hearing testimony from the jurors -- and from Mr. Laguer, who admitted that he himself had written the first draft of the juror's affidavit based on his own "notes," which had somehow been lost (see generally Exh. D) -- Judge Mulkern found that "those statements [of alleged ethnic bias in the juror's affidavit] [were] not essentially true." (Exh. B at 1-6).

Based on the evidence at the hearing, the judge found that:

. . . Nowick became convinced, after serious lobbying by advocates for LaGuer, (which included, on his testimony, a showing of a photograph of the 'actual rapist') that the guilty verdict was error.

In that circumstance it was not overly difficult to obtain his signature to an affidavit

containing wildly exaggerated and uncorroborated allegations. Nowick stated in a court authorized interview with an investigator [that] he "felt like he had been baited and hooked."

(Exh. B at 5). The Appeals Court affirmed Judge Mulkern's denial of Mr. Laguer's new trial motion in 1994 (Exh. C, 36 Mass. App. Ct. at 311-15), and the Supreme Judicial Court denied further appellate review. *Commonwealth v. Laguer*, 418 Mass. 1103 (1994).

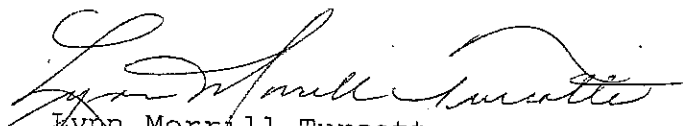
Last year, after the DNA testing by Mr. Laguer's expert showed that Laguer's DNA profile matched the rapist's DNA profile, juror Nowick told a reporter that "the DNA results affirmed his faith in the verdict handed down. 'I feel more comfortable. . . . It's over.'" (See Exhibit E at 3, Matthew Bruun, *Juror Sure LaGuer Is Guilty*, Worcester Telegram & Gazette, Mar. 26, 2002, http://www.telegram.com/news/page_one/laguer1.html).

3) Mr. Laguer has sent numerous unsettling letters and cards to prosecutors.

Attached for the Parole Board's information are samples of the fifty to sixty letters and cards that Mr. Laguer sent to the trial prosecutor, Assistant District Attorney James Lemire, during the 1980s and 1990s (Exhibit F), and a letter that he sent to Assistant District Attorney Lynn Morrill Turcotte, an appellate prosecutor, in 1994. (Exhibit G).

Based on the above-cited information and materials, and the reasons stated by the witnesses from the District Attorney's Office and by the victim's family at the June 12th parole hearing, the Office of the District Attorney for the Middle District opposes Benjamin Laguer's release on parole.

Very truly yours,


Lynn Morrill Turcotte
Assistant District Attorney

✓ enclosures

cc: James C. Rehnquist, Esq. (w/ enclosures)