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Parole Board members Mark A. Conrad, Candace J. Kochin, Thomas F. Merigan, Jr., Leticia S. Munoz, Pamela Lombardini, Cesar A. Archilla and Roger L. Michel, Jr.

In Re: In the Matter of Ben LaGuer W40280

Dear Members of the Parole Board:

Please accept this letter as a formal appeal of the adverse parole decision dated May 20, but provided on Friday June 11, 2010.

I would like first to address the five-year setback, since that issue is easily correctable. Please note that I was convicted in 1984, when the law limited a setback on second degree life applicants to three-years. As the Board's chief legal counsel is well aware, the United States Supreme Court in Wilkinson v. Dotson ruled that a setback longer than the maximum that was allowed by state law at the time of sentence violates the ex post facto doctrine of the US Constitution.

Furthermore, since the Board unanimously agreed to postpone a hearing that was initially scheduled for April 2008, a setback must begin tolling from that date. (As the Board might remember, the postponement was granted because the Executive Office of Public Safety had indicated in letters that a review of the DNA analysis was underway.) Therefore, I should be eligible for a review no later than April 2011, assuming the Board fails to act sooner.

Superior Court Judge Isaac Borenstein (ret) offered the Board a detailed chronology of what programs I have participated in 27 years. That history of programs was multidisciplinary in nature. After 27 years, I should not have to attend programs in perpetuity so a prison official's offspring can have a job. At some point, I should be free to graduate. As John C. Archer, a friend, told the Boston Globe in a review interview, "I believe in forgiveness. We do our time and move on. We don't do our time for the rest of our lives." For this Board to not find a single laudable talent or deed to acknowledge from the book of my life reflect a real stinginess of integrity, and a hunger to quickly get at a prescient parole denial.

This Board also distorted my prison disciplinary record. And I challenge the Board to make public the D-reports of the last hundred lifers paroled, because I would be proud to contrast records.

The underlying facts narrative in the Record of Decision is riddled with misstatements and facts not even in the trial record. Lennice Plante's eyewitness testimony was in no way consistent and any inculpatory evidence was embarrassingly weak. (1) The building manager initially alerted police that I was a stranger living next door. In a search warrant application the chief investigator first quoted Plante as claiming her assailant lived in the LaGuer apartment, a quote very useful to obtain his warrant signed, but one that she repudiated at trial with the benefit of six corroborating declarants elsewhere noting that Plante had denied knowing her assailant's identity; (2) DNA evidence did not further link me to the crime, but a

DNA profile was developed from a contaminated pool of samples that in 1983 were jumbled with hairs and underclothes recovered from me and my apartment; (3) the trial prosecutor did not display the scratch mark photographs, avoiding the issue in his summary to the jury all together, because the photos included evidence that I had no abrasions or contusions on my knuckles consistent with the bare fist beatings on Plante's face; (4) the police did not confront me wearing an outfit similar to the one Plante described, because she first told police that her assailant was totally nude except for tube socks, then she denied that he was nude in her trial testimony, settling on him wearing a jogging outfit with possible socks. (None of the underpants and underclothes recovered during a search of my apartment revealed evidence of female biological material) and: (5) there is no "evidence of consciousness of guilt" in me substituting the saliva of another inmate when I was asked for a saliva sample for lab testing, because my saliva is dissimilar in bloodtype to the physical evidence that prosecutors sought a comparison with.

At the April 22 hearing, the Board was determined to confirm whether I was offered a pretrial deal to plead guilty in exchange for an additional 17 months in prison. Trial attorney Peter L. Ettenberg happily submitted a sworn affidavit confirming to this Board what his trial notes indicated. I provided a letter from the trial prosecutor in which the pretrial deal was spelled out in detail. For this Board to have substantiated the pretrial deal then not reference the fact in a three page Record of Decision is, in my opinion, beyond fair play. (By contrast, this Board recommended that Gerald Amirault's sentence be commuted because his sister and mother had been released and his continued incarceration created a disparity worthy of a gross injustice.)

This parole denial is a glaring political act. At a time when Governor Patrick is fully in election mode, this Board felt as if paroling a political symbol of Law & Order from Patrick's past might be hurtful to his reelection. Yet for this Board to deny a man freedom because of politics is a grotesque affront to all that is excellent and decent about our American experience.

In a letter that was twice submitted to this Board, then citizen Deval Patrick wrote: "I receive a crushing volume of mail, much of it from prisoners in facilities all over this country. None of it is as thoughtful, insightful, eloquent, or humane as that I receive from Mr. LaGuer. I urge you and your colleagues on the Parole Board to act favorably on his application." Even after Patrick was aware of the controversy over his letters and DNA test that is still in dispute, when asked if he would use those same words, Patrick told Fox 25 TV station "He's still thoughtful and eloquent. There's no doubt about that." This is a famous clip that Republicans used in a TV ad that doomed Kerry Healy's gubernatorial bid. This parole denial not only calls in question my character, but the wisdom and acuity of Governor Patrick himself.

Governor Patrick would probably still be supportive but for historical change in circumstances beyond the merits of the case itself. This parole denial reflect the impulse of liberals to overcompensate in their public bravado on race and crime issues. In his first presidential bid, Bill

Clinton returned to Arkansas to sign the death warrant against a mentally retarded Black death row inmate to prove to leery whites that a liberal southern governor could be tough on criminals. The inmate's IQ was so low that he asked the guard to save the cake of his last meal, because he might be hungry when he returned from where he was being escorted.

The Board accuses me of being combative and evasive in questions. But every question I was asked, beginning with the first, felt exactly designed for that reaction. The video record reflects this truth. I think the Board fails to appreciate the enormous stresses of standing in front of a panel bent nitpicking, over emphasizing all that is negative and negating all that is laudable in a man for fear that any gestural acknowledgement might be caught by the media and criticized. Governor Patrick himself fell short on his honesty when first asked about his role in my life. More recently, gubernatorial aspirant Charlie Baker was found fibbing about his dirty fingers in the Big Dig scandal. But, this Board essentially sentenced me to five added years in prison for acting under pressure no different than officials in high office.

This Board was provided a detailed home plan for me to reside in one of the safer communities in the northeast. A work plan had given me the opportunity to clerk for a retired superior court judge in a Boston law firm. An educational plan included a prestigious university Masters of fine Arts program. For this Board to deny me parole because some young parole officer might not be able to supervise me, I suspect, speaks to the perils of unearned confidence and this Board's fear of shadowy critics, which is not any issue I care to further, address.

In prison, I have become the man I always wanted to be despite a daily life knee deep in sin and hate that blows like the wind from all four corners. I pray every day that all I might say be beautiful, scented in kindness and hopeful to a fellow man.

I would have liked a parole to start a family. To reunite with family and friends. To own an iPod 4. To press Send on my first email. To watch 100 films and read great books. To drink real coffee. To eat fresh fruits and vegetables. To be permitted to enjoy Denzel Washington play the soulful Troy Maxson in August Wilson's Broadway revival of Fences. To sit in silence under a sky full of stars. Finally, in spite of all, I would have liked to lay an American flag on my father's grave.

But with all I have candidly expressed in this appeal, I probably stand no chance of winning a single favorable vote. And of course I am at peace with the dim prospects. I have decided to attend the Sexual Offender Treatment orientation and go as far as I can without compromising the truth of my life. I have also requested to be put on

the list of Community Reentry, which is part of the CRA programs. In this appeal, I hope to have displayed no scarcity of hope or great purposes. I hope these short words have opened a glimpse of the much better man I still aspire to become. The work that is my life remains a work in progress. God has blessed me with unusual strength to walk the most rugged of many roads. I feel that no man can take away the water and fire that God has given me for this journey. And I feel no need to say anymore about that.

I hope this request for a reconsideration is accepted. I wish each of you a 2010 summer to remember. Perhaps you'll find a quiet moment to celebrate a wild heart still kept in cages. Be well.

Sincerely (have no doubt),

Ben LaGuer W40280

(signed copy on file)

Cc: Governor Deval L. Patrick
Secretary of Public Safety Mary Elizabeth Heffernan
Department of Corrections Commissioner Herald W. Clarke
NCCI Superintendent James J. Saba