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*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety and Security*

**PAROLE BOARD**

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Charlene Bonner  
Chairperson

**DECISION**

**IN THE MATTER OF**

**BENJAMIN LaGUER**

**W40280<sup>1</sup>**

**TYPE OF HEARING:** Review Hearing

**DATE OF HEARING:** April 23, 2015

**DATE OF DECISION:** July 1, 2015

**PARTICIPATING BOARD MEMBERS:** Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Lee Gartenberg, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe.

**DECISION OF THE BOARD:** After careful consideration of all relevant facts, including the nature of the underlying offense, criminal record, institutional record, the inmate's testimony at the hearing, and the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by unanimous vote that the inmate is not a suitable candidate for parole. Parole is denied with a review in five years from the date of the hearing.

**I. STATEMENT OF THE CASE**

On February 17, 1984, after a jury trial in Worcester Superior Court, Benjamin LaGuer was convicted of aggravated rape and sentenced to life in prison.<sup>2</sup> LaGuer timely filed a direct appeal which was later consolidated with a motion for new trial. His convictions were affirmed by the Appeals Court and further appellate review was denied by the SJC (*See Commonwealth*

<sup>1</sup> LaGuer's commitment number was erroneously written as "W42080" in his 2010 Record of Decision.

<sup>2</sup> He was also convicted of breaking and entering and unarmed robbery at that time, and received sentences of 12 to 15 years on both counts. These sentences were ordered to run concurrently with the life sentence and have since expired. LaGuer was also convicted of assault and battery, which was filed with the defendant's consent (*Commonwealth v. LaGuer*, 448 Mass. 585, 586, FN 2 (2007)).



*v. LaGuer*, 20 Mass. App. Ct. 965 (1985); *Commonwealth v. LaGuer*, 396 Mass. 1103 (1985)). Thereafter, LaGuer filed eight additional motions for new trial and a federal habeas corpus petition. All were either denied or dismissed. At his hearing before the Board, LaGuer stated that he has recently filed a ninth motion for new trial. He is currently incarcerated at MCI Gardner (NCCI).

Given that LaGuer adamantly denies the crime and continues to profess his innocence, the facts of the case are derived from *Commonwealth v. LaGuer*, 65 Mass. App. Ct. 612 (2006) and *Commonwealth v. LaGuer*, 448 Mass 585 (2007). LaGuer's convictions arise from a brutal sexual attack on a 59 year-old woman living alone in an apartment in Leominster at a time when he resided in the apartment next-door. At approximately 9:00 p.m. on July 12, 1983, the rapist broke into the victim's apartment, turned off the light, hit her in the face, threw her to the floor, and raped her vaginally, anally, and orally for the following eight hours.<sup>3</sup> The rapist was wearing only jogging shorts and white socks, possibly with stripes on the top.

The rapist severely beat the victim and, before leaving, stole her jewelry, money, and a purse, and bound her hands with the cord from her telephone and her feet with the cord from a hair dryer. At one point during the attack, the rapist put a plastic bag over the victim's head and tied it tightly, causing her to lose consciousness temporarily. While the bag was over her head, the victim "fought" and struggled with the rapist. She was able to see the rapist's face as the room was illuminated by outside security lights, and the rapist made no attempt to hide his face. Before leaving, the rapist warned the victim that if she testified, he would kill her.

The victim was found shortly after 5:10 a.m. on the morning of July 13, when a maintenance man heard her cries for help and then telephoned the police. She was found lying naked on the floor with her hands and feet bound, having suffered from serious physical injuries, a bloody nose, bloody fingernails, and blood on one hand. Emergency medical personnel transported the victim to the hospital. Several police officers were at the victim's apartment processing the scene and collecting evidence for most of the day. The maintenance man remained at the apartment with the police, but neither the police nor the maintenance man saw LaGuer that day.

At the time of the incident and for the preceding two weeks, LaGuer had been staying with his father in his father's apartment, which was immediately next to the victim's apartment. His father was away on vacation at the time of the incident. The victim identified LaGuer as the perpetrator of the crimes. At trial, the victim testified that LaGuer had rung her doorbell one or two weeks prior to the attack to gain access to the building's common hallway. She had opened her door, but closed it immediately upon seeing LaGuer because she ordinarily had no visitors other than her daughter.

At first, the victim told the police that she was unable to identify her attacker and provided merely a general description: a short black male with a small build. The following day, while still hospitalized, the victim told the police that the attacker was the "dark" man who had recently buzzed her apartment. She explained that she originally did not identify anyone

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<sup>3</sup> The woman's identity will be kept confidential, pursuant to G.L. c. 265, § 24C, as she is the victim of a crime involving sexual assault. Portions of a parole record of decision may be withheld to preserve confidentiality (G.L. c. 127, § 130).



because the assailant had threatened to kill her if she did so. The next day, on July 15, the police obtained a photograph of LaGuer, included it in a photographic array, and the victim identified LaGuer's photograph as that of her assailant. The victim was certain of her identification. At the trial, she pointed out LaGuer as the perpetrator.

On the day of the attack, the victim left her keys in the door to her apartment. She realized her mistake minutes later and went to retrieve the keys, but they had disappeared. She obtained another set of keys from the building manager. LaGuer testified at trial that he had seen the victim's keys hanging from her front door lock on two or three prior occasions and had knocked on her door to return the keys each time. The victim denied that LaGuer had ever done so.

Shortly after the victim was transported to the hospital, police canvassed the other apartments to see "if anybody had heard anything." An officer knocked on LaGuer's door numerous times, but there was no response. The following day, after the victim had identified LaGuer as her attacker, the police executed a search warrant for his apartment. Although no one was there, the officers observed in drawers and on the floor many mismatched white "tube" or "athletic" socks with stripes on top. When the police returned to LaGuer's apartment the next day, he was at home wearing only jogging shorts and white "tube" socks with mismatched colored stripes at the top; the same attire the victim had described her attacker as wearing. The police observed and photographed a "fresh scratch on his back, all across." LaGuer first explained to the police that the scratch was from a nail at a bar, but later at trial he said it was caused by splinters or nails when he had been lying on a picnic table several days earlier. He also stated that he had been at home during the time of the attack but had heard no noise coming from the apartment next door.

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. Although LaGuer's saliva was tested to see if his blood type matched any blood found at the scene or the 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 saliva sample by mixing his saliva with that of another inmate.<sup>4</sup>

LaGuer testified at his trial and denied committing the crimes. His defense was misidentification, and he suggested that the rapist was a young, dark-skinned Hispanic male who lived in an apartment in the same complex (across the street from the victim) and who had moved out seven months before the rape. Two witnesses called by LaGuer placed him with them, away from the crime scene, during part of the relevant time period. These alibi witnesses were his half-sister and a young man who did not know LaGuer's name, and who admitted to drinking "seven days a week" at a bar where he said he had seen LaGuer on the night of the rape, six months earlier. He told no one about seeing LaGuer in the bar until the night before he testified. This witness said that LaGuer stuttered – and apparently LaGuer stuttered while testifying – a fact about her attacker the victim had not mentioned to anyone.

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<sup>4</sup> LaGuer admitted this fact nearly 20 years later at a Parole Board hearing, and again at his hearing before this Parole Board on April 23, 2015.



On January 12, 2000, sixteen years after his conviction, LaGuer filed a motion for a court order authorizing DNA testing of items from the victim's rape kit. The results showed that LaGuer's DNA profile, which occurs in less than one in 100 million people, matched the DNA profile found in pooled sperm taken from the victim.

In sum, significant evidence linked LaGuer to the attack, including: (1) The victim's eyewitness identification (which must be accorded significant weight in view of her ample opportunity to observe her attacker and her prior familiarity with LaGuer); (2) DNA evidence linking LaGuer to biological material recovered from the crime scene; (3) testimony regarding scratches on LaGuer's back at the time of his arrest; (4) the fact that the clothing worn by LaGuer at the time of his arrest matched the victim's description of the clothing worn by her attacker; and (5) consciousness of guilt evidence in the form of LaGuer's admission that he had submitted the saliva of another man when asked to provide a saliva sample for laboratory testing. Notwithstanding the foregoing, LaGuer has persistently professed his innocence, blaming his conviction on a combination of poor police investigative work, trial errors, and a racially biased jury. All of these challenges were reviewed in the aforementioned appeals and motions for new trial, and rejected.

LaGuer has been incarcerated for 32 years. According to his Classification Report from the Department of Correction, LaGuer has incurred a total of 31 disciplinary reports over this period. He incurred his last disciplinary report on June 24, 2009, for possession of pornographic material, for which he was sanctioned with a written reprimand. LaGuer has not completed any program to address violence, criminal thinking, or his conviction for a sex offense. His most recent Sex Offender Status Report, dated February 10, 2015, states:

*Mr. LaGuer has refused treatment on three occasions. He has a pattern of attending orientation and signing the Informed Consent to participate in treatment; however, when he is scheduled for and assigned to a class he does not report. He has been given an opportunity to re-engage in treatment annually and has elected to refuse treatment each time.*

LaGuer was 20 years old at the time of the offense. He is currently 52 years old and serving his first incarceration with no prior criminal record. When LaGuer last appeared before the Parole Board for his third<sup>5</sup> parole hearing in 2010, the Board raised concerns about his continued lack of rehabilitative programming to address the extremely violent sex offense for which he was convicted. Specifically, in its 2010 decision denying parole, the Board stated:

*Unfortunately, in large part due to Mr. LaGuer's insistence that he is innocent, he has not engaged in any significant sex offender treatment. Indeed, since his last parole hearing in 2003, Mr. LaGuer admittedly 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*

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<sup>5</sup> 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.



*Board from undertaking any meaningful inquiry into the question of Mr. LaGuer's suitability for community supervision.*

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*After careful consideration and following an exhaustive review of a large body of documentary evidence supplied by all parties interested in the case, the Board has determined that, at this time, Mr. LaGuer's release is not consistent with the demands of public safety. His failure to take responsibility for his actions in spite of significant inculpatory evidence was but one factor informing our decision.*

The Board further noted that, "Mr. LaGuer's willful failure to make productive use of the wide range of rehabilitative programming opportunities available to him in prison," was also an important factor in its decision to deny him parole.

## **II. PAROLE HEARING ON APRIL 23, 2015**

LaGuer appeared before the Parole Board for his fourth parole review hearing on April 23, 2015, represented by Attorney John LaChance. Attorney LaChance stated that LaGuer's denial of guilt should not preclude him from obtaining parole. He suggested that LaGuer is suitable for parole because LaGuer: (1) has been imprisoned for "33 years"; (2) has no prior record; (3) has worked as a clerk in the prison library and has "become somewhat of a jailhouse lawyer," working on his case and helping other inmates gratuitously; and (4) he became college educated and was awarded a Bachelor's Degree from Boston University after graduating *magna cum laude* therefrom. Attorney LaChance stated LaGuer is faced with a dilemma insofar as past Parole Boards have denied him parole for his failure to do sex offender treatment, and LaGuer says he cannot do the program unless he signs a document acknowledging that he must admit guilt in order to participate in treatment, which he is unwilling to do.

In his opening statement, LaGuer told the Board that he believes he has spent his time in prison "constructively" over the past 32 years, and that he has "no psychological or neurological issues" that have "impaired [his] cognitive abilities." He said he currently attends church, goes to the library, volunteers to tutor inmates in "civics and history," and spends a lot of time on his case and his medical issues. He further added: "I know some people might say you should be doing more. But I'm doing the very best that I can, and I think that should be enough. It's enough for me."

LaGuer said he believes previous Parole Boards have denied him parole primarily because he denied committing the offense. A Board Member at his last parole hearing said he could do the sex offender treatment program without admitting guilt, and he said he would do the program if that were the case. He signed up for the program, attended orientation, and received a copy of the curriculum, which he claims was centered on reading a book entitled, *Who Moved My Cheese?*<sup>6</sup> LaGuer, with a tone of derision, said he would have continued with the program, "if all they wanted me to do was read *Who Moved My Cheese?*." He decided not

<sup>6</sup> LaGuer submitted a copy of this "curriculum," which shows that it is actually a "Class Syllabus" for the "Motivation and Engagement" phase of the sex offender treatment program. The syllabus indicates that the 12-week class revolves around *Who Moved My Cheese?* for only the first three weeks.



to participate in the program, however, because he was required to sign a form stating that he would have admit his crime and give permission to have his information shared with the District Attorney and other law enforcement agencies.<sup>7</sup>

One Board Member asked LaGuer why he has not aggressively advocated to participate in the sex offender treatment program, given his documented history of strong self-advocacy. He mockingly replied:

*If all they wanted me to do was read "Who Moved My Cheese?" I mean, I just couldn't believe this! That they spend the millions of dollars to have people gather round and sing songs and to read "Who Moved My Cheese?". I would like to submit to the Board that there are programs on the outside that are much better programs.*

Another Board Member asked LaGuer why he has not advocated to attend other rehabilitative programs such as the "CRA, Emotional Awareness, Jericho Circle," and so forth. LaGuer suggested that there was no need to do so because he obtains knowledge from these programs through other inmates that have attended them.

LaGuer admitted during the hearing that, in 1989, he telephoned the victim while she was at a rest home (or nursing home). He falsely identified himself to the victim as "Father Thomas from the Boston Archdiocese," telling her that he was sorry for what happened to her and that he forgave her for blaming LaGuer. LaGuer also admitted to contaminating a court-ordered saliva sample 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.

Five people spoke in support of parole for LaGuer: Christopher Lydon; John Archer; Louis Levesque; Minister Don Mohammad; and Leslie Epstein. Four people spoke in opposition to parole, including the victim's son-in-law and her granddaughter. Also testifying in opposition were Dean Mazzarella, who is the Mayor of Leominster and a former police officer who went to the crime scene, and Worcester County Assistant District Attorney Sandra Hautanen. ADA Hautanen emphasized that LaGuer's tampering with the court-ordered saliva sample is indicative of consciousness of guilt.

### **III. DECISION**

LaGuer acknowledges that the primary reason for the Board's refusal to grant him parole is his failure to engage in the sex offender treatment program. He nevertheless claims he should be excused from doing so because of his abiding claim of innocence, and the assertion that the sex offender treatment program requires him to sign a document acknowledging that he must admit guilt, "under pains and penalties of perjury," in order to participate in treatment. The referenced "Treatment Agreement and Waiver," which LaGuer submitted, contains no language indicating it is to be signed under pains and penalties of perjury. Furthermore, his

<sup>7</sup> LaGuer submitted a copy of the form, which is a Department of Correction (DOC) document, entitled "Treatment and Agreement Waiver." The waiver itself, which may be found as an attachment to DOC policy, "Sex Offender Management", 103 DOC 446, requires the inmate to acknowledge that the DOC has identified him as a sex offender; that he has been referred to sex offender treatment; and that he agrees to participate in all aspects of the program.



concern that the District Attorney and Attorney General would use the document as proof of guilt seems somewhat fanciful given that he is represented by counsel and the document contains language suggesting that its use by public safety and law enforcement agencies is limited to, "classification, housing level, lower security, release, potential civil commitment, post release supervision, and registration as a sex offender."<sup>8</sup> Thus, it appears that LaGuer is looking for any available excuse to avoid engaging in sex offender treatment.

On at least three occasions since 2000, the Parole Board has denied parole to LaGuer primarily for his failure to engage in sex offender treatment. Yet, LaGuer persists in refusing to engage in treatment to address the crime for which he was convicted, even after multiple failed attempts to reverse his conviction on appeal. Despite the Board's unwavering insistence that he engage in sex offender treatment and other available rehabilitative programming in order to enhance his likelihood of obtaining parole, LaGuer continues to ignore the Board's advice and relentlessly continues to pursue parole on his own terms. This is not a sign of rehabilitation. To the contrary, it is a sign of LaGuer's determination to have things his way or no way at all. Given his intransigence, this Board can have no confidence, even after 32 years of incarceration, that if LaGuer were paroled he would abide by his conditions of release and be amenable to supervision in the community.


LaGuer has every right to pursue his appeals in the courts of law. The Parole Board, however, is not a court of law. It is an executive branch agency that serves a separate and distinct function from the courts. The Parole Board has to determine parole suitability under circumstances where one has already been convicted of a crime. In fulfilling its responsibilities, the Parole Board must consider the nature of the crime and the steps taken by the convicted offender, like LaGuer, to address his crime through programming, positive institutional behavior, and any other factor suggestive of rehabilitation. LaGuer's denial of the crime for which he has been convicted and his refusal to heed the Board's repeated advice to engage in programming, does not suggest rehabilitation or, consequently, parole suitability.

The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." Applying that appropriately high standard here, it is the unanimous opinion of the Board that Benjamin LaGuer does not merit parole at this time because he is not rehabilitated. Parole is denied with a review in five years from the date of this hearing.

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<sup>8</sup> In order to effectuate treatment, the waiver provides that the inmate must provide the DOC with permission to share pertinent information concerning his background and criminal record with a sex offender therapist. The document goes on to provide that the inmate must give permission to the sex offender therapist to share "his progress in treatment and other pertinent evaluative information" to several law enforcement agencies, including the District Attorney, the Attorney General, and the Parole Board, so that those agencies may fulfill their respective duties with respect to sex offenders.

*I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing. Pursuant to G.L. c. 127, § 130, I further certify that all voting Board Members have reviewed the applicant's entire criminal record. This signature does not indicate authorship of the decision.*

  
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Peter Mimmo, Staff Attorney

  
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Date