

a result of those charges, Father Lavigne was indicted and arraigned in the Franklin County Superior Court and eventually (on June 25, 1992) pleaded guilty to one charge of indecent assault and battery on a person over the age of 14 years. He was placed on probation for a term of 10 years and agreed to receive treatment at St. Luke's Institute in Suitland, Maryland, an institution specializing in the psychiatric treatment of clergy with sexual or alcohol related disorders.

Trooper Susan M. Mosman prepared a complete report of the investigation conducted by the Hampshire/Franklin CPAC Unit of the Massachusetts State Police. A copy of that report is annexed to and made a part of Trooper Daly's affidavit. The report includes statements of a number of victims of child molestation at the hands of Father Lavigne. It reveals a pattern of conduct which has persisted throughout his adult life and in at least three of the parishes to which he has been assigned. His victims, for the most part, have been altar boys under his supervision and often members of the same family. His practice was to befriend the boys and their parents and develop a close relationship with them. As the relationship grew he would take the boys on overnight trips and invite them for dinner and for overnight stays at his rectory or at other locations. He often bought them gifts and did them other favors. He sometimes gave them wine or other alcoholic beverages.

It was during the overnight stays that the sexual attacks usually occurred. He would often invite the boys to take a shower and would then give them a long nightshirt to wear to bed even when

they had their own nightclothes with them. He would ask the boys to sleep in his bed with him. While in bed he would playfully touch them, tickling them and giving them back rubs and massages. He would then ask them to return the favor. This would often lead to his touching of the boys' genital areas and buttocks and an invitation to them to touch his.

The investigation revealed that he engaged in this type of conduct before, during and after the period of time when he was in contact with Daniel Croteau and his family.

The information obtained by the Hampden/Franklin CPAC Unit caused the Hampden County CPAC Unit of the State Police to re-open its investigation of the Daniel Croteau murder. Since it now appeared clear that Father Lavigne was very probably a pedophile, the police set out to determine what part, if any, that malady played in the Daniel Croteau Case. On May 27, 1993 they obtained the following statement from Carl and Bernice Croteau, Daniel's parents.

Danny became acquainted with Father Lavigne when he became ass't Pastor at St. Catherine's of Siena. Our four other sons were altar boys at the time and serve mass with Father. Father would come to our home and visit 3 or 4 times a week. He would sometimes take one son for a ride or to visit his mother and father's home. At times he would call and ask if he could stay over night dropping him off in the morning. At first Danny wasn't usually included. Danny became an altar boy taught by Father Lavigne and was an altar boy for 5 years or better. Danny served Mass with Father Lavigne mostly every Sunday while Father was at St. Catherine's. Father Lavigne would pick Danny up on Friday or Saturday evening two or three times a month during school year and three times a week during school vacation time. They were always alone during these trips and over night stays, this continue when Father Lavigne was transfer to St. Mary's parish in Springfield. He Father Lavigne continue

to visit our family home and continue to take one of our sons on rides and trips. However Danny was the one Father most frequently took for rides and kept him over night. The over night stays happen when Father Lavigne would call around 8:30 pm to 9:30 pm and asked to have Danny over night. This hour was late for our sons. This relationship continue until Danny's murder. There were times that we didn't know that Danny was with Father Lavigne until Father would call us to tell us he was with him and wanted to keep him over night, this would happen occasionally. This statement is written from the best of our knowledge.

The police learned from Daniel's brother [REDACTED] that while he was a student at Our Lady of the Sacred Heart School he was repeatedly molested by Father Lavigne over a period of time. [REDACTED] stated that he stayed many nights at St. Mary's rectory in Springfield and at Father Lavigne's parents house in Chicopee, and that during those overnight visits Lavigne sexually molested him. Another brother, [REDACTED] stated that when he was about fourteen years of age Father Lavigne initiated the same type of activity with him and at some time gave him alcohol.

On December 1991, Detective Lieutenant Brad Holmes interviewed Stephen R. Burnett of 78 Briarcliff St., Springfield, MA. Burnett gave him the following statement:

Danny and I were best friends since about 1965, I was about 6 years old. We both attended Our Lady of Sacred Heart elementary school. I knew Danny as a good natured kid, he didn't have alot (sic) of material goods, and not to (sic) many friends. Danny stayed back a year in school and was therefore a year older than the other kids in our class. We were both alter boys at St. Catherine's. I served Mass with Danny for Father Lavigne for about a year before I moved with my family to Mississippi. When we did funeral Masses with Father Lavigne at St. Catherine's, he would usually get us out of school. this was always during the week. After the Mass, Father Lavigne would

offer us the wine in the chalice. The chalice was always filled with more wine than when he performed the Mass. This only took place during the week, when no one else was around. It never happened on Sunday. Danny and I would share one chalice of wine. Father Lavigne would joke around a little and encourage us to drink the wine. I remember this because I didn't like the wine, but Danny seemed to. While we drank the wine, Father Lavigne would change into his regular clothes. He always wore his regular clothing under his robes, except for his shirt. After we finished Father Lavigne would always tell us to chew gum and provide us with the gum. I think it was Wrigley's gum. After we finished the wine we would go to the locker room to change. Father Lavigne would come with us. We changed from our robes while Father Lavigne watched. We had our regular clothing on under our robes so the most we actually changed was our shirts. I never cared for the wine, but the most important thing for Danny was drinking the wine at the end of the Mass. The highlight for me was getting out of school. I found it strange that the other priests never watched us change, but Father Lavigne always did. In fact he helped us by assisting us pull off the robes. We thought Father Lavigne was a cool guy. He didn't act like a priest. He acted like a playboy, very carefree and never serious outside the church. We would cruise with him in a car which was a convertible. I didn't know whose convertible it was, but he also drove a funeral-like car, either dark blue or black, with four doors. It could have been a cadillac. We usually drove to Friendly's. I didn't go with him as often as Danny did. I do remember that there were Playboy magazines in the convertible, under the driver's seat. Father Lavigne gave them to us to look at and in fact encouraged it.

We played street hockey alot (sic) on Lumae St. in Springfield. I can remember very clearly that on many occasions, we would be in the middle of a game, well before supper time, everybody would be having a good time, all of a sudden I would see Danny crying and I would look up to Prouty St. which was about five houses away, and see Father Lavigne parked in the big four-door car, but he wouldn't come

out of his car or park any closer like he was trying to conceal his identity. Danny would say "I have to go" and he would run to the car crying with no further explanation. Danny told me that Father Lavigne was his uncle and that's why I never thought any more about it. This would happen alot. And Danny was with Father Lavigne alot (sic). Where Father Lavigne parked his car on Prouty St. was only about five houses from the Croteau house. I know that Father Lavigne did not bring Danny home to his (Danny's) house as he went the opposite direction. They drove towards Sunrise Terrace down Lumae St.

I know Danny seemed to latch on to Father Lavigne because he didn't have many friends, and it seemed like his father was never home. We never went to Danny's house.

The above statement is true and accurate to the best of my knowledge.

On May 3, 1993 [REDACTED] currently of [REDACTED]

[REDACTED] sent a written statement to Trooper Daly in which he described an incident that had taken place while he was on an overnight camping trip with Father Lavigne and the Croteau family in the Town of Goshen when he as about ten or eleven years old. That statement is as follows:

To whom it may concern,

I recently had an opportunity to speak to my brother [REDACTED] regarding the weekend I, [REDACTED] was sexually molested by Richard Lavigne. We began this discussion with my inquiry of whether (sic) or not [REDACTED] had been molested as well. He had not.

As we spoke of that weekend in Goshen, Ma. a fog seemed to lift from my memory. He spoke of things as he remembered them and those same memories came rushing back to me clear and true. We both agreed upon the recollection of Danny Croteau, being the youngest one there, as the focal point of name calling and mild ridicule by his three brothers, Joe, Michael and Greg and the boys from my family, myself, Tommy and Brian. It was obvious that Danny was frustrated and upset that Lavigne joined in the taunting. He seemed upset at being the

focal point of Lavigne's attention. More than once Danny threatened Lavigne with the words "I'll tell ...! I'll tell ...!" This had an obvious effect on Lavigne. He began to pay more attention to Danny and ordered us to stop the name calling. He also showed a change of behavior due to the threats. At one point Danny and I were vying (sic) for Lavigne's attention when I pushed him to the floor. Lavigne reacted violently by slapping me across the face so hard it knocked me to the floor.

I think the change in Lavigne's behavior on that summer weekend 25 years ago was a direct result of Danny Croteau threatening to tell. At the time I thought "I wonder what he has on Lavigne." That night I was molested by Lavigne and I then figured that Lavigne must have molested Danny too.

I failed to recall any of this because I buried everything about that weekend due to the shame and guilt I felt. The discussion I had with my brother on April 17, 1993 was the first time I had spoken about that weekend in detail with him. His recollections stirred many memories I had buried.

If Danny Croteau had begun threatening Lavigne with exposure as early as 1967 or 1968, who knows how serious these threats became by the time he was murdered in 1972? I believe they became too much for Lavigne to handle. I believe the violence he displayed in striking me in 1968 was displayed again in 1972 when he lost control of it and murdered Danny Croteau. Only God and Richard Lavigne know for sure.

Among the evidence collected by the police during the 1972 investigation were Daniel's clothing, soil and stones from the area near his body, a stained piece of paper, chewing gum wrappers, a piece of newspaper, a straw and a piece of cotton rope. Those items were sent to the State Crime Laboratory for testing. The tests established that the blood on Daniel's clothing was Group "O," as were traces of human blood found on the stained piece of paper. Blood found in the soil collected from near the body and on the stones tested positive for human blood, but no blood grouping could be identified. The testing done on the cotton rope and plastic straw, however, indicated that human blood was present on

those items which was identified as Group "B."

Trooper Daly determined from weather data on file with the National Weather Service and Westover Air Force Base in Chicopee that there had been an intense rainfall (0.96 inches) on Thursday, April 13, 1972, just 24 hours before Daniel's murder. From this information he deduced that the type "B" blood found at the scene could not have been there before the murder because the rain would have washed it away, so there is a strong likelihood that this blood came from the person who committed the murder.

The rope and plastic straw were sent to Forensic Science Associates (FSA), 3053 Research Drive, Richmond, California for DNA typing using the PCR DNA amplification procedure. FSA was told that this evidence was collected in the course of a murder investigation about twenty years ago, but was not told the names of the victim and possible suspects in the case. The testing was conducted by Edward T. Blake and Jennifer S. Mihalovich of FSA<sup>3</sup>, and their report was issued on January 8, 1993. A copy of their report is appended to and made a part of the affidavit. Their findings revealed that a low level of the DQ $\alpha$  gene could be amplified from one area of the plastic straw and that it was determined to be type 1.1,4. They report that this DQ $\alpha$  type occurs in approximately 8% of the Caucasian population and approximately 9% of the Black population. The gene could not be amplified or typed from a second area of the straw or from any of

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<sup>3</sup> The rather impressive credentials of both scientists are described in detail in the affidavit.

the specimens obtained from the rope.

On the basis of the facts set forth in the affidavit, I determined that a sample of Father Lavigne's blood would probably produce evidence relevant to the question of his guilt or innocence of the murder of Danny Croteau. I accordingly issued a warrant in the form requested in the application.

On September 3, 1993, I received a faxed copy of a motion from Father Lavigne's attorney moving for a stay of the seizure of the blood sample pending a hearing, or, in the alternative, an order that Bay State Medical Center maintain custody, possession and control to any blood seized pending a hearing and further order of this court. I granted the alternative relief sought.

Father Lavigne filed a motion to have the blood sample that was taken from him in pursuance of the warrant returned to him. The Commonwealth has filed a motion to have the blood sample released to it for testing. A hearing on those two motions was held before me on September 10, 1993.

I. Statutory Authority

Father Lavigne first contends that there is no provision in Massachusetts law that authorizes the non-consensual extraction of blood from a suspect in the absence of a grand jury proceeding or a pending criminal proceeding. He points specifically to the provisions of G.L. c. 276, § 1 which authorizes the issuance of warrants to search for and seize (1) property or articles stolen, embezzled, or obtained by false pretenses, or otherwise obtained in the commission of a crime; (2) property or articles which are