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F A X T R A N S M I T T A L S H E E T

DATE: Sept. 7, 1993

TO: Clerk Betty Gengrow
BUSINESS: Clerk's Office - Superior Court
FAX NUMBER: 413 288 737-1611
FROM: Patty Garin
RE: Richard Lavigne

THE FOLLOWING MESSAGE HAS 3 PAGE(S) INCLUDING THIS COVER SHEET. IF YOU HAVE ANY DIFFICULTY READING IT, OR IF TRANSMISSION WAS INCOMPLETE, PLEASE ADVISE LAURA BRADWAY, LAURISA CLAYTOR, CAROL FREDO OR HELEN EWER AT (617) 542-0663.

Thank you for your assistance

Patty Garin

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COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

In re Richard Lavigne,
Petitioner

PETITIONER'S MOTION FOR AN IN-CAMERA HEARING

Petitioner hereby moves this Court to conduct the hearing on Petitioner's Motion for Return of his Blood Sample in-camera. In support of this motion, petitioner states that he has not been charged with a crime; the purpose of this proceeding is to challenge the in-camera, ex parte proceeding at which the Commonwealth obtained a search warrant to forcibly extract petitioner's blood; the media has persistently and extensively covered this case; and, any coverage of the media on this explosive topic will adversely effect petitioner's right to a fair trial should he be charged in this matter.

Respectfully submitted,

Patricia Garin

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HAMPDEN COUNTY
SUPERIOR COURT

FILED
SEP 9 1993

William J. ...
ADMINISTRATOR

Dated: September 9, 1993

9/9/93

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

SUPERIOR COURT ~~HAMPDEN COUNTY~~
OF THE TRIAL CO ~~SUPERIOR COURT~~

FILED

SEP 13 1993

Kellin J. Martin

CLERK/MAGISTRATE

In re Richard Lavigne,
Petitioner

PETITIONER'S MOTION FOR A STAY, IN THE ALTERNATIVE

Before the Court at present is Petitioner's Motion For Return of Blood Sample and the Commonwealth's motion for access to the blood sample.¹ In the event that this Court denies petitioner's motion and allows the Commonwealth to have access to the blood sample, petitioner hereby moves this Court, in the alternative, for a stay of its order requiring the Bay State Medical Center to release petitioner's blood sample to the State Police until such time as the petitioner is able to obtain a hearing before a Single Justice of the Supreme Judicial Court on petitioner's request for relief pursuant to M.G.L. c.211, §3.

Respectfully submitted,

Patricia Garin

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Dated: September 10, 1993

¹ If the Commonwealth's motion was reduced to writing, petitioner did not receive a copy of that motion.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT

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HAMPDEN COUNTY
SUPERIOR COURT

FILED

SEP 24 1993

William J. Martin Jr.

CLERK/MAGISTRATE

In re Richard R. Lavigne,
petitioner**COMMONWEALTH'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR RELEASE OF BLOOD
AND IN OPPOSITION TO PETITIONER'S
MOTION FOR RETURN OF HIS BLOOD SAMPLE**

Now comes the Commonwealth in the above-captioned matter and respectfully requests this Honorable Court to release to the Commonwealth the sample of the petitioner's blood drawn from him pursuant to a search warrant issued by this court, per Moriarty, J., on September 2, 1993 to enable further investigation in this matter as detailed in the Affidavit of Massachusetts State Police Trooper Thomas J. Daly filed in support of the Commonwealth's application for a search warrant to seize a sample of the petitioner's blood. In so doing, the Commonwealth necessarily requests this Honorable Court to deny the petitioner's request for the return of his blood sample.

As grounds for its requests, the Commonwealth relies upon the following:

INTRODUCTION¹

On Saturday, April 15, 1972 at 8:25 A.M., the body of thirteen year old Daniel Croteau was discovered in the Chicopee River in the area under the Governor Robinson Bridge overpass in the city of Chicopee. Based upon the results of an autopsy conducted by a forensic pathologist, Dr. George G. Katsas, the cause of death was determined to be blunt trauma to the head. The manner of death was ruled a homicide. Investigation revealed that the time of death was between the hours of 4:30 P.M. on April 14, 1972 when the victim was last seen alive and 8:25 A.M. on April 15, 1972 when the body had been found.

According to a Chicopee Police Department report filed by Lieutenant Edward Radwanski dated April 15, 1972, initial examination of the crime scene revealed the following: From the north side of East Main Street to the river bank there are two cement piers each nine feet wide and thirty-three feet long, which support the Governor Robinson Bridge. A large section of blood-stained sand, about six feet by twelve feet was found about sixteen feet from the south side of the

¹ For the sake of clarity, the Commonwealth provides this court with a synopsis of procedural events in the investigation of this case. However, the Commonwealth relies upon the entire affidavit of Trooper Thomas J. Daly in support of the factual predicate establishing probable cause for the issuance of this court's September 2 search warrant for a sample of the petitioner's blood.

northernmost pier. Nearby were marks in the sand which seem to indicate some sort of a scuffle had taken place. These marks and the bloodstain were close to a set of tire tracks from a motor vehicle which had driven in the area, backed around and then taken off at a high rate of speed. From this blood-stained area, marks in the sandy soil indicated that some heavy object had been dragged eighty-three feet to the edge of the river and ended in a large pool of blood on the river bank directly south of the location of the body in the river. From this pool of blood, bloodstains were found spattered on the rocks and soil for a distance of fifteen feet in a westerly direction.

Although a primary suspect was developed early on in the case, no charges were ever filed. The suspect at that time was identified as Richard R. Lavigne, a Roman Catholic Priest who at the time was assigned to St. Mary's parish located at 840 Page Boulevard in the city of Springfield. At the time of the murder, Father Lavigne had been closely associated with the Croteau family which included the five boys, Carl, Gregory, Michael, Joseph, and the decedent, Daniel. The investigation first conducted in 1972, however, eventually became inactive due to a determination by the then District Attorney that there was insufficient evidence to proceed at that time. When the present District Attorney took office in January 1990, all unsolved murder files were reviewed. During this process,

additional investigation was conducted into the death of Daniel Croteau .

To date, this investigation has revealed that Father Lavigne was convicted in Franklin County of indecent assault and battery upon a child under fourteen and placed on ten years probation. During the course of the investigation which formed the basis of his conviction, it was learned that eighteen individuals had come forward to claim that they at one time had been sexually molested by Father Lavigne. These included persons who were parishioners at the parishes to which Father Lavigne had been assigned. A total of five victims who made allegations against Father Lavigne fell within the statute of limitations. Father Lavigne's conviction upon a single count of sexual assault was the result of plea negotiations with the prosecuting authorities in Franklin County.

Publicity generated by the Franklin County investigation and the subsequent indictment of Father Lavigne caused persons to come forward with new and previously undisclosed information relating to the Croteau homicide investigation. A pattern of sexual abuse by Father Lavigne was discovered. For the most part, his victims served as altar boys at the parishes to which Father Lavigne was assigned, as was Daniel Croteau and his four brothers. Each victim's family had established a close relationship with Father Lavigne. At the time of the victim's murder, the Croteau family thought of Father Lavigne as a close

friend and confidant. It was learned that Father Lavigne routinely gave the boys alcohol prior to the molestation. One week before his death, Daniel Croteau had been with Father Lavigne overnight at his parents home in Chicopee and returned home the next morning ill and vomiting. Investigation showed that Father Lavigne had given other children alcohol in similar overnight visits at his parent's home, although he denied ever giving alcohol to the victim or other youngsters when he was initially questioned by police in 1972. At times, Father Lavigne also would provide gum to the boys to hide the smell of the alcohol. An autopsy of Daniel Croteau's body revealed a blood alcohol level at .18%. Gum was found in the stomach contents of the victim at the time of his death.

Contemporaneously, a decision had been made by investigators to further test the physical evidence deposited at the scene. In 1972, forensic tests performed upon two pieces of the physical evidence -- a piece of rope and a plastic straw found on the river bank -- revealed the presence of human blood, Type B. On March 13, 1992, these two articles were sent to the Forensic Science Laboratory in California. Due to the age of the evidence, a type of DNA analysis conducive to older samples was asked to be performed upon the evidence. On January 8, 1993, a report of the examination of the rope and plastic straw sent to FSA laboratory for analysis was issued by Dr. Edward T. Blake and his associates. This report was subsequently sent to the