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ADDITIONAL MESSAGE:

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT

In the matter of
RICHARD R. LAVIGNE

MEMORANDUM AND ORDER

On September 29, 1993, I allowed ex parte a motion of the District Attorney for Hampden County for the impoundment of certain documents pertaining to Richard R. Lavigne pending receipt by the court of a memorandum to be read in camera setting forth the reasons why disclosure of the materials impounded would so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

The documents impounded included an application for a search warrant submitted by Trooper Thomas Daly of the Massachusetts State Police, the affidavit and supporting documents submitted in support of that application, the search warrant issued by this court on the basis of that application and its return, memoranda of law filed by the Commonwealth and Richard R. Lavigne in support of and in opposition to conflicting motions as to the disposition of the fruit of that search warrant, and the order and rulings filed by this court in disposing of those motions.

The memorandum was to be filed by the District Attorney no later that October 4, 1993. It was timely filed before 9:00 a.m. on that date. I have read it in camera.

At 1:00 p.m. on that date, I received an Opposition to the Commonwealth's Motion for Impoundment filed by THE REPUBLICAN

COMPANY, publisher of the Springfield Union-News and the Springfield Republican, as an interested third party purportedly pursuant to Rule VIII (10) of the Uniform Rules on Impoundment Procedure.

I had previously been advised that Father Lavigne intended to petition the Supreme Judicial Court to exercise its power of general superintendence in this matter pursuant to G.L. c.211, § 3, and I had stayed execution of my order until October 20, 1993 to give him an opportunity to do so. Since I anticipated that the Supreme Judicial Court would probably entertain and consider Father Lavigne's petition and thereby make Trial Court Rule VIII applicable in this matter, I decided to entertain the Motion of the Republican Company as if that rule were already in effect and ordered that the matter be set down for hearing on Tuesday, October 12, 1993 on the motion of the District Attorney to impound and the opposition of The Republican Company to that motion. I also ordered that Father Lavigne's attorneys be notified of the hearing and given an opportunity to appear and be heard.

At the request of Father Lavigne's attorneys, the date of the hearing was continued to October 18, 1993.

The hearing was held on October 18, 1993 as scheduled. The District Attorney, Father Lavigne's attorneys and an attorney for The Republican Company all participated.

At the outset of the hearing I learned that Father Lavigne's attorneys had abandoned their plan to petition the Supreme Judicial Court for relief under G.L. c. 211, § 3, and had decided instead to request the Appeals Court to entertain an interlocutory appeal

under G.L. c. 231, § 118. I accordingly extended the stay of my order in the underlying matter until such time as the Single Justice of the Appeals Court acts on that request.

In the course of the hearing, both the District Attorney and Father Lavigne's attorney spoke in favor of continued impoundment, and the attorney for The Republican Company urged that the impoundment order be lifted.

At the conclusion of the hearing the District Attorney and the attorneys for Father Lavigne agreed that there were substantial portions of the previously impounded documents that could be made public without jeopardizing the integrity of the government's investigation, the right of Father Lavigne to a fair trial if and when he is indicted as a result of the investigation, and the rights of privacy of innocent third parties who have provided information and assistance to the investigators. They agreed to provide me with a list of those portions of the impounded material.

I received the promised list on October 21, 1993. Upon reviewing it, I ordered that all those portions of the materials upon which the District Attorney and Father Lavigne's attorneys had agreed be released forthwith. Those materials included: (a) the first page of the application for a search warrant that had been filed with me by Trooper Thomas Daly; (b) the search warrant issued in pursuance of that application; (c) the return of that warrant filed by the state police; (d) a redacted edition of the Commonwealth's memorandum of law in support of its motion for the release to it of the sample of Father Lavigne's blood taken from him in

pursuance of the warrant, and in opposition to Father Lavigne's motion for a return of that blood sample; (e) a redacted edition of Father Lavigne's memorandum of law in support of his motion for a return of his blood sample; and (f) a redacted edition of my decision and order dealing with the conflicting motions.

Those portions of the impounded materials that were not released consist of the affidavit and attached materials that were submitted to me by Trooper Daly in support of his application for the search warrant, and those portions of the two memoranda of law and my own decision which summarized, quoted or referred to Trooper Daly's affidavit and attached materials.

In making this decision I have read in camera and considered memoranda of law submitted by the District Attorney and the attorneys for Father Lavigne, an affidavit of Trooper Thomas J. Daly submitted in connection with the motion for impoundment, and an affidavit of Max D. Stern, one of Father Lavigne's attorneys. I have also read and considered the memorandum of law submitted by the attorney for The Republican Company.

This case involves an investigation of a murder of a 14-year old boy, Daniel Croteau, that occurred over 21 years ago in the City of Chicopee. There was an extensive investigation performed at that time by the Chicopee Police Department and the Massachusetts State Police assigned to the office of the Hampden County District Attorney, but no charges were brought or indictments sought against any suspect. Father Richard R. Lavigne was mentioned at that time as a possible subject of the investigation,

and that rumor achieved some notoriety in the community. The investigation eventually became dormant for lack of evidence, however, and Father Lavigne was transferred out of Hampden County to a parish in North Adams in Berkshire County in 1976 and then to a parish in Shelburne Falls in Franklin County in 1977.

In 1991, Father Lavigne was charged with rape of a child and indecent assault and battery upon a child in Franklin County. He was eventually indicted on charges of having sexually abused five persons over the course of a number of years. The bringing of those charges generated extensive and intensive media coverage throughout Western Massachusetts. It also revived the rumor that Father Lavigne had been considered a suspect in the Croteau murder case. That rumor was also widely publicized by the news media.

The publicity became so intense that I, while sitting in Franklin County in April of 1992, ordered the venue of the upcoming trial transferred to Newburyport in Franklin County in an effort to assure Father Lavigne a fair trial.

The indictments against Father Lavigne were brought forward for trial in Essex County before another justice of this court (Volterra, J.) in June of 1992. Even at that distance from Franklin County, the effects of the publicity were so great that after three full days of jury selection in the City of Lawrence which included the voir dire examination of 150 jurors, it was still impossible to select a jury of which no member had any knowledge of the Father Lavigne case. In order to empanel a jury the court and parties finally had to rely upon affirmations of the