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OF COUNSEL

JOAN RACHLIN

JEFFREY M. FEUER

VIRGINIA M. FLEMING

D. STERN  
NATHAN SHAPIRO  
S. STEPHEN ROSENFELD  
LYNN G. WEISSBERG  
PATRICIA GARIN  
DENNIS SHEDD  
JENNY C. CHOU

TELEFAX TRANSMITTAL SHEET

DATE: Sept. 30, 1993

TO: Betty Jangrow  
BUSINESS: Assistant Clerk  
FAX NO.: 413-737-1611  
FROM: Patty Garin  
RE: In Re Louigne - IMPOUNDED

THE FOLLOWING MESSAGE HAS 4 PAGE(S) INCLUDING THIS COVER SHEET. IF YOU HAVE ANY DIFFICULTY READING IT, OR IF TRANSMISSION WAS INCOMPLETE, PLEASE ADVISE THIS OFFICE AT ONCE AT (617) 542-0663.

Dear Ms. Jangrow,

Could you please present this motion to Judge Moriarty.

Thank you  
Patricia Garin

cc: Beth Farris, ADA

THIS TRANSMITTAL IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OR THIS TRANSMITTAL IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE TRANSMITTAL TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE ABOVE OFFICE IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL TO US BY MAIL AT THE ABOVE ADDRESS. THANK YOU.

continue the stay for an additional sixteen days. First, as this Court noted in its memorandum, "the issues raised . . . are novel and complex." There is no appellate authority on point.

Petitioner would like the opportunity to thoroughly research this issue of first impression. Petitioner's counsel agrees that it is complex and novel and, in light of the fact that petitioner's counsel had only twenty-four hours to brief this issue before the September 9 hearing before this Court<sup>1</sup>, petitioner is requesting this additional sixteen days.

3. It is the plan of petitioner's counsel to file a Petition for Review Pursuant to M.G.L. c.211, §3 on October 15, 1993. Counsel has already conferred with SJC Clerk George Sliva with respect to an October 20, 1993 hearing date. Mr. Sliva will be able to schedule a hearing on that day before Justice Lynch.<sup>2</sup>

4. Petitioner's counsel, Max D. Stern and Patricia Garin, will be unable to file their petition and supporting memorandum of law before October 15, 1993. Max Stern is presently before Judge Catherine White on a first degree murder case in Middlesex Superior Court. Mr. Stern is scheduled to begin another first degree murder case in Suffolk Superior Court before Judge McDaniel on October 4, 1993. (There is a motion to continue that trial date which is pending.) Patricia Garin will be in court

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<sup>1</sup> Petitioner's counsel returned from Buffalo, New York on the afternoon of September 7, 1993 and had to be in Springfield to argue this matter on September 9, 1993.

<sup>2</sup> Mr. Sliva advised counsel to file the instant motion with the Superior Court first. If additional relief concerning the stay was necessary, Mr. Sliva asked that counsel then so advise him.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

#1

HAMPDEN COUNTY,  
SUPERIOR COURT

**FILED**  
OCT - 7 1993

In the Matter of Richard Lavigne,  
Petitioner

*10-7-93  
Allowed  
Monday  
C.D. [unclear]  
[unclear]*

*William J. [unclear]*

**PETITIONER'S MOTION TO CONTINUE THE  
HEARING ON THE COMMONWEALTH'S MOTION TO IMPOUND**  
CLERK/MAGISTRATE

Petitioner Richard Lavigne hereby requests that this Court continue the hearing on the Commonwealth's Motion to Impound to October 18, 1993. In support of this motion, petitioner states:

1. The hearing on the Commonwealth's Motion to Impound is presently scheduled for Tuesday, October 12, 1993.
2. Petitioner's counsel, Patricia Garin, will be in Buffalo, New York from October 8 to October 13, 1993.
3. Petitioner's memorandum of law in support his petition for relief pursuant to M.G.L. c.211, §3 must be filed in the Supreme Judicial Court on Friday, October 15, 1993. Petitioner's counsel has set aside October 14 and 15 to work on her memorandum of law.
4. Petitioner's counsel would like the opportunity to file a memorandum of law in support of the impoundment order. If the hearing date is not continued, counsel will be unable to file such a memorandum because of the time constraints.
5. Petitioner's counsel has not yet been served with THE REPUBLICAN COMPANY'S Opposition to the Commonwealth's Motion for Impoundment.

wherefore, petitioner respectfully requests that this Court continue the argument on the Commonwealth's Motion to Impound to October 18, 1993.

Respectfully submitted,

Patricia Garin

Max D. Stern  
BBO# 479560  
Patricia Garin  
BBO# 544770  
STERN, SHAPIRO, ROSENFELD  
& WEISSBERG  
80 Boylston Street  
Suite 910  
Boston, MA 02116  
(617) 542-0663

Dated: October 6, 1993

G:LA VIGNER CONTINUE.MOT

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand) this date 10/6/93

Patricia Garin

93

1

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

HAMPDEN COUNTY  
SUPERIOR COURT

FILED

OCT 6 1993

*William J. Martens*

CLERK/MAGISTRATE  
SUPERIOR COURT

#1

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 than October 4, 1993. It was timely filed before 9:00 a.m. 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.

Supreme Judicial Court Rule 1:15, § 1 provides that requests for impoundment in the Supreme Judicial Court and the Appeals Court shall be governed by the provisions of Trial Court Rule VIII with the following exceptions: "This Rule, and Trial Court Rule VIII when used in conjunction with this rule, shall govern impoundment in both civil and criminal proceedings . . ."


Rule VIII (1) of the Trial Court Rules provides that Trial Court Rule VIII shall govern impoundment in civil proceedings in every department of the Trial Court.

As of this date, October 6, 1993, the matter of Richard R. Lavigne is not pending in either the Supreme Judicial Court or the Appeals Court. It is a criminal and not a civil proceeding. Therefore, as of the moment, neither Supreme Judicial Court Rule 1:15 nor Trial Court Rule VIII is applicable in this proceeding.

I am advised, however, that Father Lavigne intends to appeal to the Supreme Judicial Court to exercise its power of general superintendence in this matter pursuant to G.L. c.211, § 3. I have stayed execution of my order until October 20, 1993 to give him an opportunity to do so. I deem it appropriate to assume that the Supreme Judicial Court will entertain Father Lavigne's appeal and that the provisions of Trial Court Rule VIII will become applicable on or about October 20, 1993. I therefore intend to entertain the Motion of The Republican Company as if Rule VIII were in effect at

this time.

Accordingly it is ordered that the ex parte impoundment order be continued in effect until further order of this court, and that the matter be set down for hearing on the motion of the District Attorney to impound and the opposition of The Republican Company thereto at 2:00 p.m. on Tuesday, October 12, 1993. Notice and opportunity to be heard at that hearing is to be given to Richard R. Lavigne forthwith.

  
John F. Moriarty  
Justice of the Superior Court

Dated: October 6, 1993

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

#1

In re Richard Lavigne,  
Petitioner

PETITIONER'S NOTICE OF APPEAL

Petitioner Richard Lavigne hereby gives notice of his appeal to the Appeals Court of the Order of the Superior Court (Moriarty, J.) issued on September 29, 1993 denying his motion for return of his blood sample.

Respectfully submitted,

*Patricia Garin*

Max D. Stern  
BBO# 479560  
Patricia Garin  
BBO# 544770  
STERN, SHAPIRO, ROSENFELD  
& WEISSBERG  
80 Boylston Street  
Suite 910  
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(617) 542-0663

HAMPDEN COUNTY  
SUPERIOR COURT

FILED

OCT 18 1993

*Katherine J. Martineau*

CLERK/MAGISTRATE

Dated: October 14, 1993

G:\LAVIGNE\APP.NOT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by-hand) on this date 10/14/93

*Patricia Garin*



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

#1

In re Richard Lavigne,  
Petitioner

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Respectfully submitted,

*Patricia Garin*

Max D. Stern  
BBO# 479560  
Patricia Garin  
BBO# 544770  
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HAMPDEN COUNTY  
SUPERIOR COURT

FILED  
OCT 15 1993

*William J. Martynoff*  
CLERK/MAGISTRATE

Dated: October 14, 1993

G:\LAVIGNE\APP.NOT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by-hand) on this date 10/15/93

*Patricia Garin*

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

Superior Court  
No. [Impounded]

In re Richard Lavigne,  
Petitioner

PETITIONER'S MOTION FOR FURTHER STAY

Petitioner moves that the Court grant a further stay of its order allowing the Commonwealth to obtain possession of the blood sample until November 2, 1993.

Respectfully submitted,

*Max D. Stern*

Max D. Stern  
BBO# 479560  
Patricia Garin  
BBO# 544770  
Dennis Shedd  
BBO #555475  
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HAMPDEN COUNTY  
SUPERIOR COURT

FILED

OCT 25 1993

*William J. Martens*

CLERK/MAGISTRAT

Dated: October 21, 1993.

G:LAVIGNEPURSTAY.MOT

HAMPDEN COUNTY  
SUPERIOR COURT

FILED

OCT 25 1993

*William J. Martens*

CLERK/MAGISTRAT

## STERN, SHAPIRO, ROSENFELD &amp; WEISSBERG

MAX D. STERN  
 JONATHAN SHAPIRO  
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 LYNN O. WEISSBERG  
 PATRICIA GARIN  
 DENNIS SHEDD  
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80 BOYLSTON STREET  
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 (617) 542-0663  
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OF COUNSEL  
 JOAN RACHLIN  
 JEFFREY M. FEUER  
 VIRGINIA M. FLEMING

October 21, 1993

The Hon. John F. Moriarty  
 Associate Justice  
 Hampden Superior Court  
 Hall of Justice  
 50 State Street  
 Springfield, MA 01103

Re: In the Matter of Richard  
 Lavigne, Petitioner

Dear Justice Moriarty:

At the hearing on Monday, you expressed the intention to grant whatever further stay would be necessary so that a judge of the Appeals Court or of the Supreme Judicial Court might consider the matter on the merits.

When we returned from Springfield, we received a message from the Appeals Court that the case was set for hearing next Tuesday, October 26. The message also recited that you had entered a further stay. Upon inquiry, however, we learned that this was a reference to your comment in open court and that no further formal stay had been entered.

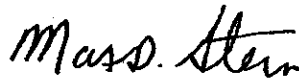
This is to request that a further order be entered continuing the stay until Tuesday, November 2. The reason for the proposed date is as follows. As you know, we have proceeded by appeal to the Appeals Court, rather than by way of c. 211, §3 to the SJC, because the case law indicates that, in the absence of a pending criminal proceeding, an order denying a motion for the return of property is an appealable final order. Since, the general rule is that the SJC will not exercise jurisdiction under c. 211, §3 if there is an alternative appellate avenue, we believe that we are required to pursue this route. However, as indicated on Monday, the Commonwealth now takes the position that the Appeals Court has no jurisdiction of the appeal. In our view, this contention is unlikely to succeed, given Commonwealth v. Gildea, 17 Mass. App. Ct. 177, 178, n.1 (1983) and Commonwealth v. Sacco, 401 Mass. 204, 206-207 (1987), as well as very clear Supreme Court authority regarding the identical issue in the federal system. However, in the unlikely event that the Appeals Court single justice was persuaded that she was without

The Hon. John F. Moriarty  
October 21, 1993  
Page -2-

jurisdiction, then, if no stay were still in existence, we would be placed in an anomalous situation. If the Appeals Court were without jurisdiction, it would then be indisputable that a c. 211, §3 petition to the SJC would be the appropriate remedy. However, without jurisdiction, the Appeals Court single justice would be without power either to consider the merits or to grant a further stay to enable us to take the matter to the SJC. The stay would then expire without any appellate justice having considered the merits, contrary to Your Honor's intention.

In order to avoid the possibility of this occurring, we are therefore requesting that you set your stay to expire one week after the hearing before the Appeals Court single justice. This ought to provide sufficient time for the justice to decide the matter and, if necessary, for us to place the matter before a single justice of the SJC. I am enclosing a motion to this effect.

Very truly yours,



Max D. Stern

MDS/mc

cc: Elizabeth Dunphy Farris  
Assistant District Attorney  
✓ Elizabeth Jangrow, Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

Superior Court  
No. [Impounded]

In re Richard Lavigne,  
Petitioner

PETITIONER'S MOTION FOR FURTHER STAY

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Respectfully submitted,

Max D. Stern

Max D. Stern  
BBO# 479560  
Patricia Garin  
BBO# 544770  
Dennis Shedd  
BBO #555475  
STERN, SHAPIRO, ROSENFELD  
& WEISSBERG  
80 Boylston Street  
Suite 910  
Boston, MA 02116  
(617) 542-0663

Dated: October 21, 1993.

G:\LAVIGNE\FURSTAY.MOT

LAW OFFICES  
**STERN, SHAPIRO, ROSENFELD & WEISSBERG**

MAX D. STERN  
JONATHAN SHAPIRO  
S. STEPHEN ROSENFELD  
LYNN G. WEISSBERG  
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80 BOYLSTON STREET  
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(617) 542-0663  
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OF COUNSEL  
JOAN RACHLIN  
JEFFREY M. FEUER  
VIRGINIA M. FLEMING

October 21, 1993

The Hon. John F. Moriarty  
Associate Justice  
Hampden Superior Court  
Hall of Justice  
50 State Street  
Springfield, MA 01103

Re: In the Matter of Richard  
Lavigne, Petitioner

Dear Justice Moriarty:

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When we returned from Springfield, we received a message from the Appeals Court that the case was set for hearing next Tuesday, October 26. The message also recited that you had entered a further stay. Upon inquiry, however, we learned that this was a reference to your comment in open court and that no further formal stay had been entered.

This is to request that a further order be entered continuing the stay until Tuesday, November 2. The reason for the proposed date is as follows. As you know, we have proceeded by appeal to the Appeals Court, rather than by way of c. 211, §3 to the SJC, because the case law indicates that, in the absence of a pending criminal proceeding, an order denying a motion for the return of property is an appealable final order. Since, the general rule is that the SJC will not exercise jurisdiction under c. 211, §3 if there is an alternative appellate avenue, we believe that we are required to pursue this route. However, as indicated on Monday, the Commonwealth now takes the position that the Appeals Court has no jurisdiction of the appeal. In our view, this contention is unlikely to succeed, given Commonwealth v. Gildea, 17 Mass. App. Ct. 177, 178, n.1 (1983) and Commonwealth v. Sacco, 401 Mass. 204, 206-207 (1987), as well as very clear Supreme Court authority regarding the identical issue in the federal system. However, in the unlikely event that the Appeals Court single justice was persuaded that she was without

The Hon. John F. Moriarty

October 21, 1993

Page -2-

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In order to avoid the possibility of this occurring, we are therefore requesting that you set your stay to expire one week after the hearing before the Appeals Court single justice. This ought to provide sufficient time for the justice to decide the matter and, if necessary, for us to place the matter before a single justice of the SJC. I am enclosing a motion to this effect.

Very truly yours,



Max D. Stern

MDS/mc

cc: Elizabeth Dunphy Farris  
Assistant District Attorney  
Elizabeth Jangrow, Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss:

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

In re Richard Lavigne,  
Petitioner

PETITIONER'S AMENDED NOTICE OF APPEAL

Petitioner Richard Lavigne hereby gives notice of his appeal to the Appeals Court of the Order of the Superior Court (Moriarty, J.) issued on September 29, 1993 denying his motion for return of his blood sample and allowing the Commonwealth's motion for access to the blood sample.

Respectfully submitted,

*Patricia Garin*

Max D. Stern  
BBO# 479560  
Patricia Garin  
BBO# 544770  
STERN, SHAPIRO, ROSENFELD  
& WEISSBERG  
80 Boylston Street  
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Boston, MA 02116  
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HAMPDEN  
SUPERIOR

FILED

OCT 28 1993

*Shirley J. Martyn*

CLERK/MAGISTRAT

Dated: October 21, 1993

G:\LAVIGNE\APP2.NOT



105  
LAW OFFICES

**STERN, SHAPIRO, ROSENFELD & WEISSBERG**

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PATRICIA GARIN  
DENNIS SHEDD  
JENNY C. CHOU

OF COUNSEL  
JOAN RACHLIN  
JEFFREY M. FEUER  
VIRGINIA M. FLEMING

October 22, 1993

Elizabeth Jangrow  
Assistant Clerk  
Hampden Superior Court  
Hall of Justice  
50 State Street  
Springfield, MA 01102

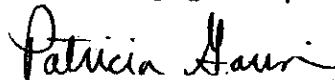
Re: In the Matter of Richard  
Lavigne, Petitioner

Dear Ms. Jangrow:

Enclosed for filing please find Appellant's Amended Notice  
of Appeal to the Appeals Court.

Thank you for your assistance.

Very truly yours,



Patricia Garin

cc: Elizabeth Dunphy Farris  
Assistant District Attorney

LAW OFFICES **106**  
**STERN, SHAPIRO, ROSENFELD & WEISSBERG**

MAX D. STERN  
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LYNN G. WEISSBERG  
PATRICIA GARIN  
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OF COUNSEL  
JOAN RACHLIN  
JEFFREY M. FEUER  
VIRGINIA M. FLEMING

**BY TELEFAX AND MAIL**

September 10, 1993

Elizabeth R. Jangrow  
Clerk  
Hampden Superior Court  
50 State Street  
Springfield, MA 01102

Re: In Re: Richard Lavigne, Petitioner

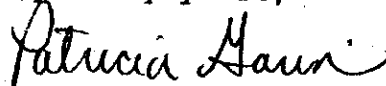
Dear Ms. Jangrow:

Enclosed please find for filing Petitioner's Motion for a Stay, In the Alternative.

I would appreciate it if you would present this motion to Judge Moriarty.

Thank you for your assistance.

Very truly yours,



Patricia Garin

cc: Elizabeth Farris  
Assistant District Attorney

**WILLIAM J. MARTIN JR.**  
CLERK OF COURTS



FIRST ASSISTANT CLERK MAGISTRATE

CHRISTOPHER D. REAVEY

ASSISTANT CLERKS

WILLIAM L. EASON  
ELIZABETH R. JANGROW  
MARIE G. MAZZA  
KATHLEEN M. MCGREAL

ADDRESS ALL COMMUNICATIONS  
TO  
CLERK, SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
HALL OF JUSTICE  
P.O. BOX 559  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01103

County of Hampden  
In The  
Commonwealth of Massachusetts  
Office of Clerk of Courts

Telephone 413-781-8100  
FAX 413-737-1611

FAX TRANSMITTAL COVER LETTER  
(413) 737-1611

DATE: Oct 25 1993

PLEASE DELIVER TELEFAX TO THE FOLLOWING:

Patricia Garcia

FROM:

Elizabeth R. Jangrow

TOTAL NUMBER OF PAGES TRANSMITTED: 11, INCLUDING THE  
COVER PAGE.

IF YOU DO NOT RECEIVE ALL OF THE PAGES AS INDICATED, PLEASE  
CALL (413) 781-8100 Ext. 3124 IMMEDIATELY.

THANK YOU.

ADDITIONAL MESSAGE:

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\_\_\_\_\_  
\_\_\_\_\_

HAMPDEN COUNTY  
SUPERIOR COURT  
**FILED**  
OCT 25 1993

*William J. Hartsofski*  
CLERK/MAGISTRAT

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

HAMPDEN, SS.

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 than 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



jurors that they could put their previous knowledge of the case out of their minds.

On the day set for trial at the Essex Superior Court in Newburyport there were news representatives from all over the United States present, including network television news reporters and Court-TV. On that day, Father Lavigne pled guilty to two counts of indecent assault and was placed on probation for a period of ten years.

Since the day when I issued the warrant for a search of Father Lavigne's blood, the media coverage of the proceedings concerning that warrant has already been extensive. Although Father Lavigne has not been personally present at any of the three hearings that I have conducted with regard to this matter, each of them have resulted in public re-airing on the local TV newscasts of videotapes of him and his counsel taken at Greenfield during his court appearances in his previous cases. The coverage in the printed press has been equally extensive. I am morally certain that if the media is afforded free access to the details and theories of the government's investigation, each of those details and theories will be explored and debated in the press and on the airways to such an extent that if and when Father Lavigne is ever indicted for the murder of Daniel Croteau, a fair trial anywhere in this commonwealth will be extremely difficult if not impossible to attain.

It has been said that "[n]o right ranks higher than the right of the accused to a fair trial," and that protection of that right "is undeniably a substantial government interest." Newspapers of

New England, Inc. v. Clerk-Magistrate of the Ware Division, 403 Mass. 628, 632, 531 N.E.2d 1261, 1264 (1988). Our Supreme Judicial Court has cited the Supreme Court of the United State for the proposition that "[t]o safeguard the due process right of the accused, a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity." Id. @ 633. In that case the court held that a newspaper had no constitutionally guaranteed pre-trial right of access to a search warrant affidavit, and that a District Court judge had not abused her discretion by impounding it. Id. @ 637-638.

The due process right of Father Lavigne to a fair trial is not the only factor that must be taken into consideration. The Commonwealth also has a substantial interest in protecting the integrity of its investigation.

The prosecution of Father Lavigne in the 1991-1992 Franklin County cases had the effect of bringing forth information which had previously been undisclosed. The investigation into the death of Daniel Croteau that had laid dormant for so many years was re-activated, and the state and local police renewed their efforts to solve the twenty year old mystery. That investigation is still ongoing, and its success undoubtedly depends to a large extent on the continued cooperation of individuals with knowledge and memory of relevant facts. Such material is still being gathered.

The District Attorney properly concedes that the documents of which the impounded materials are a part are public records as that term is defined in G.L. c. 4, §7(26). He contends, however, that

the impounded portions are exempt from the requirements of that statute by virtue of the provisions of sub-paragraph (f) of that clause which specifically exempts:

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

It is established that there is a presumption favoring disclosure, and that the custodian of the records, in this case the District Attorney, has the burden of establishing the existence of the exemption. WBZ-TV4 v. District Attorney of Suffolk County, 408 Mass. 594, 603, 562 N.E.2d 817, 822 (1990). I am satisfied that the District Attorney has met that burden.

The Supreme Judicial Court has pointed out that the decision whether an exemption to disclosure applies requires careful case-by-case consideration. Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 290, 391 N.E.2d 881 (1979). The decision turns on whether, because of its possible effect on effective law enforcement, such a disclosure would not be in the public interest. "The relevant public policy concerns," the court has said, "include 'the prevention of the disclosure of confidential investigative techniques, procedures or sources of information, [and] the encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation.'" WBZ-TV4 v. District Attorney of Suffolk County, supra, citing Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62, 354 N.E.2d 872 (1976). In Bougas the court had also mentioned as additional

purposes for the exemption, ". . . the avoidance of premature disclosure of the Commonwealth's case prior to trial, . . . and the creation of initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusions."

I am convinced that the District Attorney has made out a very good case from the Commonwealth's point of view for continued impoundment of Trooper Daly's affidavit and the attached materials together with those portions of the memoranda and decision that refer to and discuss the affidavit and materials.

Finally, the privacy rights of those innocent individuals who have come forward to provide information to the authorities must be considered. In most instances, publication of the identities and testimony of those persons would be extremely intrusive. Although it is probably true that they have waived their privacy rights in the event their testimony should be required at a trial, I do not believe that they have intentionally relinquished those rights while the investigation remains in a pre-trial status.

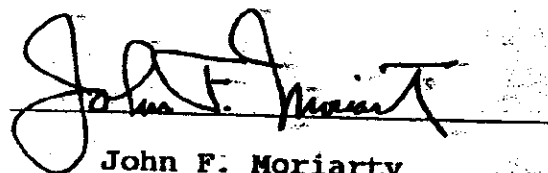
Rule 8 of the Trial Court Uniform Rules on Impoundment Procedure provides that an impoundment order must specify the length of its own duration. It has been suggested - in a case quite similar to this - that such an impoundment order should include a provision that it will automatically be dissolved at least as early as the conclusion of the criminal proceedings. Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Division, supra (Wilkins, J. concurring). I believe that such a

provision, qualified to permit an earlier dissolution on the motion of any interested party if appropriate, should be included in the order in this case.

Accordingly it is ORDERED that the ex parte order of impoundment previously entered by me in this matter be continued in effect with respect to the following materials:

- (a) the affidavit and attached materials submitted by Trooper Thomas Daly in support of his application for a warrant to search the blood of Richard R. Lavigne;
- (b) those portions of the memoranda of the District Attorney and the attorneys for Richard R. Lavigne that were previously redacted when those documents were released for publication;
- (c) those portions of the decision written by me with regard to disposition of the blood sample taken from Richard R. Lavigne that were previously redacted when that document was released for publication; and
- (d) the memoranda of the District Attorney and the attorneys for Richard R. Lavigne and the accompanying affidavits that were submitted to me to be read in camera in connection with this order.

This order is to be automatically dissolved at least as early as the conclusion of any criminal proceedings that may result from the presently ongoing investigation, unless dissolved or modified at an earlier date by further order of this court or by an order of an appellate court.



John F. Moriarty  
Justice of the Superior Court

APPLICATION FOR SEARCH WARRANT

G.L. c. 276, §§ 1-7

TRIAL COURT OF MASSACHUSETTS

Massachusetts Superior

COURT DEPARTMENT

Hampden

DIVISION

SEARCH WARRANT DOCKET NUMBER

NAME OF APPLICANT

Thomas J. Daly

118

AGENCY OF APPLICANT

Trooper, Massachusetts State Police

I, the undersigned APPLICANT, being duly sworn, depose and say that:

Affidavit & Addendums ABCDEFGHIJ

1. I have the following information based upon the attached ~~which is (are) incorporated herein by reference.~~

2. Based upon this information, there is PROBABLE CAUSE to believe that the property described below:

- has been stolen, embezzled, or obtained by false pretenses.
- is intended for use or has been used as the means of committing a crime.
- has been concealed to prevent a crime from being discovered.
- is unlawfully possessed or concealed for an unlawful purpose.
- is evidence of a crime or is evidence of criminal activity.
- other (specify) \_\_\_\_\_

3. I am seeking the issuance of a warrant to search for the following property (describe the property to be searched for as particularly as possible):

The blood of Richard R. Lavigne, sample to be drawn by trained medical personnel at a medical facility. This includes the authorization to use reasonable force only if necessary, permission to transport

Richard R. Lavigne to a convenient place for these purposes, and

authorization to enter the residence of Richard R. Lavigne for these purposes.

4. Based upon this information, there is also probable cause to believe that the property may be found (check as many as apply):

at (identify the exact location or description of the place(s) to be searched):

which is occupied by and/or in the possession of:

on the person or in the possession of (identify any specific person(s) to be searched): Richard R. Lavigne

on any person present who may be found to have such property in his or her possession or under his or her control or to whom such property may have been delivered.

THEREFORE, I respectfully request that the court issue a Warrant and order of seizure, authorizing the search of the above described place(s) and person(s), if any, to be searched, and directing that such property or evidence or any part thereof, if found, be seized and brought before the court, together with such other and further relief that the court may deem proper.

- I have previously submitted the same application.
- I have not previously submitted the same application.

PRINTED NAME OF APPLICANT

THOMAS J. DALY

SIGNED UNDER THE PENALTIES OF PERJURY

Thomas J. Daly

Signature of Applicant

SWORN AND SUBSCRIBED TO BEFORE

X John T. Hunt

Signature of Justice

September 2, 1993

DATE

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AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

I, being duly sworn, depose and say:

My name is Thomas J. Daly. I am a Trooper with the Massachusetts State Police assigned to the Crime Prevention and Control Unit (CPAC) attached to the Hampden County District Attorney's Office. I have been a state police officer for eight years. I was recently assigned to the CPAC unit in December of 1992. The officers in CPAC are responsible for conducting investigations into allegations of criminal conduct and particularly serious felonies including murder. I have graduated from the State Police Academy in Framingham, Massachusetts. I have a Bachelor of Science degree in Criminal Justice. I have attended courses in criminal investigation, forensic science and violent sexual assault. During my time in CPAC I have participated in the investigations of several homicides and have worked closely with other officers having training relevant to the investigation of homicides.

The purpose of this affidavit is to support an application for a search warrant to seize the blood of Richard R. Lavigne for blood typing and DNA comparison.

On Saturday, April 15, 1972 at 8:25 AM, the body of Daniel Croteau was discovered in the Chicopee River in the area under the Governor Robinson Bridge overpass which crosses over East Main Street in the Chicopee Falls section of Chicopee, Massachusetts. East Main Street is also known as Rte. 141 which runs in a east-west direction. Based upon the results of an autopsy conducted, the cause of death was determined to be blunt trauma to the head which had caused fractures of the skull. The manner of death was ruled homicide. Investigation revealed that the time of death was between the hours of 4:30 PM on April 14, 1972 when the victim was last seen alive and 8:25 AM on April 15, 1972 when the body had been found.

The body was found floating face down in the river about five feet from the south bank. The body was clothed in a tan suede zippered short jacket with left pocket torn off, white tee shirt, blue corduroy trousers with a wide brown leather belt, blue socks and high canvas shoes with white soles. In a pocket of the jacket the following items were found: a small wooden box containing a student's dissecting instruments; a blue neck tie with the initials "OLSH" in white; and an examination paper on yellow paper with the heading, "Daniel Croteau, Grade 7, Our Lady of Sacred Heart School." Sister Helen Elizabeth, principal of Our Lady of Sacred Heart School at the time confirmed that Daniel Croteau, date of birth November, 12 1958 of 107 Ferncliff Street, Springfield, MA was a seventh grade pupil at the school. Upon discovery of the body, the Chicopee Police Department learned through a missing persons report that Daniel Croteau had been reported missing by his parents Carl and Bernice Croteau at 2:11 AM on the morning of April 15, 1972.

The primary investigating officers at the time of the initial investigation were Captain Edward Rojowski, Lieutenant Edmund Radwanski and Lieutenant Francis Saccavino of the Chicopee Police Department and Detective Lieutenant James Fitzgibbon, Lieutenant Thomas Gilmartin and Trooper James Mitchell of the Massachusetts State Police.

According to a Chicopee Police Department report filed by Lieutenant Radwanski dated April 15, 1972, initial examination of the crime scene revealed the following: "From the north side of E. Main St. to the river bank there are two cement piers each 9 ft. wide and 33 ft. long, which support the Robinson Bridge. A large section of blood-stained sand, about 6"x12" was found about 16 ft. from the south side of the northern most 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 m/v vehicle which had driven into 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 83' 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 15 ft. in a westerly direction. Photographs of the entire area were taken by Lt. Saccavino and plaster casts of the tire marks were made by Officer Ramos and Lt. Saccavino". (Refer to Addendum A)

The investigation first conducted in 1972 eventually became inactive due to lack of evidence. Although a primary suspect was developed early on in the case, no charges were ever brought. This suspect 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, Springfield, MA. 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, who was the youngest.

In October of 1991, an investigation was conducted by Troopers assigned to the Crime Prevention and Control Unit attached to the Northwestern District Attorney's Office. This investigation was initiated as a result of allegations made in Franklin County against Father Lavigne charging him with two counts of Rape of a Child and Indecent Sexual Assault of a Child. At this time, Father Lavigne was assigned to St. Joseph's Parish in Shelburne, Falls, MA. He had been transferred from St. Mary's parish in Springfield to St. Francis' parish in North Adams on July 6, 1976 but was later transferred to St. Joseph's parish on November 30, 1977. This investigation later expanded to include a total of eighteen persons who have come forward to claim they have at one time been sexually molested by Father Lavigne. These include



persons who have been parishioners of three separate parishes where Lavigne has been assigned. These parishes include St. Catherine of Siena and St. Mary's in Springfield, and St. Joseph's in Shelburne Falls. A total of five victims have made allegations against Lavigne which fell within the statute of limitations. (Refer to Addendum B)

As a result of the Northwestern District Attorney's Office investigation, Lavigne was arraigned on February 25, 1992 in Greenfield Superior Court on two counts of Rape of a Child, seven counts of Indecent Assault and Battery on a Child Under Fourteen, and three counts of Indecent Assault and Battery on a Child Over Fourteen. Lavigne subsequently pleaded guilty on June 25, 1992 to one charge of Indecent Assault and Battery on a Person Over Fourteen and was placed on ten years probation. As part of the conditions of probation, Lavigne agreed to receive treatment at St. Luke's Institute located at 2420 Brooks Dr., Suitland, MD 20746. This center specializes in the psychiatric treatment of clergy who have sexual or alcohol related disorders. As of this writing, Lavigne has been released from this treatment center but as part of probation he is required to report back to the center on a regular basis for continuing treatment. The conditions also include that Lavigne not live in any household occupied by children under sixteen years of age and that he not hold any job which involves unsupervised children under sixteen years of age. He has been further ordered to have no contact with the victims in this case. (Refer to Addendum C)

Publicity generated by the Franklin County investigation and subsequent indictment of Father Lavigne caused persons to come forward with new and previously undisclosed information relating to the Croteau homicide investigation. The case had remained open through the years and with the discovery of this new information, a decision was made to reactivate the case. When this officer was transferred to the Hampden County CPAC unit, I was assigned as case officer.

As a result of the Franklin County investigation, a report was filed by Trooper Susan Mosman of the Crime Prevention and Control unit (CPAC) attached to the Northwestern District Attorney's Office which covers both Hampshire and Franklin counties. A copy of that report has been included in this affidavit. This report is relevant to the Croteau homicide investigation in that it clearly reveals a widespread pattern of sexual molestation allegedly committed by Father Lavigne on numerous victims. This pattern of abuse ranges in time from 1958 when Lavigne was seventeen years of age throughout his adult life until 1991 when he was indicted in Franklin County. When he was seventeen, Lavigne had worked as an Assistant Recreation Leader for the Chicopee Park and Recreation Department. He was fired from that position for touching the genitals of a six year old boy who was under his supervision. (Refer to Addendum D)

Trooper Mosman's report reflects a pattern whereby Lavigne would develop deeply rooted relationships with his victims which would progress to the point where these victims felt committed and indebted to Lavigne. The information contained within Trooper Mosman's report demonstrates a clear pattern of manipulation and seduction. This pattern includes Lavigne giving many of the boys alcohol and inviting them to sleep over at the rectories in Springfield and Shelburne Falls. It was during these sleep overs that Lavigne would often invite the boys to take a shower and to dress in a long nightshirt. He would then invite the boys to sleep in the same bed with him. It was at this point where Lavigne would initiate physical contact with the boys which included back rubs, massages and tickling. This in turn would lead to Lavigne indecently touching the boys.

This pattern is relevant to the Croteau case because it reveals that these victims were for the most part, altar boys supervised by Lavigne at the various parishes where he was assigned. Further, it demonstrates that many of these victims included brothers of the same family. Such is the case with the Croteau family. At the time of the murder, Father Lavigne was a close friend of the family. Father Lavigne had been previously assigned to St. Catherine of Siena Parish located at 1001 Parker St., Springfield, MA. He served there from May 6, 1967 until June 29, 1968. The Croteau family were parishioners of St. Catherine's and Daniel Croteau had been an altar boy at the church along with his four brothers, Carl, Gregory, Joseph and Michael. Father Lavigne developed a close relationship with the Croteau boys and this relationship continued after Father Lavigne was transferred to St. Mary's Parish. Statements on file from Carl, Gregory and Joseph Croteau reveal that Father Lavigne would often visit the Croteau family home and would take the Croteau boys on camping trips and other outings. Carl Croteau Jr. has stated that at the time of the murder, Father Lavigne was a trusted friend and confidant. This type of close relationship is consistent with the pattern which emerges from Trooper Mosman's report. (Refer to Trooper Mosman's report attached as Addendum E)

Despite this outward appearance of being a trusted family friend however, Daniel's brother, [REDACTED] has stated that while a student at Our Lady of Sacred Heart School, Father Lavigne repeatedly molested him over a period of time. [REDACTED] Croteau has said that he has stayed many nights at St. Mary's rectory in Springfield and at Father Lavigne's parents house in Chicopee and that while on these overnight stays, Lavigne sexually molested him. [REDACTED] Croteau has stated that when he was about fourteen years of age, Lavigne had initiated this same type of activity toward him and has in the past given him alcohol. At the time of his murder, Daniel Croteau too, was thirteen years old and in the seventh grade at Our Lady of Sacred Heart School.

As the 1972 investigation into the murder of Daniel Croteau continued, numerous subjects were interviewed. In light of his close ties to the family, Father Lavigne was one of the persons interviewed. Based upon these initial conversations with Father Lavigne which began to reveal an unusually close relationship between Lavigne and Daniel Croteau, and in light of some unusual questions asked by Lavigne of investigators, Father Lavigne began to develop as a suspect in the homicide.

The unusual questions asked by Lavigne came during an April 17, 1972 interview with Father Lavigne when he asked two questions of Lieutenant Radwanski. Father Lavigne asked, "If a stone was used and thrown in the river, would the blood still be on it?" And he then asked, "In such a popular hang out with so many cars and footprints, how can the prints you have be of any help?"

I know from my experience and training that questions of this nature are often asked of investigators by perpetrators of crimes in order to monitor the progress of the investigation or to obtain information as to the possible identification of suspects or the collection of evidence. The questions asked by Father Lavigne during the initial phase of the investigation were consistent with those that are often asked by the perpetrator of a crime.

Lieutenant Radwanski states in his report that on April 16, 1972 he observed Father Lavigne at the crime scene alone.

According to Chicopee Police Department log notes dated April 16, 1972 information had been received from a \_\_\_\_\_ which indicated the following: \_\_\_\_\_ reported that Daniel Croteau came to the door of her home on Friday, April 7, 1972 at approximately 10:30 PM. This was one week prior to his murder. According to Daniel Croteau had said that he was lost and that he was looking for Father Lavigne. \_\_\_\_\_ allowed him to use the telephone at which time Daniel placed a call. \_\_\_\_\_ overheard Daniel ask over the phone, "Is Father Lavigne still there?" After a short conversation, Daniel hung up and said to \_\_\_\_\_ that he would wait outside. Within approximately five minutes, someone drove up in a car and picked Daniel up and then drove off. The car was described as a Ford Mustang. Statements on file describe Father Lavigne's car as being a maroon colored Ford Mustang. \_\_\_\_\_ positively identified Daniel Croteau from a photograph shown to her and had also identified a jacket belonging to Daniel Croteau as that which he was wearing when he arrived at her home.

According to Lieutenant Radwanski's report, Father Lavigne was interviewed on April 17, 1972 at which time he admitted to receiving a phone call from Danny from a home .

Danny said he was lost. Father Lavigne stated he had picked Danny up and notified his parents and that Danny had spent the night at Father Lavigne's parents house in the Aldenville section of Chicopee. Father Lavigne claimed at the time of the initial investigation however, that whenever he took Danny anywhere, it had always been with his brothers or a gang of kids. The information that Danny slept over at Father Lavigne's parents house on the night of April 7 contradicts this claim and demonstrates that at times, Father Lavigne and Daniel were alone.

In a subsequent interview with Father Lavigne dated May 11, 1972, Father Lavigne added additional information regarding the night of April 7, 1972 when Daniel had stayed at Lavigne's parent's house. According to notes from the interview, Father Lavigne stated that he believed he had called Daniel and spoke with him prior to Daniel going to a scout's meeting. Father Lavigne had said that Daniel had asked about going to Vermont. According to Father Lavigne, Daniel had indicated during this phone call that he (Daniel) wanted to go to Father Lavigne's house. Father Lavigne stated that he told Daniel not to come to his house.

Father Lavigne has admitted that Daniel did in fact arrive at his home on the night of April 7, 1972 and that Father Lavigne had picked him up when Daniel had become lost. Father Lavigne stated that he believes he had Daniel call his parents and that Daniel watched television in the finished cellar of Father Lavigne's parents home. Father Lavigne stated that he woke Danny up on Saturday morning, gave him breakfast and then took him home. Father Lavigne stated he dropped Daniel off at the corner of his street and did not see Daniel's parents. Father Lavigne stated that Daniel did not seem ill. Father Lavigne stated during this interview that he had a well stocked bar in the basement but he denied ever giving alcohol to Daniel. He stated that it was possible Danny could have taken some himself. The next time Father Lavigne stated he saw Danny was at Czerpial's Funeral Home on April 15, 1972. He said he had not spoken with him since April 8, 1972.

In reference to the April 7, incident, Bernice Croteau made a statement to the Chicopee Police on August 7, 1972, in which she stated the following: "On April 7, on Friday at around supper time, my son Danny dressed up, in fact dressed up better than he usually does. He wore his knit shirt, tie, herringbone jacket with a fur collar. He said that he was going some place with father Lavigne. He had been trying to contact the father on the phone, I don't know if he had contacted father Lavigne, but he left. That was the last we had heard of him that evening until we received a call from father Lavigne, it was around 11:30 or around midnight, and the father asked me if Danny could stay over for the night. The following morning at around 8:00 A.M. or 9:00 a.m. Danny walked

into the house. He didn't say too much, he just laid around for a while and complained about his stomach. Towards evening he told me that he had vomited several times during the day. At about 6:30 P.M. he went out for the evening, he said that he was getting on the bus and was going to the YMCA. At no time did Danny tell me how he got to Chicopee and returned home. I thought that father Lavigne had brought him back home."

The autopsy report completed by Dr. George G. Katsas, M.D. on May 15, 1972 indicated that Daniel Croteau's blood-alcohol level at the time of his death was measured at .18 percent. The report also indicated that the contents of Daniel Croteau's stomach contained evidence of chewing gum. The alcohol level and presence of chewing gum are notable in light of the following information. (Refer to Addendum F)

On December 1991, Detective Lieutenant Brad Holmes interviewed

during which he stated the following:

"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 Church on Parker St. in Springfield. Most of the other kids in our class went to Our Lady of Sacred Heart. Father Lavigne was one of the Parish priests at St. Catherine's. I served Mass with Danny for Father Lavigne for about a year before I moved with my family. 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."

statement reveals that Lavigne had often given Danny alcohol and, according to even encouraged it. This contradicts Lavigne's claim that he had never given Danny alcohol. The information that Lavigne had in the past given Danny both alcohol and chewing gum is consistent with the findings of the autopsy which showed both the presence of chewing gum in his stomach and a blood-alcohol content of .18 percent. statement also reveals that Danny was often alone with Father Lavigne. Further evidence of this is the fact that Danny slept overnight at Lavigne's parents house on the night of April 7. This information contradicts Lavigne's claim to investigators that whenever he took Danny somewhere, it was with his brothers or a group of kids. In light of these inconsistencies, this officer believes Lavigne has intentionally misled investigators by downplaying his level of involvement with Danny.

I know from my experience and training that a perpetrator of a crime will often lie to or mislead investigators in an attempt to conceal their involvement in the crime. A perpetrator will often intentionally fail to disclose pertinent details or facts in order to prevent being associated with persons who are named in the investigation. If the investigation confirms that a suspect did in fact know the victim or accomplice, the suspect will often downplay his relationship with this person. For example, a perpetrator may explain that he or she had not seen the victim in a long time and did not know him or her very well. This is done in an attempt to prevent the focus of the investigation from shifting toward the perpetrator.

statement reveals that Father Lavigne would often park five houses away from the Croteau residence and wait for Danny to come over to his car. In his statement, details how Danny would often start to cry upon seeing Father Lavigne. In this officer's opinion, the above information suggests that an unusual relationship existed between Father Lavigne and Daniel Croteau, a relationship harboring deep-seated emotional ties.

I know from my experience and training that cases of child molestation invariably involve strong emotional feelings on the part of the victim. These emotions are extremely powerful and may range from feelings of guilt and shame, to rage and hatred toward the assailant. The victim feels he or she cannot share this secret with anyone and as a result, they may often feel isolated and alone. Danny's reaction to seeing Father Lavigne parked on the street is a strong indicator of this type of emotional turmoil.

The following is a statement made by Carl and Bernice Croteau on May 27, 1993 regarding the relationship between Danny and Father Lavigne. This statement illustrates that Danny and Father Lavigne spent a great deal of time together and that Danny often stayed overnight at the rectory. Furthermore, this statement reveals that this relationship had been continuing at the time of the murder:

"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 an visit 3 or 4 times a week. He would some times take one son for a ride or to visit his mother and father's home. At times he would call an 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 serve mass with Father Lavigne mostly every Sunday while Father was at St. Catherines. 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 son's on rides or 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 an asked to keep Danny over night. This hour was late for our sons. This relationship continue until Danny's murder. Father always pick Danny up alone and dropped him off alone. 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."

On Monday, April 17, 1972, two days after the body of Daniel Croteau was found, a telephone call was made to the Croteau home. Carl Croteau Jr., then nineteen years of age, answered the telephone. He has stated the caller said, "We're very sorry what happened to Danny. He saw something behind the circle he shouldn't have seen. It was an accident." The caller then hung up without saying anything further. Carl Croteau Jr. made an initial statement to Chicopee Police on August 7, 1972 in which he stated that he felt the voice could have been Father Lavigne's voice in disguise.

In a subsequent interview with this officer on April 22, 1993 Carl Croteau Jr. made the following statement:

"The following is my statement regarding a telephone call I had received on April 17, 1972. This is in reference to my brother Daniel Croteau's homicide investigation.

On Monday, April 17, 1972, at approximately 1:00 or 1:30 PM, I was at my home at 106 Fernclift Avenue, Springfield. I was standing in the kitchen between the living room and the kitchen doorway. The house was full of family and friends. The phone rang. I was the closest to it so I picked it up.

I said hello. There was a long pause and I said hello again. After I repeated myself, the person on the other end of the phone said, "We're very sorry what happened to Danny. He saw something behind the circle he shouldn't have seen. It was an accident". This was a male voice and it was very familiar to me. At that point I got a little panicky because I realized I was talking with somebody who obviously knew something about my brother's death. The only thing I could think of to say was, "Who is this?" After several times asking, "Who is this?", the party in question hung up.

My father had come over to me while I was on the phone. He was saying, "Take it easy, who is it?" When I hung up I was



a little distraught and my father said, "Take it easy, if another call comes in just take it easy and keep them on the phone as long as you can."

At this point my father called the Chicopee Police or the State Police, I'm not sure which and reported the call. I went downstairs to change to get ready for the wake. During the week after the phone call, it was bothering me because I recognized the voice on the phone but I just couldn't place the face with the voice at the time because of all the emotion and activity that was going on with the wake and the funeral. We're a big family and there was a lot of activity and commotion going on in the house.

The realization of who the voice was came during a conversation with the Chicopee Police. I believe I was speaking with a Captain of the Chicopee Police and Lieutenant Fitzgibbon of the State Police. This conversation took place at my parent's home. That's when they informed us that Father Lavigne was the chief suspect. Immediately I realized that the voice on the phone had been Father Lavigne. The officers asked me if I thought that the voice on the phone could have been Father Lavigne. I told them that I felt it could be and the only reason I hesitated was the shock of who they were telling me the chief suspect was in my brother's death. There was a lot of emotion at that moment and it was a shock affect. Father Lavigne had said the funeral mass and the final prayer at the cemetery. I really didn't want to believe it. He was a trusted friend, someone you could go to as a counselor or confidant, someone you could talk to. The officers asked me to come down to the station to give them a statement which I eventually did. Most of the conversations that took place during the first two weeks were more of a question and answer type conversation. They took notes but they never asked me to sign anything at that time.

At this point, I am as confident, if not more confident that that was indeed Father Lavigne's voice on the other end of the line when I received that phone call on April 17, 1972. I hear that voice everyday of my life and I'll never forget it. There is no question in my mind that the voice was that of Father Lavigne.

I knew Father Lavigne very well at that time. I was an alter (sic) boy at St. Catherine's of Sienna with my brothers including Danny when Father Lavigne was there. I would say that at the time I probably (sic) had conversation with Father Lavigne on the phone at least once a week. We were associated through both church activities and outside activities such as camping, overnight trips, trips to the mountains, fishing, things of that nature. He was a family friend at the time. I talked to him on the phone when he was at St. Catherine's rectory and St. Mary's rectory. I talked to him on the phone when he was at his parent's house in Chicopee. He would stop

by the house on occasion and pick one of us up at times for incidental things, to go for rides, or to go to a movie or to look for antiques. And there were times he would come by the house just to talk, to stop and visit. I knew him very well at the time. There is no question in my mind that the voice on the phone was that of Father Lavigne's."

During the telephone call to Carl Croteau, Jr., the caller made reference to, "the circle." "The circle" refers to an area located directly behind the Sixteen Acres Library which is located at 1187 Parker St., Springfield, in the center of the Sixteen Acres section of the city. In the late 1960's, the city had developed a wooded area behind the library and created a small sitting or reading area. A circle was made with benches around a large oak tree. Area youths began to congregate at the circle and eventually this group of kids became known as "the circle gang."

The "circle" was located in Daniel Croteau's neighborhood, less than one half mile from his home. Furthermore, St. Catherine's Church which is where Father Lavigne was first assigned and where he first came to know the Croteau boys is located one half mile from the circle. All three locations are located within a half mile radius. And in speaking with Carl Croteau Jr., he has stated that while growing up, he and his brothers were very familiar with "the circle."

The Circle Gang became so notorious in the area due to their rowdy behavior, that a book was written about them in 1969. The author of the book is identified as James A. Coleman, a local writer and professor of physics at American International College. Professor Coleman was very active with the youth in the Sixteen Acres neighborhood and wrote the book as a way of better understanding the problems associated with adolescence. He is now retired and still resides in Springfield. (Refer to statement and book references Addendum G)

In his book, "The Circle," Professor Coleman illustrates what life was like in the Circle Gang from the perspective of one of the members of the gang. Although the names of the characters in the book have been changed, the story is based on fact. The setting of the book accurately depicts what the center of Sixteen Acres looked like at that time including the library, A&P shopping center and Friendly's store.

In chapter thirteen, Professor Coleman introduces a character named Father Ravine. Father Ravine is assigned to what is referred to as St. Jude's Church and becomes closely associated with the boys who are members of the Circle Gang. Father Ravine is well liked by the Circle Gang and gets them more involved with church activities. Eventually however, the book describes how Father Ravine is transferred to another parish and how this upsets the Circle Gang.

On May 6, 1993 this officer interviewed Professor Coleman about his book, "The Circle." The purpose of this meeting was to confirm if Coleman in his book, was actually referring to Father Richard Lavigne when he used the character name, Father Ravine. As a result of this meeting, Professor Coleman confirmed that the character Ravine was based on Father Lavigne and he further stated that the role of Ravine in the book accurately depicted the true to life relationship between Lavigne and the members of the Circle Gang. He further stated that he knew Danny Croteau from the area but that Danny was not a member of the Circle Gang. Coleman also confirmed that St. Jude's church was a synonym for St. Catherine of Siena on Parker Street where Father Lavigne was first assigned and where he first associated with the Circle Gang. This information establishes a close association between Father Lavigne and the Circle Gang of Sixteen Acres. This association is relevant in light of the phone call to Carl Croteau Jr. in which the reference was made to "the circle."

On March 12, 1993 this officer interviewed

is currently

has stated that when he was younger he served as an altar boy at St. Mary's parish when Father Lavigne was assigned there. He has said that Father Lavigne became very close with his family and that Lavigne would often stop at his house for dinner or just to visit. would often go on overnight trips with Father Lavigne to his parent's house, or to Ashfield, MA where Father Lavigne had just built a house.

recalls being in Father Lavigne's car one day traveling along Parker Street, Springfield near St. Catherine's church. has described Father Lavigne's car at the time as a 1962 Maroon colored Ford Mustang. states that as they drove along Parker Street, Father Lavigne was talking about a group of youths who were causing trouble in the area near the House of Television which is near the corner of Parker Street and Wilbraham Road. states, "I got the impression that he (Father Lavigne) knew who these kids were or some of whom they were and that he had some dealings with them. I don't remember specifically any names or what his dealings with them were but the name of the whole group that sticks out in my mind was, 'The Circle'. That must have been mentioned more than once because that stands out in my mind." This is important to note as the telephone call which was received by Carl Croteau Jr. on April 17, 1972 made reference to "the circle."

The information supplied by is important as it further establishes a tie between Father Lavigne and the Circle Gang. Although he does not recall exactly when this conversation with Lavigne took place, has stated that his

relationship with Father Lavigne was contemporaneous with the time of the murder of Daniel Croteau. In statement, he also makes reference to an incident in which Father Lavigne had given him alcohol. states that while on an overnight stay at Father Lavigne's parents house, Father Lavigne took him downstairs to the basement and offered him what thought was a glass of water. Father Lavigne then made a drink for himself. After one sip out of his drink, found out that it was a martini and he practically spit it out. He states that Father Lavigne then laughed. He states that was the only time Father Lavigne offered him liquor.

This information describes an incident when Father Lavigne took downstairs to the finished basement of his parent's house in Chicopee. While downstairs, Lavigne gave what he thought was water but instead was a martini. On April 7, 1972, Danny Croteau stayed overnight in the basement of Lavigne's parents house and returned home sick and vomiting the next day. During interviews with Lavigne about the night of April 7, he denied giving Danny alcohol, but as revealed by statement and numerous other statements on file, Lavigne has in the past given many boys alcohol, including Danny. The statement by Danny's mother that he came home the next morning sick after being with Lavigne should be noted.

On May 10, 1993 this officer received a letter from which is dated May 3, 1993. This is a supplemental statement to the initial statement he made to Trooper Mosman on December 31, 1991. In his first statement, described being molested by Lavigne during an overnight camping trip he had went on with the Croteau family in Goshen, MA when he was about ten or eleven years old.

In this supplemental statement, states that this incident occurred during the summer of 1968. He describes the following:

"To whom it may concern,

I recently had an opportunity to speak to my brother regarding the weekend I, was sexually molested by Richard Lavigne. We began this discussion with my inquiry of wether (sic) or not had been molested as well. He was 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 rusing 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 3 brothers, Joe, Michael and Greg and the 3 boys from my family, It was obvious that Danny was frustrated and upset that Lavigne joined in the taunting. He also seemed upset at not being the focal point of



would invite these boys to become altar boys and would begin to develop a relationship with them. As the relationship grew, Lavigne would take the boys on trips, overnight stays, and antique hunting. He would spend time with the boys and shower attention on them, buying them gifts and doing them favors to build their trust.

Often, Lavigne would invite the boys over to the rectory to work around the house. He would have them over for dinner and would spend evenings with them at the rectory. Statements indicate that Lavigne would often offer the boys alcohol and encourage them to drink it. Eventually, he would ask them if they wanted to sleep over at the rectory. At this point, the pattern becomes more rigid and ritualistic. It was during these sleep overs when Lavigne would often invite the boys to take a shower and then would give them a long nightshirt to wear to bed even though they often had their clothes. Lavigne would ask the boys to sleep in his bed with him. While in bed, Lavigne would begin to playfully touch the boys, tickling them and giving back rubs and massages. He would then ask that the boys return the favor. This would lead to Lavigne touching the boys sexually and inviting them to touch him. Often he would try to put the boys at ease, to lower their inhibitions by talking to them and explaining that this type of touching was alright.

Lavigne manipulated these boys, developing the relationship slowly and cautiously. He was generous, affectionate and attentive to their needs. He has been described in statements as "dynamic, exciting, and fun to be around. He seemed unlike other priests in the way he related to us altar boys. He was more of a friend or buddy than someone in authority. We felt he could do no wrong."

At times, he was warm and inviting but at other times, he could become enraged and display a violent temper. Because of this, he was often unpredictable. Many incidents describe how Lavigne could be intimidating and threatening. In one statement, nine year old \_\_\_\_\_ states, "When I went downstairs to the kitchen, Fr. Lavigne was cutting something. I think they were carrots for soup....Fr. Lavigne turned to me and said, 'If you tell anybody', and he had the knife in his hand and he started waving the knife at me, and then he said, 'I'm going to hurt you'. Then he started cutting carrots again. Then he turned back around and pointed the knife at me and said, 'or your parents'. Then he went back to cutting carrots and talking about other stuff. I was scared that he might cut me or stab me or my parents."

Lavigne developed these relationships with these boys through a deliberate and calculating process. He selected which boys to approach and then through coercion and seduction, he escalated the level of sexual activity. Once he established the relationship to the point where he was sexually molesting

these boys, Lavigne further manipulated them to keep the activity secret.

On May 10, 1993 this officer contacted Special Agent Gregg McCrary of the Federal Bureau of Investigation in Quantico, VA. S/A McCrary is assigned to the Behavioral Science Unit. After a brief conversation during which this officer requested research on the study of pedophiles, S/A McCrary forwarded to this officer literature on the subject.

As part of the material supplied by the FBI Academy, a publication was received entitled, "Child Molesters: A Behavioral Analysis." This was published by The National Center for Missing and Exploited Children in cooperation with the FBI. It was prepared by Supervisory Special Agent Kenneth V. Lanning of the Behavioral Science Unit. In this literature, the term pedophilia is defined as follows: "The essential feature of this disorder is recurrent, intense, sexual urges and sexually arousing fantasies, of at least six months' duration, involving sexual activity with a prepubescent child. The person has acted on these urges, or is markedly distressed by them. The age of the child is generally 13 or younger."

In discussing the differences between a child molester and pedophile, the manual explains that the person who has a distinct sexual preference for children and fantasizes about having sex with a child is a pedophile. A child molester is a person who may not necessarily have sexual fantasies about children but does in fact act out and sexually molests them. A person may be a pedophile but unless he acts out and satisfies his fantasizes about children, he is not a child molester.

The Preferential Child Molester is defined as the following: "The Preferential Child Molesters have a definite sexual preference for children. Their sexual fantasies and erotic imagery focus on children. They have sex with children not because of some situational stress or insecurity but because they are sexually attracted to and prefer children. They can possess a wide variety of character traits but engage in highly predictable sexual behavior. These highly predictable sexual behavior patterns are called sexual ritual and are frequently engaged in even when they are counter-productive to getting away with the criminal activity. Although they may be smaller in number than the Situational Child Molesters, they have the potential to molest large numbers of victims. For many of them, their problem is not only the nature of the sex drive (attraction to children) but also the quantity (need for frequent and repeated sex with children). They usually have age and gender preferences for their victims. Members of higher socioeconomic groups tend to be over represented among Preferential Child Molesters. More Preferential Child Molesters seem to prefer boy than prefer girl victims."

One pattern of behavior of the Preferential Child Molester is referred to as "Seduction." This is described as the following: "This pattern characterizes the offender who engages children in sexual activity by 'seducing' them - courting them with attention, affection, and gifts. Just as one adult courts another, the pedophile seduces children over a period of time by gradually lowering their sexual inhibitions. Frequently his victims arrive at the point where they are willing to trade sex for the attention, affection, and other benefits they receive from the offender. Many of these offenders are simultaneously involved with multiple victims, operating what has come to be called a child sex ring. This may include a group of children in the same class at school, in the same scout troop, or in the same neighborhood. The characteristic that seems to make this individual a master seducer of children is his ability to identify with them. He knows how to talk to children - but, more important, he knows how to listen to them. His adult status and authority is also an important part of the seduction process. In addition, he frequently selects as targets children who are victims of emotional and physical neglect. The biggest problem for this child molester is not how to obtain child victims but how to get them to leave after they are too old. This must be done without the disclosure of the 'secret'. Victim disclosure often occurs when the offender is attempting to terminate the relationship. This child molester is most likely to use threats and physical violence to avoid identification and disclosure or to prevent a victim from leaving before he is ready to 'dump' the victim."

The four major characteristics of the Preferential Child Molester (pedophile) are defined as: 1) long-term and persistent pattern of behavior, 2) children as preferred sexual objects, 3) well-developed techniques in obtaining victims, and 4) sexual fantasies focusing on children.

A section entitled, "Well-Developed Techniques in Obtaining Victims" outlines the following characteristics and indicators of a pedophile in the process of selecting a victim:

Skilled at identifying vulnerable victims: Some pedophiles can watch a group of children for a brief period of time and then select a potential target. More often than not, the selected child turns out to be from a broken home or the victim of emotional or physical neglect. This skill is developed through practice and experience.

Identifies with children (better than with adults): Pedophiles usually have the ability to identify with children better than they do with adults - a trait that makes most pedophiles master seducers of children. They especially know how to listen to children. Many pedophiles are described as 'pied pipers' who attract children.



Access to Children: This is one of the most important indicators of a pedophile. The pedophile will surely have a method of gaining access to children. Other than simply hanging around places children congregate, pedophiles sometimes marry or befriend women simply to gain access to their children. Pedophiles are frequently the 'nice guys' in the neighborhood who like to entertain the children after school or take them on day or weekend trips. Also, a pedophile may seek employment where he will be in contact with children (teacher, camp counselor, baby sitter, school bus driver) or where he can eventually specialize in dealing with children (physician, dentist, minister, photographer, social worker, police officer). The pedophile may also become a scout leader, Big Brother, foster parent, Little League coach, and so on. The pedophile may operate a business that hires adolescents. In one case known to the author, a pedophile married, had a daughter, and he molested her. He was the 'nice guy' in the neighborhood who had the neighborhood girls over to his house for parties, at which he molested them. He was a coach for a girl's softball team, and he molested the players. He was a dentist, who specialized in child patients, and he molested them.

Activities with children, often excluding other adults: The pedophile is always trying to get children into situations where there are no other adults present. On a scout hike he might suggest the fathers go into town for a beer. He will 'sacrifice' and stay behind with the boys.

Seduces with attention, affection and gifts: This is the most common technique used by pedophiles. They literally seduce the children by befriending them, talking to them, listening to them, paying attention to them, spending time with them, and buying gifts for them. If you understand the courtship process, it should not be difficult to understand why some child victims develop positive feelings for the offender. Many people can understand why an incest victim might not report his or her father, but they cannot understand why a victim not related to the offender does not immediately report molestation. There are many reasons for a victim not immediately reporting molestation (fear, blackmail, embarrassment, confusion), but the results of the seduction process are often ignored or not understood at all.

Skilled at manipulating children: In order to operate a child sex ring involving simultaneous sexual relations with multiple victims, a pedophile must know how to manipulate children. The pedophile uses seduction techniques, competition, peer pressure, child and group psychology, motivation techniques, threats, and blackmail. The pedophile must continuously recruit children into and move children out of the ring without his activity being disclosed. Part of the manipulation process is lowering the inhibitions of the children. A skilled pedophile who can get children into a

situation where they must change clothing or stay with him overnight will almost always succeed in seducing them.

Has hobbies and interests appealing to children: This is another indicator that must be considered for evaluation only in connection with other indicators. Pedophiles might collect toys or dolls, build model planes or boats, or perform as clowns or magicians to attract children. A pedophile interested in older children might have a 'hobby' involving alcohol, drugs, or pornography.

The publication then goes on to discuss multiple victims and states, "If investigation reveals that an individual molested many different victims, that is a very strong indicator that the offender is a pedophile. More important, if other factors indicate that the offender is a pedophile then a concerted effort should be made to identify the multiple victims. If you know of only one victim, but have reason to believe the offender is a pedophile, then begin looking for the other victims. For instance, if a teacher who is a suspected pedophile molests one child in his class, the chances are high that he has molested or attempted to molest other children in the class as well as children in all the other classes he has taught." (Refer to Addendum H)

Information exists within this affidavit to show that Father Lavigne throughout his adult life has been sexually molesting a large number of adolescent boys. In light of the evidence which shows that this pattern of molestation is consistent with the character traits of the Preferential Pedophile, this officer feels there is enough probable cause to believe that Father Lavigne is a pedophile.

It has been demonstrated that Danny and Father Lavigne were often alone together and that an unusually close relationship existed between them. Danny would often burst into tears upon seeing Father Lavigne parked on the street. This indicates a deep emotional tie between the two. Further information exists to show that Lavigne often gave Danny alcohol and encouraged him to drink it. Statements on file reveal that this relationship was ongoing at the time of the murder. Danny spent the night at Lavigne's parents house in Chicopee one week before the murder on the night of April 7, 1972. Based on this, and the overwhelming amount of information to show how widespread his pattern of molestation has reached, this officer feels there is enough probable cause to believe that Daniel Croteau was being molested by Father Lavigne at the time of his murder.

On June 1, 1993, the officer interviewed Joseph Croteau at which time he described a fishing trip he had went on with Father Lavigne. He stated that approximately one year before the murder, Lavigne had taken him to the crime scene at the edge of the Chicopee River. At that time, Lavigne described

the location as a good fishing spot. Joseph Croteau went on to say that Lavigne had taken him fishing several times to area locations but he distinctly recalls being brought to the crime scene by Lavigne. This information reveals that Lavigne is familiar with this area and had been there in the past.

Furthermore, Carl and Bernice Croteau have described in their statement that Lavigne would pick Danny up on Friday or Saturday evenings two or three times a month during the school year and two or three times a week during school vacation. This reveals that Danny and Lavigne were together on a regular basis on Friday and Saturday nights. Danny spent the night at Lavigne's parent's house on Friday, April 7th, 1972. The murder occurred the following week, on the night of Friday, April 14, 1972.

In light of the foregoing information contained in this affidavit, Father Richard Lavigne has emerged as a strong suspect in the murder of Daniel Croteau. The unusual statements made to investigators, the denial that he and Danny were ever alone together, the telephone call to the Croteau home two days after the murder, the close relationship with Danny, the pattern of abuse consistent with that of a Preferential Pedophile, familiarity with the crime scene, and the pattern of spending Friday nights together; all of this adds to the level of probable cause to believe Lavigne murdered Danny Croteau.

I have personal knowledge, based upon my experience and training, that a crime scene will contain physical evidence which will aid in establishing the identity of perpetrator(s), the circumstances under which the crime was committed, and/or which in general will assist in the discovery of the pertinent facts, and that such evidence requires a systematic search to locate, seize, record and process.

In processing the crime scene where Daniel Croteau's body was found, numerous forms of evidence were recovered by investigators and later submitted to the state crime lab in Boston. This evidence included 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. These items were to be examined for human blood, blood group and evidential traces.

The results of the testing done by the crime lab on the articles submitted revealed the presence of two different types of blood groupings. These types are identified as group "O" and group "B."

Blood found on Daniel Croteau's clothing which included his suede jacket, blue corduroy trousers, and blue necktie was identified as group "O." The piece of stained paper also revealed traces of blood group "O." The soil collected from near the body and on the stones submitted tested positive as human blood but a blood grouping could not be identified.

The testing done on the cotton rope and plastic straw found on the river bank revealed that bloodstaining was present but this blood group was identified as group "B."

The identification of blood group "B" found on the articles submitted is extremely important for evidentiary purposes. It has been confirmed through the autopsy and toxicology tests that Daniel Croteau's blood was type "O." The discovery of blood group "B" at the scene of the homicide is not consistent with the blood type of the victim and therefore indicates that another person was present at the scene who was bleeding. (Refer to lab report Addendum I)

Weather data on file with the National Weather Service and Westover Air Force Base in Chicopee reveals that 0.96 inches of precipitation fell on Thursday, April 13, 1972. As reported, this is equivalent to 10 inches of snowfall and is defined as an intense rainfall. This was just twenty four hours before the murder. This means that the type "B" blood found at the scene could not have been there prior to the murder. The rain would have washed it away. As a result, there is a strong likelihood that this blood belongs to the person who committed the murder.

Based on my experience and training, I know that a homicide of this nature which involves blunt trauma inflicted on the victim is a crime of violence. Blunt trauma is caused by the physical impact of some object upon the human body. This involves a certain level of force. From my experience and training, I know that because of this force, such as a struggle between two people, the assailant oftentimes will sustain an injury. This may come as a result of the close physical encounter between the two people such as during an assault, stabbing or bludgeoning. The assailant is oftentimes injured in some way by the weapon or object used in the crime, or by the victim attempting to defend him or herself.

I have also learned that the person or persons participating in the commission of a violent offense are often in contact with the physical surroundings in a forceful or otherwise detectable manner. In crimes of violence there is often an attempt to alter, destroy, remove, clean up or cover up evidence of a crime but that traces may be left in the form of blood, saliva, physiological fluids and secretions, hair, fibers, fingerprints, palm prints, footprints, shoe prints, cutting instruments and cutting tools, blunt force instruments, and fragments, dirt, dust and soil. Many of the above items are minute and/or microscopic, thus requiring additional specialized examination by forensic laboratory techniques.

In this particular case, the crime scene contained evidence of a violent struggle between the victim and assailant. The front pocket of Daniel's coat had been torn away and marks in the sand indicated that his body had been dragged 83 feet to the edge of the river ending in a pool of blood. Evidence of

blood splattering was also observed. Based on this, it is not unlikely that the person who committed the murder sustained an injury from which bleeding occurred.

As part of the further examination of evidence in this case, additional testing of two pieces of evidence (rope and plastic straw) taken from the scene of Daniel Croteau's death was undertaken. The rope and plastic straw were sent to Forensic Science Associates (FSA), 3053 Research Drive, Richmond, California for DNA typing to be conducted on the biological evidence using the PCR DNA amplification procedure in order to determine traits associated with the blood on the rope and straw. The rope and plastic straw were received from Trooper Michael Sullivan of the Massachusetts State Police (who at that time was assigned to the Hampden CPAC Unit attached to the Hampden County District Attorney's Office and was assigned as case officer to this investigation) at the FSA laboratory, via Federal Express mail, on March 13, 1992. The FSA laboratory was told that this evidence was collected pursuant to a homicide investigation about twenty years ago; but, it was not told the name of the victim or possible suspects in this case.

On January 8, 1993, a report of the examination of the rope and plastic straw sent to FSA for analysis was issued by the FSA laboratory personnel and subsequently sent to the Hampden County District Attorney's office. The testing of the rope and plastic straw was conducted by Edward T. Blake and Jennifer S. Mihalovich. (Refer to Addendum J).

Edward T. Blake holds a Doctor of Criminology in Forensic Science from the University of California at Berkley. He also received a Bachelor of Science in Criminalistics from the University of California at Berkley in 1968. Dr. Blake is a member of the California Association of Criminalists, Sigma Xi (Research Society of North America), American Society of Human Genetics, American Association for the Advancement of Science, New York Academy of Science, American Academy of Forensic Sciences, and the Northwest Association of Forensic Scientists. He has worked in the field of forensic science since 1969, and has been a consultant in forensic biology from 1975. Dr. Blake received Service Awards for his work from the California Association of Criminalists in 1976, 1977 and 1984. He received the Distinguished Member Award of the California Association of Criminalists in 1985. He has numerous published works in his field, including but not limited to, Clecilia H. von Beroldingen, E.T. Blake, R. Higuchi, G.F. Sensabaugh, and Henry Erlich, "Applications of PCR to the Analysis of Biological Evidence," in PCR Technology: Principles and Applications for DNA Amplification, Henry A. Erlich, Ed., Stockton Press, 1989, 209-223; Henry A. Erlich, Russell Higuchi, Clecilia H. von Beroldingen, and Edward Blake, "The

Use of the Polymerase Chain Reaction for Genetic Typing in Forensic Samples," Proceedings of an International Symposium on the Forensic Aspects of DNA Analysis, June, 1989, Quantico, Va., 93-101, U.S. Government Printing Office, Washington, D.C.; E.T. Blake, S. Paabo, and M.D. Stolorow, "DNA Amplification and Typing from Aged Biological Evidence," Proceedings of an International Symposium on the Forensic Aspects of DNA Analysis, June 1989, Quantico, Va., 267-268, U. S. Government Printing Office, Washington, D.C.; S. Walsh, R. Higuchi, and E. Blake, "PCR Inhibition and Bloodstains," Proceedings of an International Symposium on the Forensic Aspects of DNA Analysis, June 1989, Quantico, Va., 281-282, U. S. Government Printing Office, Washington, D.C.; Rhea Helmuth, Nicola Fildes, Edward Blake, M.C. Luce, J. Chimera, Roberta Madej, C. Gorodezky, Mark Stoneking, Norma Schmill, William Klitz, Russell Higuchi, and Henry A. Erlich, "HLA-DQ [alpha] Allele and Genotype Frequencies in various Human Populations Determined by Using Enzymatic Amplification and Oligonucleotide Probes," Am. J. Hum. Genet., 47, 1990, 515-523; Rebecca Reynolds, George Sensabaugh, and Edward Blake, "Analysis of Genetic Markers in Forensic DNA Samples Using the Polymerase Chain Reaction," Anal. Chem., January, vol. 63, 1991, 2-15; Edward Blake, Jennifer Mihalovich, Russell Higuchi, P. Sean Walsh, and Henry Elrich, "PCR Amplification and HLA-DQ [alpha] Oligonucleotide Typing on Biological Evidence Samples: Casework Experience," J. Forens. Sc., Vol. 37, No. 3, May 1992, 700-726. In addition, from 1971, Dr. Blake has made over seventy-five presentations at scientific meetings in his field with approximately eight presentations specifically involving DNA analysis and techniques in the last six years.

Jennifer S. Mihalovich holds a Masters of Public Health in Forensic Science from the University of California at Berkley. She also received a Bachelor of Science in Microbiology at the University of Montana at Missoula in 1985. She has been employed as a Criminalist at FSA laboratory since 1986. Ms. Mihalovich is a member of the California Association of Criminalists, the Regional Director of Northern California for the California Association of Criminalists, Board of Directors, and a Provisional Member of the American Academy of Forensic Science. She received a Merit Award for the work she conducted on the DNA Quality Assurance Committee for the California Association of Criminalists. She has also been honored with the Paul Kirk Award from the California Association of Criminalists in 1990, and was a Regional Award recipient for the American Academy of Forensic Sciences in 1991. Ms Mihalovich has published a number of technical papers, including but not limited to, Gima, L; Sims, G; Konzak, K; Blake, E and Super-Mihalovich, J. "The Recovery, Amplification and DQ [alpha] Typing of DNA from Partially Cremated Human Remains," presented at the Fall 1990 Semi-Annual Seminar of the California Association of Criminalists, Long Beach, California,

the Fall 1990 Seminar of the North Western Association of Criminalists, Seattle, Washington, and the 1991 Annual Seminar of the American Academy of Forensic Science, Anaheim, California; Super-Mihalovich, J. and Blake, E.T. "Detection of DQ[alpha] Genotypes in DNA Mixtures" presented at the Spring 1991 Semi-Annual Seminar of the California Association of Criminalists, San Francisco, California; Super-Mihalovich, J. and Blake, E.T. "DNA -PCR Blind Trial Results" presented at the Spring 1991 Semi-Annual Seminar of the California Association of Criminalists, San Francisco, California; and Kearney, J. J. et al., "Guidelines for a Quality Assurance Program for DNA Analysis," Crime Laboratory Digest, Vol. 18 No. 2, 1991, 44-75.

Dr. Blake and Ms. Mihalovich report that recent advances in molecular biology have revealed an enormous extent of genetic variation at the level of the primary genetic material, the DNA. These findings are, to a large extent, a by-product of the recombinant DNA industry that has revolutionized the medical approach to genetic disease diagnosis and treatment. Recently it has been recognized that genetic analysis at the DNA level has particular application in the forensic sciences [Jeffreys et al., *Nature*, 316, 1985, 76-79; Gill et al., *Nature*, 318, 1985, 577-579; Dodd, *Nature* 318, 1985, 506-507; Jeffreys et al., *Nature*, 322, 1986, 290-291; Lewin, *Science*, 233, 1986, 521-522; Tyler et al., *Forens. Sci. Intern'l.*, 31, 1986, 267-272; Sensabaugh, *J. For. Sci.*, 31(2), 1986, 393-396; Kantner et al., *J. For. Sci.*, 31(2), 1986, 403-408; Guisti et al., *J. For. Sci.*, 31(2), 1986, 409-417; Higuchi et al., *Nature*, 322, 1988, 543-546]. Furthermore, application of DNA technology by anthropologists to mummified tissues of now extinct species is witness to the robust nature of the DNA encapsulated within the nucleus of tissue cells [Higuchi et al., *Nature*, 312, 1984, 282-283; Paabo, *Nature*, 314, 1985, 644-645]. Similar recent anthropological studies have shown that the effect of profound DNA degradation is a failure to obtain any result rather than the production of a false or misleading finding [Hughes et al., *Nature*, 323, 1986, 208]. The trust of this work indicates that biological evidence is susceptible to successful analysis using DNA technology.

Dr. Blake and Ms. Mihalovich further report that the San Francisco Bay area is a center for recombinant DNA research; and one of the leaders in this field is Cetus Corp. The DNA analysis in this case has been conducted employing DNA technology developed by Dr. Henry Erlich and his colleagues within the human genetics laboratory of Cetus Corp. Dr. Erlich's laboratory has been a pioneer in the study of genetic variation in the DNA associated with the HLA region of the human genome [Erlich et al., *Bio/Technology*, 4, 1986, 875-981]; conventional serological HLA typing has been a routine tool for paternity testing for many years. In addition Dr. Erlich's laboratory has been involved in the development of DNA

technology that is capable of amplifying relatively small quantities [sub-nanogram range] of DNA for genetic analysis [Saiki et al., Science, 230, 1985, 1350-1354; Saiki et al., Nature, 324, 1986, 163-166; Higuchi et al., Nature, 332, 1988, 543-546; Saiki et al., PNAS, 86, 1989, 6230-6234]. The amplification strategy employed here also has been used to develop a direct test for the AIDS virus in blood [Ou et al., Science, 239, 1988, 295-297].

The particular DNA region exploited in these studies is the DQ segment within the HLA Class II group: this region has the subclass designation DQ[alpha]. The DQ[alpha] DNA region can be considered a genetic marker system in its own right in a similar manner to the ABO genetic marker system. Within the DQ[alpha] marker system there are 6 alleles (or traits) designated 1.1, 1.2, 1.3, 2, 3, and 4. Since each individual has two alleles, this genetic marker gives rise to 21 possible types as follows: [1.1, 1.1], [1.1, 1.2], [1.1, 1.3], etc. Each allele is associated with a specific and known DNA sequence. The DNA associated with the conventional HLA genetic markers (A, B, and C loci) is in the Class I group. All of these genetic markers are associated with the short arm of chromosome 6.

Although Massachusetts presently rejects the use of DNA evidence derived from RFLP (Restriction Fragment Length Polymorphism) analysis at the trial of a criminal case, see Commonwealth v. Lanigan, 413 Mass. 154 (1992), the PCR DNA analysis used on the rope and plastic straw in this case is reported not to have significant genotype deviations from the observed to the expected distribution based on Hardy-Weinberg equilibrium assumptions that some RFLP markers have been documented to have and which caused concern to the Supreme Judicial Court in Lanigan. In addition, the power of discrimination -- that two persons chosen at random from a population will have different genotypes -- for the DQ[alpha] marker is not as discriminating as a combination of RFLP markers so as to avoid yet another concern of the SJC in Lanigan concerning excessively large frequency estimates. For DQ[alpha], the agreement of observed and expected genotype frequencies does not necessarily imply that all the assumptions of the Hardy-Weinberg equilibrium (random mating, no selection, and so forth) obtain but does show that there is no fundamental, systematic error with the typing method. The PCR based DQ[alpha] oligonucleotide typing method has been used to analyze biological evidence in over 250 cases thus far. It is possible to do PCR analysis on samples that are years old. As of September 1991, the DQ[alpha] test has been introduced as courtroom evidence in 44 cases and has been evaluated in 25 admissibility hearings in 20 different states. In 23 hearings, it has been admitted and in the case of Virginia v. Spencer, this ruling was upheld by the Virginia Supreme Court. Edward



Blake, Jennifer Mihalovich, Russell Higuchi, P. Sean Walsh, and Henry Elrich, "PCR Amplification and HLA-DQ [alpha] Oligonucleotide Typing on Biological Evidence Samples: Casework Experience," J. Forens. Sc., Vol. 37, No. 3, May 1992, 700-726.

Dr. Blake and Ms. Mihalovich initially examined the rope and plastic straw, and reported that:

The blood stained rope was examined for the presence of blood using a sensitive presumptive test [otolidine and hydrogen peroxide]. Blood traces were detected along the entire length of the rope. Four area from [A,B,C and D] were removed and the DNA extracted...The straw possesses a blunt end and a torn end. In addition the straw has been spilt down the length of the straw barrel. Presumptive tests for blood indicate a thin film of blood is present on the straw surface down its length; and much of this thin smear is visible to the eye. Two pieces of the straw [Areas A and B] were remove from near the torn end [see figure 2B] for DNA extraction....

Genetic analysis of the specimens in this case involved the following essential steps:

1. Digestion of blood with SDS and proteinase K.
2. Extraction of DNA from sample digests with chloroform/phenol and concentration of DNA using Centricon molecular filters.
3. Amplification of DQ[alpha] DNA gene using the Polymerase Chain Reaction [PCR] employing 12.5 U Taq polmerase.
4. Hybridization probe analysis of the amplified sample DNA with Allele Specific Oligonucleotides (ASO's) for the sic DQ[alpha] alleles [1.1, 1.2, 1.3, 2, 3, 4] using a Dot Blot assay.

These findings revealed the following observed facts:

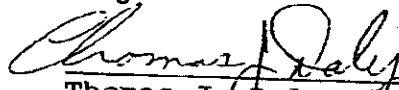
1. A low level of the DQ[alpha] gene was amplified from the straw [Item 1-2] in Area A. The DQ[alpha] type of this DNA was determined to be type 1.1, 4. This DQ[alpha] type occurs in approximately 8% of the Caucasian population and approximately 9% of the Black population.
2. The DQ[alpha] gene could not be amplified or typed from the straw in Area B due to the small amount of material and inhibition by the sample of the enzyme [Taq] responsible for the amplification process.
3. The DQ[alpha] gene could not be amplified or typed from any

of the specimens obtained from the rope [Item 1-1] despite repeated attempts to overcome PCR inhibition.

Through my conversations with Ms. Mihalovich I have been informed that if blood from a subject was sent to the FSA Laboratory, that sample could be tested pursuant to the PCR DQ[alpha] DNA testing as previously outlined in this affidavit and could be compared to the results of the testing previously performed by herself and Dr. Blake upon the plastic straw to identify by either including or excluding the subject as the depositor of the genetic material analyzed on the straw found at the scene of Daniel Croteau's death.

Based upon the probable cause established in this affidavit, I respectfully request that the court issue a warrant to search, seize, and test a blood sample of the suspect Father Richard R. Lavigne for evidence in the investigation of the murder of Daniel Croteau. Said blood sample to be drawn by trained medical personnel at a medical facility.

Signed under the pains and penalties of perjury, this ~~sixth~~ *second* day of ~~August, 1993.~~ *September, 1993.*



Thomas J. Daly, #861  
Trooper, Massachusetts State Police

*Handwritten initials*