

LAW OFFICES

STERN, SHAPIRO, ROSENFELD & WEISSBERG

80 BOYLSTON STREET

SUITE 910

BOSTON, MASSACHUSETTS 02116

(617) 542-0663

TELEFAX (617) 451-0136

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

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

TELEFAX TRANSMITTAL SHEETDATE: 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 Court¹, 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.²

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

¹ 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.

² 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
Monahan
C.D. [Signature]
State Court

William J. Martini
CLERK/MAGISTRATE

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

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

William J. Martin

CLERK/MAGISTRATE
SUPERIOR COURT

#1

COMMONWEALTH OF MASSACHUSETTS

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. 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
Boston, MA 02116
(617) 542-0663

HAMPDEN COUNTY
SUPERIOR COURT

FILED

OCT 18 1993

William J. Martin

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,

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

HAMPDEN COUNTY
SUPERIOR COURT

FILED

OCT 15 1993

Kirkland J. Martin

CLERK/MAGISTRATE

Dated: October 14, 1993

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
STERN, SHAPIRO, ROSENFELD
& WEISSBERG
80 Boylston Street
Suite 910
Boston, MA 02116
(617) 542-0663

HAMPDEN COUNTY
SUPERIOR COURT

FILED

OCT 25 1993

William J. Martens

CLERK/MAGISTRAT

Dated: October 21, 1993.

G:\LAVIGN\B\FURSTAY.MOT

HAMPDEN COUNTY
SUPERIOR COURT

FILED

OCT 25 1993

William J. Martens

CLERK/MAGISTRAT