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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.

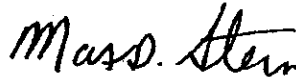
This is to request that a further order be entered continuing the stay until Tuesday, November 2. The reason for the proposed date is as follows. As you know, we have proceeded by appeal to the Appeals Court, rather than by way of c. 211, §3 to the SJC, because the case law indicates that, in the absence 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

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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80 Boylston Street

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Dated: October 21, 1993.

G:LAVIGNE:FURSTAY.MOT

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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

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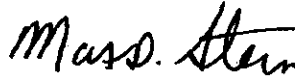
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Very truly yours,



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
Suite 910
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HAMPDEN
SUPERIOR
FILED
OCT 28 1993

Richard J. Martyn
CLERK/MAGISTRAT

Dated: October 21, 1993

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LAW OFFICES

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VIRGINIA M. FLEMING

October 22, 1993

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

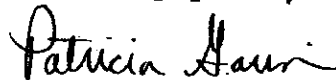
Re: In the Matter of Richard
Lavigne, Petitioner

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

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OF COUNSEL
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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

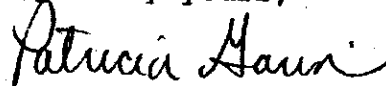
Dear Ms. Jangrow:

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