

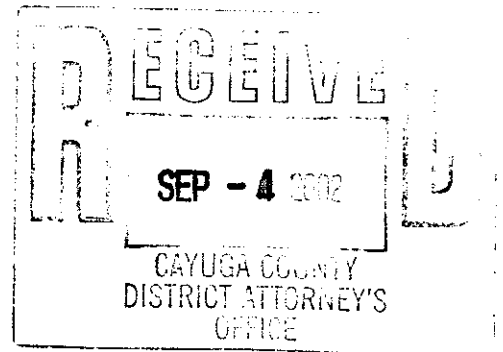
Leroy E. Leubner, Jr.

43 Mary St.

Auburn, NY 13021

James Vargason
District Attorney
Cayuga County

Mr. Vargason:



Today marks the third anniversary of the murder of my son, Daniel Michael Leubner. The ensuing plea bargain, brokered by defense attorney David Elkovitch and Judge Peter Corning, placed the blame for this heinous crime directly on Daniel and allowed his killer, Michelle Davis, an unduly lenient six-year prison sentence. I have spent a considerable amount of time in research since this miscarriage of justice, and believe I have found two viable avenues of appeal.

First, I argue that the plea bargain, with its' granting of an "Extreme Emotional Disturbance" defense, must be appealed due to its' fraudulent basis. In *LOCKETT vs. JUVILER* (65NY2d182) it was found that the court may rescind a plea agreement if it were discovered that its basic elements were predicated upon fraud. In the matter of *THE PEOPLE vs. MICHELE DAVIS* the element in question is her claim that Daniel had raped her the night she murdered him. This claim is sole reason she was allowed the "EED" plea, and sentenced on a reduced charge of Manslaughter 1. However, as you are very well aware, there is absolutely no proof to support her claims.

Even the testimony of Anne Burgess, the "rape trauma syndrome" expert that Judge Corning cited as the justification in his acceptance of the special circumstances plea, was shown to be totally without merit and based entirely on her own personal opinion when you deposed her in the closed-door evidence suppression hearings. In the end, Michelle Davis was allowed an "EED" plea based on a completely fraudulent story she concocted when her previous explanations for Daniel's death were exposed as lies. She did not meet the burden of proof required for such a privilege, and should not be allowed to maintain the plea agreement.

A second, and perhaps stronger argument, is that Judge Peter Corning was **STATUTORILY DISQUALIFIED** from hearing any aspect of this case due to his extensive prior involvement in related Family Court matters, and their bearing on the instant offense. It has been well established that Judge Corning had been repeatedly presented with my concerns for my children's welfare on several occasions prior to Daniel's murder. On these occasions, Corning repeatedly ignored both State and Constitutional law, as was his long-established practice, denied my petitions and allowed Michele Davis to control all aspects of my children's lives with impunity. Then, when my worst fears came to fruition and Daniel was murdered by his mother, Judge Corning was confronted with the horrific results of his long-entrenched illegal policies; his negligence had allowed an obviously unfit mother to abuse and kill her child.

New York State Judicial Code states that no judge may preside over a proceeding in which he has a personal interest, based on the common-law maxim that "no man may sit in judgment of himself". Judge Corning clearly violated this code, as his Family Court decisions played a pivotal role in the criminal case before him. His later behavior further substantiates this argument, as he did everything in his power to keep the matter from going to trial and, eventually, exposing his culpability.

The duty of the district attorney to prosecute a case does not end once sentence is pronounced. I am confident that there are sufficient grounds for appeal in this case, and believe that you are duty-bound as the newly-elected president of the New York State District Attorney's Association to present the highest standard of ethics and justice possible. Therefore, I formally request that you appeal all possible aspects of THE PEOPLE vs. MICHELLE DAVIS based on the above-stated grounds and any other reasons you are aware of.

Justice was not served in this matter; Daniel Michael Leubner was not a rapist. Until this travesty is appropriately addressed, it will continue to be the yardstick against which both the quality of justice in Cayuga County as well as the integrity of your career are measured.

Awaiting Your Reply,

A handwritten signature in black ink, appearing to read 'Leroy E. Leubner, Jr.', written in a cursive style.

Leroy E. Leubner, Jr.

October 18, 2002
Leroy E. Leubner, Jr.
43 Mary Street
Auburn, N.Y. 13021-4854
615-255-2070

Winthrop H. Thurlow
Asst. Atty. General in Charge
Syracuse Regional Office
615 Erie Blvd. W., Suite 102
Syracuse, N.Y. 13204

Dear Sir;

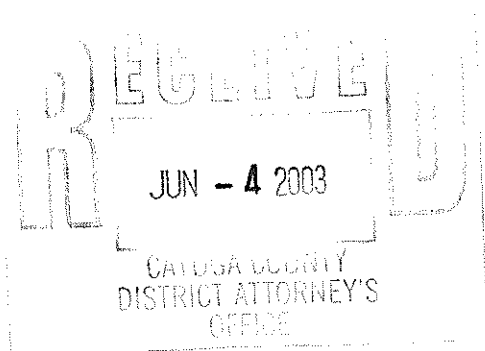
On October 10, 2002 I had the pleasure of meeting Attorney General Spitzer during a reception held at Mayor Carnicelli's home. I had a brief discussion with him concerning the miscarriage of justice that Cayuga County District Attorney James Vargason allowed in his failure to properly and aggressively prosecute my son's murderer, and told him that if he were to look into this case he could possibly "do to Vargason what he had done to Pickney". Mr. Spitzer seemed genuinely interested in this possibility, and instructed me to contact you in regard to this matter.

Enclosed please find an explanation of my argument in this matter, as well as documentation supporting it. I understand that your office has recently been exposed to the nature of Cayuga County politics, so my story should ^{not} come as a complete shock. There is considerably more evidence on record further supporting my position, and indications of even more that has been suppressed and hidden. Thank you for your consideration, I look forward to hearing from you.

Yours Truly,



Leroy E. Leubner, Jr.



June 3, 2003
Leroy E. Leubner, Jr.
43 Mary St.
Auburn, NY 13021- 4854

James Vargason
Cayuga County District Attorney
Genesee St.
Auburn, NY 13021

Mr. Vargason:

On September 4, 2002, I commemorated the third anniversary of my son Daniel's murder by formally requesting that you appeal the illegal plea bargain given to his killer, Michelle Davis. Nine months have passed, and I have not received a response from you. June 4, 2003 would have been Danny's seventeenth birthday, and I have chosen to honor his memory by renewing my request for action from your office. This time, however, I have further support for my argument.

On November 12, 1999, while Michelle Davis was incarcerated in the Cayuga County Jail without bail, the Fourth Department Appellate Division issued a reversal of a Judge Corning Family Court ruling in *MALLORY v. MASHACK* (266A.D. 2d 907). In this instance, the Appellate Division ruled that Corning abused his discretion by denying a father visitation without conducting a hearing.

Judge Corning ruled in an identical fashion during Family Court proceedings in August, 1998, at which time I sought to enforce visitation and to have counseling or some other form of mediation mandated in order to address the growing problems between myself, my children and their mother. Therefore, *MALLORY v. MASHACK* also deems Corning's ruling in my case an abuse of discretion.

Family Court Act, Section 145 (Liability of Judge) states: "Any family court judge who in good faith issues process in any proceeding under this act shall not be liable therefore unless it is shown that his action in so doing was malicious or a deliberate abuse of his discretion". *MALLORY v. MASHACK* establishes the potential liability of a civil action against Judge

Corning on behalf of Danny's estate, as his Family Court policies allowed Michelle Davis (an obviously unfit mother) to control, abuse and eventually murder her son. This obvious personal interest in The People V. Michelle Davis must STATUTORILY DISQUALIFY Peter Corning from any involvement in the case. Judge Corning's actions in the case further support my argument, as his highly questionable rulings created a pervasive "appearance of impropriety".

You have gone on record that you do not believe Danny raped his mother, and have stated in the press that justice was not served in this case. You can still correct this injustice, and truly fulfill the duties of your office. The longer you wait, however, the tighter you will be bound to this "obstruction to justice". No matter what else you may have accomplished during your career, this case will always define your legacy. This is your record; step up and set it straight.

Still awaiting your reply,

A handwritten signature in black ink, appearing to read "Leroy E. Leubner, Jr.", written in a cursive style.

Leroy E. Leubner, Jr.

LEL:sml



JAMES B. VARGASON
DISTRICT ATTORNEY

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INVESTIGATOR
RICHARD F. MIDDLETON

June 6, 2003

Mr. Leroy E. Luebner, Jr.
43 Mary Street
Auburn, New York 13021

Dear Mr. Leubner:

I acknowledge receipt of your June 3, 2003 letter. There was no illegal plea bargain in the case of the People v. Michelle Davis as you assert.

During the prosecution of the case I made myself available to you every step of the way. I offered you my candid opinion about all aspects of the case including, but not limited to: (1) the legal sufficiency of the charges; (2) the legal problems associated with the tape recorded interrogations of the defendant; (3) the likely ruling from the court concerning the voluntariness of her statements; (4) the defendant's expert witnesses anticipated opinions concerning "false confession", diminished capacity, rape trauma syndrome and extreme emotional disturbance; (5) the impact her expert witnesses could have on a jury; (6) your daughter's testimony; (7) the People's expert witness testimony; and (8) the chances of a successful murder prosecution at trial.

I was and remain convinced, that if we did not agree to proceed in the manner that we did, that the court was going to suppress the confession upon the grounds that: (1) There was no showing of an unequivocal revocation of a prior assertion to counsel; and (2) The defendant's statements were involuntary as a matter of law because it was obtained from her by means of a promise or statement of fact, which promise or statement of fact created a substantial risk that the defendant might falsely incriminate herself. At that point, our only recourse was to certify to the appellate division that we could not proceed without the confession and ask that they reverse the trial court's determination. I explained to you that I did not believe we would succeed at the appellate division on that issue. I also explained that an unsuccessful appellate challenge of the trial court's suppression order would have resulted in an outright dismissal of the indictment, with no recourse. I recall that you were not happy with the situation confronting us, but there was nothing I could do to change it. A trial court's decision to suppress confessions is given considerable weight at the appellate division.

Mr. Leroy E. Leubner, Jr.

Page two

June 6, 2003

I further explained that even if the trial court did not suppress the confession, it had indicated that it was going to allow the defendant's attorney to introduce at trial testimony concerning "false confession", rape trauma syndrome, diminished capacity and extreme emotional distress. I explained to you that it was my opinion that the cumulative effect of such testimony would have established at the very least, the affirmative defense of extreme emotional disturbance, or in the worst case scenario, an outright acquittal. Under that scenario, no justice, however small, would have been done for Daniel and the community.

Based upon the above, and many others factors not revisited herein, I agreed to allow a plea to Murder in the Second, and not oppose the affirmative defense contained in the relevant section of law. In this regard, you are right; I did not believe that Daniel raped the defendant because other than her assertion, there was no proof of it. My decision to allow the affirmative defense had nothing to do with that claim. I believed, however, that there were plenty of other reasons to explain her extreme emotional disturbance. Ultimately, my decision was driven (with your full knowledge) that we did not have the type of evidence which I believed was required to sustain our high burden at trial and overcome the cumulative effect of the defendant's experts' testimony which the trial court was going to allow.

The negotiated plea disposition was the right decision. The fact that the court imposed a sentence that was in my judgment far too lenient does not change that. I suspect, that if the defendant received the type of sentence we believed she was likely to receive, I would not be writing this letter. I convicted her of a class B felony which allowed the court to sentence her to a determinate sentence of up to 25 years. I did not expect that the court would impose that high of a sentence, but I did believe it was likely to impose a sentence closer to 25 than 5, the minimum sentence. I was shocked when it imposed only six years.

I believed then, and continue to believe that such a sentence was inadequate, and I publicly criticized it as not doing justice. Nevertheless, it was a legal sentence. It was within the sentencing parameters established by the legislature. Do I believe you are justified in your outrage over the sentence? Yes. Notwithstanding, there was nothing I could do about it then, and there is nothing I can do about it now.

Finally, the conclusions you reach about the Family Court Judge's personal interests and prejudices toward you etc., were then, and continue to be now, outside the jurisdiction of this office. It is not up to the District Attorney to decide family court issues etc. Further, a family court decision in another case has no controlling authority over the county judge who exercises jurisdiction pursuant to that elected position.

Mr. Leroy E. Leubner, Jr.

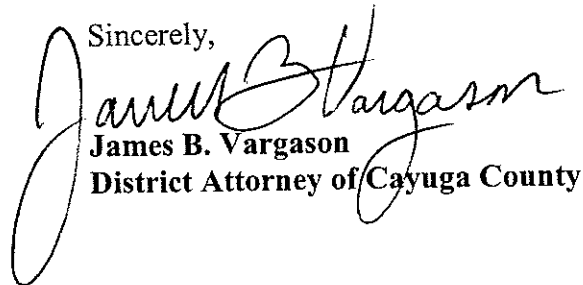
Page three

June 6, 2003

You refer to "highly questionable rulings" in your family court case which you believe affected the court's decisions in the criminal case. You assert it as a basis for me to appeal the outcome in the criminal case. Even if what you assert is factual, I cannot. There is no statute, case law, or other mechanism that permits what you seek from this office. If you believe that the county judge acted in a manner that warrants sanction, the appropriate place for you to file such a claim is with the Judicial Conduct Committee, not this office. Although I did not agree with many of the court's rulings and decisions, they fell into the category of judicial discretion, and were not subject to appeal.

I know this response will be unsatisfactory to you. I regret that, but there is nothing I can do. The case is closed and I have no authority to re-open it.

Sincerely,

A handwritten signature in black ink, appearing to read "James B. Vargason". The signature is written in a cursive style with a large, looping initial "J".

James B. Vargason
District Attorney of Cayuga County

JBV/ts

JAMES B. VARGASON
DISTRICT ATTORNEY

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September 5, 2003

INVESTIGATOR
RICHARD F. MIDDLETON

Ms. Marie Noonan

Temporary Release Chairperson
Bedford Hills Correctional Facility
247 Harris Road
Bedford Hills, New York 10507-2499

Re: Davis, Michelle 00G0743

Dear Ms. Noonan:

I strongly and emphatically oppose the above-referenced inmate's application for temporary release consideration.

First, the defendant received what can only be described as an exceedingly light sentence given what she did. The People asked for a 25 year determinate sentence and the court imposed a 6 year determinate sentence, one year more than the minimum.

Next, even though it is true that in her confession she claimed that her son had on prior occasions physically attacked her and even raped her once, there was no physical or testimonial evidence to support the rape claim and I rejected it as a basis to form the affirmative defense under the plea agreement. The Court, defense counsel and the defendant agreed that her claim of rape would not be asserted as a basis of her extreme emotional disturbance defense. If you review the plea minutes, you will note that the rape claim was not part of the affirmative defense.

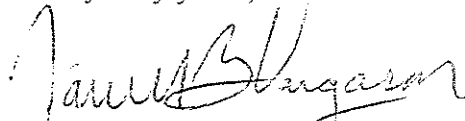
I did not believe then, and I do not believe now, that her son raped her. Nor, did I believe he caused the type of "substantial physical or psychological abuse" contemplated by the statute. It was my judgment that the defendant had plenty of other reasons to be suffering from extreme emotional disturbance. Not the least of which included financial hardship, bankruptcy, failed relationships, loss of employment, and overall hardship of trying to raise on her own a severely autistic son.

Page two
September 5, 2003

I believe granting her an early release of any nature would compound the tragedy of this case. Her extremely light sentence was a windfall for her and to release her before she serves the maximum amount by law would further underscore the injustice of the original sentence, and trivialize the senseless death of a 13 year old autistic boy who had no control over his condition.

If you have any questions, do not hesitate to call.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James B. Vargason".

James B. Vargason
District Attorney of Cayuga County

JBV/ts
cc: Leroy E. Luebner, Jr.

AN OPEN LETTER TO JAMES VARGASON

Over the past year I have written you on two separate occasions, requesting that you appeal the improper and undeserved plea bargain allowed to my son's murderer, Michelle Davis. You finally replied to my second request, explained that you would not re-address this case and considered it closed. Recently, after Davis sought to further exploit her "fraud upon the court" by applying for temporary release as a victim of domestic violence, you stated that I was ignoring the Constitutional protection against double jeopardy in my requests for appeal. You went on to agree that there was no evidence that supported her claim of rape, but argued that your acceptance of the "Extreme Emotional Disturbance" plea was legitimately based on factors such as "financial hardship, bankruptcy, failed relationships, loss of employment, and overall hardship of trying to raise on her own a severely autistic son". Unfortunately many of these claims were also false, yet went unquestioned as you fought to prevent the "Jenna's Law" hearings that would have subjected them to the scrutiny of open court.

First, the rejection of her "rape story" eliminates a fundamental element required to support an Affirmative Defense; provocation. If Danny did not rape his mother, then what single event caused her to "snap" and commit this unspeakable crime? Also, you are very aware that there is a large amount of evidence indicating premeditation and intent, including the removal of the smoke alarm batteries, closing of most of the windows on a very warm night, presence of accelerant in several places in the home (and indications of secondary application after the blaze was started), removal of items one week prior to the fire and the administration of narcotic medication to my son prior to bedtime. Davis was also actively interested in purchasing another house, "stopped by" to inquire about it with the owner THE DAY AFTER Danny's death, and submitted a homeowner's insurance claim in order to purchase it. Premeditation, motive and intent are not elements of an Affirmative Defense.

Secondly, Davis's testimony refutes the claims of financial hardship and bankruptcy, as she claimed to be current with her bills and happily going to school in order to secure new, home-based employment. Furthermore, she was quite adamant in her assertion that she was behind the breakup of her marriage to Robert Davis, even stating that she finally had to "stick the knife in" and force him out. You are also very aware that she was involved in a new relationship at the time of the fire, and had a joint bank account with her girlfriend (there are indications in Davis's testimony that she was with her at the time of the purported rape). It has been reported that this girlfriend did not like Danny, and that Danny did not like her.

Finally, her claim that I was an "absentee father" who rejected his son is a complete lie, and one that you and the Court are very aware of. I did not abandon my children, as Davis claims, but remained in the family home for three months after our separation was filed to insure the finances were in order. Sleeping in a downstairs bedroom for this period, I suffered the humiliation of having her share an upstairs room with her then-boyfriend, Robert Davis. I always paid my child support on time and without hesitation, and often supplemented it with clothing and other extras. Even when Davis became militant and began to use my children as weapons against me, I still attended school

meetings and functions in an attempt to maintain my place as their father. In the end, when she was trying to place Danny in an institution because she was supposedly unable to control him (funny she didn't say this when Child Protection was investigating my complaint the month before), I told her that I would take custody of him, and that he would live with me. Davis admits to this on at least two separate occasions after the fire, yet you still allowed the plea.

In conclusion, it must be stated that "double jeopardy" does not apply in this case, as Davis (by taking the plea) has not yet faced conviction by trial and, therefore, has not faced jeopardy. The defense has the responsibility to support an Affirmative Defense by the "burden of proof", and any plea based on fraud is invalid. Michelle Davis did not meet the requirements of her plea, and must be returned to face trial for the execution of Daniel Michael Leubner. It is your duty as District Attorney to aggressively prosecute this case, and your responsibility does not end at pronouncement of sentence. As I have said before, this case is the yardstick against which you will be measured. This is your record; step up and set it straight.

Leroy E. Leubner, Jr.

This is an "Op-Ed" submitted to
The Citizen (315-253-5311) on 10-7-03.
No response from the paper yet.

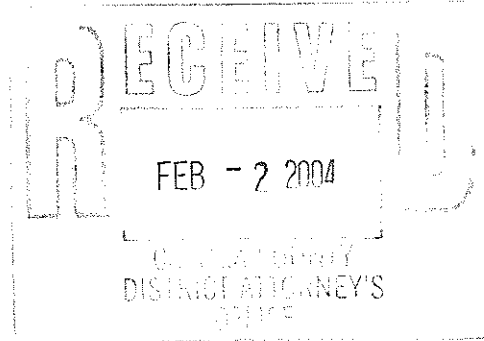
Leroy E. Leubner, Jr.
43 Mary St.
Auburn, NY 13021-4854

Copy

February 2, 2004

James Vargason
District Attorney
Cayuga County

Dear Sir:



I formally request an accurate and complete copy of the evidence you utilized in supporting your acceptance of the "Extreme Emotional Disturbance" plea in the case of THE PEOPLE vs. MICHELLE DAVIS. I also request an itemized list of this evidence. Realizing that there may be a fee charged for this service, I am prepared to pay the customary "twenty-five cents per page" for these copies

I realize that your office is quite busy with other matters; however, if I do not receive a response by COB on February 17, 2004 I will assume you do not intend to do so.

Sincerely yours,

Leroy E. Leubner, Jr.

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