

## Archived NewsFront Story

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### Fleming fire kills youth

East Middle School student dies in early-morning blaze

Daniel Lovell  
Region Editor

**FLEMING** -- An early-morning fire killed a 14-year-old boy at his mother's lake side home Saturday.

Daniel Leubner was sleeping in his second-floor bedroom at 6012 West Lake Road when fire broke out on the first floor at about 4:30 a.m., Cayuga County Sheriff Peter Pinckney said. Daniel was pronounced dead at the scene.

His mother, Michelle Davis, was home at the time of the fire, but on the front porch with her daughter, Pinckney said.

"She said it was a hot night and they had trouble sleeping," Pinckney said.

Another daughter was out camping with friends, and not at home when the fire broke out. A smoke detector on the second floor went off during the fire, but a detector on the first floor did not appear to be operating, Pinckney said.

Firefighters from several departments battled the fire for about 30 minutes before bringing the flames under control.

When firefighters arrived on the scene, the two-story gray home was engulfed in flames. The house was destroyed.

"It had a pretty good start," Pinckney said. "The fire departments did one hell of a job knocking it down quickly."

The state Office of Fire Prevention and Control was called in early Saturday morning to aid in the investigation.

Sheriff's Department Chief Criminal Investigator Stephen McLoud said the brunt of the damage to the house appeared to be at the front of the house. Daniel's room was nearly unscathed, he said.

"There doesn't appear to be a lot of fire damage in that room," McLoud said. "But there would have been smoke and heat."

Coroner Janice Ross ruled smoke inhalation caused Daniel's death. McLoud said investigators don't expect to rule on the cause of the fire until later this week.

A neighbor, alerted by Davis' daughter, ran to the house in attempt to pull Daniel from the bedroom, but the smoke was too thick and the heat too intense to enter the house. His brother trained a garden hose through the dining room window to douse the flames, while his wife called the fire department.

But the flames blew out a skylight, he said, and the house burst into flame.

"There's nothing anybody could have done," he said. "You couldn't get in there."

The neighbor asked that he not be identified.

"My heart just goes out to these people," he said. "They're good people, and it's a terrible thing to have happened. All my smoke detectors got new batteries today."

Diane Dolcemascolo, East Middle School principal, said Daniel was a special needs student who worked hard to succeed in school and was well liked by other students.

"I'm sure that he's going to be missed by all of us," Dolcemascolo said. "He was always outgoing in the halls. He was a kid who worked very hard and did very well."

Daniel would have started his last year at East Middle School this coming Wednesday.

Dolcemascolo said the school will likely have counselors available for students to talk to about the tragedy when classes resume.

"I know they'll all know who he was," she said. "I'm sure he'll be missed."

Cayuga County Red Cross volunteers Angel and Awilda Gonzalez were on the scene Saturday morning to offer support to the family, said Alice Gollnick, emergency services director. The Red Cross offered to help the family purchase clothing and find a place to stay.

"They're staying with friends, but we'll wait for them to call us if they need a place to stay," Gollnick said. "It looks like they lost everything, so we'll be in touch with them to help."

The sheriff's department and Rural/Metro Medical Services, along with fire departments from Fleming, Aurelius, Skaneateles, Owasco, Cayuga, Sennett and Scipio responded to the scene.

Donations can be sent to the Cayuga County Red Cross, 213 West Genesee St., Auburn.

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Archived NewsFront Story

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## Fatal fire ruled murder

Sheriff: Mom set Fleming blaze that killed autistic son

Daniel Lovell  
Region Editor

**FLEMING** -- A Fleming woman killed her 13-year-old autistic son by burning down her lakeside home, police say.

Sheriff's deputies charged Michelle Davis, 36, with two counts of second-degree murder and a count of second-degree arson late Wednesday. Sheriff Peter Pinckney said Davis is believed to have intentionally set fire to her home at 6012 West Lake Road Sept. 4, killing her son, Daniel Leubner.

The arrest came after more than two weeks of investigation. Pinckney said investigators Stephen McLoud, Fred Cornelius and Joseph Weeks ruled out every possible accidental cause in the case.

Investigators questioned Davis Tuesday and Wednesday afternoon. During the interview Wednesday, Davis made several incriminating statements that led police to believe she started the fire to intentionally murder Daniel, Pinckney said.

Daniel Leubner was sleeping in his second-floor bedroom when fire broke out on the first floor at about 4:30 a.m.

Davis was home at the time of the fire. She told police she was on the front porch with her 9-year-old daughter, because the two had trouble sleeping. Davis' oldest daughter, who is 15, was not at home at the time of the fire.

Daniel was pronounced dead at the scene. Coroner Janice Ross ruled smoke inhalation the cause of death.

Pinckney would not say how the fire was started.

Davis was arraigned before Fleming Town Justice David Wawrzaszek at 11 p.m. Wednesday. Dressed in black jeans and a plum-colored long-sleeved shirt, Davis was shaking as Wawrzaszek read the charges. She entered a mandatory innocent plea, and was remanded to the Cayuga County jail without bail.

Because the murder counts are class A felonies, a town justice can not set bail, Wawrzaszek said.

Her voice barely audible in the small courtroom, Davis asked only one question.

"Will I be able to see my kids?" she asked.

McLoud said Davis' husband has contacted Auburn attorney Thomas "Tucker" Leone to handle her defense.

She is scheduled to appear next in court Sept. 28.

The first murder count charges Davis with intentionally causing her son's death. The second murder count charges her with causing Daniel's death while committing arson. The arson count charges Davis with intentionally lighting a fire knowing her son was inside.

### **Questions**

Daniel was killed just days before he was to start his final year at East Middle School. An autistic child, Daniel participated in classes with other special-needs students. But he worked hard and got along well with his peers, school officials said. He frequently made the honor roll at school.

He enjoyed swimming and playing video games.

While police would not speculate on a motive in the alleged murder, McLoud said deputies responded to the Davis house several times to help handle behavior problems linked to Daniel's autism. McLoud said Daniel was the murder victim in the case, but his sisters, Melissa and Kimberly, have suffered from their mother's actions.

"Those are the two other victims in this," McLoud said.

For more than 10 years, Pat Nolan has lived fewer than 100 yards from the Davis home. He was shocked when he learned the mother of three was charged with arson and the murder of her 13-year-old son.

"I thought she was a great mother," Nolan said. "I think she was a home person."

He recalled Davis watching her son swim and play in the lake for hours. She was an affectionate mother, Nolan said, but he did not remember Daniel returning her affection.

The night of the fire, Nolan said Davis was "freaking out."

"I came out here because I heard screaming," Nolan said.

Nolan and his brother Thames, who lives in another house adjacent to Davis' home, used a garden hose to fight the blaze that night. Thames ran to the house in an attempt to pull Daniel from the bedroom, but the smoke was too thick and the heat too intense to enter the house. Pat trained a garden hose through the dining room window to douse the flames while his wife called the fire department.

"I could taste smoke for two days," Pat said.

Ian Nolan, Pat Nolan's nephew and a sophomore at Auburn High School, wasn't prepared for the news that his neighbor was charged with murder.

"I'm trying not to think about it," he said.

*Staff Writer Anneke Witbeck contributed to this report.*

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*Outline:* PLEASE PUT IN THE DEGREE OF THE MURDER CHARGE. THANKS.

DOM COLOR:

Trevor Kapralos / Staff Photographer

Fred Cornelius, an investigator with the Cayuga County Sheriffs Department, walks away from the gutted home at 6012 West Lake Road while other investigators examine the second floor last week in Fleming. Michelle Davis was arrested and charged Wednesday with second-degree murder, accused of setting the fire knowing that her son, Daniel Leubner was inside. Daniel, 14, died as a result of smoke inhalation from the fire.

INSIDE BW:

Trevor Kapralos / Staff Photographer

A neighborhood cat sits near the burned home at 6012 West Lake Road in Fleming

*Breakout:* Michelle Davis, 36, faces three felony counts.

\* Second-degree murder. Charges Davis with intentionally killing her son.

\* Second-degree murder. Charges Davis with killing her son while committing arson.

\* Second-degree arson. Charges Davis with intentionally setting fire to her home knowing her son was inside.

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## Fire trail leads to mom

Investigators say accelerant, suspect's words behind arrest in boy's death

Daniel Lovell  
Region Editor

**FLEMING** -- Incriminating statements and residue from a flammable substance helped lead investigators to bring murder charges against a Fleming woman.

Chief Criminal Investigator Stephen McLoud said residue of an accelerant was found at the foot of the stairwell inside Michelle Davis' home. He would not say what substance was found. And during an interview with investigators Wednesday afternoon, Davis gave several statements implicating herself in the crime, McLoud said.

Davis is now charged with two counts of second-degree murder and a count of second-degree arson. She is accused of killing her 13-year-old autistic son, Daniel Leubner, by setting fire to her home at 6012 West Lake Road.

The first murder count charges Davis with intentionally causing her son's death. The second murder count charges her with causing Daniel's death while committing arson. The arson count charges Davis with intentionally lighting a fire knowing her son was inside.

McLoud said Davis told police she entered the burning home to try and save her son. Neighbors found her on a porch roof as the fire raged. She told police she was on the porch with her 9-year-old daughter when the fire broke out because the two had trouble sleeping. There were several inconsistencies in the statements, McLoud said.

Davis was emotional during the interview, he said.

"Emotions run high any time there's a death," McLoud said. "Especially the death of a child."

Investigators continued work on the case Thursday, gathering more evidence and searching for a motive. McLoud said Daniel was on medication, and investigators are waiting for toxicology reports to determine whether his medication may have been switched in the days before his death.

Davis told police her son's medication had not changed, he said.

The murder charges have led investigators to take a second look at another fire at Davis' home.

McCloud said the garage at 6012 West Lake Road was destroyed by fire in March 1991. Though the fire was labeled suspicious at the time, no one was ever charged with starting the fire.

The sheriff's department has released little about who Michelle Davis is. She separated from her husband a week before the fire; she was an employee at United Health Care until the business closed in late April and she was the mother of three. Other than 13-year-old Daniel, Davis has two daughters, 15-year-old Melissa and 9-year-old Kimberly.

Little more is known about the victim. Matthew Fletcher, attorney for Cayuga-Onondaga BOCES, said Daniel's teachers are prohibited from talking about his time in school without the permission of his parents.

He was killed just days before he was to start his final year at East Middle School. An autistic child, Daniel participated in classes with other special-needs students. But he worked hard and got along well with his peers, school officials said. He frequently made the honor roll at school.

He enjoyed swimming and playing video games.

While police will not speculate on a motive in the alleged murder, McCloud said deputies responded to the Davis house several times to help handle behavior problems linked to Daniel's autism.

District Attorney James Vargason said Thursday he will review the murder case to determine whether first-degree murder charges can be brought in the case.

Vargason said while the alleged crime appears to fall under the umbrella of the capital murder statute because the alleged murder was committed in the course of an arson, the case is in too early a stage to make a determination.

Vargason said he will weigh the aggravating factors and mitigating circumstances before a decision is made.

Davis remained in jail without bail Thursday. She will return to Fleming Town Court next week, where an attorney will be appointed to represent her, Vargason said.

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*Cutline:* A1.dom.mccloudjimcut

Jim Michalowski / Staff Photographer

Stephen McCloud, chief criminal investigator with the Cayuga County Sheriff's Department answers questions at a press briefing outside the Public Safety Building in Sennett Thursday morning. McCloud led the investigation into a

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## Friends, family offer support to murder suspect

Estranged spouse calls Michelle Davis good mother, person

Anneke Witbeck  
Staff Writer

AUBURN -- Michelle Davis had a loving relationship with her son, a relationship that grew strained and difficult as he entered adolescence, family and friends say.

Now living in an apartment in Auburn, Robert Davis, Michelle Davis' estranged husband, said his wife is a caring mother; a woman who's life revolved around her children.

"Anybody who would say she's a terrible mother will face the wrath of God," Robert said. "She turned down jobs, the opportunity to do things, even turned her back on her friends for her children."

Michelle Davis, 36, faces two second-degree murder counts and a charge of second-degree arson. Police accuse her of killing her 13-year-old son by setting fire to her lakeside home in the early morning hours of Sept. 4.

Robert and Michelle Davis met in high school more than 20 years ago. The couple dated for a year and a half before Robert joined the Army. Mary Davis, Robert's mother, remembered the couple.

"They were very much in love back then," she said. "They were always together."

But the young couple split. Robert married and Michelle had three children, Melissa, Daniel and Kimberly, with Leroy Leubner. When Michelle's relationship with Leubner ended, she and Robert got together again and married in 1996.

Michelle worked first shift at United Health Care until she was laid off a few months ago. Robert worked second shift at McQuay International until he was laid off earlier this month.

Daniel needed constant supervision, Robert said.

"Danny could not be alone," Robert said. "He didn't fend for himself."

After she was laid off, Michelle took courses at BOCES with Sue Gatto, a former co-worker. Gatto said Michelle was studying to be a medical transcriptionist a job she could do from home to work around Daniel's

schedule.

Though Daniel could feed and clothe himself, Robert said the 13-year-old could not cook or bathe on his own.

"She gave Danny caring, loving, understanding," he said. "As the years went by, she learned to understand more. She changed her whole life."

### **Growing up**

Daniel also changed.

Mary Davis said Daniel was a well-behaved child, but grew hard to manage as he reached adolescence.

"Danny was a sweet boy, but only certain people could get close to him," Mary said. "Michelle was one of those people. He had become a problem within the past couple of years. He started getting on the violent side."

Daniel was not violent with Robert, but with Michelle, who he would sometimes hit and kick, Mary said.

"You don't know how the autistic mind works," she said. "They do say an autistic child hurts the one he loves the most."

When Michelle called Mary in July and cried over Daniel's behavior, the grandmother suggested that Michelle send the boy away.

"She said, 'Mom, it would be the hardest thing I ever did,'" Davis recalled. "This was only in July that I talked to her like this."

Davis said she doubts her daughter-in-law's guilt.

"Her life was practically surrounded by Danny," Davis said. "I do not believe she could have done it."

Robert said he believes puberty is the reason Daniel's became more aggressive.

"He always liked to talk and be around his mother the most," Robert said. But some of Daniel's aggression was directed toward his stepfather.

"I had to be patient for some of the things he did," Robert said.

### **Coping**

Robert could use some of that patience now. Though he and Michelle separated days before Daniel's death, Robert said she is still his best friend. His soul mate.

"The hardest part is not being able to help Michelle," he said. In the days since his wife's arrest, he smoked seven packs of cigarettes. It has been especially hard on Michelle's daughters, who are doing their best to adjust, he said.

One of Michelle's daughters is staying with Robert, the other is with

Leubner.

Robert remembers good times when the whole family went swimming. The last time Robert saw Daniel, he gave him a hug and said he loved him. His wife was horrified by the loss of her son.

"It left a major-sized void in her," Robert said.

Daniel's cousin, Tammy Davis, 19, said Daniel was like a fish in water and was excellent at video games.

"He would look over and grin every time he'd win," she said. She recalled certain things Daniel would say, like "love you."

"He even hugged me," she said. "I was one of the few people he would show affection to."

While those memories support Michelle's friends and family outside, Robert took some family pictures to her in jail.

"I know that whatever she did or didn't do I will always love her," Robert said. "I hope they look at the person she is."

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## Archived NewsFront Story

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### Capital counsel steps in

Emil Rossi, David Elkovitch to represent accused child killer

Daniel Lovell  
Region Editor

FLEMING -- Michelle Davis will have two attorneys from the state Capital Defenders list representing her in court.

Syracuse attorney Emil Rossi and Auburn attorney David Elkovitch were named Davis' legal counsel for the 36-year-old Fleming woman accused of killing her 13-year-old autistic son by setting fire to her lakeside home in the early morning hours of Sept. 4.

The attorneys, both certified with the state's Capital Defenders office, were assigned to handle the case after District Attorney James Vargason's comments Thursday that Davis, now charged with two counts of second-degree murder, could face prosecution on first-degree murder charges.

Vargason said he has started reviewing the case to see if capital murder charges are warranted. But until that decision is made, Rossi will serve as lead counsel and Elkovitch will serve as associate counsel.

Vargason has 120 days after a grand jury indictment to decide, Elkovitch said. Whether Rossi and Elkovitch would continue to represent Davis if Vargason decides first-degree murder charges are not warranted is unknown, Elkovitch said.

Attorneys on the capital defenders list must submit applications and attend seminars to ensure they have the experience to handle a capital murder case, Elkovitch said. He is currently the only Cayuga County attorney on that list.

A preliminary hearing will be held 2 p.m. Tuesday to determine whether police have gathered enough evidence to warrant the charges against Davis and present the case to the grand jury. That hearing must be held within 144 hours of arraignment.

Sheriff's deputies arrested Davis Wednesday night, charging her with two counts of second-degree murder and a count of second-degree arson. She is accused of lighting her West Lake Road home ablaze Sept. 4 to murder her son, Daniel Leubner, an eighth-grade special education student at East Middle School.

In an interview with investigators Wednesday afternoon, Davis gave statements leading police to believe she was responsible for the fire, police said. Found at the home at 6012 West Lake Road was residue from a flammable substance.

Daniel Leubner was sleeping in his second-floor bedroom when fire broke out on the first floor at about 4:30 a.m.

Davis was home at the time of the fire. She told police she was on the front porch with her 9-year-old daughter, because the two had trouble sleeping. Davis' oldest daughter, who is 15, was not at home at the time of the fire.

Police would not speculate on a motive in the alleged murder, but deputies

responded to the Davis house several times to help handle behavior problems linked to Daniel's autism.

Davis remains held in the Cayuga County jail without bail.

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# Grand jury accuses mother of murdering her son

Davis may be first death penalty case in county

Anneke Witbeck  
Staff Writer

AUBURN -- A Cayuga County Grand Jury handed up a five-count indictment Friday against a Fleming woman accused of killing her 13-year-old autistic son by setting fire to her lakeside home.

Michelle Davis is charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson.

The separate counts charge Davis under separate sections of the law. The first-degree count accuses her of intentionally killing Daniel Leubner, a felony, while committing arson, another felony, at her 6012 West Lake Road home Sept. 4.

She is scheduled to be arraigned on the grand jury charges at 1:30 p.m. Monday in Cayuga County Court.

Once Davis has been arraigned, Cayuga County District Attorney James Vargason will have 120 days to determine whether he will pursue the death penalty when the case goes to trial.

The second-degree counts charge Davis with intentionally killing Leubner, acting with depraved indifference to human life resulting in his death, and committing a felony that resulted in his death.

The arson count charges Davis with intentionally lighting a fire when fully aware that her son was inside the house.

The separate counts will allow Vargason different avenues to pursue Davis' conviction.

"I will avail myself of as much of the 120-day period as is necessary so that I can make a fair, complete and appropriate decision as to whether or not we will seek the enhanced penalty -- the death penalty," he said.

To make that decision, Vargason will have to decide whether any mitigating factors might arise in the penalty phase of the trial that would justify a lesser sentence from the jury.

If Vargason does not pursue the death penalty and Davis is convicted, she could face 15 years to life in prison. There have been no death penalty cases in Cayuga County since the state legalized the punishment in 1995.

On Sept. 4, Davis allegedly murdered her son, an eighth-grade special education student at East Middle School. Cayuga County Sheriff's deputies arrested her Sept. 22 and charged her with two counts of second-degree murder and a count of second-degree arson.

In an interview with investigators that afternoon, Davis gave statements leading police to believe she was responsible for the fire, police said. Police also found residue

from a flammable substance at the home.

Leubner was sleeping in his second-floor bedroom when fire broke out near the stairway on the first floor at about 4:30 a.m. Davis was home at the time of the fire.

She told police she was on the front porch with her 9-year-old daughter because the two had trouble sleeping. Davis' oldest daughter, who is 15, was not at home at the time of the fire.

Police would not speculate on a motive in the alleged murder, but deputies responded to the Davis house several times to help handle behavior problems related to Leubner's autism.

Davis is being held in the Cayuga County Jail without bail.

Emil Rossi, Davis' lead legal counsel, could not be reached for comment. David Elkovitch, associate counsel, refused to comment.

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### Murder suspect denies setting fatal fire

DA to decide in 120 days if he'll seek death penalty for Fleming mom

Darrin Youker  
Staff Writer

AUBURN -- Visibly shaking as she stood before Judge Peter Corning, Michelle Davis pleaded innocent to a five-count grand jury indictment.

At her Monday arraignment, Davis answered one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson. She remains in jail without bail.

Davis, 36, of Fleming, is accused of killing her 13-year-old son, Daniel Leubner, by setting fire to her Fleming home Sept. 4. She is charged under separate sections of the law.

Police allege Davis knowingly set fire to the house and was aware her son was inside at the time.

Cayuga County District Attorney James Vargason has 120 days to decide whether he will pursue the death penalty when the case goes to trial. Vargason said he expects to take much of that time to decide.

In order to determine if the case warrants capital punishment, Vargason said he will have to weigh any mitigating circumstances that would justify a lesser sentence.

"It is the DA's responsibility to determine if anything may bear on the fact of mitigating circumstances," Vargason said.

But Vargason also has to determine if there are any aggravating circumstances that should make him pursue the death penalty. Murder by way of arson is an aggravating circumstance, he said.

If Vargason decides to proceed with a capital murder charge it would be the first of its kind in Cayuga County since the death penalty was outlawed in 1963, Vargason said.

But Davis' lawyer, Emil Rossi, contends she should not face a capital murder charge because the question surrounding this case is whether arson was the alleged method of murder.

Rossi said he will begin to look over disclosure material provided by the prosecution to determine exactly how he will defend his client in court and will determine if there are any mitigating circumstances that could impact the case.

That would include psychological tests to determine Davis' mental stability, Rossi said.

Davis' gender also plays a factor in this case.

"It involves not only a woman but a mother," Rossi said. "It takes on a whole new dynamic."

But the fact that a 13-year-old boy is dead makes the crime that more difficult,

Vargason said.

"Whenever a child has been harmed a horrible and egregious crime has been committed," Vargason said. "I will prosecute to the fullest extent."

The case is held over for 45 days to give lawyers the opportunity to file motions. And during that time, Rossi said he will provide the court with a written request for bail.

"She is a citizen charged with a crime and she has made a plea of not guilty," Rossi said.

Vargason would not comment on specific evidence the grand jury was provided with for the indictment but said a sworn confession made by Davis will be used against her at trial.

Davis said nothing at the arraignment but was wiping tears from her eyes while waiting for the proceedings to begin.

A trial date is undetermined, Vargason said.

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### Judge weighs mom's release

Judge reserves decision until Davis gets clean bill of mental health

Anneke Witbeck  
Staff Writer

AUBURN -- Michelle Davis might be home in time for Christmas.

Davis, who is accused of setting a fire that destroyed her lakeside home and killed her 14-year-old autistic son, applied for bail in Cayuga County Court Thursday.

"I believe Michelle Davis is entitled to bail. She has no previous criminal record and has been examined twice by the Cayuga County Mental Health examiner," said defense attorney David Elkovitch. "She is no threat to herself. She is no threat to anyone in the community."

When first incarcerated, Elkovitch said Davis was isolated to a special section of Cayuga County jail and given anti-depressant drugs. She is now lucid, he said.

"She was just in shock," he said. "She had spent two days under severe conditions with questioning."

Elkovitch asked that bail be set at \$50,000 cash or bond.

"Hopefully the parents will be able to help with that," he said.

But given the severity of the charges facing Davis, District Attorney James Vargason asked that bail be set at \$100,000 cash or a \$250,000 bond.

"I am certainly concerned as to anybody's safety, but I'm more concerned about the safety of the public at large," Vargason said. "The proof we have in this case is quite substantial, including a quite detailed confession."

If released Davis will stay with her husband, Robert, Elkovitch said.

On Sept. 4, Davis allegedly murdered her son, Daniel Leubner, an eighth-grade special education student at East Middle School. Cayuga County sheriff's deputies arrested her Sept. 22 and charged her with two counts of second-degree murder and one count of second-degree arson.

In an interview with investigators that afternoon, Davis gave statements leading police to believe she was responsible for the fire, police said. Police also found residue from a flammable substance at the home.

Leubner was sleeping in his second-floor bedroom when fire broke out near the stairway on the first floor at about 4:30 a.m. Davis was home at the time of the fire.

She told police she was on the front porch with her 9-year-old daughter because the two had trouble sleeping. Davis' oldest daughter, who is 15, was not at home at the time of the fire.

Police would not speculate on a motive in the alleged murder, but deputies responded to the Davis house several times to help handle behavior problems related to Leubner's autism.

Facing a five-count Grand Jury indictment, the minimum sentence Davis will get if

convicted is 20 years to life, the maximum is death by lethal injection.

Judge Peter Corning reserved his decision until Elkovitch sent him a letter confirming that the Cayuga County Mental Health examiner felt Davis would not be a risk if released from jail. Elkovitch said he sent the letter Thursday afternoon.

Any order of bail would be accompanied by electronically monitored homebound detention, Corning said.

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### Death penalty ruled out in murder case

Michelle Davis faces sentence of 20 years to life to life without parole.

Anneke Witbeck  
Staff Writer

AUBURN -- A Fleming woman charged with killing her child will not face the death penalty.

Cayuga County District Attorney James Vargason said Friday that the first-degree murder charge against Michelle Davis does not fit well with the state's death penalty law.

Instead of death, Davis faces a minimum of 20 years to life in prison or a maximum of life without parole if convicted.

"The chances of the jury voting for the death penalty are pretty slim," Vargason said. "This decision was not taken lightly. A young boy is dead and his mother has been accused of killing him."

County Court Judge Peter Corning set bail at \$50,000. Davis' parents drove from the New York City area Friday night to post bail and arrange for her release from the Cayuga County jail.

Sheriff's deputies escorted her from the jail to her husband's Genesee Gardens apartment Friday evening.

Davis, 36, is accused of setting the Sept. 4 fire that destroyed her lakeside home and killed her 14-year-old autistic son, Daniel Leubner.

She is charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson.

"The law was drafted so the death penalty would be used under rare circumstances," Vargason said. "After reviewing this case and studying it very thoroughly, I decided that this did not comfortably fit the death penalty statute."

If Davis was convicted under the death penalty statute, Vargason said defense attorney David Elkovitch could offer any circumstances to justify her actions, such as financial situation, emotional state, marital status or employment to the jury before sentencing.

"Notwithstanding my decision, this is still an exceedingly serious case and warrants aggressive prosecution and punishment to address the loss of innocent life," Vargason said.

Robert Davis, Michelle's husband, said the district attorney should never have suggested he would pursue the death penalty. Vargason's decision, Robert Davis said, was justice.

Michelle Davis declined comment.

Elkovitch, who is assigned as Davis' attorney along with Syracuse lawyer Emil Rossi, did not know whether Rossi would remain on the case with the threat of the

death penalty removed. Both were assigned to the case because they are certified with the state's Capital Defenders office, which assigns lawyers to represent those facing the death penalty as a possible sentence.

"I'm relieved that it's not a death penalty case," Elkovitch said.

Rossi did not return a telephone message left at his office Friday.

At a hearing Friday morning, Corning granted Elkovitch's requested bail amount.

"I recognize that the Constitution says she's entitled to reasonable bail," Vargason said. "Given the seriousness of the crime, I asked that bail be set at \$100,000 cash, \$250,000 bond. I respect the court's decision."

Davis' parents, Ellen and Michael Janero, drove from White Plains to post bail. Davis will remain in homebound detention and will be monitored electronically.

Davis is still being prosecuted on all five counts of a grand jury indictment. Motions in the case are due Jan. 27. No trial date has been set.

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## Archived NewsFront Story

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### Eviction may greet Davis and husband

Released mother may not be allowed in husband's apartment

Anneke Witbeck  
Staff Writer

AUBURN -- Michelle Davis went home to husband Robert's Genesee Gardens apartment Friday night, but how long she can stay has yet to be determined.

Davis has been in the Cayuga County jail since being accused of setting a Sept. 4 fire that killed her 14-year-old autistic son. Cayuga County Judge Peter Corning Friday morning ordered that after posting \$50,000 bail, Michelle be sent to home detention and monitored electronically.

Because of the charges facing Michelle, Genesee Gardens management won't let her stay in the complex.

"We have seen in the paper that if your wife gets bail she plans to live with you here," reads the letter from assistant property manager Marsha Jenks. "That is *not* possible. Your lease states that no one can live here without being approved by our Tenant Selection Process. Mrs. Davis would not be approved, due to the charges against her. We must consider the welfare of all residents here. So please do not even think of letting her stay or visit at all."

Because Michelle has been charged, but not convicted, Robert sees the complex's stance as discriminatory.

"I don't think she's a threat to anybody in this world," Robert said. "Do you have to ruin the one good day she's had in the past two months?"

Though Robert plans to look for another apartment, he was referred to Legal Services of New York by Merrilee Witherell of the Fair Housing Council of Central New York.

"The crime of which she's accused took place off the premises," Witherell said. "Another thing to take into consideration is that she has not been convicted."

Jenks did not return two phone messages Friday.

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*Breakout:*

## Archived NewsFront Story

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### Davis out on bail

Woman's parents post \$50,000, Davis accused of starting fire that killed her autistic son, Daniel Leubner

Anneke Witbeck/Staff Writer

AUBURN -- Robert's Davis' apartment at Genesee Gardens shined freshly clean in anticipation of his wife's arrival. Family pictures hung on the wall and a decorated Christmas tree stood in the front window.

"I busted my tail to do this," Robert said.

He's not the only one. Michelle's parents, Ellen and Michael Janero drove from their home in White Plains Friday afternoon with a \$50,000 check to retrieve their daughter, Michelle Davis, from the Cayuga County jail. Michelle was incarcerated there since Sept. 22, when she was accused of lighting the Sept. 4 fire that destroyed her West Lake Road home and killed her 14-year-old autistic son.

"I called to tell them how much the bail was," Robert said. "When I called back 10 minutes later, they had gone to the bank."

The Janeros pulled into town around 6:30 p.m. and headed directly to the jail. Ellen, who is recovering from a recent angioplasty, used a walker to make her way into the jail lobby.

"I see her before me and I just want to grab her and I want to cry," Ellen said as she waited for Michelle to be released.

Ellen confirmed with jail staff that Michelle did not know the family had come, because she wanted to surprise her daughter. But after waiting close to three hours to see Michelle walk into the lobby, into their arms, Robert Davis' cellular phone rang.

Sheriff's deputies had already escorted Michelle out a back door and taken her home.

Michael stayed quiet, Ellen cried with exhaustion and devastation.

"They did that to her?" she wondered aloud. "How could they do that?"

### Homecoming

It wasn't the only blow dealt to the family Friday. Earlier in the day Robert got a letter from Genesee Gardens management telling him that because of the charges facing Michelle she is not welcome in the complex.

"Welcome to America," Robert said. "Innocent until proven guilty."

Though he said he plans to look for another apartment, Davis has contacted Legal Services of New York and will speak to a lawyer Monday.

Michelle has been "going nuts" in jail, Robert said, largely because she misses her children. With her home, the family is looking forward to being together. Robert had fresh coffee and a cinnamon muffin waiting for her arrival.

"She likes her coffee," he said.

After two decades of friendship, Robert said he knows Michelle well. Monday is the couple's third wedding anniversary.

"Me and Michelle have been friends for 20 years," Robert said. "We're married and we'll probably be married for a long time to come."

Michelle's mother is looking forward to seeing her daughter over the holidays and said Thanksgiving was depressing this year.

Things have also been difficult for Michelle's father.

"He has cried," Ellen said. "It's the first time I've seen him break down. This is one thing he couldn't hide."

She recalled a Christmas when Michelle was 15 years old and the Janeros were living at Genesee Gardens, the same apartment complex that would now refuse her daughter a roof.

The family was struggling that year and Michelle got a job at Arby's, Ellen recalled. On Christmas morning Ellen and Michael came downstairs to find that Michelle had gotten a tree and decorated it. She had placed presents under the tree: a pair of dungarees and a flannel nightgown for her mother and three bottles of wine in a wooden case.

"I never expected it," Ellen said.

Ellen also remembered holidays with her grandson, Daniel, who was killed in the Sept. 4 fire.

One year, Daniel somehow put a few batteries in a turkey and put it in the microwave, Ellen recalled, laughing.

Michelle was never ashamed of Daniel and took him to the store for an outing every day, Ellen said.

As Daniel grew older and began to act out, it was Michelle who would hug him and comfort him.

"I saw him punch her in the face," Ellen said. "Every time she'd comfort him."

As things got more difficult Ellen said even she wondered why Michelle didn't send Danielle away.

"Mom, I've got to try because I love him so much," Michelle told Ellen. "I've never seen a mother so devoted."

District Attorney James Vargason claims to have a detailed confession form Michelle, but Ellen maintains that her daughter could not have injured Danielle.

"I tell you noone's ever had a daughter like Michelle," Ellen said. "I know she's innocent."

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## Archived NewsFront Story

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### Suspect claims innocence

Mother accused of killing autistic son in fire thanks friends, family in letter

Anneke Witbeck  
Staff Writer

AUBURN -- A woman accused of killing her autistic son publicly declared her innocence today.

Michelle Davis, charged with killing her 14-year-old son, Daniel Leubner, in a September fire, wrote a letter to local newspapers declaring her innocence. The letter appears on page A4 of The Citizen today.

Davis, 36, thanked friends and family for their support in the letter and told those who have left her side that she understands.

Davis has been living in her husband's Genesee Gardens apartment on homebound detention since posting \$50,000 cash bail earlier this month. She awaits trial for allegedly setting fire to her lakeside home in Fleming to kill Daniel.

In the letter, Davis wrote that losing Daniel has been part of "the worst nightmare a mother can experience."

Charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson, Davis faces a minimum of 20 years to life in prison and a maximum of life without parole if convicted.

While home, Davis has been able to spend time with friends and family, celebrating birthdays and the third anniversary of her marriage to Robert Davis.

But she also has been evicted from Genesee Gardens for her credit history and was not allowed to attend Christmas Eve services at her church because of the homebound detention. The family will be moving this week. They will not say where.

"Even though my family and I have faced adversity," Davis wrote, "I have a lot to be thankful for."

Davis, who refused to comment, got approval from her attorney, David Elkovitch, to write the letter, said her husband, Robert Davis.

Elkovitch said he has not seen the letter.

Davis is not hoping to have anything come of the letter and is not trying to stir up public sympathy, Robert Davis said.

"It's basically just her way to thank the community," he said.

District Attorney James Vargason did not return telephone calls seeking comment. No trial date has been set.

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## Archived NewsFront Story

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### Murder suspect faces psych tests

DA calls request for exams in such cases 'pretty usual'

Naomi Mueller  
Staff Writer

AUBURN -- Judge Peter Corning ruled Thursday that two experts will examine Michelle Davis' mental fitness before her trial on murder charges.

Corning ruled in favor of District Attorney James Vargason's request that Davis be examined by a psychiatrist or psychologist of his choice. Davis' attorney David Elkovitch did not challenge the request.

Davis, 36, is accused of killing her 13-year-old autistic son, Daniel Leubner, by setting fire to her lakeside home in the early morning hours of Sept. 4. She faces one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson.

In his pretrial notice Elkovitch said he may use psychiatric evidence in Davis' trial.

"If the issue of psychiatric evidence comes up, this is a pretty usual request," Vargason said.

The law provides that a defendant may offer a plea of a mental disease or defect in their defense, but that they must serve the state with a notice of their intention to possibly use that evidence, Vargason said.

Vargason said if the state's and defendant's experts do not agree, the defense can call their expert witness to testify about the defendant's condition and then the people can call in their expert, with the decision of who to believe left up to the jury.

Though she faces a first-degree murder charge, Vargason said her case does not fit well with the death penalty statute. If convicted, Davis faces a minimum of 20 years to life in prison or a maximum of life without parole.

Motions in the case are due Jan. 27. No trial date has been set.

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Archived NewsFront Story

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## Mom's murder trial set

Defense tries to get confession thrown out before April 3 start

Darrin Youker  
Staff Writer

AUBURN -- The murder trial against Michelle Davis is scheduled to start April 3.

Cayuga County Judge Peter Corning set the trial date as Davis' attorney attempts to get her confession to police thrown out of court.

David Elkovitch, Davis' attorney, said he wants her confession removed from evidence in the trial because her statement was not done voluntarily. Corning will hold a hearing later this month to determine if the confession is admissible as evidence.

Davis, of Fleming, faces a maximum of 20 years to life in prison for allegedly setting the Sept. 4 fire that killed her 14-year-old autistic son, Daniel Leubner. She is charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson.

Elkovitch will call as a witness a psychological expert to present scientific evidence on how a person's state of mind can impact a decision. Elkovitch refused to say who the witness is, stating only that the witness has provided similar evidence in previous trials.

Davis was under severe mental strain when she gave her statement and that mental strain impacted on her ability to make a clear decision when giving her statement, Elkovitch said.

"Can you imagine what she went through?" Elkovitch said. "She lost her son, her home and her daughters have been split up."

Cayuga County District Attorney James Vargason does not dispute that Davis was under strain when she gave her statement.

"She was under severe strain, she killed her son," Vargason said.

Elkovitch's request for suppression of the statement came as attorneys for both sides were discussing motions in County Court Thursday.

Davis, 36, is free on \$50,000 bail and said nothing as attorneys argued motions in the case. She is on electronically monitored homebound detention.

Vargason said he will call witnesses for the upcoming hearing to refute the claims of psychological duress. Davis' testimony was given voluntarily, Vargason said.

"I am confident her statement was given knowingly and voluntarily," Vargason said. "I feel that she unburdened herself with this confession and is now rethinking that confession."

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## Archived NewsFront Story

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### Defense goes after confession

Lawyer for mother accused of killing son to call expert witness

Darrin Youker  
Staff Writer

AUBURN -- Michelle Davis' attorney is looking to get her confession thrown out of court in a hearing set for today.

David Elkovitch, Davis' attorney, is expected to call an expert witness on how psychological strain can impact a person's confession. Elkovitch maintains Davis' confession was not given voluntarily.

Cayuga County Judge Peter Corning will oversee the hearing and determine if the evidence is permissible. The hearing is scheduled for 9:30 a.m. today.

Elkovitch has refused to say who the expert witness is, stating only the witness has presented similar evidence in previous trials. He also refused to comment on the upcoming hearing.

"If people want to know what's going on, they can come and observe," Elkovitch said.

Davis faces a maximum of life in prison for allegedly setting a Sept. 4 fire that killed her 14-year-old autistic son, Daniel Leubner. She is charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson.

Cayuga County District Attorney James Vargason refused to comment on the upcoming hearing but has said he believes Davis' statement was given voluntarily.

Davis, 36, is free on \$50,000 bail. She is on electronically monitored homebound detention.

Her trial is scheduled to start April 3.

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Archived NewsFront Story

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## Judge closes courtroom

Peter Corning: Open pretrial hearing for accused killer could taint jury pool

Darrin Youker  
Staff Writer

AUBURN -- Cayuga County Court Judge Peter Corning closed a pretrial hearing in the Michelle Davis murder case to the press and the public Wednesday as arguments began over whether to admit Davis' confession into evidence at her trial.

James Baier, an attorney for Davis, made the request to close the courtroom, which Corning granted.

Davis is charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson in the death of Daniel Leubner, her 14-year-old autistic son. She faces a maximum sentence of life in prison.

David Elkovitch, Davis' attorney, planned to argue that Davis' confession was involuntary, and said he would call an expert witness to testify on how a person's state of mind can affect a decision. Baier requested to close the court because of the sensitive nature of the evidence.

After meeting in closed chambers with Elkovitch, Baier, Davis and Cayuga County District Attorney James Vargason, Corning ruled to close the court because evidence revealed during the hearing could make it difficult to give the defendant a fair trial.

"It would make it literally impossible to select a jury from this community if contents of proceedings were published," Corning said. "I don't take this lightly."

Vargason did not object to the closing of the courtroom.

Before Corning ruled to close the courtroom, Syracuse Newspapers reporter David Shaw objected to the ruling, requesting adjournment of the proceedings until the newspaper's attorney could present a formal objection to the court closing.

Alan Vaughn, managing editor of The Citizen, presented Corning with a written request Wednesday afternoon asking him to suspend the proceedings until The Citizen and its attorney could be heard on the closing.

Corning denied both requests and continued with the proceedings behind

closed doors. Only attorneys, witnesses and the defendant were allowed in court.

Court proceedings were closed for the entire day and the hearing was adjourned at 4:45 p.m. The hearing was scheduled to continue at 1:30 p.m. today.

Both Elkovitch and Vargason said they could not comment on the proceedings inside the courtroom, including giving the names of the witnesses called and their testimony.

Elkovitch planned to call a psychological expert witness during the proceedings to provide testimony on how psychological strain can affect a person's confession. He has refused to say who the witness is, stating only that the person has presented similar evidence in previous trials.

Vargason said he called a witness during the proceedings, but because the court was closed, he could not release their name. Cayuga County Sheriff's Department Chief Criminal Investigator Stephen McLoud, one of the investigating officers in the case, was present in the courtroom during the proceedings.

Davis' trial is scheduled to begin April 3.

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## Experts: Judge's ruling out of order

SU official says proof of possible jury taint must be proved

Naomi Mueller  
Staff Writer

AUBURN -- Lawyers and legal experts said Wednesday that Cayuga County Court Judge Peter Corning's decision to close Michelle Davis' pretrial hearing was done without reason and without following the proper procedure.

The American justice system has the power to weed out potential jurors who have been influenced by news reports in the media, said David Rubin, dean of the Newhouse School of Journalism at Syracuse University.

"If a judge wants to close a pretrial proceeding he or she ought to give notice to the public of that intent and the reasons for doing so and allow the public and media to appeal," Rubin said.

At the request of Davis' attorney, Corning agreed to close the hearings because "It would make it literally impossible to select a jury from this community if contents of proceedings were published," Corning said.

Although Corning said he closed the hearing to the public to prevent potential jurors from being tainted by media reports, Rubin said unless Corning proves that irreparable damage would be done to Davis if pretrial hearings were open, they should not be closed.

Judges do have the authority to close court proceedings, but they must have an extraordinary reason to do so, said Dave Bookstaver, spokesman for the state Office of Court Administration.

"Courtrooms are inherently public forums and can be closed only under extremely limited circumstances," Bookstaver said.

The Citizen and the Syracuse Newspapers protested the closing of the courtroom and requested an adjournment until attorneys for both could be present to object to the closing.

Corning denied that request.

Walter Foulke, attorney for The Citizen, said Corning should have suspended hearings until the media could present its objection.

"He has to have compelling reasons to close the court," Foulke said. "We have a right to hear that and argue the public has a right to know."

According to Rubin, most judges who close pretrial hearings do so to make sure defendants receive a fair and impartial trial. But while judges consider it their job to ensure a fair and impartial trial for all defendants, Rubin said the media is looking to defend the First Amendment.

"Not all judges appreciate the press and the First Amendment," Rubin said. "The First Amendment and Sixth Amendment often collide and it is a challenge for judges to

balance the two."

The voir dire, or jury selection process, has proven to be more than capable at ensuring defendants get fair trials over the course of history, and the burden of demonstrating why the pretrial motions should be closed rests on the presiding judge, Rubin said.

"In general, openness is always the best policy in American society," Rubin said.  
*Staff Writer Darrin Youker contributed to this article.*

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## Archived NewsFront Story

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### Victimology expert sits in at hearing.

University professor testified at Menedez trial

Darrin Youker  
Staff Writer

AUBURN -- A Pennsylvania victimology expert who once testified in the murder trial of Lyle and Erik Menendez could be called as a witness in pre-trial hearings in the case against accused murderer Michelle Davis.

Ann Burgess, a psychology professor from the University of Pennsylvania, was in the courtroom during the hearing Thursday, which was closed to the public. On County Judge Peter Corning's order, only attorneys, court personnel, the defendant and her husband and witnesses were allowed inside.

The hearings are to determine whether a confession Davis gave police will be allowed at Davis' pending trial on murder counts, scheduled for April 3.

Defense attorney David Elkovitch has said he planned to call a psychological expert to testify about how mental strain can impact a confession. He has refused to say who the expert witness is.

An expert in rape trauma syndrome, Burgess presented testimony in several trials on the long-term psychological strain rape victims face. She also testified for the defense at the first murder trial against Erik and Lyle Menendez in California, which resulted in a hung jury. She presented testimony on how the disorganized crime scene suggested the murder had not been premeditated.

Burgess also testified as an expert witness on the sexual and physical abuse of women in a trial in Pennsylvania that eventually freed a woman convicted of murder. In the trial, Burgess detailed the elements of "Battered Woman Syndrome" and testified that the defendant's involvement in the murder stemmed from an abusive relationship with her boyfriend.

Burgess has written, edited and contributed to many books, including "Practical Aspects of Rape Investigation" and "Understanding Violence Against Women."

Burgess and Elkovitch refused to confirm whether Burgess would be called as a witness.

Davis, 36, is charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson. She is accused of intentionally setting fire to her Fleming home while her 13-year-old autistic son, Daniel Leubner, slept in a second-floor bedroom.

Attorneys on both sides refused to comment on the proceedings inside the closed courtroom, but both said they are calling witnesses for the pre-trial hearing.

Three Cayuga County Sheriff's investigators who worked on the murder investigation -- Fred Cornelius, Joseph Weeks and Stephen McLoud -- were present in the courtroom Wednesday and Thursday.

Wednesday, defense attorney James Baier requested Corning keep the press and the public out of the courtroom because of the sensitive nature of evidence to be presented. Cayuga County District Attorney James Vargason did not object.

Representatives from The Citizen and Syracuse Newspapers requested that Corning adjourn the proceedings until lawyers from the newspapers could present formal objections. Corning denied both requests.

Court bailiffs slid wooden doors in front of the second-floor courtroom, blocking the view of court proceedings.

The pre-trial hearing convened at 1:30 p.m. Thursday and continued for the rest of the afternoon. The hearing is scheduled to continue at 9:30 a.m. today.

Davis faces a maximum sentence of life in prison if convicted.

*-- Community Editor Matt Sullivan contributed to this report.*

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Archived NewsFront Story

This story was published **03/05/2000** by the **EditPage** desk.

## Judge wrong to close court

Our View

The trials of two New York state residents charged with murder moved forward with preliminary hearings this week.

Both started with hearings to examine potential evidence. Both courts heard motions to hold the hearings in secret.

Only Cayuga County chose to lock the public out.

Wednesday, Cayuga County Judge Peter Corning granted a request from an attorney for Michelle Davis that pretrial hearings be closed. Corning granted the motion, refusing requests from The Citizen and the Syracuse Newspapers that they be allowed to present arguments why the hearings should be open to the public.

Davis is accused of setting the September fire that killed her 13-year-old son in their Fleming home.

Also Wednesday, Carroll County, Ga., Superior Court Judge Aubrey Duffy was forced to decide nearly the same issue. Duffy is presiding over pretrial hearings in the case against Schenectady resident Jeffrey McGee, who is accused of killing a Georgia police officer.

The difference is Duffy took the prudent and proper step of permitting two local news organizations to present arguments that the public's best interest is served by keeping the hearings open. When he heard their arguments, Duffy ordered that the hearings remain public.

Nobody in Cayuga County even got the chance to argue for the public.

Corning's decision not to hear arguments in support of the public's constitutional right to attend court proceedings is wrong. Whether he was right to close the hearings themselves, we don't know.

We don't know because the arguments to shut the public out were made in secret. We don't know because nobody had to defend those arguments in public. We don't know because nobody got to make the case that court proceedings are kept open to preserve the justice in the justice system.

Corning feared that reporting on what was said in these hearings would irrevocably harm Davis' chance for a fair trial. He may be right, but who would know? No public evidence was presented to support the claim, and Corning permitted no one to refute the supposition.

Corning went a step further Friday and without explanation removed a reporter from the hallway in front of his courtroom, apparently extending his imposed blackout zone not only to the hearings but to public spaces nearby.

The hearings themselves tackle some of the most essential and important concerns about the fairness of the justice system -- including whether police acted properly when collecting a confession from Davis that she intentionally set the fire which killed her son, or whether Davis was too psychologically distressed to be able to give such a

statement.

We all have an interest in making sure that law enforcement officers do their work properly. And we all have an interest in seeing that when officers do the job right that evidence is not improperly thrown out by the court.

Without access to testimony on these subjects, the public, either in person or through news reports, loses its ability to keep an eye on the system. Those scrutinizing eyes of the public are what keeps justice blind.

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## Archived NewsFront Story

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### Judge delays mom's ruling

Attorneys in cse of autistic boy's death wrappre-trial hearing.

Darrin Youker  
Staff Writer

AUBURN -- It will take at least a week before Michelle Davis will know if her police confession will be used in court.

Cayuga County Judge Peter Corning reserved decision on testimony in a pre-trial hearing where defense attorneys are trying to get Davis' confession to police excluded from her upcoming trial.

Attorneys wrapped up testimony in the closed hearing Monday afternoon and Corning gave attorneys a week to provide him with written statements on the hearing. From there, Corning will issue his ruling.

"The judge has asked us to submit legal arguments," District Attorney James Vargason said.

Both Vargason and defense attorney David Elkovitch said they could not comment on the hearing and who was called to the witness stand.

Elkovitch did confirm University of Pennsylvania professor Ann Burgess, who testified for the defense in the murder trial of Lyle and Erik Menendez, was a witness. Burgess appeared in the courtroom Thursday and Friday.

Burgess has given testimony in previous trials on the sexual and physical abuse of women.

Throughout the four days of testimony Cayuga County Sheriff's Investigators Stephen McLoud, Fred Cornelius and Joseph Weeks, all of whom worked on the case, were inside the courtroom.

The pre-trial hearing started Wednesday when defense attorneys requested the courtroom be closed because of the sensitive nature of evidence presented. Only court personnel, attorneys, witnesses and Davis were allowed inside the courtroom.

Davis is charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson and faces a maximum of life in prison if convicted. Davis is accused of intentionally setting fire to her Fleming home in September while her 13-year-old autistic son, Daniel Leubner, slept inside.

Her trial is scheduled to start April 3.

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## Archived NewsFront Story

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### Mom confesses

Michelle Davis faces 25 years in prison for son's death

Darrin Youker  
Staff Writer

AUBURN -- Michelle Davis admitted in court Tuesday she intentionally set fire to her Fleming home and killed her 13-year-old autistic son.

Davis pleaded guilty to lesser charges of one count of first-degree manslaughter and one count of second-degree arson after it was revealed she was under the influence of "extreme emotional disturbance" when she set fire to her home, killing her son, Daniel Leubner.

Cayuga County Judge Peter Corning ruled there was a reasonable explanation for Davis' actions after closed pre-trial hearings brought to light the psychological strain she was under at the time of the murder.

"There was aggressive conduct towards the defendant at the time," Corning said.

Davis was originally charged with one count of first-degree murder, three counts of second-degree murder and one count of second-degree arson. When Corning decided Davis was suffering from emotional stress, the second-degree murder charges, by law, were knocked down to manslaughter, said James Vargason, Cayuga County district attorney.

Davis now faces a maximum of 25 years in state prison and is scheduled to appear in court April 27 for sentencing.

In court, Davis' voice shook as she told the judge she lighted candles and let them burn, causing fire to break out in the home, killing her son as he slept in an upstairs bedroom.

Davis lighted candles in a closet underneath a stairwell, soaked wrapping paper with nail polish remover and set them underneath the candles, Vargason said. Nail polish remover is highly flammable, he said.

Four days of pre-trial hearings were held earlier this month to determine if Davis' confession to police could be used as evidence in her upcoming trial, and during the course of the proceedings the mental strain Davis was under became evident, said David Elkovitch, defense attorney.

After the hearings concluded Elkovitch, co-counsel James Baier and Vargason met with Corning to discuss what type of plea would be acceptable, Baier said. They also discussed Davis' mental state, Elkovitch said.

Elkovitch said he is not certain why Davis decided to change her plea but said with the manslaughter count, she will face less time in prison and could possibly be released in time to see her daughters graduate from high school.

In a December letter to The Citizen, Davis wrote she was innocent.

"I am incapable of harming any of my children," Davis wrote. "In addition to the

death of my precious son Daniel, this has been the worst nightmare a mother can experience."

Tuesday, Davis threatened to call the police on a reporter seeking comment at her home.

Vargason said he feels this outcome is the best for the case. There was a risk that jurors at trial would never have heard Davis' confession, and Vargason said he was not confident the case could have survived without the confession.

"I was risking an adverse ruling on her confession," Vargason said. "I felt we had a good legal sound argument but a reviewing court could feel different."

### **The hearing**

During the closed hearings, Davis' confession was read and she took the stand during the proceedings, Elkovitch said. Richard Leo, a social scientist and expert on police confession, and Ann Burgess, a University of Pennsylvania professor, testified.

Burgess gave testimony on Davis' mental strain at the hearing. Leo and Burgess could not be reached for comment.

Jay Jackman, a private practice psychiatrist in Ithaca, also testified at the hearing but refused to comment on his testimony.

The prosecution called Michael Lynch, a Buffalo private practice psychiatrist who examined Davis, to testify at the hearing.

Davis gave her confession voluntarily but there was reason to believe she suffered emotional stress around the time of the murder, Lynch said.

During his examination of Davis, Lynch said she denied setting the fire and said the statement she gave police was not voluntary. She also said Daniel hit her.

"I think she exaggerated to me how much physical abuse she suffered," Lynch said. "She said a lot of things that were self serving."

Davis was suffering from more than an everyday emotional stress and her psychological strain was evident to everyone at the hearing, Elkovitch said.

Davis was dealing with financial troubles, separation from her second husband, Robert, and difficulties with her autistic son, Vargason said. Robert also was the authority figure in the household, he said.

We may never know the real Davis, who went through a very difficult time because of aggressive behavior toward her, Elkovitch said. However, Elkovitch refused to give details about the emotional strain Davis was under at the time of the murder or the abuse she may have suffered. This information will come out at the sentencing, he said.

"She was and still is an excellent mother," Elkovitch said. "You will never be able to put yourself in her position. I don't think a parent could judge a person who went through this for years."

There is nothing that can justify Davis' actions, Vargason said.

"A good mother does not set fire to her house to kill her child," Vargason said.

Leroy Leubner, Daniel's father, was in court during Davis' plea and said he was not surprised when Davis was charged with murder. Sitting in court and listening to the proceedings was difficult, he said.

"It was a very numbing experience," Leubner said. "We have been expecting a trial

all along and it's a sudden finish."

Daniel had classic autism and he could not talk or understand when people were speaking with him, Leubner said. It was frustrating for Daniel and difficult to convey his needs, he said.

Daniel often would speak in one- or two-word sentences, Leubner said. If Daniel wanted to go to the mall, he would say something like "go mall," Leubner said. But Leubner and teachers were trying to work with him, he said.

"Daniel could be difficult but it wasn't anything I would consider outlandish," Leubner said. "He was a frustrated child."

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*Outline:* 0315.cuts

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Cayuga County Fire Investigator Steve Smith surveys what remains of the interior of Michelle Davis' home after a September fire killed 13-year-old Daniel Leubner. Tuesday, Davis admitted in County Court she intentionally set the fire that killed her son.

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Michelle Davis arrives at her arraignment in Fleming Town Court in September.

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death penalty if Davis is convicted of first-degree murder.

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*Breakout:* Michelle Davis, 36, pleaded guilty Tuesday to first-degree manslaughter and second-degree arson. She faces up to 25 years in prison when sentenced April 27.

*Breakout:* This is the first in a four-part series on the murder case against Michelle Davis.

Today: Davis alleges she was raped by her 13-year-old autistic son before she set the fire that killed him. Prosecutors say there is no evidence the rape ever happened.

Wednesday: Defense witnesses testify Davis could not have confessed to killing Daniel, because she suffered from post-traumatic stress disorder caused by the alleged rape. Investigators and prosecutors say she was competent and coherent.

Thursday: A defense witness testifies that sheriff's investigators may have used coercive tactics to induce Davis' confession. Investigators say, and signed statements by Davis show, she waived her rights to a lawyer and to remain silent.

Friday: Convicted of first-degree manslaughter and second-degree arson, Davis is scheduled to be sentenced Thursday.

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Archived NewsFront Story

This story was published **04/25/2000** by the **Business** desk.

It ran in these editions: Cayuga, page B6 (Full version)

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## Citizen journalists win 12 awards from Syracuse Press Club

In Other Business

AUBURN -- Journalists from The Citizen won 12 awards in the Syracuse Press Club's 1999 professional recognition awards, more than any other daily newspaper in the club's 23-county region.

Region Editor Dan Lovell won four awards, two for column writing and two for news stories covering the arrest of Michelle Davis on a murder charge and a Delevan Street fire that killed three children.

In other writing categories, Staff Sports Writer Todd Ceisner earned an award for sports writing and Managing Editor Alan Vaughn won one for editorial writing.

Photographers won six awards, three for Director of Photography Jim Michalowski, two for staff photographer Cydney Scott and one for staff photographer Trevor Kapralos.

The awards were announced this month at a luncheon at the Hotel Syracuse.

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## Archived NewsFront Story

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### Facts cast doubt on mom

Fleming woman says son's rapes pushed her to kill; evidence hints otherwise

Daniel Lovell  
Region Editor

Daniel Leubner was dead before the sun rose Sept. 4. His mother, Michelle Davis, shook uncontrollably on a neighbor's porch, watching firefighters douse the remaining flames inside her family's home.

Two-and-a-half weeks later, Davis sat crying in a police station as she confessed to burning down her house to kill her 13-year-old son.

Police charged her with murder -- a crime the district attorney said had potential to turn into a death penalty case. He later decided against seeking that punishment.

Two months later, Davis changed her story again, denying her guilt in a letter to The Citizen and again during pre-trial hearings in March, when her lawyers fought to keep a jury from hearing her confession to Sheriff's Department investigators.

Behind the closed doors of those hearings, Davis' defense team accused Cayuga County sheriff's investigators of forcing a confession from Davis as she struggled with crippling stress, and accused 13-year-old Daniel of raping his mother.

But before Judge Peter Corning could rule on the motion to suppress the confession, Davis, charged with counts of first- and second-degree murder, was allowed to plead guilty to first-degree manslaughter and second-degree arson, two lesser charges. As part of that plea, she once again admitted to starting the fire that killed her son.

She faces up to 25 years in prison at her sentencing, scheduled for Thursday.

The fire that destroyed Davis' house burned for only a few hours. The ensuing drama played out in interrogation rooms and criminal courts, filled with tearful confessions, conflicting stories, expert witnesses, and horrific accusations, has now lasted almost eight months. Soon, it will be over. No matter what the resolution, Daniel will not be there to see it.

#### **September**

Davis remembered the last day of her son's life as a normal day for herself and her three children. In Davis' court testimony and sworn confession, she told of how she took her youngest daughter, Kimberly, on a shopping trip for school clothes that day. Her older daughter, Melissa, was away from home at a concert. It was Friday, the eve of Labor Day weekend, before the start of the school year.

Robert Davis, Michelle Davis' estranged husband, came to the family's house at 6012 West Lake Road in Fleming during the day to look after Daniel, an autistic boy who was getting ready to start his last year at East Middle School.

Davis said in her confession that when she and her daughter came home from

shopping, Robert Davis left and Daniel went outside to swim in Owasco Lake. Daniel came back inside shortly before 7 p.m. His mother gave him a change of clothes, and he sat down in the living room to watch television.

Davis said shortly after, Daniel grew agitated, punching and kicking his mother. The fight ended quickly, and Daniel went to the back porch to watch television.

At about 8:30 p.m., Davis said she was folding clothes when Daniel came back into the room. He was naked.

According to Davis' confession, she fought against her son, slapping and kicking him. Daniel hit her on the head and knocked her to the ground. Then, she said, he pulled off her clothes and raped her.

"I screamed at him and fought him but I ended up giving in," Davis told police. "I didn't think I had a chance."

Davis said Daniel raped her once before that day, and she feared that her daughters, then 9 and 15 years old, would be sexually attacked by her son. The rape "set a light bulb off" in her head, warning her that things could go bad for the family, that the family could return to the days when Daniel was younger and his violent outbursts were more common.

"I thought of my girls and the danger Danny posed to them," Davis said in her confession. "I thought a long time about what I could and couldn't do. I thought I needed to stop it and end it. I knew that the easiest thing I could do was to let him go to sleep and never wake up."

In a room at the bottom of the stairs, Davis placed a lighted candle next to wrapping paper soaked in nail polish remover, she said.

"I think I set the fire in the closet because I knew I wouldn't be able to get to Dan," she said in her confession. "I wouldn't be able to get up the stairs, and Dan wouldn't be able to get down them."

### **Evidence**

Police and prosecutors do not believe Davis' version of the story.

Police found no evidence she was ever raped. They did find evidence they believe shows the murder was planned well before the fire was set, and well before the alleged rape took place.

There were two smoke detectors in the house, one on each floor. The batteries had been removed from both before the fire.

During a police interrogation Sept. 21, Davis told police she removed the battery from the smoke detector on the first floor to keep it from going off while she cooked.

Davis told police she and Kimberly slept on the porch the night of the fire because it was too hot inside the house to sleep. Police say Davis closed nearly every window in the house before putting her son to bed alone.

Davis had taken her youngest daughter school shopping that day, but left the newly purchased clothes in the trunk of the car. She bought no new school clothes for Daniel.

Cayuga County Sheriff's Investigator Joseph Weeks said that evidence led police to believe Davis planned to light the fire well before the alleged rape occurred.

"That was either highly suspicious or highly coincidental," Weeks said. "Most of us who have children, when we buy new clothes, the first thing they want to do is take

them in the house and wear them."

Defense attorney David Elkovitch said police never asked Davis to explain why the clothes were left in the car.

"If you bring in anything for anyone else and not for Danny, he'll go off," Elkovitch said. "He'll get violent. So you leave them in the car."

A circuit breaker that controlled a motion-detector flood light on the garage was turned off that night. Neighbors said the light was always active, and the light regularly turned on at night. Of all the circuit breakers in the house, only that one had been disconnected.

Davis claimed Daniel hit her and scratched her during the rape. No evidence was found when her body was examined after her arrest.

"There was nothing other than her word that indicated there had been a sexual assault," Weeks said. "There was no evidence to support it. To my knowledge there were no injuries detected on her."

Elkovitch said at trial, he would likely have presented testimony at trial from Daniel's teachers and others who knew him to show he was preoccupied with sex. He said he also would have called Dr. Ann Burgess, an expert on rape trauma syndrome, to testify Davis had symptoms that would be found in a person who had been raped.

### **Obsession**

Dr. Eric London, vice president of the National Alliance for Autism Research, said he has never heard of an autistic person committing rape.

London heads the medical affairs department of the agency located in Princeton, N.J. He also has raised an autistic child.

When autistic boys reach puberty, hormonal imbalances can cause violent behavior, London said. But autistics become no more preoccupied with sex than other pubescent boys.

London said many autistic people become obsessed with things they see or hear, including television commercials and songs, or certain activities, such as washing their hands. When they become obsessed, they can't stop repeating the actions, London said.

According to investigation reports, Daniel likely had some access to adult films. Davis' youngest daughter told investigators the family once caught Daniel watching "bad tapes," which she said featured "disgusting stuff like boys and girls trying to have a baby."

"The information we got, and it was pretty sketchy, was that he had gotten hold of an adult movie and was watching it," Weeks said. "That's probably true, but we don't know."

According to statements, the video was hidden after Daniel was discovered watching it.

Viewing a video just once would not have been enough to create an obsession, London said.

"I don't know that I've ever heard of an autistic person raping anyone," London said. "Most autistic people probably wouldn't even know how. It's hard for me to believe an autistic person would be capable of doing that."

## Family

Daniel's father, Leroy Leubner, doesn't believe Davis' allegations either.

Instead, Leubner believes his ex-wife's statements were meant to make the murder seem necessary -- as if she was protecting her daughters from a predator.

But Daniel was never a predator, Leubner said.

He and girlfriend Sherryl Parsons believe Davis murdered Daniel to get him out of the way, and burned down the house for the insurance money. According to police documents, the house was insured for about \$175,000.

Leubner said his children told him Davis had her eye on a new house, and knew that Daniel would not want to leave his home on the lake. Daniel didn't fit into Davis' new life, he said.

"She did this for every reason but what she said," Leubner said.

He said Davis tried to poison their kids' minds against him, and did everything she could to keep him out of their lives. Fearing the children were being neglected, Leubner contacted state and county child protection officials, but was told the children were not being mistreated.

Leubner fought in Family Court to visit his children more often. But Peter Corning, who oversaw the Family Court proceedings, said the children could not be forced to spend more time with their father.

From the time Leubner and Davis divorced in 1994, Leubner feared for Daniel's life, he said. But the government and the courts failed to help protect his children, he said. The system also failed by allowing his ex-wife to plead guilty to manslaughter instead of forcing a trial and convicting her of first-degree murder, he said.

It is a failure, Leubner said, that continues. After Davis' arrest, Corning granted her custody of the oldest daughter, Melissa. Davis is free on \$50,000 bail, and has come to Leubner's Mary Street house to pick up Kimberly for visitation. Leubner said he fears for his children's safety.

"It's taken every bit of hope I've ever had," Leubner said. "There's no more hope left for me. You can't even imagine where life goes from here."

The couple fears the court system will fail Daniel once again by imposing a light sentence based on Davis' claims.

Leubner said Daniel was a good boy, but was rarely disciplined. If given the opportunity, Daniel would learn to speak in complete sentences, he said. Leubner and his son read books together, and Leubner tried to teach Daniel to ride a bicycle.

"I was trying to establish a normal environment here," Leubner said.

Tears welled in Leubner's eyes when he spoke about the time he will miss with his son. Daniel didn't visit his father the last Christmas he was alive, and those gifts still wait for a child who will never come to unwrap them.

"I still have his toys here," Leubner said. "They're upstairs. All together. I don't have the heart to do anything with them."

*For questions or comments about this story, contact Region Editor Daniel Lovell at 253-5311, Ext. 231.*

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## Archived NewsFront Story

This story was published **04/25/2000** by the News desk.

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# Taking more time: Decision to wait on coverage of confession tough call

Alan Vaughn  
Managing Editor

The hardest choice in journalism is deciding not to publish.

A few weeks ago, when we first discovered the contents of Michelle Davis' confession to Sheriff's Department investigators and her allegations of rape prior to setting the fire that killed her son, it would have been easy to have a story in the paper the next day. We had more than 400 pages of verbatim questions and answers from transcripts of the closed-door hearings, including testimony from Davis herself.

The subject was inarguably newsworthy and there was plenty of time before deadline.

But we waited, a rarity for this or any newspaper. In the meantime, competing newspapers published the contents of the confession, as did television stations and The Associated Press wire. We could have had a story ready to run that day, or the next day.

So why aren't you reading about this until now?

Because Davis' confession was not the entire story, and it needed to be placed in a context with the testimony of the psychologists who examined her and the defense and prosecution witnesses who weighed in on the legitimacy of her confession, as well as the investigators, defense attorney and testimony of Davis herself. Plus, the truth of Davis' rape allegation was -- and still is -- in doubt.

So we held the story until we could place the confession in context and report on the nuances contained therein. That reporting takes time. No important facts are left out; the truth is unvarnished.

We felt the potential to damage the reputation of a dead 13-year-old boy, without having enough evidence to properly weigh the truth of the allegations, outweighed the need to print the story as soon as possible -- even though we knew we'd likely get beat on a big story, the worst of punishments for competitive reporters.

Did we do the right thing? I think so, but the issue isn't black and white; little in journalism ever is. Perhaps it would have been better to tell the story in pieces as it went along. There certainly was nothing journalistically unethical or improper about that.

If we erred, it probably was on the side of thinking too much about the effects of the stories on the family and the community. The stories are sensitive and complex; we think taking more time allowed us to tell them better, and with more understanding.

*Managing Editor Alan Vaughn can be reached at 253-5311, Ext. 230, or via e-mail*

## Archived NewsFront Story

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### Witness: Abuse traumatized mother

Expert says rapes would have prevented a voluntary admission by Michelle Davis

Daniel Lovell  
Region Editor

Michelle Davis' mental and emotional breakdown before she set fire to her home and killed her son could lead to a lighter sentence.

Thursday, County Judge Peter Corning could sentence Davis under a section of the law meant for victims of domestic violence based on her claims she was abused by her son, defense attorney David Elkovitch said. And while that law requires a hearing to determine whether Davis was a victim of domestic violence, Elkovitch said Corning will not likely hold a hearing.

"It gives him an alternative based on the facts of the case," Elkovitch said. "The statute calls for a hearing, but at the pre-trial suppression hearing, I believe the facts were brought out that would not require another hearing."

Under the sentencing scheme Corning is considering, Davis could be released from prison in three years. Under normal sentencing guidelines, Davis could serve no less than five years in prison.

Davis, who pleaded guilty to manslaughter and arson last month, told police her 13-year-old son Daniel Leubner raped her the night she killed him. The trauma that followed the alleged rape spun Davis into a breakdown that kept her from willingly confessing the crime to police or understanding her rights, according to defense experts.

Davis' lawyers called on Ann Burgess, a University of Pennsylvania professor and expert on rape trauma syndrome, to testify at pre-trial hearings to determine whether a jury would see the signed confession Davis gave police.

A jury will never hear the case against Davis. Charged with first- and second-degree murder counts, Davis pleaded guilty March 14.

While she admitted to actions that would constitute second-degree murder, District Attorney James Vargason and Corning decided Davis was under extreme emotional distress when she lighted the fire, and allowed her to plead guilty to charges of first-degree manslaughter and second-degree arson.

#### **Rights**

According to Burgess' testimony at the suppression hearings, Davis was in a "traumatized mental state" and would have been unable to voluntarily confess to police Sept. 22 at the State Police barracks in Canandaigua. Davis was severely depressed, had trouble sleeping and blocked out much of her memory about the alleged rape and the fire until nightmares and flashbacks began to torment her several days after the fire, Burgess testified.

Nor would Davis be able to willingly waive her rights to remain silent or to have an attorney present during questioning, Burgess said.

She was in a mental state where she couldn't understand the consequences of her actions, Burgess said.

Defense attorneys Elkovitch and James Baier backed up Burgess' testimony with that of Ithaca psychiatrist Jay Jackman, who diagnosed Davis with post-traumatic stress disorder. He testified Davis could not have given a voluntary statement or knowingly waived her rights.

Vargason went after Burgess' credibility. Under cross-examination, Burgess said the fire and Davis' arrest on murder charges alone would likely cause many of the same symptoms found in rape trauma syndrome. Only the rape itself, along with flashbacks and nightmares about the rape, distinguished rape trauma syndrome from post-traumatic stress disorder, which Davis could have suffered as a result of the fire and her son's death, she said.

The loss of her job and breakup of her marriage also would have contributed to Davis' mental state, Burgess said.

"She did have nightmares of the fire," Burgess testified. "She had nightmares of Daniel. She had several. She has the flashbacks to Daniel being on top of her, of the whole rape scene itself and that then throws her into what do you call this? All of her feelings about a son raping a mother, which are very, very burdensome and troublesome for anyone to have to deal with, let alone go through it."

Elkovitch said if the case had gone to trial, he would have called teachers, family friends and others who knew Daniel to testify that the boy was violent and preoccupied with sex.

### **Trauma**

Police and prosecutors dispute Davis was ever raped.

Sheriff's investigators examined Davis for scratches and bruises, but found none. Though Davis told investigators Daniel also had made sexual advances toward her daughters, both girls denied it. And Davis never mentioned her son raped her until she confessed to killing him.

To refute Burgess' testimony, Vargason called Michael Lynch, a psychiatrist from Rochester, who testified he found no evidence of mental illness or retardation that would keep Davis from waiving her rights or giving a statement. He said throughout the taped police interrogation from Sept. 21 that Davis showed several signs that led him to believe she started the fire.

"I think she was very anxious to impress the examiners with what a handful her son was and how difficult it was to handle him and her efforts to rescue him from the fire," he said. "She seemed to dwell on some aspects ... more so than, than I might expect from someone else who wasn't guilty, hadn't set the fire."

But Carole Kimmell, program coordinator for Mercy Medical Center's Sexual Assault Forensic Examiner Program in Baltimore, Md., said no one is more knowledgeable about rape trauma syndrome than Burgess. Burgess did much of the research that led to rape trauma syndrome's acceptance as a clinical diagnosis, and would not likely give a false diagnosis, she said.

"She is like the guru on this," Kimmell said. "She has worked closely with not only victims of rape but perpetrators as well."

Kimmell said women often don't report rapes. Only 37 percent of rape victims report the assault to police, she said.

"There's a greater stigma when it's someone you know," Kimmell said. "Especially a family member, or your own child."

But rape trauma syndrome and post-traumatic stress disorder are not enough to keep a confession from a jury, said Christopher Slobogin, professor of law and psychiatry at the University of Florida.

Davis should have been able to understand her rights, Slobogin said. The so-called Miranda warnings, outlining a suspect's right to remain silent and right to have an attorney present during questioning, were given to Davis on a 10-question form, filled with questions about whether she understood her rights. She wrote coherent answers to the questions and signed the form.

"Unless the person doesn't understand the warnings, or the person is coerced, the statement is admissible, even if the person is mentally ill or confused," Slobogin said. "And the Supreme Court is very clear on this. Those symptoms don't have anything to do with abilities to understand rights."

### **Stress**

Vargason said last week he did not allow a conviction on lesser charges because of Davis' claims that she was raped.

"I am not aware of any evidence to support her allegations," Vargason said. "Her claims of alleged sexual abuse at the hands of this 13-year-old boy did not factor into my decision concerning the disposition. There were, however, other legal considerations that did; namely the fact that the court was considering the defendant's application to suppress the confession and the fact that the defendant was going to be allowed to introduce so-called expert testimony which, in my judgment, would have amounted to excusing her actions."

Davis lost her job at Met Life months before the fire, and had recently filed for bankruptcy, sheriff's investigators said. Her husband, Robert Davis, moved out of the house about a week before the fire. At a trial, those circumstances would have gone to a jury as mitigating factors to consider when reaching a verdict.

During the suppression hearings, Jackman testified Davis was under severe strain every day. Her son's life had to be strongly regimented to keep him from feeling uncomfortable and becoming violent, Jackman said. He testified many of the people he spoke with saw the abuse Davis took at the hands of her son.

"She was perceived as an extraordinarily caring mother dealing with a disturbed child," Jackman said. "They were all aware of the violence that had occurred in which the son had assaulted Michelle, and several of them spoke at some length about that."

Vargason said that testimony would have gone to the jury, which would have been instructed to take the alleged abuse into account.

"Under the law and facts of this case, the court would have been required to submit the affirmative defense to the jury," Vargason said. "I think there was certainly evidence presented, unrelated to the outrageous claims of sexual abuse, that the defendant was

under some type of disturbance."

Elkovitch said he has not decided what sentence he will ask Corning to impose Thursday. But he hopes the judge takes into account the pain Davis went through while Daniel was alive, and the pain she felt after his death.

"I have support in letters on her behalf," Elkovitch said. "People who don't even know her but have autistic children and know what it's like."

*For questions or comments about this story, contact Region Editor Daniel Lovell at 253-5311, Ext. 231.*

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April 27, 2000 -- Davis, convicted of first-degree manslaughter and second-degree arson. She faces up to 25 years in prison when sentenced April 27.

*Breakout: Thursday*

A defense witness testifies that sheriff's investigators may have used coercive methods to force a confession from Davis.

Friday

Convicted of first-degree murder and second-degree arson, Davis is scheduled to be sentenced Thursday.

## Archived NewsFront Story

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### Experts testified cops pressured mom to confess

Michelle Davis said she never confessed to murder; defense claims it was an accident

Daniel Lovell  
Region Editor

Sheriff's investigators may have used coercive tactics to force Michelle Davis into confessing to a crime she didn't commit, an expert for her defense team testified.

During closed-door hearings to determine whether a jury would hear Davis' confession to police, defense attorneys David Elkovitch and James Baier called Richard A. Leo, professor of criminology and psychology at the University of California at Irvine. Before County Judge Peter Corning ruled on the motion to exclude the confession from evidence, Davis pleaded guilty to first-degree manslaughter and second-degree arson.

She was scheduled to be sentenced this morning for setting fire to her West Lake Road home and killing her 13-year-old autistic son, Daniel Leubner.

Davis' guilty plea put an end to a legal battle to keep her confession from reaching a jury. But according to a Florida professor of psychology and the law, it was a battle that need not have been fought.

Leo wrote his doctoral dissertation on police interrogation, which he studied by participating in police training seminars and witnessing interrogations at the Oakland, Calif., police department. He specializes in coerced and false confessions. According to his testimony, police seek confessions and often use coercive interrogation techniques to get them -- sometimes obtaining confessions from innocent people.

Police often convince suspects that evidence against them is overwhelming, and they will be convicted, Leo said. Police make suspects believe only confessing to the crime will help overcome a hopeless situation, and that the court system and the public will be more sympathetic to someone who accepts responsibility for a crime, Leo testified.

Cayuga County Sheriff's Investigator Stephen McLoud used those tactics when he interrogated Davis Sept. 21 -- tactics that could have caused Davis to confess to a crime she didn't commit, Leo said.

McLoud offered Davis several separate scenarios, saying maybe Davis killed Daniel to protect her other children, or that she was sleepwalking, or that the fire was an accident.

"In exchange for what he wants to hear, he keeps appealing to getting the truth, and even though she makes numerous denials, he doesn't take that to be the truth," Leo testified. "And the theme he develops, which I think is coercive, is the suggestion that maybe it was just an accident, that she didn't mean to do this and contrasting that with intentionally setting the fire. The accident scenario technique is meant to convince a

suspect if they admit to it, their culpability will be reduced."

"In this interrogation, he talks about people are going to see you as a monster," Leo said. "The clear implication is that if you did this intentionally, if you're going to be seen as a monster, you're going to be treated more harshly by the criminal justice system as well as by the community."

Elkovitch said Davis, in a fragile mental state, took what seemed to be the better option by telling police she killed her son.

According to Christopher Slobogin, professor of law and psychiatry at the University of Florida, the methods used in the interrogation, called the "pretended friend" method, are not coercive. Though that method may trick someone into confessing to a crime, it does not force a confession.

Offering accident scenarios to a suspect as a reason for a crime also is acceptable, he said.

"If a guy confesses because he's stupid, that's not forcing them into it, that's tricking them," Slobogin said. "That is not generally seen as coercive. That doesn't lead an innocent person to confess."

Slobogin has written several published articles about using psychological evaluations in court and mental illness issues in criminal law. He co-authored "Psychological Evaluations for the Court," considered the definitive text in that area.

If Davis' confession was not coerced, it should have been allowed to go before a jury, Slobogin said.

### **Not guilty**

During the hearings, witnesses claimed Davis did not intentionally light the fire to kill her son.

Ann Burgess, an expert on rape trauma syndrome from the University of Pennsylvania, said Davis was performing an Indian prayer ritual, and used candles and herbs to cleanse her home of evil. Davis went to bed and left the candles burning, with the intention of blowing them out a few hours later, Burgess said.

Davis claims her son raped her that night. The ritual was meant to give Davis stability, Burgess said, and give her strength to handle Daniel's autism.

But in her confession to police, Davis claims her trauma and fear that Daniel would rape her daughters, 15-year-old Melissa and 9-year-old Kimberly, forced her to kill him.

After four hours of interrogation Sept. 21, Davis was taken early the next morning to the State Police barracks in Canandaigua, and given a polygraph examination. After that interview, Davis said, she felt trapped, and told sheriff's investigators anything they wanted to hear so she could leave.

"They could've told me that I was green and the sky was pink and I would have agreed with them," Davis testified. "I just wanted to go to my husband and I wanted it to stop, and it had been too long for me."

Sheriff's Investigator Joseph Weeks wrote out the confession, and asked Davis to read it. According to her testimony, she did not read the statement, because she felt sick. She signed the confession.

"They told me I could see my husband -- we were done with this," she said. "All I wanted was to get to him so I just signed it, a piece of paper that he wrote to get to my

husband."

Investigators drove Davis back to the Sheriff's Department in Sennett, where she signed another statement. Again, she testified, she never read what was on the paper.

"In a 24-hour period, I had spent 12 to 13 hours with these gentlemen and I hadn't even slept or eaten," she said. "I lost my son and my home, my normal life, I had confrontations with their father, I just -- it was just I was trying to get something back on track. I was trying to find a house for my girls or an apartment. I just wanted the whole thing to be over and I signed things just to get home."

Investigators dispute Davis' story. They say she willingly confessed, and Weeks wrote down what she said.

Under questioning from District Attorney James Vargason, Leo admitted the interrogation tactics McLoud used when interviewing Davis are widely used and accepted in courts. Those tactics also regularly elicit true confessions more often than false confessions, Leo said.

Leo also admitted his study, on which he based part of his testimony, was based on 60 cases over 23 years. Only 34 of those cases contained confessions proven to be false.

Most of those proved to have been coerced dealt with extreme situations: one woman was questioned for 23 straight hours, a woman was told she would get the electric chair if she didn't confess to the crime, a woman with a fear of heights was taken to the crime scene and made to walk along a 350-foot-high bluff. Many included in Leo's study were mentally retarded.

Leo said he found no evidence that such extreme tactics were used. There were no overt threats made, and Davis is not mentally handicapped.

McLoud said in nine years as an investigator, he has never been accused of coercing a witness of giving a statement. Nor has any confession he's taken ever been proven false.

"Not only myself but our staff here, I feel that we are trained and we do the job to the best of our ability," McLoud said.

Davis faces a maximum of 25 years in state prison at her sentencing, scheduled for this morning in Cayuga County Court.

*For questions or comments about this story, contact Region Editor Daniel Lovell at 253-5311, Ext. 231.*

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Archived NewsFront Story

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## Judge delays mom's fate

Defense seeks hearing to determine if Jenna's Law applies to Michelle Davis

Daniel Lovell  
Region Editor

AUBURN -- Michelle Davis was allowed to plead guilty, but the son she killed will be put on trial.

Based on a request by defense lawyer David Elkovitch, County Judge Peter Corning put off Davis' sentencing Thursday and said he will hold a hearing to determine whether Davis was a victim of domestic violence, and therefore eligible to receive a lighter prison sentence.

Davis, 37, formerly of Fleming, pleaded guilty in March to counts of first-degree manslaughter and second-degree arson, admitting she set fire to her home on West Lake Road in Fleming and killed her 13-year-old autistic son Sept. 4. Davis claims her son, Daniel Leubner, raped her -- a trauma that forced her to kill him.

Corning said the hearing could be held as early as next week, or as late as June.

At the upcoming hearing, Elkovitch will likely call witnesses who testified during closed hearings in March. Those hearings were held to determine whether a confession Davis gave police would make it to a jury.

A jury never heard the case against Davis. Though she admitted to actions that would constitute second-degree murder, Corning and District Attorney James Vargason found Davis was under extreme emotional distress when she set the fire and allowed her to plead guilty to lesser charges.

Elkovitch said his witnesses will show Daniel abused his mother.

Daniel's father, Leroy Leubner, said Corning's decision to hold a hearing is a victory for his family. He believes Davis is lying about the rape and physical abuse, and said a hearing will expose his ex-wife's lies.

"This is a good thing," Leubner said. "We'll actually put these claims on trial in open court."

In making the request, Elkovitch used a clause contained in Jenna's Law, a state statute passed in 1998 that ended parole for first-time violent felony offenders, and provided longer prison sentences. The clause allows parole to victims of domestic abuse who commit violent felonies.

Davis, convicted of a violent felony, would face between five and 25 years in prison under Jenna's Law, without the possibility of parole.

But if her lawyers prove Daniel beat or sexually abused her, she could be released from prison in as little as three years.

Vargason said he plans to fight for the tougher sentencing guidelines at the upcoming hearing.

"It is my position that whatever the alleged disturbance was, it did not justify her

actions," Vargason said. "My plan is to rebut the allegations she's making toward this young boy."

Elkovitch said Davis' claims are believable and were backed up by testimony during the closed hearings in March. Ann Burgess, a University of Pennsylvania professor, testified Davis was suffering from rape trauma syndrome, brought on by the alleged rape at her son's hands.

"I believe her testimony," Elkovitch said. "I saw signs of what she went through, but it is not up to me. It doesn't matter whether I believe it. This is entirely up to the court."

### **Michelle's Law**

Attorney Spiros Tsimbinos, editor of *New York Criminal Law News*, wrote a book called "New York's Jenna's Law" when the law was passed in 1998. He said Davis is likely the first defendant to invoke the "battered spouse" exception to Jenna's Law.

That clause was added at the last minute in an effort to pass the bill into law, and is worded in such broad terms that it is difficult to know exactly what circumstances fit the statute, Tsimbinos said.

To prove her case, Davis could take the stand and face cross-examination, Tsimbinos said. Defense attorneys could call witnesses on her behalf, but Corning will likely rule based on whether he believes Davis' story, Tsimbinos said.

"Her word could be good enough," he said. "Frankly, if the judge believes her word, that would be sufficient. It would have to be established that the abuse caused her to commit the crime."

Proving that could be difficult, according to Steve Garvey, professor of substantive criminal law at Cornell University. Davis didn't kill her son in the heat of the moment, nor have witnesses established there was a pattern of abuse.

If Davis seeks to be sentenced under the more lenient guidelines based solely on her allegations that she was raped, and if evidence shows that she planned the fire in advance, she will likely be unsuccessful in her attempt, he said.

"Suppose I get hit twice, I think about it for a little while and then I kill you," he said. "It's a weird way for somebody to handle an abuser. This is not as sympathetic a case as others."

Vargason doubts Davis' allegations that her son raped her, and sheriff's investigators working the case found no evidence she was raped. Investigators did find evidence they believe shows Davis planned to kill her son hours before she lighted the fire.

"It seems to boil down to credibility, and who bears the burden of proof," Garvey said. "Simply saying it -- I would be skeptical."

Leubner said he hopes the hearing will bring out answers to questions he's had since his son died -- answers he wasn't allowed to hear when he was shut out of the hearings in March. That's more than he expected when he walked into court Thursday morning.

"I expected her to get a slap on the wrist, that's what I dreaded," Leubner said. "I was afraid they were going to throw Dan's life away."

*For questions or comments about this story, contact Region Editor Daniel Lovell at*

253-5311, Ext. 231.

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*Cutline:* 0428.A1.sec.jimcut

Michelle Davis was scheduled to be sentenced for her conviction on a first-degree manslaughter count Thursday morning in Cayuga County Court, but Judge Peter Corning delayed the sentencing pending a hearing on allegations her 13-year-old son abused her.

Archived NewsFront Story

This story was published **04/30/2000** by the **EditPage** desk.

## Jenna's Law; City Hall silence

### Our View

Jenna's Law, the much-heralded end to parole for violent felons, is being used in a unique way as part of Michelle Davis' defense during sentencing, a manner clearly not foreseen as part of the law.

Davis' defense will argue that she should be eligible for a lighter sentence, based on a "battered spouse" provision that allows parole if the felons are victims of domestic abuse. If Davis can be convicted under that exception, she could be released from prison in three years, as opposed to the minimum of five to 25 years she would otherwise serve.

But this measure was designed to include some leniency for battered women who struck back at abusive husbands or live-in boyfriends, not for mothers who kill their 13-year-old children in their sleep. Upon passage of the law, Gov. Pataki lauded it as containing some protection for abused wives, and clearly that was the legislative intent behind the provision.

Davis will be required to demonstrate that she was the victim of abuse at the hands of her son -- which she has previously claimed. But she will also likely have to face cross-examination on her assertions and other issues, including evidence that she may have planned the fire she set to kill her son.

It is unlikely many unintended cases will fall within the provisions of the law, but the language is also sufficiently vague that the possibility still exists that it more unintended criminals may seek to lessen their sentences with its safeguards.

### Don't ask, don't tell

Want to know how police feel about crime in the city? What state budget cuts could mean to the city? How about whether an intersection is safe?

Well, don't ask anyone who works for the city. According to an "unwritten" city policy supposedly recently re-imposed, city employees are only allowed to provide facts, no opinions. Want help understanding or analyzing that factual information a city employee was so graciously permitted to allow you access to? Sorry, just the facts, ma'am.

City officials argue that the city needs one spokesman -- the city manager -- to handle policy questions. In addition to the fact that policy shows remarkably little trust in city employees, the explanation makes little sense.

If you want to know about law enforcement, ask a police officer. If you want to know about decrepit properties, ask a code enforcement officer. As much as we may expect it, a city manager cannot be an expert on everything in a city. The better idea might be to ask questions of those who actually are the experts, and we think the city should be doing what it can to facilitate this rather than placing gag orders in the way.

This plan smells more of politicians seeking to funnel City Hall news through the

spin cycle than it does of any realistic need of the city, especially since interim City Manager Bruce Clifford says he did bring the issue up.

Funny this filter was not resurrected until after newspaper articles included information city politicians did not appreciate. We very much doubt the necessity of it existing at all.

Ironically, allowing city employees to talk freely with city residents and reporters would likely do more to show off what the city's doing well than this transparent attempt to permit only officially sanctioned communication.

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## Archived NewsFront Story

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### Case tallies hefty price

Fees for defending Michelle Davis likely to keep rising higher

Daniel Lovell  
Region Editor

It has cost taxpayers more than \$43,000 to defend Michelle Davis.

According to Lloyd Hoskins, administrator of the county's assigned counsel program, Davis' defense team has spent \$43,475.38. More than \$14,000 of that total was paid for by the state Capital Defenders office, which stepped in to handle Davis' defense within days of her Sept. 22 arrest.

That leaves county taxpayers to pick up \$29,150.62 for expert testimony and defense attorney fees. That cost represents more than 10 percent of the county's annual assigned counsel budget of about \$276,000, Hoskins said. And the costs are likely to rise significantly in the coming months.

Davis, 37, formerly of Fleming, pleaded guilty March 14 to charges of first-degree manslaughter and second-degree arson, admitting she set fire to her home at 6012 West Lake Road and killed her 13-year-old autistic son, Daniel Leubner.

District Attorney James Vargason said in September Davis could face the death penalty if convicted of first-degree murder charges filed against her. The Capital Defenders Office, which handles capital murder cases statewide, stepped in immediately, paying \$8,200 in fees to defense attorney David Elkovitch and more than \$6,000 in other costs. Since Dec. 3, 1999, when Vargason decided he would not seek the death penalty, county taxpayers have picked up the tab for Davis' defense.

The county sets a cap of \$1,200 in defending felony cases, Hoskins said. But County Judge Peter Corning can waive that cap and approve higher spending.

Davis' defense spending tops all local cases for at least five years and probably much longer, Hoskins said.

"This by far has got to be the most expensive case as far as professional services, but we're certainly going to provide Mr. Elkovitch and (defense attorney James) Baier with the services they need," he said.

The lion's share of the costs are for three expert witnesses, who were called to testify at pre-trial hearings in March. At those hearings, Elkovitch and Baier fought to keep a jury from hearing the confession Davis gave to police in late September. Corning never ruled on whether the confession would be allowed at trial; Davis pleaded guilty when the hearings ended.

The highest bill came from Richard Leo, a California expert on police interrogations and false confessions, who testified Cayuga County sheriff's investigators used coercive tactics and forced Davis to confess to killing her son. Leo billed the county \$100 per hour for 72 hours of work, and \$960 in travel and other costs. His total bill came to \$8,240.

Ann Burgess, a University of Pennsylvania professor and expert on rape trauma syndrome, has so far billed the county \$3,769, but has yet to submit her final bill, Hoskins said. At a cost of \$100 an hour, Burgess diagnosed Davis with rape trauma syndrome, and testified Davis could not willingly waive her rights to remain silent or have an attorney present during police questioning.

Jay Jackman, a psychiatrist from Ithaca, backed up Burgess' testimony. From his examination of Davis, Jackman testified she suffered an acute stress disorder and unable to give a voluntary statement to police. Jackman billed the county \$4,723 for his work, charging \$150 each hour.

County taxpayers will also pick up a \$6,500 bill from expert witness Michael Lynch, a psychiatrist from Buffalo who testified for the prosecution. Lynch had the most expensive hourly rate of anyone who has worked on the case, charging \$280 an hour.

Corning's decision Thursday to hold hearings to determine whether Davis' 13-year-old son beat her will likely raise the cost to county taxpayers. Elkovitch is expected to call his expert witnesses back to court.

Hoskins said the defense costs will put a pinch on the county's assigned council budget. He worries the program will run out of money long before the end of the year. In 1999, Hoskins was forced to go back to the county Legislature for \$10,000 in additional funding.

Davis' arrest in September came after Hoskins worked out the 2000 budget.

Hoskins said the Davis case is the most expensive assigned counsel case since that of Debra Marks, who was convicted in February 1994 of the June 1993 murder of her mildly retarded sister, Donna.

A jury found Marks guilty of two counts of second-degree murder, one count of first-degree robbery and one count of second-degree forgery. She is serving 25 years to life in state prison.

"I believe the total was pretty close to \$15,000," Hoskins said. "So this is the most expensive I've seen."

*For questions or comments about this story, contact Region Editor Daniel Lovell at 253-5311, Ext. 231.*

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*Breakout:* The county will pick up bills from expert witnesses:

Ann Burgess \$3,769

Jay Jackman \$4,723

Richard Leo \$8,240

Michael Lynch \$6,580

Archived NewsFront Story

This story was published **05/03/2000** by the **EditPage** desk.

## Justice should treat all alike

### Our View

The bill to defend Michelle Davis will cost county taxpayers a spot of money -- about \$30,000 so far and counting, or more than 10 percent of the county budget to represent all defendants who can't afford attorneys.

While we shouldn't be happy having to pay it, we should do so because it's necessary.

Far from being money wasted, the underfunded assigned counsel program, which pays attorneys to represent poor people charged with crimes, is an essential safeguard to ensure the comparatively well-funded police and prosecutors can make their case. While politicians routinely campaign on "get tough on crime" slogans, rare is the politician who will stump on increasing the budget to defend those who can't afford lawyers.

As a result, the justice system is stacked in favor of prosecution over poor defendants. Locally, the entire \$276,000 budget to pay for lawyers for the poor is less than the resources devoted to prosecuting crime. Lawyers assigned cases under the program get \$40 an hour for in-court work and \$25 for out-of-court work -- not bad wages for most professions, but also well below what lawyers would earn if working for private clients for the same amount of time. That pushes many able and experienced attorneys out of the program. The fees are set by the state Legislature, which has shied away from any attempt in more than a decade to increase them.

Just as politics should not hinder aggressive prosecutors and police doing their jobs to the best of their abilities or from having enough resources to do so, neither should state politicians' fears of public backlash prevent them from ensuring a capable defense to the poor.

Some would argue that spending money on these criminals just takes money out of the pockets of law-abiding, tax-paying residents who don't run afoul of the law, and it's never a popular idea to give more money to lawyers. That misses the point.

True, many of the people represented by publicly funded lawyers are guilty. But the measure is not how many guilty people are represented at taxpayer expense, it's whether the justice system treats rich and poor alike. It's pretty easy to get a fair trial if you have thousands to spend; it's more difficult if your lawyer is losing money for every hour spent on your case. If we're not going to pay for an adequate defense for all people charged with crimes, why bother with a trial at all? Just arrest 'em and lock 'em up. It's much more efficient, as countries like China or Afghanistan can attest to.

So it's to the credit of Cayuga County that it has not balked at Davis' legal bills. She has admitted to killing her son, and will be sentenced this spring or summer. Whether you agree with her defense arguments or buy the prosecutors' version of events, in this case the system worked as it should. Opposing sides with similar resources met in court.

The result may not be perfect, but it's the best system anyone's come up with yet.  
It's up to the lawmakers to keep the system fair for everyone.

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## Archived NewsFront Story

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### Hearing for mom in works

Judge sets date for Michelle Davis during closed session

Darrin Youker  
Staff Writer

AUBURN -- Michelle Davis will go back to court June 6 for hearings to determine if she was a victim of domestic violence and eligible for a lighter sentence.

Davis, who admitted to setting fire to her Fleming home in September and killing her 13-year-old son, Daniel Leubner, has claimed that her son physically and sexually abused her before his death. She pleaded guilty to first-degree manslaughter and second-degree arson in March.

The date for the hearing was set Thursday during a closed conference to determine procedures for the hearing, said Davis' attorney, David Elkovitch.

Davis' allegations of rape and sexual abuse came out during closed-door hearings in March.

A jury never heard the case against Davis. Though she admitted to actions that would constitute second-degree murder, County Judge Peter Corning found Davis was under extreme emotional distress when she set the fire and allowed her to plead guilty to lesser charges.

In 1998, Gov. George Pataki signed Jenna's Law, which ended parole for first-time violent felony offenders. But a clause in that law allows victims of domestic abuse who commit violent felonies the possibility of parole. Elkovitch requested that clause be taken into consideration at a court appearance last week.

Expert testimony will show Davis was a victim of domestic abuse, Elkovitch said.

Witnesses who testified in the March hearings may be called again for the June 6 hearing and additional witnesses may present testimony, District Attorney James Vargason said.

"It would not be unexpected that additional witnesses would be called," Vargason said.

Daniel's father, Leroy Leubner, does not believe his son was capable of raping his mother and said he is welcoming the opportunity to dispute those claims in court.

"Up to this point she has been portrayed as the victim," Leubner said. "This will expose the truth in the situation."

*For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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## Archived NewsFront Story

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### Reps recoil at cost of case

Michelle Davis tab leads county officials to check her finances

Darrin Youker  
Staff Writer

AUBURN -- County lawmakers want to offset some of the high costs of defending Michelle Davis in court.

The county is considering seeking judgment against Davis' Fleming property to see if her assets could pay for the more than \$30,000 her lawyers have spent so far.

In March, Davis transferred her portion of her 6012 West Lake Road property to her parents, causing some local politicians to raise concerns that Davis had assets, County Attorney Thomas Stopyra said.

"That is what got people asking questions," Stopyra said. "We can't say she had money because she transferred property to her parents. If she had sold it, she would have had liquid assets."

The property was assessed at \$131,000 before the fire. It is now worth \$43,000.

Though he is still researching the issue, Stopyra said the possibility of recovering money is not promising.

Davis' defense bills through the county's assigned counsel program include payments to expert witnesses who testified that Davis' confession was coerced and that she suffered from rape trauma syndrome.

Davis admitted to killing her 13-year-old son, Daniel Leubner, by burning down her house in September. She pleaded guilty to manslaughter and arson in March.

The county Judicial and Public Safety committee oversees the budget of the assigned counsel program and committee Chairman Herb Marshall is wondering why the county is picking up the tab for witnesses who testified during closed-door hearings.

"We had one come in and testify she was dancing around like an Indian and knocked a candle over," Marshall said. "Why do we need to pay \$40,000 for that kind of foolishness?"

Marshall said the county needs to be concerned about costs surrounding the case because of the potential impact it could have on the assigned counsel program's budget. The county has discussed replacing the assigned counsel program with a full-time public defender.

To decide whether Davis qualified for the assigned counsel program, Lloyd Hoskins, administrator of the program, and County Judge Peter Corning considered her assets, job status and the seriousness of the crime she was accused of, Hoskins said.

Davis was initially charged with first-degree murder, three counts of second-degree murder and one count of second-degree arson, but pleaded guilty to second-degree arson and first-degree manslaughter.

"It was revealed she has assets," Hoskins said. "We looked at these and

employment status and we decided on an assigned counsel."

State law sets a cap on assigned counsel spending for felony cases at \$1,200 but a judge has the authority to authorize higher spending, Hoskins said.

Hoskins said he can understand concerns about the cost of defending Davis, and would not want to see costs spiral out of control and set a precedent for other cases. But defense attorneys should have the same resources as Cayuga County District Attorney James Vargason, he said.

"We need to afford our defense attorneys the same as Mr. Vargason to help level the playing field," Hoskins said. "These experts came with judicial approval."

*For questions or comments about this story contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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## Archived NewsFront Story

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### Davis lawyer's paycheck in limbo

County officials hold \$2,600 while checking Fleming house transfer

Darrin Youker  
Staff Writer

AUBURN -- The county is looking to withhold payments for Michelle Davis' defense.

A \$2,600 payment to defense attorney David Elkovitch was pulled from a routine bill payment resolution by the county Ways and Means Committee Monday night as officials wonder if Davis can afford to pay for her own defense.

Officials question whether the county should pay for Davis' legal defense when she transferred ownership of her lakefront Fleming home to her parents. Elkovitch legally oversaw the property transfer.

"People who own homes on the lake are not normally eligible for this program," said Herb Marshall, R-Port Byron.

Taxpayers pay for Davis' legal defense under the county's assigned counsel program because it was previously determined she could not afford an attorney.

The payment will be withheld temporarily until Lloyd Hoskins, administrator of the assigned counsel program, determines if Davis is indeed eligible for the program after the property transfer, Marshall said.

Marshall made the initial motion to pull the payment. Earlier this month, Marshall asked that the county look into the property transfer and determine if Davis has assets.

The county also is looking into the possibility of seeking a judgment against the property to offset the cost of defending Davis.

Davis admitted to killing her 13-year-old son, Daniel Leubner, by burning down her house in September. She pleaded guilty to manslaughter and arson charges in March.

Taxpayers have paid more than \$30,000 for her defense.

Hoskins previously said when Davis was first charged in September, her employment status before the fire, assets and nature of the crime were all taken into consideration before she was OK'd for the assigned counsel program.

*For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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## Archived NewsFront Story

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### Judge: Davis' hearing canceled

Court ruling stops play by defense to introduce claims of sexual abuse

Darrin Youker  
Staff Writer

AUBURN -- Michelle Davis will not be granted the opportunity to receive a lighter prison sentence.

Defense attorney David Elkovitch expected to call witnesses Tuesday to testify Davis was sexually abused by the 13-year-old son she admitted to killing and therefore eligible for an exemption to a state law that eliminates parole for violent felony offenders. But Cayuga County Judge Peter Corning canceled the hearing Thursday.

Evidence supporting Davis' allegations of sexual abuse and rape at the hands of her son, Daniel Leubner, already came up during closed court hearings in March.

"I have heard the evidence and to reiterate that would serve no purpose," Corning said. "There is no need for further hearings."

Davis' sentencing is scheduled for 9:30 a.m. June 8. She faces five to 25 years in state prison.

Elkovitch refused comment on Corning's ruling.

Davis pleaded guilty in March to reduced charges of first-degree manslaughter and second-degree arson.

As part of the plea agreement, Davis was not allowed to claim she was raped, District Attorney James Vargason said.

But Elkovitch asked Corning to grant a hearing to determine if Davis was sexually abused and raped by her son, and therefore eligible for a lighter sentence. Vargason said he does not believe Davis was raped.

"I reiterate that I did not believe her claim of rape, and that I would rather try the case than participate in any proceeding, or allow any disposition, that attempted to portray this little boy as a rapist," Vargason wrote in a May 4 letter to Corning.

Elkovitch said he was prepared to call witnesses, including experts who testified in the March hearings, who would say Daniel occasionally acted out during school both violently and sexually.

"He made sexual encounters in the classroom, asking students to take their clothes off," Elkovitch said.

Vargason said he was prepared to rebut all of Elkovitch's claims and said he pored through thousands of pages of evidence -- none of which insinuated any kind of sexual encounters.

"There was an isolated incident where Daniel acted aggressively in school but it was not a sexual incident," Vargason said. "The fact that he may have acted out in some physically aggressive nature doesn't make him any different than any other boy."

Elkovitch said he had planned to call expert witnesses who would claim Davis was

suffering from rape trauma syndrome when she killed her son.

Davis also would take the stand to testify about the rape, Elkovitch said.

It is unfair to paint the boy as a rapist when he cannot defend himself, Vargason said.

"(Davis) is willing to exploit any avenue to save herself from a tougher sentence," Vargason said.

Vargason said he was pleased Corning ruled to cancel the hearing and enforce the plea agreement.

Leroy Leubner, Daniel's father, said he has mixed emotions about Corning's ruling.

"I wanted to see her on the stand," Leubner said. "I wanted to see her experts in open court and see how contrived this story is."

Vargason has declined to say what his sentencing recommendation will be. Leubner, however, would like to see Davis never again be a free woman.

"She should never breathe free air again," Leubner said. "Danny won't."

*For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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## Archived NewsFront Story

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### Judge draws doubts

Family Court Experts, autistic boy's father question rulings after fatal fire

Daniel Lovell  
Region Editor

AUBURN -- A court order holds Leroy Leubner in his house every Friday evening while his 11-year-old daughter Kimmy climbs into a car with a convicted killer.

He stands in the window and watches Kimmy ride away with his ex-wife, Michelle Davis, who admitted she killed her 13-year-old autistic son, Daniel Leubner, and pleaded guilty to arson and manslaughter charges. On orders from Cayuga County Judge Peter Corning, Davis' older daughter, Melissa, still lives with her mother. Davis, who remains free on bail, has weekend visitation with Kimmy.

Corning's most recent rulings follow years of custody and visitation battles Leubner and Davis fought before him in Cayuga County Family Court.

In one of those battles, Corning refused to require the children visit with their father, a decision experts say ignored the law.

Leubner and Davis divorced in 1994 after 12 years of marriage. Within two years, they stood before Corning in Family Court, fighting over whether the children should have been allowed to refuse visits with their father.

Leubner asked Corning to enforce the agreed-upon three-hour weekly visitation periods. Although Kimmy would always visit, the older children often decided to stay home with their mother, he said.

Corning refused. He told Leubner and Davis that when he was a young lawyer, he handled a similar case, in which the judge forced visitation. Corning said the couple decided to meet in front of the courthouse to follow the judge's order.

"I was there for that meeting," Corning said in court in 1996. "And this lady is coming down Court Street with two kids screaming and she's got them by the nape of the neck and they are kicking and they are fighting. I said I could never do that and so I vowed that I would never order that scenario to take place because I think it's unproductive."

#### **Bound by law**

A higher court would likely have reversed Corning's decision, according to Martha Fineman, professor of family law at Cornell University. Daniel should have been granted time with both parents unless there was evidence Leubner abused his son, she said.

"The father should have access to the children," Fineman said. "If the child would be harmed by the visitation that would be different -- the child has a right to a continuing relationship with his father. That's not just a parent's right -- it is the child's right as well."

It was a right Corning denied when he refused to enforce visitation and allow Daniel -- a 10-year-old autistic child who couldn't speak in complete sentences -- to decide whether he would spend time with his father. In 1975, the state's highest court ruled custody and visitation should not be determined by children. That case, which set precedent in New York, dictates judges must enforce visitation.

Fineman said children can be easily led to hate one of their parents; Leubner claims his children didn't want to visit him because it displeased Davis.

Corning said Thursday the case he cited in the 1996 Family Court proceedings left an indelible mark in his mind -- a memory he has used in handling Family Court cases from the bench since 1980.

"When I have a child who is going to be traumatized by a forced transfer, then I'm not going to do it," he said. "If the Appellate Division wants to traumatize children, that's fine. They can disagree with me, but I'm right. I'll stand by my decision any time of the day."

Merril Sobie, family law professor at Pace Law School in Westchester County, said judges regularly allow teenagers to decide for themselves whether they will visit with their parents. But Corning's oath as a judge forces him to follow the law.

"With a kid 15 or 16, it's hard to enforce, but for the younger kids that's not so," Sobie said. "Judges are sworn to uphold the law outside their personal thought."

Leubner and Davis came back to court in 1998 to fight over their children. Leubner asked Corning to mandate counseling for his children, who rarely visited and were growing detached from him. Leubner told Corning he feared for his children's well-being, and wanted a counselor to step in. Again, Corning denied Leubner's request. It was the last time Leubner and Davis would fight over their son.

One year and 17 days later, Davis set fire to her house and killed Daniel.

### **Knowing the rules**

Leubner believes Daniel would be alive today if Corning had granted him custody. Leubner said he cared for his son, and struggled to be a part of his life.

As his wife's sentencing grows closer, Leubner fears Corning will fail Daniel again.

Leubner spends much of his time searching the Internet for laws governing Family Court and judges. He believes Corning should have awarded him custody of Daniel. But he blames himself for allowing Corning's rulings to go unquestioned. He believes he should have fought harder for visits with his son.

In many ways, Leubner's hands are now tied. His son is dead, and Corning will have the final say in how long Davis stays in prison. Though she was charged with first-degree murder, Corning and District Attorney James Vargason allowed Davis to plead guilty to manslaughter and arson. Instead of the death penalty, Davis faces a maximum of 25 years in state prison.

Friends and lawyers told Leubner to keep his mouth shut. They told him not to anger the judge.

He was told the justice system is fair and impartial. He doesn't believe that.

Corning's actions, Leubner said, have already allowed Davis to get away with murder.

Leubner dreads Fridays, when he sends Kimmy out the front door and into Davis'

car. He wonders if he'll see his daughter again.

"If Corning did what he was supposed to do in Family Court, Danny would be alive today," Leubner said. "He understands the whole thing and he allows it to happen. He orders it to happen."

*For questions or comments about this story, contact Region Editor Daniel Lovell at 253-5311, Ext. 231.*

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## Archived NewsFront Story

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### Mother awaits sentence

Former Fleming woman set to answer for son's killing in court tomorrow

Darrin Youker  
Staff Writer

AUBURN -- Michelle Davis will learn Thursday how much time she will spend in prison for killing her son.

The former Fleming woman faces five to 25 years in state prison on her guilty plea to charges of first-degree manslaughter and second-degree arson. She admitted to setting fire to her Fleming home and killing her 13-year-old autistic son, Daniel Leubner.

She is scheduled to appear for sentencing at 9:30 a.m. Thursday in County Court.

District Attorney James Vargason said he would not comment on his sentencing recommendation.

"It is inappropriate to announce my sentencing recommendations before I inform the court," Vargason said. "Canons of ethics requires me to inform the court first."

Defense attorney David Elkovitch did not return telephone calls seeking comment.

Elkovitch had asked Judge Peter Corning for a hearing to determine if Davis was eligible for a lighter sentence under state law after Davis claimed she was physically and sexually abused by her son.

But Corning ruled Davis' allegations came up during closed-door hearings in March, and further hearings would serve no purpose. He canceled the hearing.

Both the prosecution and defense will make sentencing arguments. Corning will make the final decision on her sentence.

Vargason said he has to take into consideration every aspect of the case when making sentencing recommendations, including the threat to public safety and the seriousness of the crime.

"This is extraordinarily serious," Vargason said. "It doesn't get much more serious."

*For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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Archived NewsFront Story

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## County holds on Davis bill

Legislature rep wants ruling from state AG saying property transfer OK

Darrin Youker  
Staff Writer

**SENETT** -- County officials will not pay David Elkovitch to defend Michelle Davis until they hear from the state Attorney General's Office.

Herb Marshall, chairman of the county Legislature's judicial and public safety committee, said he will move to continue withholding payment to Elkovitch until the state rules on a questionable property transfer.

Elkovitch oversaw the transfer of Davis' Fleming property to her parents after the fatal fire, making county officials question if Davis has money to pay for her court costs.

Davis pleaded guilty to one count of first-degree manslaughter and second-degree arson after she set fire to her Fleming home, killing her 13-year-old son, Daniel Leubner.

Taxpayers are paying more than \$30,000 to defend Davis, who was deemed eligible for the assigned counsel program. Marshall said he wants the Attorney General's Office to make a ruling on the transfer to see if it is legal.

"I want a written ruling from the attorney general to determine if it is legal for an attorney to transfer property like this," Marshall said.

The county already withheld a \$1,600 payment to Elkovitch last month. One way for Elkovitch to receive payment is by seeking a court injunction against the county.

The assigned counsel program pays court costs for defendants who cannot afford to pay for their own attorney.

Elkovitch appeared at the county judicial and public safety meeting Wednesday night to answer committee members' questions about the property transfer and their concerns about the rising court costs.

Elkovitch appeared tense and defensive while fielding questions from committee members about why he transferred Davis' property to her parents.

"I'm concerned with him transferring property in a way that makes it look like he is circumventing her ability to pay for her defense," Marshall said.

But Elkovitch never said why he oversaw the property transfer, instead asking why committee members were even questioning his action.

"If I didn't do this transfer you would have paid me right?" Elkovitch said. "So because I did this you are saying 'let's screw David Elkovitch?'"

The Davis case could be the death knell for the assigned counsel program.

"This case has cost taxpayers three times as much as any other murder case," Marshall said. "As far as I'm concerned, this will be the demise of the assigned counsel program."

The committee will meet next month with a public defender to hear about comparative costs. Some committee members believe the county should switch to a public defender system.

"You'll never run a public defender's office for this cheap," said Raymond Lockwood, R-Aurelius. "I'll never support this."

*For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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*Outline:* Trevor Kapralos / Staff Photographer

David Elkovitch, defense attorney for Michelle Davis, talks with Herb Marshall during the judicial and public safety committee meeting at the Public Safety Building Wednesday night. Marshall refused to pay Elkovitch's bill until the state Attorney General's office certifies that Davis' transfer of assets to her parents was legal.

*Outline:* Trevor Kapralos / Staff Photographer

Michelle Davis walks into the Cayuga County courtroom with her daughter Melissa (16) at the Historic Post Office earlier this morning. She was sentenced to \*\*\*\*\* years in prison.

District Attorney James Varguson listens to statements during Michelle Davis' sentencing Thursday afternoon. Varguson recommended Judge Peter Corning sentence Davis to a minimum of 20 years in prison, but Corning sentenced Davis to two six-year terms for manslaughter and arson.

0609.leroy.girlfriend

Daniel Leubner's father, Leroy (right) speaks at his former wife's sentencing Thursday in Cayuga County Court. His girlfriend, Sherryl Parsons, sits next to him.

0609.davis.pray

Michelle Davis reacts to a recorded call from Cayuga County Emergency Services played in court Thursday afternoon. The tape recording captured sheriff's dispatchers talking to Davis during an apparent fight with her son, Daniel.

0609.Davis.Robert.bw.jm

Michelle Davis' current husband Robert (left) attends the sentencing hearing Thursday.

0609.Davis.hand.jm

Defense attorney David Elkovitch comforts Michelle Davis when she breaks down during the sentencing.

## Archived NewsFront Story

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### Mom draws six-year term

Boy's death nets year more than minimum sentence

Daniel Lovell and  
Darrin Youker  
Staff Writer

AUBURN -- In the end, County Judge Peter Corning sided with Michelle Davis and believed her claim that her son raped her.

Corning sentenced Davis to six years in prison Thursday for killing 13-year-old Daniel Leubner -- one year longer than the minimum sentence allowed by law.

Following impassioned pleas from both sides in the case, Corning sentenced on her guilty pleas to first-degree manslaughter and second-degree arson. Davis admitted to setting fire to her Fleming lakeside home Sept. 4, intentionally killing her autistic son.

Davis faced a maximum of 25 years in prison.

Corning said he believed Davis' claim that she killed Daniel because he raped and beat her.

"A picture emerges of an individual, overwhelmed with circumstances," Corning said, reading from a prepared statement.

Corning said Davis was not the only person at fault for her son's death. Though Davis started the fire, she had to deal with a husband who left his children, a second husband who left her and a system that failed to provide the help she needed in raising her autistic child.

"There is certainly enough blame to go around," he said.

District Attorney James Vargason said he did not believe Daniel raped his mother. He asked Corning to send Davis to prison for no less than 20 years.

Corning's decision shocked him.

"Words, at this moment, escape me to describe [how I feel]," Vargason said. "I don't think justice was served today."

Vargason asked Corning to look past Davis' claims that Daniel raped her, and impose a prison sentence that would send a message to the community and give Daniel's life meaning. Vargason said there was no evidence Davis was ever raped, and told Corning he believed Davis was trying to rid her life of a son who was difficult to handle.

"I believe the appropriate sentence is one that says young Daniel had a right to live," Vargason said. "He was not a monster like some would have you believe. In my judgment, you have an opportunity to right a horrible wrong."

Vargason read a list of a dozen agencies that help families of autistic children. Davis never called any of them, he said.

"I think it's a startling look into the mind of a selfish person," Vargason said. "A person who would kill her own flesh for her own convenience. She will breathe free air

again -- Daniel's last breath included gagging and choking on carbon monoxide and smoke."

Davis admitted in March that she lighted candles in a closet underneath a stairwell, soaked wrapping paper with nail polish remover, and set them underneath the candles while Daniel slept in an upstairs bedroom.

He was pronounced dead at the scene from smoke inhalation. This past Sunday would have been his 14th birthday.

Defense attorney David Elkovitch asked Corning for lenience, and said Davis has been misunderstood. He offered several letters and reports from child protective services and Daniel's teachers, all of which wrote Davis worked hard to care for a son who was often violent and abusive.

In his statement, Elkovitch said he wanted to portray the real Michelle Davis -- a woman who loves her children, a woman who has suffered.

He maintained Davis' claims that she was raped, and offered letters that showed Daniel often acted out sexually. Daniel would often bite, kick, punch, pinch, head butt and throw things at his mother, Elkovitch said.

Elkovitch said he wanted the court and the public to know how Davis suffered at Daniel's hands. During the sentencing, Elkovitch played a July 23, 1999, emergency call from Davis to the sheriff's department after a reported violent outburst from Daniel.

A hysterical-sounding Davis was heard pleading with Daniel to stop hitting her.

"Dan stop! Dan stop! No Daniel, no, no, no, no," Davis said on the tape. "Please stop, please! I warned you to stop! No!"

Davis buried her head, clenched her ears and shook uncontrollably when the tape was played.

But when a sheriff's dispatcher told Davis two cars were responding to the scene, she waved off help.

"I really don't want you involved," Davis said on the tape.

Elkovitch said Daniel was sexually aggressive, both in the home and in school.

Daniel learned about his sexuality, and tried to convince girls at school to take off their clothes and kiss him, Elkovitch said. That escalated and then quickly ended Sept. 4, 1999, when Daniel raped his mother, causing her to set fire to the house and kill him, Elkovitch said.

But Vargason said if Daniel learned about sex, Davis and her husband should shoulder part of the blame. Statements from family members showed Daniel found adult movies at the home.

Davis read a statement, asking the court to understand her life with Daniel was full of abuse, but she loved him and forgave him for what he did.

"My son did rape me," Davis said. "It was the most horrific and violent act a woman can go through. I doubt I can have an intimate relationship with my husband."

But at the same time, Davis said she did not want to let Daniel go.

"I couldn't stand the thought of letting Danny go," Davis said. "We would destroy his world. But I was destroying my daughters' world."

Davis could not seek help, because she loved her son too much, Elkovitch said.

"The rape of Sept. 3 was too much to bear," he said. "The humiliation and the undeserved guilt. She did not want to lose her son, and she did not want to send him

away."

Corning also heard pleas from Leroy Leubner, Daniel's father, and Melissa Leubner, Davis' 16-year-old daughter.

Leubner said Davis first murdered and then vilified his son, who struggled to be a normal child.

"Dan did not ask for the life he was given," he said. "By all accounts, Dan was beginning to realize his potential, just as we all knew he would. With several options available and offered to her, his mother chose to take him from us forever and to devastate the lives of everyone who knew and loved Dan."

Melissa Leubner said no one, including her father, knew what life with Daniel was like. Her mother struggled to care for her children, without the help of her father.

"Unless you lived with my family, you have no right to judge," she said. "Life with Daniel was, in no uncertain terms, hellish. The last year or so it escalated to a higher level. During the last years of his life, Danny's violence became extreme."

Melissa said she spent much of her time in her bedroom, listening to her brother beat Davis. She said her brother often acted out in inappropriate sexual ways.

The Davis house was one Daniel ruled, and his mother catered to Daniel's every whim, Melissa said. She told Corning she felt bitterness toward her brother, but loved him. She asked Corning to be lenient.

"I want to start a new life with my mother and my sister," she said. "One that is not ruled by Danny."

*Staff Writer Jennifer Cooke contributed to this report. For questions or comments about this story, contact Region Editor Daniel Lovell at 253-5311, Ext. 231, Staff Writer Darrin Youker at 253-5311, Ext. 235 or Staff Writer Jennifer Cooke at 253-5311, Ext. 239.*

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*Cutline:* a6.dom.corning.tk PICTURE OF CORNING

Trevor Kapralos / Staff Photographer

Cayuga County Judge Peter Corning listens to Michelle Davis make a statement during her sentencing hearing at the Historic Post Office Building Thursday afternoon in Auburn. Davis said she loved her son and was driven to kill him as a result of his increasingly violent behavior.

family.inside.bw.tk PICTURE OF GIRL HOLDING HANDS WITH WOMAN

Trevor Kapralos / Staff Photographer

Melissa Leubner, 16, (left) holds her paternal grandmother Mary Davis as Michelle Davis is sentenced to six years in prison Thursday afternoon in Auburn.

*Cutline:* 0609.davis.jimcuts

A1.dom.color

During a brief recess at her sentencing Thursday afternoon, Michelle Davis greets her daughter, Melissa Leubner. Leubner's younger brother Daniel, 13, died in a fire set by Davis.

A1.sec.color

## Archived NewsFront Story

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### Judge's sentence stirs emotional debate

Family of victim, convicted killer split on outcome of case

Darrin Youker  
Staff Writer

AUBURN -- It was his ex-wife's sentence hearing, but Leroy Leubner felt like he was on trial.

As Michelle Davis learned her fate in the death of her 13-year-old autistic son, Daniel Leubner, the boy's father faced accusations about his role in Daniel's life. Davis admitted to killing Daniel in a Sept. 4 fire.

Davis claims her son raped her and sexually assaulted her the night before the fire.

County Judge Peter Corning touched upon the relationship between father and son in a prepared statement he read at the hearing.

"Leroy was not a factor in the child's upbringing," Corning said. "He never accepted the fact that the child was autistic. As the biological father he was supposed to support the mother."

Corning also praised Davis' current husband, Robert Davis, for his role in raising the children, saying he had some handle on the difficult situation.

Robert Davis said he witnessed firsthand the abuse Michelle Davis endured. He would not elaborate.

Davis was sentenced to six years in prison for killing Daniel. She pleaded guilty to one count of first-degree manslaughter and one count of second-degree arson.

Leubner's 16-year-old daughter, Melissa, spoke at the sentencing. Melissa defended her mother, and said she was blessed to have Davis as a mom.

At times, the speech turned into finger-pointing at her father. Melissa said Leubner was not there for Davis or Daniel and she did not enjoy visits with her father.

"I only visited because mom thought it was a good idea," Melissa said.

District Attorney James Vargason objected twice to Melissa's statement because it did not directly relate to her mother's sentencing. Often while Melissa spoke, Leubner shook his head in disbelief.

Davis was a good mother, who suffered abuse by her son, Corning said. And while her actions were inexcusable, the sexual abuse she suffered played a factor in Daniel's death.

Leubner sees his son's death differently.

"She got tired of having Danny around," Leubner said.

Justice was not served with a six-year sentence, Leubner said. But he was not surprised.

Robert Davis saw a just sentence, and praised Corning for being fair and relying on the facts. Defense attorney David Elkovitch also deserves praise for the work he did on the case, Robert Davis said.

Robert Davis also found fault with Vargason and his prosecution of the case.

"I think he has no clue about the person he was talking about," he said. "He didn't have a clue about who he was trying to convict."

Robert and Michelle Davis have known each other for 21 years, Robert said. She is a woman who puts her family first.

"This is a woman whose whole life revolved around her family," he said. "She hardly ever went out. And if for some reason she wasn't there, I was."

For the time she is in prison, Davis will have to take life one day at a time, Robert said.

The real victim is Daniel, who cannot speak about his mother's accusations, Leubner said. Her claims should have been cross examined in a trial, he said.

Leubner said he will continue to pursue this matter, adding he has retained a lawyer from out of the area. He would not comment further.

Ultimately, Davis should not spend only six years in prison for taking the life of her child, Leubner said.

"She should be away from society for the rest of her life," Leubner said. "I bet plenty of people have children that hit them. They don't kill them."

*Staff Writer Jennifer Cooke contributed material for this report. For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235 or Jennifer Cooke at 253-5311, Ext. 239.*

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## Report sheds light on Davis' sentence

Judge Corning followed sentencing recommendations

Darrin Youker  
Staff Writer

AUBURN -- In sentencing Michelle Davis, County Judge Peter Corning followed to the letter the recommendations of a group that assisted the defense.

Davis' defense team called on the Syracuse-based Center for Community Alternatives to prepare a report and sentence recommendation to aid Corning in his decision. The group's report, dated March 27, outlined its belief that Davis was the victim of rape at the hands of her son. The group recommended Davis serve six years in prison -- the sentence Corning handed Davis Thursday.

"It is CCA's professional opinion that a sanction of a determinate six-year sentence in state prison would serve the needs of the criminal justice system," the report says.

The Center for Community Alternatives is a non-profit agency that, among other things, offers judges specific alternatives to prison sentences. Defense attorney David Elkovitch contacted the group.

The report also urged Corning to hold a hearing to determine if Davis should be sentenced under a provision of state law that allows the court to give a lighter sentence to victims of domestic violence.

If sentenced under this provision, Davis should serve between three and six years in prison for her crime, the report says. The group also makes a recommendation if the hearing is not held.

Corning did not allow a hearing on a lighter sentencing and the law required Davis to be sentenced from five to 25 years in prison.

Davis admitted to killing her 13-year-old autistic son, Daniel Leubner, by setting fire to her home Sept. 4. Davis pleaded guilty in March to one count of first-degree manslaughter and one count of second-degree arson.

The report was submitted to Corning two weeks after Davis admitted in court that she set the fire.

"We wish to emphasize that the information contained in this report is not intended in any way to minimize or rationalize the defendant's actions," the report says.

Yet the report, which Elkovitch used in Davis' sentence hearing, tries to explain her actions. Numerous bits of evidence point to the rape she allegedly suffered at the hands of Daniel.

The evidence attempts to illustrate a violent child who became sexually aggressive after his 12th birthday. Elkovitch touched upon these points Thursday.

Although Davis admitted she lighted candles and set them under wrapping paper soaked with nail polish remover to start the fire, evidence submitted in the report tries to portray the fire as accidental.

In a Feb. 7 evaluation from the Cayuga County Community Mental Health Center, Davis is reported as saying to doctors that she accidentally left candles burning and never intended to kill her son. At the same time, however, the mother reports Daniel raped her.

"The fire was started when she went to sleep with candles burning and she regrets that but she never planned on killing her son," the evaluation reads.

Experts who testified during a closed-door March hearing said that after the rape, Davis performed a Native American ritual, called smudging, where space is purified. Candles are used in the ceremony.

The sentencing report touches on the smudging rituals and how they are performed.

At the sentencing, Elkovitch painted Davis as a victim, as does the report.

"Despite the seriousness of her actions on Sept. 3, 1999, Michelle Davis is not a criminal, nor does she possess a criminal mentality," the report says. "Her actions were the result of years of physical abuse, which escalated to sexual molestation and ultimately rape."

*For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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Archived NewsFront Story

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## Case rests on who to believe

### Our View

The point: Michelle Davis' claims were never examined in court to determine their truth

Everything in the Michelle Davis case came down to who you believed.

Davis, who was sentenced to six years in prison for killing her 13-year-old autistic son, says she did so after he raped her and was becoming more violent.

Prosecutors say Daniel was no more violent than any autistic child and no rape ever took place. Davis killed him and invented the rape to free her life from the enormous demands of caring for him, they say.

Cayuga County Judge Peter Corning believed Davis' version, and sentenced her to just a touch more than the minimum -- the sentence recommended by an outside agency initially hired by the defense, and which advocates for alternatives to incarceration. In court Thursday, it would have been tough not to believe Davis as she broke down, sobbed and publicly reiterated her story of being raped. An excerpted 911 call, an emotional statement from her daughter and supporting letters from teachers added to her story. There is no doubt she suffered physical assaults by Daniel.

But there were many questions never asked in court, and Corning accepted Davis' claim without any attempt to prove it true or false, as did psychological experts hired by the defense. No physical evidence of the rape was ever presented in court, and neither side was forced to defend their claims about the alleged rape.

The prosecution and law enforcement found evidence to suggest Davis planned the fire well in advance. In any case, the fire was not set in the heat of passion or in a sudden moment of fear or bad judgment, but hours after Davis alleged the rape happened and with forethought. And Davis' own story significantly changed over time, including her statement to the court Thursday.

And, somehow, the sentencing became a critique of Leroy Leubner's parenting abilities. Leubner, Davis' ex-husband and father of Daniel, read a statement in which he asked for a tough sentence for Michelle. He has also been critical of her and Corning throughout the case. Over the objections of the district attorney, Melissa Leubner, Leroy and Michelle's daughter, read a statement that had little to do with the sentence she felt her mother deserved, but which was highly critical of Leroy.

Corning also joined in, criticizing Leroy's participation as a father. The criticism may all be justified, and Leroy has not been shy about speaking his mind, but we have to wonder about the propriety of the statements during a hearing to determine Michelle's sentence. That Corning would chime in on an issue not before the court seems particularly out of place.

Davis' sentence seems on the light side to us, and we remain skeptical of her story. But also of concern is that the sentence seemed to revolve around Davis' rape claim,

which was not thoroughly investigated in court. Corning based his decision on the claim, though he did not hear testimony about its truth.

The sentence in this case was based more on allegations than information.

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## Archived NewsFront Story

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### Doctor: Mom's rape claims baseless

Sentence based upon allegations irks expert who would have testified

Daniel Lovell  
Region Editor

If given the chance, Dr. Stephen Bauer would have told County Judge Peter Corning that Daniel Leubner did not rape his mother.

But Bauer, a developmental pediatrician and director of pediatric development unit at Genesee Hospital in Rochester, lost that chance when Corning dropped plans to hold a hearing to determine whether Michelle Davis was the victim of domestic abuse. Convicted of first-degree manslaughter and second-degree arson, Davis, 37, formerly of Fleming, now sits at the county jail. She will be transported to Bedford Hills to serve out the six-year prison term for killing her 13-year-old autistic son Corning imposed Thursday.

District Attorney James Vargason called on Bauer to testify as an expert witness, and supplied Bauer with Daniel's school and medical records.

From those, Bauer, who has worked closely with hundreds of autistic children, determined Daniel was a low-functioning autistic with a high level of mental retardation. He prepared a list of facts he felt proved Daniel was not capable of raping his mother, Bauer said.

When Corning decided to cancel the hearings, Bauer thought his work was finished. But when Bauer read accounts of Corning's comments to the packed courtroom Thursday, he wished he'd had a chance to testify.

"Because of Daniel's disability, a judge was able to accept this mother's concocted defense," Bauer said. "The one thing I think is the least likely is that this child raped his mother. It is astonishing to me that on the basis of her statement, without any further exploration of whether it was even plausible, the judge accepted her story."

Corning said he believed Davis' claim that Daniel raped her Sept. 3, 1999, and that the rape was the last assault Davis suffered in years of abuse. He said he also believed Davis killed her son as a result of the abuse.

Bauer said he would have told Corning otherwise.

Although Daniel would have been more interested in sex as he entered puberty, he didn't have the knowledge or physical skill necessary to commit the complicated act of forcible rape, he said. More likely, Daniel would have done some of the things outlined in school reports, such as touching himself or others inappropriately, he said.

Davis told police that Daniel raped her when the two were alone; after Davis' two daughters had left the house. But Bauer said autistic children don't know how to sneak around. If Daniel was fixated on sex, he would act out sexually at all times, not just when he and his mother were alone, he said.

And Davis' claims that Daniel was caught watching pornographic movies don't

explain the alleged rape, he said. Daniel would have had to have been exposed to sex much more often, and he would not likely understand what he saw.

### **Impact**

Bauer worries that Corning's comments Thursday will lead others to fear mentally disabled children.

Because the judge believed Davis, some may think the mentally disabled pose a threat to the community. Some might be scared to learn their children are schooled with autistics, he said.

Part of Bauer's research for the district attorney's office involved digging through medical research to find cases similar to Daniel's, or to find instances where autistics have committed forcible rape. Bauer said his research did not turn up a single case in which a teenaged autistic person raped someone.

And when Corning characterized Daniel's aggressiveness as abuse, he undid years of study in the field, Bauer said.

Bauer said he doesn't doubt that Daniel was aggressive. But autistic children often use aggression as a form of communication, he said. Daniel was probably frustrated, angry or confused, but couldn't find an appropriate way to express those feelings to his mother, he said.

Daniel never abused his mother; he lashed out when he couldn't make her understand him, Bauer said.

"I don't deny that it is very hard on a family, and the record is fairly ample in showing he was aggressive," Bauer said. "But to consider this abuse is a terrible misunderstanding and a misuse of the term. I would never consider that abuse when we're taking about a severely retarded child."

Bauer said the records he saw showed Davis loved her son. Daniel was aggressive, and that could have been difficult to handle. But Daniel did not rape his mother, and never intended to hurt her, Bauer said.

And he would have said the same in court.

"In many ways, she was a caring mother who cared about her child," Bauer said. "I think it was a desperate act of a woman who snapped under pressure."

Bauer doesn't dispute Corning's sentence, but that the case's outcome rested so heavily on allegations that could never be proved, and actions that were impossible, he said. Bauer said defense attorney David Elkovitch, who himself has a developmentally disabled child, is partially to blame for putting forward the defense. But Corning's comments, he said, validated Davis' allegations.

"It gives the impression that he is a violent rapist, and that's just not fair," Bauer said. "If Daniel wasn't autistic, this mother wouldn't have been believed for a second. (Corning) vilified a child, and he vilified an entire group of people."

*For questions or comments about this story, contact Region Editor Daniel Lovell at 253-5311, Ext. 231.*

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## Archived NewsFront Story

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### Davis' lawyer to receive payment

Local lawmakers reverse decision on withholding payment

Darrin Youker  
Staff Writer

AUBURN -- The county has reversed its position and decided to pay Michelle Davis' lawyer.

County lawmakers decided at a special meeting Friday to pay David Elkovitch, who defended Davis at a cost to taxpayers. Lawmakers originally withheld a \$1,600 payment to Elkovitch over a questionable property transfer.

That payment will now go through.

In March, Elkovitch oversaw the transfer of Davis' Fleming property to her parents, causing lawmakers to wonder if he transferred the property to drain her assets and make her eligible for a county-assigned lawyer. Last month, the county Legislature voted to withhold payment.

Elkovitch has declined comment.

The best option for the county was to change its position, said Legislator Herb Marshall, R-Port Byron. Marshall strongly opposed paying Elkovitch and said he will still contact the state Attorney General's Office to see if the transfer was legal.

"We thought it would be in the best interest of the county to not hold up payment," Marshall said. "Paying his salary probably won't change what I do."

County Legislature Chairman Ralph Standbrook said he received a phone call from county Judge Peter Corning, asking for the payment to be made.

"He didn't put any pressure on me, he just asked me to take care of it," Standbrook said.

Davis was deemed eligible for the assigned counsel program, in which county taxpayers paid for her defense. The cost for her defenses has totaled more than \$45,000 -- more than \$30,000 of which was charged to the county.

Davis was sentenced last week to six years in prison for killing her 13-year-old son, Daniel Leubner.

*For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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## Archived NewsFront Story

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# County considers public defender

### Taxpayer cost to defend Michelle Davis leads push for change

Darrin Youker  
Staff Writer

CAYUGA COUNTY -- After the Michelle Davis case cost taxpayers more than \$40,000, some county officials are wondering if the way county provides for defense is worth the cost.

Under the assigned counsel program, the county pays defense costs for defendants who cannot afford private attorneys. Eligibility is determined on a case-by-case basis.

Some officials think the program costs too much, and creating a public defenders office might be a better option.

Members of the Judicial and Public Safety committee will meet with Ron Valentino, public defender for Wayne County, to hear about the public defender system and how much it costs to maintain. The assigned counsel program operates under a \$275,000 budget.

Valentino could not be reached for comment.

If the committee likes what it hears, members will talk with other counties that have similar programs to compare costs, said Herb Marshall, R-Port Byron and chairman of the Judicial and Public Safety Committee.

"We are going to look at a different system," Marshall said. "The committee has done this before."

Lloyd Hoskins, head of the county's assigned counsel program, said he is pleased the county is looking into the public defender system. The assigned counsel program is cheaper, he said, and the attorneys working in the program know they are held accountable for spending, Hoskins said.

"I'm proud of the fact that we now have a system of accountability," Hoskins said.

Each lawyer knows they are held accountable for the amount of time they bill for, Hoskins said.

The cost of the Davis court case has not been popular with some county officials, but the county has examined the issue of a public defender before, Hoskins said. Davis was sentenced to six years in prison after admitting she killed her 13-year-old son, Daniel Leubner.

"Paying for legal representation for indigent people is not popular with the (county Legislators)," Hoskins said. "The public defender issue has come up in the past."

*For questions or comments about this story, contact Staff Writer Darrin Youker at 253-5311, Ext. 235.*

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Archived NewsFront Story

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## Justice isn't always cheap

### Our View

If you boil away the penny-pinching, you'll find a county Legislature uninterested in doing its duty to ensure a justice system that protects the weakest members of society with the same zeal as it does the richest.

The Legislature again is clamoring for a public defender in place of the county's current system of paying private lawyers to defend those who cannot afford to pay for their own defense. But legislators aren't trying to improve how indigents are represented; they're shopping for a bargain.

Sure, the subject came up after convicted killer Michelle Davis racked up \$40,000 in fees while transferring lakeside property to her parents. You can't really blame lawmakers for looking askance at that; it just doesn't look right.

That legal bills of this size come in only once in a blue moon doesn't seem to register with the lawmakers. That attorneys assigned to represent poor defendants have limited access to money for legal experts that aren't a problem for prosecutors doesn't bother legislators. That the county continues to pay well below going rates for lawyers to defend our county residents doesn't cause legislators concern.

It's easier and more popular to keep the deck stacked in favor of prosecutors. That way legislators can be seen to hold down crime at the same time they're holding down costs. Besides, most of those who need court-appointed lawyers are guilty, anyway. So what if a few who aren't guilty get locked up for a while, or a few get harsher sentences than they deserve? At least taxes won't go up.

Leading the charge to ensure that defendants get even less of a chance in court is Railroad Herb Marshall, who has displayed his belief in innocent until proven guilty with such erudite comments as those he made about defense expert witnesses for Davis.

"We had one come in and testify she was dancing around like an Indian and knocked a candle over? Why do we need to pay \$40,000 for that kind of foolishness?" Marshall opined.

That the amount is less than the year's salary for the patronage auditor job the county tried to set up for Marshall a while back must not have crossed his mind. Actually, just because county legislators were shamed into not paying Marshall nearly \$50,000 for an unnecessary job he was wholly unqualified for, the county could afford to defend a case as expensive as Davis' every year.

Marshall's lack of interest in a fair American system of justice is a shame. We know he doesn't like paying to defend those accused; he's made that abundantly clear. But, the fact is, the county got its money's worth out of David Elkovitch, who defended Davis. Through his lawyering, his client is in prison for six years, far less than she deserves.

The county should continue to explore hiring a public defender in place of a portion of the assigned counsel program. But the decision should be made on the merits of

which system will provide the best defense for the poor, not which one will allow the county to pinch the most pennies.

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### Panel looks at public defender system

Committee urged to move cautiously before making any type of change

Jennifer Cooke  
Staff Writer

CAYUGA COUNTY -- The county will continue studying whether to switch to a public defender system.

Wayne County Public Defender Ron Valentino advised the county's Judiciary and Public Safety Committee to be cautious before switching from an assigned counsel to public defender system.

"I think you have to be careful when you just start changing the system," Valentino said. "I wouldn't just scrap your system and jump into this."

The committee began looking at the system after the Michelle Davis murder trial cost taxpayers more than \$40,000. Under the assigned counsel program, the county pays defense costs for defendants who cannot afford private attorneys. Eligibility is determined on a case-by-case basis.

Some officials think the program costs too much, and creating a public defenders office might be a better option.

Committee members met with Valentino to discuss the pros and cons of such a system. Committee Chairman Herb Marshall said the public defender system is one that has been discussed for more than 10 years.

"The vast, vast majority (of cases), in my experience, are not that type of situation," Valentino said. "You need to be careful not to go too far based on one case experience."

An advantage to a public defender system is that "you develop expertise in an area and relationships with judges that allows you to dispose of cases quicker," Valentino said.

The cost for experts is included in Wayne County's budget, and Valentino said his office usually finishes the year close to budget.

One weakness of Cayuga County's system is that there is not the manpower nor the time or resources to investigate if those people requesting assigned counsel are really in need, said Lloyd Hoskins, head of the county's assigned counsel program.

With Wayne County's system, about 10 percent of those who request a public defender don't meet the indigent standards, Valentino said. However, in the long run, he said it is cheaper to give services to most people than to determine who does not qualify for it.

Based on 1999 data, the 1998 indigent defense budget for Wayne County was \$892,083. The total for Cayuga County was \$336,045.

Wayne County has 10,000 more people than Cayuga County, for a total of 92,812 compared to 82,961.

More than half of Cayuga County's 2000 budget of \$275,000 has already been spent, Hoskins said. The county has paid its expenses through June and has \$118,000 remaining.

"We're not awful bad considering we just got done with a murder trial," he said.

After meeting with Valentino, the committee decided to study the programs further.

*For questions or comments about this story, contact Staff Writer Jennifer Cooke at 253-5311, Ext. 239.*

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fatal fire in Fleming which led to murder charges against Michelle Davis in the death of her 13-year-old son Daniel Leubner.