



Center for Community Alternatives, Inc.

115 East Jefferson Street, Suite 300 • Syracuse, New York 13202
Tel (315) 422-5638 • Fax (315) 471-4924

A CLIENT SPECIFIC PLAN

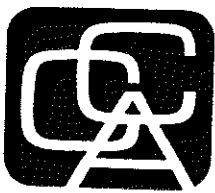
FOR

MICHELLE A. DAVIS

PRESENTED TO:

*HONORABLE PETER E. CORNING
CAYUGA COUNTY COURT JUDGE
CAYUGA COUNTY COURTHOUSE
AUBURN, NEW YORK 13021*

APRIL 2000



Center for Community Alternatives, Inc.

115 East Jefferson Street, Suite 300
Syracuse, New York 13202
Tel (315) 422-5638
Fax (315) 471-4924

MARSHA WEISSMAN
Executive Director

March 28, 2000

KATHLEEN O'BOYLE
Deputy Director

Board of Directors:

CHARLES D. ADLER
President

Honorable Peter E. Corning
Cayuga County Court Judge
Cayuga County Courthouse
Auburn, New York 13021

STEVEN KELBAN
Vice President

Re: People v. Michelle A. Davis

CHARLES A. CHAPPELL, JR.
Treasurer

Dear Judge Corning:

ALAN ROSENTHAL
Secretary

For your review and consideration, the Center for Community Alternatives (herein referred to as CCA) submits the following background information and sentencing recommendations in the above-captioned matter.

MICHAEL P. FREEDMAN
SUSAN R. HORN
PAULA C. JOHNSON
R. MAY LEE
DAVID L. LEWIS
LAWRENCE F. MURRAY
CAROLE SHAPIRO
STEPHEN L. WEINER
EDNITA M. WRIGHT

Accordingly, it is our sincere hope that this information will ultimately assist the Court in its determination of an appropriate sentence in this case. CCA's involvement was requested by David Elkovitch and James Baier, attorneys for Michelle Davis and is submitted pursuant to §390.40(1) of the Criminal Procedure Law. Should it be determined that this information would be of assistance to the Department of Correctional Services, it is hereby requested that your Honor attach this report to the official order of commitment pursuant to §390.60(1) of the Criminal Procedure Law.

The purpose of this report is to provide information about Michelle Davis. 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. Rather, we are providing this information in an effort to more fully inform the Court of Michelle Davis' background, current status, and prospects to resume a productive and contributory life in the future.

CCA is aware that Michelle Davis has entered a plea of guilty to Manslaughter in the First Degree. Accordingly, this submission to the Court has been prepared with those factors in mind.

RELEVANT BACKGROUND INFORMATION

Michelle Anne Jenaro was born on February 26, 1963 in White Plains, New York. Michelle's parents are Michael and Ellen Jenaro; the two are still married to one another and living in White Plains. This union also produced three siblings: Brenda Jenaro, deceased at age 18 months from lung failure; Lynne Jenaro, deceased at age 7 1/2 from hyperglycemia; and Ellen Jenaro, currently age 36.

Lynne Jenaro's debilitating illnesses began in 1965 and lasted until the summer of 1968. Lynn suffered from profound throat and respiratory ailments necessitating continuous hospitalizations, over 30 operations, and culminating in a comatose condition. In September of 1968, Lynne Jenaro died at the age of 7 1/2 of hyperglycemia. During the period of Lynne's many hospitalizations Michelle and her younger sister, Ellen, would go to the hospital with their mother to visit and hope for Lynne's health to improve. Michelle recalls being at the hospital sometimes for hours and hours. Several times she believed that Lynne had died as her mother was always tearful. Following Lynne's death, Michelle and Ellen were often taken to the doctor or the Emergency Room by their mother to "make sure they were healthy."

With the death of two children and experiencing a period of rapid weight gain, Ellen Jenaro began a vicious battle to lose weight and cope with depression and grief. Mrs. Jenaro reports that she began a series of mental health hospitalizations at Columbia Presbyterian Hospital due to a barbiturate addiction and depression over a 2 1/2 year period that included sessions of shock therapy.

During her mother's hospitalizations, Michelle, then 5 years old, and her sister Ellen, were left in the care of her father and on occasion with their maternal grandfather, Charlie Turner. Mrs. Jenaro describes Michelle's maternal grandfather as an alcoholic who was very strict and at times physically abusive. Michelle and her parents recall Michelle staying with her grandfather, her uncle Steve and his wife for a three week period while Ellen Jenaro was hospitalized. In this three week period, Michelle was told by these trusting adults that Ellen Jenaro was not her biological mother. Michelle was informed that her biological mother was really a Native American woman from the Cherokee Nation that her father had a previous relationship with. Michelle indicated that her uncle Steve's wife resembled a Native American woman and she grew up believing Ellen Jenaro was not her real mother and that she was somehow different. Michelle never shared this discovery with her parents until recently. From this belief that she was part Cherokee, as a teen, Michelle began exploring Native American customs and began the practice of spiritual prayer called Smudging [Exhibit A]

In regards to schooling, Michelle attended Battle Hill Elementary School in White Plains, New York, for grades Kindergarten through five. Michelle's pupil development record indicates that she was a good student in elementary school and respectful to the teachers and other students. Of note, Michelle's teachers each observed Ellen Jenaro to be preoccupied with medical concerns and Michelle's health during this period, often taking Michelle to the hospital to "make sure she's ok". These observations were made in 1969 and 1970 following Lynne Jenaro's death.

Further, in 1971, Michelle's third grade teacher noted the following observations of Michelle and her empathic nature at such an early age:

Michelle's mother has been in the hospital for several weeks in May and June. The children were upset because they did not understand why their mother was away. She [Michelle] is a good worker with marvelous insight and sensibility. At times she appears too stable and mature for her age. She is usually sympathetic and understanding. Perhaps because she is constantly exposed to sickness. She is usually quiet but aware and alert to what is going on. She will cry easily if slighted by another child. She will lead or follow depending upon the activity. Her mother seems surprised when told how capable Michelle is.

*Pupil Development Records
White Plains Public Schools
Exhibit B*

In 1972, similar observations were observed by Michelle's fourth grade teacher:

Michelle is a good worker and follows all directions. She is very sensitive. Becomes easily upset if anyone appears sick. She is overanxious about sickness, death, tragic affairs, recites all misfortune with feeling in creative writing; she is very poetic. Michelle has been absent frequently because of mother's illness.

*Pupil Development Records
White Plains Public Schools
Exhibit B*

For grades 6th through 9th Michelle attended East View Junior High School in White Plains, New York. Michelle describes her junior high experience as awkward as she was quiet and had only a few close friends. Her grade transcripts reflect an above average student with A's and B's. This attention to hard work and good grades was rewarded in both 7th and 9th grade when she was placed on the Honor Roll and received recognitions for commendable behavior. [Exhibit C]

When Michelle was 14 years old the Jenaro family opted to relocate from White Plains to Auburn, New York. Michael Jenaro had been employed by the Scarsdale School System as a plumber for many years and was becoming increasingly dissatisfied with his employer. Ellen Jenaro's brother Billy owned and operated a gas station in the Auburn area and invited Michael to join him in this business venture.

The Jenaro family lived and worked in Auburn from 1978 to 1985. During this period, Michael Jenaro struggled to make ends meet to support his family but times were tough. Michelle had entered high school in Auburn and began working part-time at Bernie's Roast Beef in the Finger Lakes Mall. Mrs. Jenaro recalled one Christmas when she and her husband had little money to buy their daughters' gifts. Michelle unselfishly used money she had made at her job to purchase gifts for everyone and pay for the groceries for a traditional Christmas dinner.

Relationships

While a student at Auburn High School, Michelle Jenaro began dating Robert Davis. The couple went steady for almost two years when Michelle and Robert went their separate ways following Michelle suspecting Robert had been cheating on her. Following their break-up, Robert went into the Armed Forces and began a relationship with another woman. Michelle continued to work in the mall and there met her future husband, Leroy Leubner.

At the time of their meeting Leroy Leubner was 20 years old and Michelle 17. Michelle graduated from high school that same year in 1981 [Exhibit D] and secured a job at Auburn Memorial Hospital, initially in housekeeping, later as a secretary and finally as a nurse's aide on the labor and delivery unit [Exhibit E].

On January 15, 1982, Michelle Jenaro and Leroy Leubner were married in a civil ceremony at her parents home. Of this Michelle states, "We'd been dating for a while and my parents were going to move back to White Plains...I didn't want to leave Auburn and was uncomfortable with only living with Leroy, so we got married." Michelle describes the day of her wedding as the beginning of the end for her and Leroy. She recalls Leroy being absolutely adamant about having a former girlfriend attend the wedding. Despite Michelle's protestations Leroy proceeded to travel several hours to pick up his former girlfriend and have her at their ceremony. This obviously created a lot of tension between the newlyweds at their nuptials and reception.

Michelle describes her relationship with Leroy Leubner as always being filled with suspicion and mistrust but she tried effortlessly to give her husband the benefit of the doubt. In 1982 Michelle encouraged her new husband to take the New York State Correctional Officers Exam in which he passed and was transferred to Long Island for his training and probationary period. At the same time, Michelle discovered that she was pregnant with their first child and she was left to care for herself while her husband was away. Leroy would occasionally return to Auburn when he had days off and Michelle reports that she would observe hickey's on his neck area. She suspected infidelity but rather than create tension in their new marriage she chose not to confront him.

After the birth of their daughter, Melissa Leubner, on December 20, 1983, Leroy returned to Auburn, securing employment at the Auburn Correctional Facility as a correctional officer. The couple had two more children during their marriage: on June 4, 1986, a son, Daniel Leubner; and on December 31, 1989, a daughter Kimberly.

Subsequent to the birth of Daniel, Michelle did not work for a period of time, returning to work at Grossman's Lumber on a part-time basis. She worked in customer service as a cashier from 1987 to 1990 when she secured full-time employment with Met Life (later United Healthcare). Michelle worked as a medical claims approver in the Auburn office. She worked there until April 1999 when the Auburn office closed and she was subsequently laid off.

Experiences with Daniel Leubner's Autism

The birth of the Leubners second child, Daniel, was complicated. According to Michelle and various medical reports Daniel was born with the umbilical cord wrapped around his neck several times. The baby suffered from broken blood vessels in his eyes and a collapsed lung. This was just the beginning of many stressful circumstances surrounding Daniel's childhood.

Michelle indicates that by the time Danny was two years old she observed him to be developing at a slower pace than a typical toddler, displaying no interest in childhood activities, and developing routine-like behaviors. In 1988 Michelle and Leroy Leubner sought testing at the E. John Gavras Center in Auburn for language and speech therapy as well as physical therapy. A July 1990 Psychiatric Evaluation prepared by Psychologist Dr. Walter Lipfert of the E. John Gavras Center cited the following regarding Danny's development:

Danny is a 4 1/2 year old multiply handicapped youngster. Intellectually he scored in the mentally retarded portion of the population. Danny had severe problems in expressive language and attending behavior during the evaluation. Danny should be placed in special education pre-school for the 1990-1991 school year.

Exhibit F

Between the ages of 2 1/2 and 5 years old Daniel Leubner was evaluated by several examiners before it was finally concluded in 1991 that Daniel Leubner was Autistic. In 1991, Daniel was referred to Dr. James Copeland of the State University of New York Health Science Center for a comprehensive developmental assessment. Dr. Copeland presented that Autism is established by the presence of the following four criteria and diagnosed Danny as such:

- 1) Onset before 30 months of age
- 2) Delayed and deviant language development
- 3) Impaired interpersonal relating
- 4) Rotely repetitious behaviors with an insistence on sameness

The above four features are the essential diagnostic criteria for infantile Autism. Danny meets all of these criteria.

Exhibit G

Upon their son being diagnosed as Autistic, Michelle reports "feeling complete denial" and did as much research as possible on the topic. Michelle indicates that Leroy began separating more and more from Danny and the family, staying away from the home as much as he could which resulted in many questions of infidelity and arguments between the couple. A short time after the autistic diagnoses Michelle and Leroy were legally separated. Michelle reports that Leroy became increasingly ashamed of Danny and commented at one time that "no son of mine is gonna be retarded or autistic." According to Michelle, and corroborated by close friends and

family, during their separation Leroy limited his visitation with his children and provided minimal child support, if any. The couple were ultimately divorced in 1993 [Exhibit H]. During this period Leroy Leubner began a relationship with a woman, Cheryl Parson, in which the children did not favor. Melissa Leubner, Michelle's oldest daughter, recalls her father coming around less and less and that she did not like the way Cheryl treated her or her siblings. She stated "she would say something terrible to us or provoke Danny and my father would not defend us. He was always making excuses as to why he would not keep his visits with us and not keep promises. He left my mother to handle Danny by herself because he was ashamed of him."

Being frustrated with her father's behaviors, Melissa Leubner chose not to visit with her father and ultimately Leroy Leubner gave up custody of Melissa. Michelle reports that Leroy continued sporadic visitation with Danny (three times in two years) but Danny often refused to go. Kimberly Leubner continued visitation with her dad, one day a week for three hours at a time. Michelle reports that since their separation and divorce she had been the primary parent to their three children. She reports that Leroy Leubner had failed to acknowledge the children's birthdays or Christmas, offering no gifts or even a telephone call. Leroy Leubner has reportedly not been involved in the care of Danny's autistic behaviors except to occasionally contact the school to "check on him" or make an allegation of neglect to Child Protective Services.¹

In 1994, Michelle resumed a relationship with her high school sweetheart, Robert Davis. On December 6, 1995, Michelle Jenaro-Leubner and Robert Davis were married in a civil ceremony [Exhibit J]. Robert was supportive of Michelle and all the children, assuming the role of a caregiver and father figure. Danny in particular responded well to Robert. For example, it was Robert who successfully taught Danny, when he was 7 years old, how to use the bathroom to relieve himself and not rely on diapers anymore. And as Danny grew bigger, stronger and increasingly short fused it was Robert Davis who was able to stabilize and redirect him without incident.

According to Michelle, Danny always had aggressive tendencies but he could easily be distracted or redirected until he reached the 6th grade and the onset of puberty. His aggression in school increased to the point of his lashing out at teachers and even hitting a teacher in the head with a chair which resulted in a concussion.² Nancy Marland, a former special education teacher's aide at BOCES, recalls her experience with Daniel Lubner while he was a student there:

¹In May of 1999, Leroy Leubner presented allegations of parental neglect to Child Protective Services indicating that his estranged wife, Michelle Davis, did not cooperate with Daniel's medication/treatment needs and that Daniel is often left unsupervised with his sisters. An investigation was completed by Child Protective Services and the allegations of neglect were unfounded. Findings state that "Mother is very appropriate and involved in the children's lives. She is cooperative with school and professionals involved in Daniel's treatment program. Mother provides adequate supervision and support to all the children. Children are safe." The complete investigation and findings can be reviewed in Exhibit I.

²The incident report reflecting teacher Denise Clark being struck by a chair and receiving medical attention was requested by the Cayuga County BOCES however was not received by either Attorney David Elkovitch or representatives of the Center for Community Alternatives.

During the 1996- 1998 school years I was a BOCES Special Education Teacher's Aide in Danny's room at East Middle School in Auburn, and at Casey Park Elementary School during two summer school years. The first year under teacher Denise Clark, and the next year under substitute teacher, Eric Corcoran.

Our classroom kept a daily notebook with each of our students families. These notebooks were sent home at the end of each school day to keep parents informed of their child's progress, behaviors both good and bad, and specific needs of the child that the parents might be able to assist us with. Most parents never responded to our notebook communications. But Michelle ALWAYS did. And her correspondence was always positive, helpful, sometimes humorous, concerned when we'd had a difficult day with Danny, and always loving toward Danny and encouraging toward the teaching staff. She came to all of the parent-teacher conferences. Often Michelle was called to the school because Danny became so violent and aggressive he had to be removed for the safety of the staff in our room. She ALWAYS came.

As Danny grew older (around 11 years old) he reached puberty, which caused him to display sexual tendencies that were inappropriate. Such as constant masturbation, pinching women staff in the breasts and trying to hug his body up against female staff's bodies from the front and pushing himself against her in a sexual manner. We always stopped him and redirected him

In my observations of Danny, as an Autistic child, he was quite intelligent. His verbal communication was often just copying what was said, but he could read, use a calculator, read a clock, do math, and use a computer. He had the ability to reason, and make simple choices which controlled his behavior. He didn't just react to situations, but often controlled them. He knew how to manipulate people to obtain his desired goal. He was a child who could show affection, but also great anger if the situation was not to his liking. Often he became violent when being asked to perform a scholastic task. His anger was displayed by swinging his open faced hands at you, or throwing sharp pointed pencils at your face at close range, grabbing, pinching (usually the breasts, arms or neck), screaming, kicking, trying to trip you as you walked him to a safe place, biting, banging his head against your head, and throwing any objects that he could get his hands on. One time he threw a plastic chair with metal legs at a teacher and hit her in the head. She ended up in the emergency room with a concussion.

In our classroom, his anger was centered on one person at a time, so those who weren't Danny's target would intervene, and the targeted staff would move away from him until he calmed down. Often it took two staff people to hold Danny's arms to escort him to a safe place. At first his anger was directed only at staff, but the last few months I was a teachers aide in his room, he began to show his anger toward other students also. Danny, even though he was a child, was growing larger, he was extremely strong. I cared about Danny as a human being,

but I must admit, that in the eight years I was a teachers aide, he is the only student I was ever afraid of. I believe other staff women in our room were also, because of Danny's often uncontrollable violence.

Nancy Marland
Exhibit K

Daniel's 8th grade Special Education Teacher, Eric Corcoran also shared his experience in regards to working with Michelle Davis and her son:

As a special education teacher for Cayuga-Onondaga BOCES. I have known Michelle Davis since September 1997. I taught her son, Daniel Luebner, until August of 1999. Daniel had autism and related disabilities. His symptoms included: moderate-severe communication deficiencies, an intense need for predictability, and a tendency to become absorbed in self-generated fantasies. Daniel was easily upset or frustrated by simple interactions, learning activities and changes in his routine. Because of the nature of his behavior, Daniel was placed in a classroom created to serve students who exhibit extremely disruptive or violent behaviors.

...During the time that I served him, Daniel displayed an array of inappropriate behaviors. Documentation clearly shows that he had a propensity for violent outbursts. During times of anger or fear, Daniel could be expected to yell, spit, slap, pinch, punch, kick, bite, and throw objects such as pens and chairs. These outbursts would occur daily in the school setting and often occurred more than once in the given school day.

In the spring of 1999, Daniel also began to display inappropriate sexual behaviors. Michelle indicated, at that time, that Dan had been expressing sexual interest in females on television and in magazines. At points throughout the spring, he inappropriately touched, hugged, and attempted to kiss a female classmate. He also once mimicked intercourse with a male classmate. During the summer of 1999 he tried several times to persuade a female classmate to kiss him and disrobe. It seemed as though Daniel was becoming increasingly sexually aware and curious.

Though Michelle experienced the same behaviors at home, she was always concerned with the safety of Daniel, my staff, and I. She and I communicated daily about Dan's state of mind and our mutual concerns. If ever Dan was sick or uncontrollable at school, she was quick to come in to help us. She even got a beeper and cell phone so she could always be accessible. Despite Dan's intense needs, Michelle was one of the most loving supportive, and involved parents I have worked with. Because Michelle had been so supportive of Dan and those who worked with him, my staff and I were greatly troubled when, in the spring of 1999, Daniel became increasingly violent at home. In our daily communication

book, Michelle gave brief accounts of almost nightly violence. Daniel was prone to "blind fits of rage" at school, and was aggressively intent at times on doing physical harm to classroom staff. It seemed that he now was displaying that level of aggression at home. At one point I called her nightly to make sure she was safe.

Never once, though did she speak negatively to me about Dan or blame him for his disabilities. She loved him and accepted him as he was. Every interaction I saw between them was nurturing. She always tried to be positive and helpful. With insistent nagging by Dan's father, however, Michelle blamed herself for many of Dan's difficulties and often looked for reassurance that she was a good mother. I could honestly assure her that she was a great mother.

Eric Corcoran
Special Education Teacher
Exhibit L

Mr. Corcoran further indicated that Daniel's father, Leroy Leubner, was rarely involved in Daniel's progress or setbacks in school. He stated that Mr. Leubner would randomly call the school to find out if Daniel had been acting out but was not directly involved in parent-teacher meetings or in the developing of Daniel's educational plans.

At home, Daniel's aggression was also escalating. He would scream, throw temper tantrums and often pinch family members. In 1996, Daniel was placed on the medication Mellaril in an effort to calm his hostility, however he developed facial tics and would head roll when frustrated.

At age 12, Daniel began to concentrate his aggression toward his mother. Often and without warning he would pull her hair, hit her in the face and scream at her. By the time Daniel was 13 years old he was 5' 7" and almost 160 lbs. As he continued to grow his strength increased and he became more and more difficult to control. His rage attacks increased in 1998 through 1999 when he was in the 8th grade. Daniel would slap, pinch and throw any objects within his reach--both at school and at home. When Danny behaved in this manner his sisters would isolate to their bedrooms and admit to becoming fearful of Danny coming into their rooms at night.

Not only was Danny acting out physically, he also began to acting out sexually. Teachers at school complained about his wearing sweat pants as he would have constant erections that would be noticeable. At home he would try to kiss his sisters on the mouth and Michelle would have to monitor his hugging the girls. Melissa Davis reports that her fear of her brother increased so much during the summer of 1999 that she would spend as much time away from home as possible or lock herself in her room. Kimberly had resorted to sleeping on the screened in porch at night "in case Danny got up during the night and tried to come into my room."

By the summer of 1999, Danny's behavior was completely unmanageable to the extent that the Cayuga County Sheriff's Department had to be contacted on two occasions only days apart. On July 23, 1999 Melissa Leubner reports that she heard objects breaking and her mother crying and

pleading with Danny to stop hurting her. In an effort to help her mother, Melissa called family friend Susan Gatto, who in turn called 911. While patrol was being summoned, dispatch contacted Michelle at the West Lake residence. It is noted in the New York State Incident Report that dispatch "could here sounds that verified her son was out of control and assaulting her while she was on the phone..." Also noted in this incident report is "patrol being concerned for the safety of the mother and her daughter. It was suggested that she may want to contact a male adult friend to help control the child at least while a patrol arrives if she has any other problems over the weekend." [Exhibit M]

Three days later, on July 26, 1999, 911 was contacted again following Danny seriously assaulting his mother. The Cayuga County Sheriff's responded to find Danny already under control by Robert Davis. [Exhibit N]

Michelle reports that throughout the summer her son's physical attacks on her were occurring almost daily and "it seemed like Daniel enjoyed them." She looked forward with dread to every evening as she expected to be beaten by her son Daniel. This continued through the end of July when Daniel's doctor, Javier Monreal, suggested to Michelle that she mix his two medications, Mellaril and Resperadal.

In August, after following Dr. Monreal's recommendations, the combination of medications appeared to work, the frequency of the physical assaults decreased to four times a week though the intensity remained the same. The week before the fire the beatings went back to daily and the sexual advances increased.

Michelle first noticed Daniel's erections when he was approximately 11. At this time, Michelle would shower her son as he was incapable of bathing himself. At the same time he began approaching her from behind, smelling her hair, touching her buttocks and groping at her breasts. These behaviors, in addition to others, were noticed by her friend Susan Gatto, who thought them to be inappropriate. Susan Gatto describes the following observations of Danny's behaviors:

In addition to her family members, I am one of the few people who had extensive knowledge of the hardships and difficulties that Michelle endured. During our employment at United Healthcare, she would often have to leave work due to a phone call from Dan's school. At one point, she used almost all of her 14 vacation days because she had to care for Dan or leave work to bring him home. At one time she applied for the Family Medical Leave Act but told that Autism was not an approved listed medical condition. There were many times Michelle came to work with bruises and black eyes. Our immediate supervisor and several co-workers were aware of the abuse that had been occurring in Michelle's home. We all tried to speak to Michelle but she was hesitant and rather defensive when it came to Dan. I visited Michelle and her children frequently. I have a good relationship with her daughters and I can tell you that it was devastating for me to see how traumatized her daughters had become. Melissa hibernated in her room and Kimmy would run at the first sign of Danny's becoming agitated. I personally witnessed his severe aggression toward Michele. Once, he beat her

Danny. Michelle admits that she was grateful to have Robert around for Danny as Robert was usually successful in calming Danny down when he became agitated.

The Night of the Instant Offense

On September 3, 1999, Robert Davis came to the residence to watch after Danny so that Michelle could take Kimberly shopping for school clothes in the afternoon. Melissa was spending the weekend away with some friends at Darien Lake. Upon Michelle and Kimberly returning home, Robert left and Michelle prepared dinner for the kids. After dinner, Kimberly went to a neighborhood friend's house to play and Danny went outside to swim in the lake. Michelle remained in the house to tend to some housework. At approximately 8:30 that evening Michelle was folding laundry and Danny came in from swimming. He was instructed to go change his clothing and come and watch television. Several minutes later it is reported that he came up behind Michelle and grabbed her. Noticing that Danny was sexually aroused Michelle attempted to barricade herself in a vacant bedroom. No match for Danny's strength, Danny forced the bedroom door open and punched his mother in the face. Daniel hit her hard in the head with a shoe and knocked her to the ground, pulling down her shorts and underwear and laid on top of her. He squeezed her breasts from which she later had bruises which were confirmed during the police investigation. She reports that she kept telling him to stop and he abruptly did so. Daniel then got up and went to the back porch with his potato chips as if nothing happened.

As had become a routine following Danny's assaults, Michelle practiced a Native American ritual called "Smudging" [Exhibit A]. This ritual allowed Michelle to "cleanse" the site of the assault and ask for strength to cope with the trauma.

MENTAL HEALTH ISSUES

Following years of physical abuse which culminated in rape, the tragic death of her son, his burial and her arrest, Michelle began a downward spiral into depression and suicidal ideation. While incarcerated at the Cayuga County Jail, Michelle began individual therapy and medication management through the Cayuga County Mental Health Center. Michelle's use of Paxil and Zoloft for depression however were short-lived as Michelle did not like the side effects of such medications and feared that she would not be able to think clearly.

On December 3, 1999, Michelle's parents posted her bail and she has been on electronic home confinement. Correctional Officer, John Gleason, of the Cayuga County Sheriff's Department, reports that since her being placed on home confinement she has been compliant and has not been in violation of the terms of her release [Exhibit P]. Officer Gleason further indicated that although she was on home confinement as a bail condition, she was given permission to continue counseling at the Cayuga County Mental Health Center on a weekly basis. Since her release, Michelle has actively continued her weekly therapy sessions with Karen Walsh, M.S.W. A CCA representative spoke with Ms. Walsh and she stated the following regarding Michelle's treatment progress:

Michelle continues to be protective of her son Daniel and his past behaviors. Michelle has been tearful for many of our sessions and has presented trouble staying focused. She has been making some progress in regards to her grieving Daniel's death and accepting that his actions toward her were inappropriate. Michelle continues to state that she wished she could have done more to help Daniel.

As Michelle continued to present with symptoms of depression and anxiety, Ms. Walsh referred her to Dr. Muslim Khan, also of the Cayuga County Mental Health Center, for a psychiatric evaluation and another attempt at medication management. On February 10, 2000, Michelle was evaluated and Dr. Khan's made the following assessment of her mental status:

[Michelle Davis] started crying many times during the interview and her affect is congruent with mood, especially when she talked about her legal problems. She seemed quite upset also when she talks about her son and the circumstances and the she was not able to help him. She expressed a lot of guilt over that. Patient also seems to have difficulty with the sexual assault and had difficulty expressing herself. There is no evidence of formal thought disorder, patient denies having hallucinations, denies paranoid ideation, denies any thought of killing herself at this time.

Exhibit Q

Dr. Kahn prescribed Prozac and Busbar, both antidepressants, to Michelle in which she complied with for two weeks. Michelle reports that she stopped taking these medications due to the side effects. She is currently not taking any psychotropic medications.

In recent months, Michelle was also evaluated by Dr. Anne Wolbert Burgess, of West Newton, Massachusetts and Dr. Jay Jackman of Ithaca, New York. Dr. Burgess is a renowned expert in victimology and rape trauma. Dr. Jackman is a forensic psychiatrist.

Dr. Burgess met with Michelle Davis in her home on February 12, 2000 regarding the impact of the traumatic events that occurred in 1999. Dr. Burgess provided the following professional opinion:

Based upon my review of documents and audio tapes that have been made available to me; on my extensive study and research concerning violence against women and juvenile sex offenders; on my interview with Michelle Davis, it is my expert opinion that Michelle Davis, a victim of a rape by her autistic son Daniel, on September 3, 1999 is suffering from symptoms of Rape Trauma Syndrome compounded by the death of her son in a house fire.

...In rape trauma, people are psychologically numb and there is biologically based state that alters the processing of information. This emotional state

interferes with memory, attention and judgement by constructing the cognitive state.

Exhibit R

Dr. Jackman met with Michelle Davis on November 6, 1999, February 6 and April 6, 2000. From these meetings he formulated the following assessment of her state of mind following the sexually assault by her son Daniel:

...It is my opinion to a reasonable degree of medical certainty that Mrs. Davis was severely psychiatrically impaired from the time of being raped by her son on September 3, 1999 through the dates of the police interrogation and arrest on September 21st and 22nd. Mrs. Davis was severely traumatized by the rape and suffered Rape Trauma Syndrome.

...Mrs. Davis suffered an acute bereavement reaction as well as an acute stress disorder as a result of the death of her son and the burning of her house. As a result of these overwhelming stressors Mrs. Davis developed localized amnesia st that for the next several weeks she had no recollection of any of the rape experience or purification ritual until being subject to police interrogation. She told no one at the time because she was trying to be protective of her son's memory and did not want to give him a bad name.

Exhibit S

SUPPORT STATEMENTS ON BEHALF OF MICHELLE DAVIS

In addition to the just-cited statements professional opinions and observations, CCA received numerous support letters on behalf of Michelle Davis. The following are noteworthy excerpts from the statements of family, friends, and former co-workers which convey the aberrational nature of the offense and the genuine and ongoing remorse exhibited by Michelle Davis:

As a child Shelly and my children spent a lot of time together at our home and hers. Shelly was always sweet loving, unselfish child, not only to her cousins, but others. As Shelly grew up, she continued to be this person, kind, loving and good. She was never in trouble at school or home.

When Shelly found out my daughter had a special needs child, she called to offer her moral support and anything else she could do to help, as she understood for she had a special needs son. Shelly is a wonderful human being who reaches out to help others. She is a devoted mother and daughter, she loves her children.

Mrs. Connie Lurner
Aunt
Exhibit T

We have known her since birth and watched her grow and develop into a loving and caring individual. She never gave us or her mother any problems and never got into any serious problems. She matured quickly and poured-out caring and love to us and everyone she met. We were and still are very proud of her.

Sharon and Linda Turner
Aunts
Exhibit U

I have known Michelle, Leroy and their children for the past 12 years. Throughout these years, I have watched Michelle's behavior towards her children and I would like to share some of these thoughts with you...

Michelle has always been an outstanding mother and spending more time and attention towards her late son, Danny. She would always keep her children clean and well taken care of. Michelle is a caring mother and had the patience of a saint when nurturing Danny. Her patients with Danny was extremely incredible. Danny was, to say the least, a handful. This is not what the papers or Leroy portray, but the truth! She was the foundation of the family and this incident is not within her character. As long as I have known Michelle she has worked and contributed to the family financially and morally. The death of Danny is devastating for Michelle and if her actions caused this death, she will live with this tragedy eternally.

Pam Walawender
Friend
Exhibit V

As the senior pastor at Second Baptist Church, I have only known Michelle for a little under a year. During this time I have had lengthy opportunities for times of counseling and getting to know Michelle. She has been attending our services on Sunday as allowed and has found acceptance and help among our fellowship. She has friends and acquaintances here who have known her far longer and who speak of her fondly.

Michelle has no history of behavior that would suggest that she is a criminal in need for long terms of punishment or rehabilitation. Her actions since her arrest have proven that she submits to enforcement and that she is not a danger to herself or others. In fact, she has been able to continue as a supportive, nurturing mother for her daughters in the most distressing of circumstances..

Pastor Ronald C. Parks Jr.
Second Baptist Church
Exhibit W

My daughter, Suzanne Gatto, introduced my husband and I to her best friend, Michelle, sometime in 1998. After this, Sue would bring Michelle to our home to visit regularly. Sometimes she would just stop by and other times she would stay for a while. We always enjoyed our visits with her.

During this time, we learned that my husband of 52 years was suffering with liver cancer. Michelle visited him during his hospital stays as often as she could. She offered her support to my daughter and myself. My husband passed away on April 27, 1999. During the late spring and early summer, Michelle helped us with a garage sale at our camp on West Lake Road and she also helped my daughter clean out the basement of my home. My husband was quite a pack rat and the basement was overloaded with his collection of "stuff". It was quite a feat to clean out. She also assisted my daughter in cleaning out the shed in our backyard and planted flowers in my front yard.

Michelle would often speak about her children and particularly her son, Daniel. I was extremely concerned about the abusive behavior exhibited towards her by her son. I wanted her to seek help and at one time I know that she and my daughter went to see someone about services that were available. Unfortunately, there are no crisis intervention services in Cayuga County for families in her unusual circumstances. It was hard for me to know how she was suffering and that I was unable to help her.

...I consider Michelle to be like a second daughter to me. I know her to be a loving, devoted, protective mother. Even at the height of all her abuse, she still loved and shielded her son from society's judgement. It is my heartfelt request that you please have leniency and mercy at her sentencing for the sake of her young daughters and many loved ones.

Marian Gatto
Exhibit X

I never knew Michelle until after she became incarcerated in the Cayuga County Jail. My husband has a Bible Study and counseling ministry there and I met Michelle in this setting.

I did know of Michelle prior to this as both my son, Rob, who is now deceased, worked with her several years ago, and my daughter, Donna Frech, was employed with her for a number of years at Met Life in the Auburn office. My daughter, at the time of Danny's death was devastated over the tragedy and couldn't tell me enough of what a patient and caring mother Michelle was. She

shared with me that Michelle never complained about her difficult role as Danny's mother and shared many of the things they did together with her co-workers.

My concern now, in addition to Michelle's pending absence from her daughters, is for those girls who are so in need of their mother. Especially in view of what they have gone through and will continue to go through in the near future without her presence.

Mr. & Mrs. Russell McClary
Exhibit Y

I had the pleasure of working with Michelle at Met Life beginning in February of 1992. Although we were not extremely close friends as far as socializing outside of work, I felt that I knew her quite well. Michelle was one of the employees that you could count on to volunteer to help when an unexpected project would come up at work. She received countless awards for her efforts, including high production and quality. She was a very conscientious worker and on many occasions helped me when I became frustrated with a medical claim or a problem with my computer. And she always helped me with a smiling face and a great sense of humor.

Through the years Michelle and I had exchanged stories about our families, weekend events, and just the usual chats that two mothers would have. Not once during these conversations did Michelle complain even though I knew that life was not easy for her. She was so proud of her children and their every achievement. She would spend her weekends watching her three children swim in the lake and playing with them. While other co-workers would be talking of shopping with friends and going out dancing, Shelly would be laughing and telling us about the cute or funny things that Dan, Melissa, or Kimmie had done. The two things I remember the most about Michelle Davis is that she has a great sense of humor and that she is a caring mother.

I have known Leroy, Shelly, Danny, Melissa, and Kimberly for approximately fourteen years. Our two families and children have been close to each other up until the time when Shelly and Leroy's marriage failed. We would spend evenings together, swim in our pool, spend time on the lake and have family outings.

Throughout this time, I can vividly recall the summers when we would go to their house on West Lake Road and I would watch as Michelle would sit along their deck, watching Danny for hours at a time swimming in the lake. Shelly always seemed to place Danny's needs in front of her other children and husband. Her patients and devotion to Danny always stuck me that Shelly was an outstanding

mother and this matter in front of you is totally beyond her motherhood towards any of her children was tremendous.

Theresa Kustyn
Friend
Exhibit Z

I have known Michelle for over twenty years. She first dated my son, her current husband, Robert Davis, when she was 15 years old. Back then she impressed me as an intelligent, responsible teenager. She took care of her mother, who at the time was suffering from mental illness, attended school and worked a part-time job. She dated my son for over a year and became like a daughter to me. As young people often do, they decided to date other people. Even after this, Michelle continued to visit me and I have always considered her to be like a daughter. It was much to my delight when she married my son in December Of 1995.

I remember the birth of each of her children. She has always been an exceptional mother. When her son Daniel was diagnosed as autistic, it didn't break Michelle's spirit and she enrolled him in an early intervention program at the E John Garvas Center. She always took pride in his accomplishments, especially when he learned to use the toilet at age 7. She taught him how to use the computer to write to her and she spoiled him rotten. Even as times became difficult with Daniel's behavior, she continued to remain positive and supportive of her son. I felt, at times, she placed her daughters second and everything she did in her life, from dinners to work times, was planned around Daniel's needs. She never complained about the enormous restrictions she had and she always planned a special getaway for her girls in the summer. I have never seen a more devoted mother. I only regret not being able to help her more. I know she reached out to people, doctors, agencies, and sheriff's for help and I can't help but feel that we have failed her in a way, that we should have done more to help her.

Mary Davis
Mother-in-law
Exhibit AA

I met Michelle Davis while working at Met Life in 1990. We became friends over a period of time. We shared a commonality, we both have autistic sons. Michelle is very open hearted and sincere. She is the same person no matter where you

meet her. Some people put on a public face but not Michelle she has always been a sincere compassionate person and cares for people.

Genevieve Burk
Former Co-Worker
Exhibit BB

Actually, I do not know Michelle Davis personally. After I read the sad article in the paper, my heart went out to her. The picture in the paper was full of pain, shock, humiliation and total dejection!

I wrote to her at the Cayuga County jail, never thinking she would return an answer. I am a Christian and sent her hope through Jesus. By chance, she was a friend of a young woman I had given comfort to a few years ago. To my surprise, Michelle responded to my letter and we continued to write each other while she was incarcerated. After she was released on bail, Michelle called me to thank me for my kindness and comfort. Through our talks and letters she seems to be a quiet, thankful, thoughtful woman who is very concerned for her family and frightened for her future.

Evelyn Kierst
Exhibit CC

There has been a terrible travesty of events that might have been avoided. For Daniel Leubner it is too late. And for his mother- Michele Davis- she is left with the knowledge that she is responsible for her son's death.

It is a terrible injustice when a parent reaches out for help for their child and their cries fall on 'deaf' ears of physicians, law enforcement agencies, etc. Even more devastating is that fact that the child is a "Special Needs" teenager that is being physically abusive to family members.

Michelle is a loving and caring mother. Her daughters Melissa and Kim love her very much. These young ladies have suffered enough. Years of abuse at the hands of their brother. Then the loss of him in a fire. Their mom is taken away because of her part in the fire. Next the girls themselves are separated when they need and should be together to help each other cope with everything that has happened. As I stated before, what a travesty of events. Michele needs to be reunited with her daughters as quickly as is permitted so that they may all start the healing process as a family once again. Families such as these need our love and prayers.

Kristine DeChick
Neighbor
Exhibit DD

I have known Michele for the past eleven years. I am the mother of her stepson, Christopher, and I consider her to be one of the most devoted, caring and generous people I have ever met. She treats my son like her own child and has helped raise him for the last 10 years. I have never worried about Christopher being in her care and she was the one who picked him up for his visitations every other weekend. It was Shelly who would call and request that Christopher come over for longer visitation on the school and summer vacations. I have always had a good relationship with Shelly and she and I talked quite a bit. It was hard for me to hear from her and my son what was happening in the home and particularly with her son, Daniel.

Daniel loved Christopher and would often ask his mother to have him come and visit more. Even though Chris loved Daniel, I believe he feared him also. Shelly always protected my son as well as her daughters when Danny became agitated. He had grown to be such a large young man that at times I feared for her as well as my son and her daughters. I remember calling her and she was in the middle of a violent episode with Daniel. I was so concerned that I drove out to her house to make sure that she was alright. We talked for a while and I could see the torment in her face. I felt so helpless. Shelly loved Daniel so much that she would endure horrible abuses by him and she always forgave him. I know she turned for help to many sources and I also know the desperation and devastation she felt at having no place to go for help.

Shelly never complained about the sacrifices and struggles her life dealt to her. She was proud of all her children. She would always speak of all her children's accomplishments and when Danny achieved a new goal, she was especially proud because she knew how hard things came for him.

...I know how she has suffered before and especially before Danny's death. Danny was her life and I know she feels a great loss without him. No amount of prison time will soften her loss. She has suffered and endured so much pain and her daughters need her as any child needs their mother. I know Shelly is not a threat to anyone and my heart goes out to her and her family.

Virginia Nielens
Friend
Exhibit EE

COLLATERAL CONSEQUENCES

Michelle Davis has suffered many consequences due to her actions in the instant offense. Both she and her family have endured a great deal of embarrassment and loss brought on by the publicity surrounding this case in their small town. Her young daughters in particular have been subject to snide remarks from their classmates. Her husband, Robert Davis, and best friend,

Susan Gatto, both express remorse and blame themselves for not recognizing that Michelle was experiencing such turmoil in trying to control Danny's aggressive behaviors.

The family rearranged itself around Danny's needs. Sometimes it was difficult on the girls. Though not intentionally, they were always placed behind Daniels needs. Shelly tried to provide all the things the kids wanted and to avoid conflict, we had 5 televisions, 3 game systems and 2 computers. These items were not done to be frivolous or materialistic but out of necessity to avoid a tough time. Daniel was not one for sharing. Shelly and I worked separate shifts for our entire marriage. This was to provide care for the children, especially Daniel., who could not be left with a stranger due to his behavior. At one time, after he hurt his teacher, I became the teachers aide at school for almost a month. Shelly would always try to take the girls away by themselves during the summer if just for a day at Darien Lake or a weekend. She never complained but wished she could include Daniel but knew that he couldn't handle the crowds and she thought she owed her daughters' time to themselves.

I have never seen a more devoted, loving and patient mother as Shelly is. Even at the height of Daniel's beatings, Shelly would still comfort him and loved her son. As her husband I can tell you that I witnessed many aggressive moments, some of which I was hardly able to handle. Daniel was becoming more violent with me and that was a surprise since I was still bigger than he was. We both loved Daniel and we know he knew what he was doing, he just couldn't control himself. I blame myself at times for not pushing Shelly to get more help. I can't help but to feel that somewhere along the way, several people failed Michelle. Still, you have to know the love Michelle has for her children. The thought of placing Daniel somewhere was revolting to Shelly. She felt she hadn't tried everything yet. She hadn't tried all the medications available. She had also been through many plateau's with Dan. I think she really wanted this to be one of his "phases" and that he would pull through in time. I know her main goal was to help Dan and at the same time protect her girls from his violence. This whole family loved Daniel and we all miss him. We have all suffered in this tragedy and now I will lose my wife and the girls will lose their mother for a period of time. Michelle's daughters love their mother with all their hearts. They have never stopped loving their mother and they need her. Michelle is not a violent, horrible person. She has worked all her life and cared for her children. She has been a wonderful friend and wife. At one point we grew apart and separated but we have learned to stick together as a family. I will be here to care for her daughters while she is away. I am here to be her support. But I am not the girls' mother and that is what they desperately need, their mother.

Robert Davis
Husband
Exhibit FF

Mrs. Davis has conveyed great concern regarding the fate of her daughters when she is incarcerated for this offense behavior. Since Michele Davis' arrest, Kimberly Leubner has been residing with her father, Leroy Leubner and his live in girlfriend Cheryl Parsons. Until recently, Kimberly has only been allowed to visit with her mother on Saturday afternoons, causing Kimberly to cope with not only the loss of her brother and her home, but also the loss of the family structure she was accustomed to. As a result, Kimberly has been involved in individual counseling at the Cayuga County Mental Health Center and is currently taking the prescription anti-depressant, Zoloft.

Kimberly Leubner has been open in discussing her living arrangements with her father and expresses unhappiness and a poor relationship with both her father and Cheryl. A CCA representative spoke with Kimberly regarding her living arrangements in which Kimberly describes her current home life as "very hard." Kimberly reports that she does not get along with Cheryl as "she is mean" and often calls Kimberly "hyper." Further, she indicates that her father has never defended her when she is being confronted by Cheryl, stating "my dad always takes her side, never mine." The following is an excerpt from a letter Kimberly Leubner has written to your Honor in regards to her mother's pending incarceration:

My mom is Michelle Davis. Please don't send mommy away long. Thank you for letting me come see her on the weekends. I wish I lived over there. I love my mom very much! I wish that she didn't have to go away at all. When she does, I still want to live here. I don't like my dad's house. I love it here, and I hate it there. So please don't let her go away for a long time!

Kimberly Leubner, age 10
Daughter
Exhibit GG

Michele Davis' oldest daughter Melissa, has also suffered the loss of a brother, the home she grew up in, and soon her mother. For a person of such a young age, Melissa has demonstrated strength and determination to confront situations that would normally cause a teenager to isolate entirely or act out inappropriately. Melissa has reported to this writer her experience and observations of her brother Daniel as well as expressed concern regarding the future of her sister Kimberly and the incredible sense of loss she is preparing herself for upon her mother's incarceration. The following is Melissa's recollection of life with Danny, her continuous support for her mother and her fear of what the future may hold for her and her sister:

My mother and I have a wonderful relationship and have always had one; she and I are extremely close, and seeing her go through all of this pain is akin to seeing one's best friend suffer. My mother is a wonderful person, and she does not deserve to go through any more pain.

My mother is the ideal "mom"...she cares deeply about all of her children, and always has. She put us before her own welfare time and time again. Sometimes I would get jealous of Danny, however, while she always made sure my sister and I

were all right., she babied Danny horribly. Danny didn't understand the concept of the word "no"... far too often I heard his voice break out, "Mommy Danny go to Walmart!"...and we almost always went. The times we didn't go, Danny would throw gigantic fits...I would whine to Mom about them, but every time it was because "he doesn't know any better;" "He's used to going to Walmart," "He's not used to being told no." His fits would consist of screaming at the top of his lungs "NO MONEY!" while pounding on the floor to more violent measures...but in the last years of his life, Danny got much worse.

...I remember once sitting in the kitchen with mom and having Danny walk through the kitchen, open the door to go outside, and then he turned around, ran over to mom and hit her in the head. It was always like that, especially in those final three months. Danny would just be randomly violent, and he was horrible. I hid upstairs most of that summer to get away from it, but downstairs I would hear him hitting her and her screaming and I would hear things shatter on the floor and things crash into the walls. I witnessed it quite a few times, but mom always shooed me upstairs. I would write her letters, telling her to find Danny help because I was sick of her constantly having to deal with the abuse...she became irate with me for saying such things because Danny was her son and she had to protect him.

One day, all I could hear was Mom screaming "stop!" and Danny throwing things and hitting her. I got upset and called her best friend Sue and told her to call someone. Soon, the Sheriffs were at our home, and Mom was completely angry at me. She refused to talk to me or to anyone, and when I tried to talk to her she screamed that I didn't love Danny and that they were going to take him away from her. And that they wouldn't "know what radio station he listened to" or that "he would go insane without the lake"... she was protecting him even in such severe circumstances. I was absolutely furious, but Mom would here none of it.

However, Sue and I managed to coax her into "trying to find some help" for Danny... but nothing happened. There was nowhere to run, and even if there was, Mom wasn't eager to find it. I remember going to sleep at night in fear that my brother was going to come rape me or my sister, since his physicality had been horrible lately...he always wanted to hug real close, to kiss on the lips, and to pull us on top of him, and he walked around, to be blunt, with a constant erection. I wanted him out of the house and constantly told Mom that, but she didn't want to hear it. Danny was her son. He would get better. |

My family (my mother, my sister and I) have suffered far too much throughout these years. If my mother has to serve any time please make it as little as possible. I have always dreamed of a day where Mom and I could leave the house without worrying about Danny, and I still have yet to have that day. Please don't make me wait too long for that. |

Melissa Leubner, age 16
Daughter
Exhibit HH

SENTENCING RECOMMENDATIONS

In light of the above information, CCA would respectfully request that consideration be given to the following sentencing recommendations designed with regard to the specific characteristics of this defendant, her role in the instant offense and the goals of sentencing.

Domestic Violence Provision

Criminal Procedure Law §60.12, concerning authorized disposition; alternative indeterminate sentence of imprisonment; domestic violence cases, states:

...upon a determination following a hearing that (a) the defendant was a victim of physical, sexual, or psychological abuse by the victim or intended victim of such offense, (b) such abuse was a factor in causing the defendant to commit such offense and (c) the victim or intended victim of such offense was a member of the same family or household as the defendant as such term is defined in subdivision one of section 530.11 of the criminal procedure law, may, in lieu of imposing such a determinate sentence, impose an indeterminate sentence of imprisonment in accordance with subdivisions two and three of this section...

In the case at bar, it can be documented that Michelle Davis satisfies all of the above criteria in that she was a victim of sexual and physical abuse by the victim in the instant offense, her son Daniel, and that he was a resident in the Davis' home.

The application of §60.12 of the Criminal Procedure Law in the case of *People v. Michelle A. Davis* is supported by information provided by Dr. Anne Wolbert Burgess's April 10, 2000 follow-up psychological evaluation, detailing the impact of the traumatic events that occurred to Michelle Davis:

Michelle Davis was a victim of severe physical and sexual abuse at the hands of her son. The physical abuse occurred over a lengthy period of time and averaged 4-5 times per week. The continued physical abuse and sexual abuse were factors in causing her to commit the offense.

In Michelle Davis' mind, she was trying to manage her sons unruly and aggressive and predatory behavior. Her sorrow was marked by the fact that she knew he was out of control; that there were grave problems with him and it broke her heart. She was confused in terms of her loyalty and commitment to him and her increasing fear and helplessness for herself and her daughters.

Michelle Davis' ability to care for and protect her children was altered as a consequence of the rape by her son Daniel and compounded by subsequent traumatic events. This woman has no prior illegal behaviors. She is a woman caught in an overwhelming situation and was trying to the best of her ability and resources available to her to get this adolescent moved to a safe environment. Time ran out before he could be placed and a tragic incident occurred.

Exhibit II

Dr. Jay Jackman also offers information and a professional opinion which supports the application of §60.12 of the Criminal Procedure Law as it relates to the case at bar. This support is documented in his April 7, 2000, follow-up evaluation of Michelle Davis:

Mrs. Davis was severely traumatized by the rape by her son, Daniel, and suffered a rape trauma syndrom, a variant post-traumatic stress disorder, which is defined in the Diagnostic and Statistical Manual IV Edition of the American Psychological Association. At the interview of February 11, 2000, five months after the rape she still met the criteria for the description of post-traumatic stress disorder.

Exhibit JJ

Based upon the history of abuse at the hands of her son Daniel, and in view of the mitigating factors that have been presented, it is CCA's professional opinion that the case at bar warrants consideration of the application of §60.12 of the Criminal Procedure Law. Under this provision the maximum term of an indeterminate sentence imposed for a conviction of Manslaughter in the First Degree, a class B felony, must be at least six years and must not exceed twenty-five years. The minimum period of imprisonment under an indeterminate sentence imposed pursuant to subdivision one of this section must be fixed by the court at one-half of the minimum term imposed. In the case of Michelle Davis it is recommended that earnest consideration be given by the Court to sentence the defendant to an indeterminate term of 3 to 6 years of state incarceration.

Alternatively, should the Court feel that Michelle Davis does not meet the criteria for the above stated domestic violence provision, CCA would like to offer the following as an alternative to the above sentencing recommendation. It is respectfully asserted that based upon the facts and circumstances outlined above, including a review of the defendant's background, the aberrational nature of her offense behavior and her potential for a productive and contributory future, it is CCA's professional opinion that a sanction of a determinate 6 year sentence in State Prison would serve the needs of the criminal justice system without diminishing the severity of Michelle Davis' role in the instant offense.

The imposition of a definite sentence of 6 years will hold Michelle Davis accountable for her illegal behavior. Under Determinate Sentencing Guidelines (also known as "Jenna's Law") Michelle Davis would have to serve a minimum of 5 years and 1 month before being eligible for post release supervision.

CONCLUSION

CCA recognizes the seriousness of the offense behavior in this tragic case. However, we would ask the Court to consider the following information relevant to sentencing. First and foremost, Mrs. Davis obviously cared very deeply for her son and has suffered greatly since his death; she was a very attentive and caring mother to him as exemplified in every letter submitted on her behalf. We would ask the Court also to take into consideration Mrs. Davis' two daughters. She has a 16 year old daughter and a 10 year old daughter that will both suffer from any lengthy term of incarceration imposed on their mother. These collateral considerations, in addition to Michelle Davis also being a victim of abuse at the hands of her son Daniel and the lack of criminal history, are the basis for this sentencing recommendation.

Despite the seriousness of her actions on September 3, 1999, Michelle Davis is not a criminal, nor does she possess a criminal mentality. Her actions were the result of years of physical abuse which escalated to sexual molestation and ultimately rape. Her pain was and is very real, for she realizes that her actions caused the death of her only son. Her remorse is profound and genuine. The grief and mental torment she has imposed upon herself is far more punishment than any court-imposed sentence. We sincerely believe these factors, as well as the multitude of others contained throughout this memorandum, militate in favor of a sentence of 3 to 6 years in state prison, pursuant to §60.12 of the Criminal Procedure Law..

Thank you for your review and consideration of this memorandum.

Respectfully submitted,

Richard Luciano, MSW

Sentencing Advocate

**Ann Wolbert Burgess, DNSc.
228 Highland Avenue
West Newton, MA 02465
617-965-6261
Fax: 617-244-2324**

April 10, 2000

Mr. David P. Elkovitch
199 Genesee Street
Auburn, New York 13021

Re: Michelle Davis

Dear Mr. Elkovitch:

This report is a supplement to my February 21, 2000 report and details the impact of the traumatic events that occurred to Michelle Davis in 1999.

Legal Status

Michelle Davis (DOB: 2/26/63) is a 37 year old married mother of two daughters who is awaiting sentencing. The evidence presented by the prosecutor was that she gave oral and written statements on September 8, 21 & 22, 1999 incriminating herself in the death of her son, Daniel Leubner. Michelle Davis made contradictory statements in the presence of two police investigators to the effect that she had lit candles in a bedroom for spiritual reasons; that Danny went to bed after the lighting of the candles; that she and her daughter went to bed on the porch; that she may have accidentally started the fire with the candles; and that she intentionally started a fire in her house so that the carbon monoxide from the fire would put Danny to sleep and he would not wake up.

Caring for an Autistic Son

For 14 years, Michelle Davis had to cope with the serious and stressful problems of raising and relating to an autistic child. Michelle Janero married Leroy Laubner in 1982 after meeting him at a fast food restaurant where they both worked. Their daughter Melissa was born in 1983; Daniel was born in 1986 and their daughter Kimberly was born in 1989. Michelle separated from Leroy in 1991 and they were divorced in 1994. Michelle had the primary responsibility of caring for Daniel and her daughters.

Daniel's birth was complicated. According to Mrs. Davis, Daniel was born with his umbilical cord wrapped several times around his neck, his color was dark, and blood vessels in his eyes had burst. Development was slow. He was verbally limited and he was not interested in usual child activities. He was evaluated around age 2 and diagnosed with multiple handicaps and learning problems. He was placed in an early intervention program from ages 2-5 and a diagnosis of Autism was made in 1991. In his childhood, Daniel focused on rocks and swings. He would eat only certain foods. He would not put soap on his body. He had a very limited vocabulary of about 100 words; he talked in monosyllables.

Daniel always had aggressive behavior but it was handled well until 6th grade (age 10) when he began to have problems in school. Mainstreaming in school was not possible for Daniel (except for gym and music) as his attention span was poor. His aggression at school increased to the point where he hit a teacher giving her a concussion. At home, he would scream, throw temper tantrums, and give family members pinches. He was placed on medication in 1996 (Mellaril) which helped to calm him temporarily. He did not adjust well to a new teacher in grade 7 (age 11). He developed tics where his eyes and head would roll when he was frustrated.

At age 12, Daniel became very aggressive toward his mother. He pulled her hair, hit her face and screamed at her. By age 13 he was 5'7" and weighed 160 pounds and as his strength increased, it became more difficult for Mrs. Davis to manage him. His sisters would leave the room whenever he began to act up. His rage attacks increased in 1998-99 when he was in the 8th grade. He would slap, pinch and throw things. Any object in the house became a weapon. His sisters locked themselves in their bedroom to avoid him. He was violent and began to be sexually inappropriate. His teacher complained of the pants (sweat) he wore to school, that he had constant erections that showed through the pants. He seemed to be constantly sexually aroused. One time he was found lying on top of a girl at school. At home, he would try to kiss his sister on the mouth and Mrs. Davis would have to monitor his hugging of his sisters.

By summer 1999, Daniel became totally unmanageable. He would hit all family members including Mr. Davis. His sisters would hibernate in their room or try to stay at friend's homes. Mrs. Davis called the police two times for help after he seriously assaulted her. The police said he could be placed in an emergency hospital unit but only for 48 hours. New medications were tried. Mrs. Davis was trying to find alternatives for placement in the summer but no one was encouraging.

Mrs. Davis did not get much help from agencies in finding placement for her son and she did not get any help from Daniel's biological father. Daniel's father did not assist in any way except to attend a few doctor conferences and school meetings.

The Rape

The week before Labor Day, Mrs. Davis was sleeping in her bed when Daniel came in and laid on top of her. She was successful in forcing him off of her; she told him to go back to his room and he did. On September 3, 1999 when her husband and daughters were not home, Daniel had come in from swimming while Mrs. Davis was folding clothes. She told him to change and to then watch television. Several minutes later he came up and grabbed her from behind. She turned; Daniel was naked and sexually aroused. She tried to fight him; she tried to run to the vacant bedroom. He became angry and hit her in the side of the head. She was stunned and fell to the floor; he pulled down her clothes. She yelled for him to stop; she felt sick; he squeezed her breasts and raped her. When he finished, he left, got a bag of potato chips and went to the back room. Mrs. Davis was in shock. She remembers going through motions. She called her daughter Kim to return home. She managed to get Daniel to bed around 10pm for the evening. She told Kim to sleep in the family room and that she would sleep with her.

Escalating Trauma

If we examine the week in which the tragic incident occurred, there was an escalation of traumatic events which increased Mrs. Davis's sense of helplessness and guilt. First, Mr. Davis moves out of the house to his own apartment, agreeing to continue to help caring for and watching Daniel. Second, Daniel becomes increasingly disturbed in his violent behavior and the domestic violence escalates to where he assaults and rapes her. Third, in her confusion, Mrs. Davis attempts to cleanse the room where she was raped through a native American ritual. Fourth, she is then confronted with a fire in which she risks her own life to try to save her child. Fifth, there is a viewing and funeral to plan and attend. There is an ugly confrontation with Daniel's father over the disposition of the son's ashes. Sixth, she has lost her home and has to relocate herself and her daughters.

These traumatic events occur within a 10 day period and Michelle Davis does not have time to recuperate or get any

perspective on these events when she is called to the police station for an intensive interrogation. She is suffering from rape trauma syndrome, bereaved, stunned and traumatized and she is then accused of deliberately setting the fire.

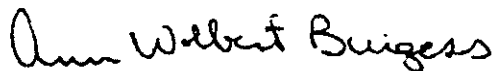
Summary

Michelle Davis was a victim of severe physical and sexual abuse at the hands of her son. The physical abuse occurred over a lengthy period of time and averaged 4-5 times per week. The continued physical abuse and sexual abuse were factors in causing her to commit the offense.

In Michelle Davis's mind, she was trying to manage her son's unruly, aggressive, and predatory behavior. Her sorrow was marked by the fact she knew he was not in control; that there were grave problems with him and it broke her heart. She was confused in terms of her loyalty and commitment to him and her increasing fear and helplessness for herself and her daughters.

Michelle Davis' ability to care for and protect her children was altered as a consequence of the rape by her son Daniel and compounded by subsequent traumatic events. This woman has no prior illegal behavior. She is a woman caught in an overwhelming situation and was trying to the best of her ability and resources available to her to get this adolescent moved in a safe environment. Time ran out before he could be placed and a tragic incident occurred.

Sincerely,



Ann Wolbert Burgess, DNSc.
Clinical Specialist in Psychiatric Mental Health Nursing