

1 COUNTY COURT OF THE STATE OF NEW YORK
2 COUNTY OF CAYUGA : TRIAL TERM

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4 THE PEOPLE OF THE STATE OF NEW YORK : Indictment No. 99-131

5 -against- :

6 MICHELLE DAVIS, : NYSID #9384403K

7 Defendant. : Sentencing

8 -----x

9 Cayuga County Courthouse
10 Auburn, New York

11 June 8, 2000

12 B e f o r e :

13 HON. PETER E. CORNING,

14 Justice

15 A p p e a r a n c e s :

16 JAMES B. VARGASON, ESQ.
17 District Attorney, Cayuga County

18 DAVID P. ELKOVITCH, ESQ.
19 Attorney for Defendant
199 Genesee Street
Auburn, New York 13021
and

20 JAMES S. BAIER, ESQ.
21 Attorney for Defendant
54 South Street
Auburn, New York 13021

22 Lisa M. Giacona
23 RPR, RMR, CSR

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I N D E X

E X H I B I T S

Exhibit No.	Marked	Received
(Court's)		
1 911 tape	100	100

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2 THE COURT: Okay. The District Attorney
3 has just handed up to me a decision from the
4 Appellate Division, Fourth Department dated May
5 25th indicating that the Trial Judge was in
6 error in allowing coverage, media coverage over
7 the objection of, I assume, the defendant in
8 this action.

9 Is there any objection from the defense to
10 media coverage in this matter?

11 MR. ELKOVITCH: We have no objection,
12 Judge.

13 THE COURT: Any objection by the District
14 Attorney?

15 MR. ELKOVITCH: I discussed the case --

16 MR. VARGASON: No objection, Judge.

17 I just -- it was faxed to my office this
18 morning and I wanted to make certain that Your
19 Honor has it.

20 THE COURT: I appreciate that.

21 MR. VARGASON: Yes.

22 THE COURT: It was news to me so I
23 appreciate your --

24 MR. VARGASON: Thank you.

25 THE COURT: -- keeping me abreast of it.

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3 Since there is no objection from either
4 the defense or the prosecution, we will allow
5 the media coverage to continue.

6 Okay. With that said, the matter before
7 the Court is the People of the State of New York
8 versus Michelle Davis.

9 Miss Davis is here to be sentenced in
10 connection with her plea to the charges of
11 manslaughter in the first degree and arson in
12 the second degree.

13 The Court has received a pre-sentence
14 report prepared by the Probation Department and
15 has also received a specific plan furnished by
16 the Center For Community Alternatives,
17 Incorporated on behalf of the defendant. I have
18 reviewed both of those documents.

19 I assume that the parties and the
20 attorneys have also.

21 With that said, is there any reason that
22 sentencing should not go forward at this point
23 in time?

24 MR. VARGASON: Not for the People.

25 MR. ELKOVITCH: No, Your Honor.

THE COURT: All right. Would the District

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2 Attorney like to be heard?

3 MR. VARGASON: Yes, I would, Your Honor.

4 Your Honor, I did, I did have an
5 opportunity to review the pre-sentence
6 investigation report, and first I would like to
7 say, Judge, that I recognize that the Court has
8 a very difficult task.

9 I recognize that to some extent the Court
10 perhaps doesn't enjoy, doesn't enjoy the luxury
11 that the District Attorney often has, which once
12 I decide that a crime has been committed and I'm
13 confident that the person who has been arrested
14 is the person responsible for it, oftentimes
15 that single-mindedness can, can drive you and to
16 pursue a case relentlessly.

17 The Court in my judgment doesn't
18 necessarily enjoy that single-mindedness that I
19 as District Attorney get to enjoy sometimes
20 because the Court is, is called upon to balance
21 many factors in arriving at a sentence which it
22 thinks is an appropriate sentence; and I'm not
23 unmindful, Your Honor, of the fact that that's
24 an extraordinary burden and just as it's an
25 extraordinary burden for me many times to

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2 initiate a prosecution and to stand here before
3 a jury or before Your Honor and ask for a
4 specific punishment. I know that it is a burden
5 that we accept but oftentimes it is not easy.

6 And that brings us, Your Honor, to the
7 thorny issue that has been, and the Court knows,
8 has been contentious on both sides, if you will,
9 oftentimes leading to some rather aggressive
10 accusations back and forth and that is the
11 thorny issue wherein the defendant has claimed
12 that her 13-year-old son raped her on the day
13 that she intentionally set fire to the structure
14 for the purpose of intentionally killing him.

15 And, Your Honor, I, I would ask you in
16 connection with that to consider a few things.
17 First, I heard Mr. Elkovitch last week in his
18 proffer of proof to the Court, which the Court
19 invited him to make concerning this issue, that
20 part of the proffer of proof would be that the
21 defendant's estranged husband was going to
22 testify to the Court that young Daniel had found
23 one of their XXX-rated pornographic tapes and
24 they had caught him watching this tape on two
25 occasions.

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3 Now, Your Honor, I have no way of knowing
4 whether that's true or not, but what I do know
5 is that if it were true and if it were somehow
6 or another a factor in this young man's conduct,
7 as the defendant would ask the Court to believe,
8 I would suggest to you, Your Honor, that it
9 shouldn't be a factor that mitigates in favor of
10 the defendant. Actually, is worse for the
11 defendant because she had this item at her house
12 and she allowed this young boy to gain the
13 access to it.

14 But, Your Honor, with regard to why we
15 have asked you to reject this claim as a basis
16 of the extreme emotional disturbance defense and
17 as a basis to impose perhaps a more lenient
18 sentence, if you will, goes something like this:
19 First and foremost, Your Honor, it's my position
20 that Daniel's dead. That's enough. He's dead.

21 Secondly, Your Honor, I just don't think
22 the facts support it, and Your Honor is well
23 aware of the facts. They are in the record.
24 You had an opportunity to review them, but,
25 Judge, I'd like to call your attention to a
number of facts: That on the evening in

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2 question the youngest daughter left to play at a
3 neighbor's house at about eight p.m., okay; that
4 young Daniel, according to the defendant,
5 re-entered from the porch about 8:30 p.m., he
6 was out swinging on a swing set. It is at this
7 time that the defendant alleges that the attack
8 took place.

9 Then we know that about shortly after this
10 incident, shortly after this incident she got
11 Danny ready for bed, and part of that routine
12 was that he would watch his cartoons. It's
13 something he did every day. He'd go out, he'd
14 swim in the lake, he'd swing on the swing set,
15 he'd come in and he'd watch his cartoons before
16 he went to bed.

17 This evening was no different than any
18 other evening. That's exactly what he did, and
19 the defendant has provided that information to
20 us.

21 Then, Your Honor, around 9:45 that evening
22 the young daughter returns from the neighbor's
23 house. About 10:15 p.m. the defendant put
24 Daniel to bed after he watched his cartoons.

25 Some five minutes later the defendant

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2 received a telephone call from her best friend
3 in the entire world. Her best friend told me,
4 Your Honor, and this is in the record, okay,
5 that the defendant sounded normal, that they
6 engaged in chitchat, that she could detect
7 nothing wrong in her voice and that the
8 defendant did not sound upset and that she did
9 not say anything about the alleged attack.

10 Now her -- Your Honor, this is the same
11 individual who spent a great deal of time with
12 this defendant on a daily basis and, in fact,
13 they were together that entire day before the
14 fire. In fact, they went and they bought school
15 clothes for the two young girls. Oddly enough,
16 they didn't buy any school clothes for Daniel,
17 and, in fact, when they got home the defendant
18 locked those school clothes in the vehicle.
19 They were not burned up in the fire.

20 But there could be an argument advanced,
21 Your Honor, that, well, when she was interviewed
22 by the investigators it's one of the first
23 things she told them during the confession.

24 Well, that is true, Your Honor, but I
25 would offer the Court this insight on that: She

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2 had been interviewed many times before that. Of
3 course she asserted certain falsehoods to them
4 concerning how the fire started. At no time did
5 she ever mention any of this alleged attack; but
6 in any event, Your Honor, I would submit that
7 she knew that the investigator suspected her,
8 that she knew that her story was not adding up
9 and that she had flunked the lie dectector test
10 and that she knew she had to come up with a
11 pretty compelling excuse, if you will, something
12 hideous in order to seek sympathy.

13 Now on the evening that she gave her
14 confession, Your Honor, she indicated to the
15 investigators, and this fact may not be known to
16 the Court, but I was at the Public Safety
17 Building, and when she was brought back to the
18 Public Safety Building when she gave her second
19 confession and she asserted to the investigators
20 that she had physical proof of this alleged
21 attack, which were scratches on her body, at my
22 request the Sheriff called in the off-duty nurse
23 to examine her. She found no scratches of the
24 type or nature described by the defendant.

25 So those were things that led to my

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2 skepticism, Your Honor, about her claim at that
3 time.

4 Then we're confronted, if you will, Your
5 Honor, with the testimony from the so-called
6 experts, Dr. Ann Burgess and Dr. Jackman, who
7 opined to this Court in closed-door hearings
8 that they believe that the defendant was
9 suffering from rape trauma syndrome and I
10 believe Dr. Jackman even opined that she was
11 suffering from posttraumatic stress disorder.

12 Well, Your Honor, Dr. Burgess and
13 Dr. Jackman both believed her story that she was
14 lighting candles in a native American ceremony
15 to drive away evil spirits. They accepted her
16 made-up story out of hand. In fact, they even
17 testified about it in detail during the hearing,
18 and as Your Honor knows, you presided over that.
19 Dr. Burgess even gave it a name. She said the
20 defendant cleansed-smudged the room, cleansed,
21 and obviously, Your Honor, we know that that
22 didn't take place. We know that there wasn't
23 this ceremony.

24 In fact, what happened was the defendant
25 lit the candles and saturated the wrapping paper

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2 with some accelerants and started the fire where
3 she did, and the reason I bring this out, Your
4 Honor, is that their testimony and their
5 credibility about the syndromes in my eyes, Your
6 Honor, now sort of becomes worthless. In point
7 of fact, she fooled them; and all of their
8 opinions were based upon these contrived
9 falsehoods, and I would ask that the Court not
10 accept them in view of that.

11 But what do we know that we can trust?
12 Well, Your Honor, in the course of preparing
13 this case and living this case over the last
14 nine months, I did have an opportunity to review
15 Daniel's school records. I had an opportunity
16 to review his medical records. They are a part
17 of the court record.

18 Nowhere in those records was there ever
19 any indication whatsoever that this young boy,
20 suffering from this autism, acted out in a
21 sexual nature. I know there have been
22 allegations to it.

23 Now I will not hide from the fact, Your
24 Honor, that there was some evidence in the
25 record, and I've conceded this to the Court many

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2 times, that young Daniel was a handful and that
3 he could be aggressive at times, no doubt about
4 it and nobody will dispute that; but what I also
5 learned, Your Honor, in interviewing neighbors
6 and talking to people and looking at this case
7 was that Daniel was a good student. Daniel
8 liked to eat pizza, he liked to play Nintendo
9 and Mario Brothers. He loved to swim in the
10 lake and swing on the swing set that he loved so
11 much. In essence, Your Honor, he enjoyed and
12 derived a great deal of pleasure from activities
13 all little boys of that age enjoy.

14 So where does that bring us? What is the
15 right sentence in terms of what I am going to
16 recommend to the Court? Your Honor, I ask the
17 Court to impose a sentence that punishes the
18 defendant for her wrongdoing. I ask that it is
19 a sentence that speaks meaningfully on behalf of
20 the victim, Daniel Leubner. I believe, Your
21 Honor, it is something that says Daniel Leubner
22 had a right to live. It is the sentence that
23 says handicapped people have as much right to
24 live as anybody else; and as I indicated, Your
25 Honor, it certainly was true that Daniel could

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2 be a handful and that his autism created many
3 obstacles for him and those who had to care for
4 him, but, Your Honor, he wasn't the monster that
5 some would have this Court believe.

6 He didn't bargain for his autism and I'm
7 positive he would rather have traded that
8 disability for a normal life in a heartbeat, but
9 that wasn't the hand that was dealt to him.

10 Judge, my job is to speak for him and
11 implore this Court to impose a sentence that
12 unequivocally tells this defendant and the
13 community that taking an innocent life will not
14 be condoned or tolerated.

15 I implore the Court to impose a sentence
16 that says, among other things, Your Honor, that
17 as a community we will not add to the decline in
18 the respect for human life even if the rest of
19 the country is sliding down the slippery slope
20 of moral relativism.

21 I ask the Court to impose a sentence that
22 says that a parent's first responsibility is to
23 protect their children, that we will not
24 tolerate a citizen taking the law in their own
25 hands under the misguided and distraught belief

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3 that they are justified in killing another human
4 being, especially, Your Honor, where there is no
5 immediate danger to the person, if there ever
6 was.

7 And I would ask the Court to reflect upon
8 the fact that Daniel was asleep in his bed, the
9 presumed safety of his bed, if you will, Your
10 Honor, at the time that this defendant set the
11 blaze that killed him.

12 Judge, in my judgment you have a wonderful
13 opportunity here. You have a wonderful
14 opportunity to right a horrible wrong.

15 I recognize nothing you do is going to
16 bring back Daniel and you're not going to be
17 able to solve all the ills of society with your
18 sentence today; and I know, Judge, that you
19 yourself are struggling to come up with a
20 sentence that is fair and will reflect justice,
21 if that is even possible under the
22 circumstances, but, Judge, I would ask you to
23 remember that the law has already afforded this
24 defendant her consideration in the form of an
25 affirmative defense and she's used that
affirmative defense, Your Honor, and that the

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2 law has already recognized and reduced the penal
3 consequences to her.

4 Now, now is the time to recognize what she
5 did and impose a sentence that reflects it; and,
6 Judge, one of the things that struck me is that
7 she did not seek out assistance from
8 organizations in the community and elsewhere to
9 help her deal with the problems that she had:
10 The Autism Society of America, The Autism
11 Research Institute, The National Autism Hot
12 Line, The Advocacy Bureau for the New York State
13 Commission on Quality of Care, The Office of
14 Vocational and Educational Services for
15 Individuals With Disabilities, The Parent
16 Network Center and Resources for Children With
17 Special Needs, all located in New York State,
18 Your Honor.

19 They all have one thing in common. Never
20 heard of this defendant. She never reached out
21 to any of them, nor, Your Honor, did she reach
22 out to the law enforcement community which is
23 charged with the responsibility to investigate
24 and adjudicate the allegations she so
25 desperately wants this Court to use in

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2 justifying a shorter sentence.

3 Instead, Your Honor, in a selfish act on
4 her part, in my judgment, devoid of any
5 consideration for the welfare of her 13-year-old
6 son, a person who I submit, Your Honor, she was
7 tired of caring for and ultimately grew to
8 despise because she thought of him as an
9 obstacle to her living a normal life, and, in
10 fact, Your Honor, at the, at the funeral service
11 she told a neighbor now she and the girls can
12 live a normal life, Judge, she disconnected the
13 upstairs smoke detector and she saturated the
14 wrapping paper with nail polish remover and she
15 lit the stairs on fire.

16 She admitted that she -- the reason she
17 chose to set the stairs on fire was because she
18 knew that it was the only source of egress for
19 Danny and that once the fire started, he would
20 not be able to escape.

21 Judge, I believe that this demonstration
22 knew exactly what she was doing and she didn't
23 want any turning back. I think it's an
24 unsettling look into the mind of a selfish
25 person, Judge, a person willing to kill her own

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2 flesh for convenience.

3 A couple more thoughts, Your Honor. I
4 suspect there will be an effort to persuade you
5 that a short sentence is justified because a
6 long sentence would penalize the defendant's two
7 surviving children, and I would ask Your Honor
8 to think about this. I imagine that the plea
9 will be made on, on their behalf not to deprive
10 them of their mother, and I ask you to consider
11 what type of message would be sent to these
12 children by a short sentence and I would ask you
13 to consider the positive life lesson that a long
14 sentence would have.

15 A long sentence would tell them that
16 Danny's life was not expendible. It would say
17 that the law protects the handicapped children
18 from the harm that grownups can and often do
19 inflict. It would say you must have respect for
20 all human life. It would also teach them, Your
21 Honor, that there are consequences for actions
22 and sometimes those consequences can be severe.

23 Finally, Judge, I ask you not to let this
24 defendant devalue Danny's life by claiming that
25 she is the true victim here.

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2 I have read the report that was submitted
3 on her behalf and it is not surprising to me.

4 I am troubled by some of it, Your Honor,
5 specifically one exhibit in there, the letter
6 written to you by the defendant's best friend,
7 who has contradicted herself in that letter with
8 sworn testimony before the grand jury, is a
9 matter that I take very seriously.

10 Judge, stand firm. I ask you to resist
11 the plea. Tell her with your sentence that she
12 received all the consideration she's going to
13 get.

14 She made a conscious decision to kill her
15 son. It is unacceptable. She must accept the
16 consequences, and the consequences must be
17 severe; and on behalf of Daniel, Your Honor, and
18 on behalf of the People of the State of New York
19 here in Cayuga County I ask you to impose a
20 sentence of at least 20 years.

21 Even with that sentence, Your Honor, she
22 will breathe free air again. Danny will never
23 get that opportunity. His last breath, Your
24 Honor, included gagging and choking on hot
25 carbon monoxide smoke.

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2 I think he deserves better. He is the
3 individual who deserves the compassion here,
4 although I know there will be an effort to ask
5 you to demonstrate compassion with a short
6 sentence and that compassion for -- with a short
7 sentence is actually being courageous.

8 Well, I would ask Your Honor to
9 demonstrate that compassion does not include
10 excusing what is wrong.

11 Thank you, Judge, for listening to me, and
12 on behalf of Mr. Leubner, he's asked that I
13 request an opportunity for him to speak before
14 the Court. I filed that notice with you.

15 THE COURT: Yes, you did, and Mr. Leubner
16 is -- certainly has the right to address the
17 Court. He can do so at this time.

18 MR. VARGASON: At this time. Very good.

19 MR. LEUBNER: Thank you, Your Honor.

20 The events of September 4, 1999 left
21 numerous victims: My daughters Melissa and
22 Kimberly who not only lost their brother, home
23 and possessions but now must come to grips with
24 the reality of their mother's actions; the
25 teachers and therapists who worked with Daniel

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3 over the years who realized the potential he had
4 and the person he was. This is exemplified by
5 the large number who attended his memorial,
6 traveling from as far away as Florida in order
7 to pay their respects to the child who had
8 touched them so; Sherryl, who loved Danny as a
9 son and shared my hopes and dreams for him; her
10 daughter Alexis who proudly called Dan her
11 brother and looked for him every day in school.
12 She spoke to his teacher almost daily so we
13 could feel in touch. Now all we feel is grief
14 and despair; myself as I long held out hope that
15 I might one day be able to resume my place in my
16 children's lives and share in their futures,
17 dreams and goals, to once again take Dan to the
18 park, play with K-nex and other toys, teach him to
19 ride his bike, have him read aloud to me.

20 Instead, Danny is dead and I have grave
21 concerns for my daughters' futures.

22 In the end, however, the real victim here
23 is Danny, murdered by his mother and vilified by
24 her accusations. He is unable to defend
25 himself. Silenced forever, I must be his voice.

Dan did not ask for the life he was given.

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2 Anxious to please, he worked very hard to be
3 like everyone else. A loving and compassionate
4 child, he was very aware of the world around him
5 and the feelings of others.

6 For example, when there were rumors of
7 problems in the stepbrother's home and the
8 possibility arose that he might be staying at
9 the lakeside home, Dan hung a sign on the front
10 door that said, "Christopher's house."

11 He also joked around often and liked to
12 make people smile. One day, story of -- my
13 daughter told me, Kimberly, upon seeing his cat
14 Toby sitting on the grill, he said, Toby, you
15 get off that grill. You're not a hamburger,
16 you're not a hotdog. This happened last summer
17 after Danny had finally been placed on
18 medication once again.

19 He was improving both behaviorally and
20 verbally. His teacher told me that he was
21 having the best session ever in summer school.

22 Dan's speech therapist was excited about his
23 progress and looking forward to the upcoming
24 school year.

25 By all accounts Dan was beginning to

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2 realize his own potential, just as we know -- we
3 knew he would. However, now we will never know
4 how far he could have gone. This beautiful,
5 intelligent, living child is no more.

6 With several options available and offered
7 to her, his mother chose to take him from us
8 forever and to devastate the lives of everyone
9 who knew and loved Dan.

10 It was not his fault that he was born
11 disabled. Danny's life had great potential and
12 immense value, as equal value as anyone's. His
13 death deserves equal justice.

14 THE COURT: Mr. Elkovitch?

15 MR. ELKOVITCH: Your Honor, we had made a
16 request also pursuant that -- to the statute
17 that Melissa Leubner would like to address the
18 Court. We had and we'd like her to do that at
19 this time.

20 THE COURT: All right.

21 The microphone, I don't think that
22 microphone works, Melissa, so we'll ask you to
23 speak up, okay?

24 MELISSA LEUBNER: All right. My name is
25 Melissa Leubner and I am the daughter of

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Michelle Davis and also Daniel's sister.

Regardless of public's uninformed perception of my mother, I would use the word blessed to describe the luck I had in choosing her as a parent. As a mother my mom is the tops. She's everything a mother should be: Kind, compassionate, open-minded and most of all in possession of an extraordinary amount of love for her children.

Instead of stomping on or laughing at my dreams of Japan and my future, she's embraced them and has done everything in her power to see that they come true.

Whenever I need to talk about something most children would be afraid to speak of I can open my heart up to her and she will listen nonjudgmentally. She is the most supporting, most wonderful woman I have ever met and I hope that maybe people will one day look past the news media and look into her eyes, and I hope that they will find in them what I have always known: My mother is an amazing woman.

Don't snicker and turn away, whispering your comments between each other. Unless you

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2 lived in my house, unless you lived with my
3 mother and my brother and my sister and my
4 stepfather, you have no right to judge.

5 My brother is the one who died, yes, but
6 he is not the only victim in any aspect of the
7 word.

8 I loved my brother. I was proud of my
9 brother's every achievement. I was happy when
10 he would bounce around to my CDs and watch
11 cartoons with me, but life with Daniel wasn't as
12 pleasant and fair-weather as some would have you
13 suspect.

14 I am sick of all of the lies, and I will
15 come right out and tell you that life with
16 Daniel, especially in his last years, was in no
17 uncertain terms hellish.

18 Ever since I was young it was made clear
19 to me that Daniel was special. I often wondered
20 why I couldn't have a normal brother like
21 everybody else did.

22 I came to know very quickly that Daniel
23 was the ruler of the house. This became
24 especially frustrating in my later years.
25 Danny's routines were so strict that it shut me

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2 out from a normal teen-age life almost
3 completely.

4 THE COURT: Excuse me. When you read you
5 tend to read --

6 MELISSA LEUBNER: I'm sorry.

7 THE COURT: So I ask you to slow down
8 because the court reporter would like to get all
9 of it down.

10 MELISSA LEUBNER: I'm sorry.

11 THE COURT: That's all right.

12 MELISSA LEUBNER: I couldn't go to any
13 school functions due to the fact that entering
14 the car meant to him that we were going to go to
15 a toy store or Wal-Mart or Blockbuster Videos.

16 My friends were chosen on a basis of
17 whether or not they would understand my
18 brother's condition. I avoided boys altogether
19 due to not wanting them to be scared of my
20 brother, who was intimidating, especially late
21 in life.

22 Eventually certain songs, phrases and
23 television shows were off limits due to the fact
24 that they set Danny off. I remained on guard at
25 all times and watched my every word in my own

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2 home.

3 Danny always had spats of violence here
4 and there. The last year or so, however, it
5 escalated to a new level. My first recollection
6 of Danny's violence is unclear, but I remember
7 several incidents where he hit me in the past,
8 usually when I tried to take something from him
9 that he wasn't done with.

10 Once I remember getting out of the car
11 after going to the video store and taking the
12 video bag and having him hit me hard on the
13 back. I hit back and I started yelling at him
14 and he hit me again until I ran off to the
15 house.

16 Hits were common whenever I took things
17 from Danny, even if he wasn't using them. I was
18 often told to wait to take back my dolls or CDs
19 if they were near Danny so he wouldn't get angry
20 if I took them.

21 Every older child at one time or another
22 has a younger sibling complex but most aren't
23 told to sacrifice theirs CDs until their brother
24 only three years their junior gets done
25 demolishing them. I began to get very bitter.

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2 During the last years of his life Danny's
3 violence became extreme. I didn't have to take
4 anything from him to set him off. Absolutely
5 nothing would trigger him into a violent fit.

6 It came to a point where my mom had to
7 leave work early every day because I had to call
8 her almost every day begging her to come home
9 during the hour I watched Danny and Kimmy, my
10 sister, because Danny was beginning to get
11 violent.

12 No matter where he went he wouldn't stop
13 hurting us. Even in the car he would pinch and
14 hit whoever was nearby, even if they were
15 ignoring him.

16 Even though I was sometimes a victim of
17 Danny's violence, it was incredibly minor
18 compared to the way he hurt my mother. I only
19 witnessed a few incidents since most of the
20 summer I spent in my bedroom due to all of the
21 violence, but I always heard her screams almost
22 every night and I'd come downstairs many times
23 after the screaming subsided to find my mother
24 crying or beaten beyond belief, in a state of
25 duress. Her bruises were immense.

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2 Many nights I would be would be downstairs
3 and Danny'd get mad and mom would tell me to run
4 upstairs, and Kimberly would run outside.

5 One time I was with mom in the kitchen
6 talking to her when Danny walked through the
7 kitchen and was halfway out the door leading
8 outside when he turned around, walked over and
9 punched mom in the face.

10 Another time I was with mom in the living
11 room and he started hitting her, kicking her and
12 slapping her, and then finally mom fell onto the
13 floor and started, and he started throwing
14 things at her.

15 At that point I shouted at him to stop
16 hitting because he was making me and mom sad,
17 and he started screaming but retreated into the
18 back porch.

19 But yet another time he started up again
20 and I yelled at him again but instead of backing
21 up, he began to yell back. At this point mom
22 sent me upstairs.

23 And at one time I was upstairs on my
24 computer telling my friend how upset I was at
25 Danny's behavior when I heard mom screaming at

1
2 him to stop and I heard things being thrown and
3 her being hit downstairs. I went off the
4 Internet and I called her friend Sue Gatto to
5 get help. She called the Sheriffs. I remember
6 that night clearly.

7 Anybody who thinks my mother had no love
8 for her son wasn't there then, didn't see her
9 then. I remember how angry I was with her that
10 night. Danny could have killed her but she was
11 mad at me for having Sue tattle on him. How
12 dare I do something like that to my brother!
13 What if they took him away from her? I remember
14 the fury I felt at being second place to my
15 brother.

16 I knew my mother loved me and loves me but
17 all my life I've felt like I was stuck in a bad
18 episode of the Brady Bunch. Instead of, Marsha,
19 Marsha, Marsha, my call was Danny, Danny, Danny.

20 I was also afraid of Danny sexually,
21 something nobody other than two of my friends
22 and my grandmother and my diary knew. Danny was
23 always asking for hugs and he wasn't content
24 with little ones. He wanted big bear hugs and
25 he always asked for big kisses on the lips

1
2 afterwards.

3 I refused the kisses and eventually the
4 hugs, but that would get him violent so mom
5 asked me to hug him but she always broke the
6 hugs up after a few seconds.

7 Danny was also always sniffing my mom's
8 hair and pinching her on the rear or the legs,
9 which discomfoted me but we all disregarded it
10 as his form of motherly love.

11 I saw him becoming increasingly sexual and
12 it both scared me and disgusted me. Everybody
13 so passed it off as his ignorance of puberty
14 that his constant erections and constant
15 masturbating in front of everybody became
16 commonplace.

17 I was very uncomfortable and scared but
18 never told my mother because her devotion to
19 Danny was near unbearable at times, as I said
20 before. It was the one thing in my entire life
21 I was afraid to tell my mother because I feared
22 that she would say I was jealous or just angry;
23 and I was jealous, I was angry, but I was also
24 scared.

25 This isn't the Daniel you have read about.

1
2 The Daniel you've read about has come primary
3 from the lips of the Leubner family, and their
4 Daniel and their lives with Daniel are all
5 nothing but daydreams.

6 Neither my brother nor myself have visited
7 my father in years and neither of us wanted to.

8 Leroy Leubner often speaks of contrived
9 stories but his is the most of all. Leroy
10 Leubner is my father but I will not address him
11 as such because it is my belief that blood does
12 not a family make but only love and heart. He
13 had neither for my brother or myself.

14 This wasn't true for a while. While he
15 was married to my mother he remained a mostly
16 absent but still large part of my life, and it
17 was comfortable knowing he was there; and for a
18 while after the divorce I enjoyed my visitations
19 with him.

20 It wasn't until he found himself a
21 girlfriend that everything began to fall apart.
22 When Leroy and Sherryl Parsons became a couple
23 both my relationship and my brother's
24 relationship with Leroy all but disappeared. He
25 became cold and distant, obsessed with his

1
2 girlfriend and his new Victorian life they were
3 to start. Visitation became sparse.

4 As for me, when I did go I was usually
5 criticized and made to feel inferior to his
6 girlfriend and his girlfriend's daughter, and I
7 went home upset almost every time.

8 There was no such thing as a good visit.
9 I dreaded going. In fact, I only went to visit
10 him because mom thought it would be a good idea.
11 However, around the age of 12 I told her I
12 wasn't going to go any more and that was it.
13 Danny had the same idea and stopped going.

14 Sometimes Leroy would come to pick Kimmy
15 and Danny up for their visitations, as his life
16 was too busy with other stuff to have
17 separate visitations, and Danny would scream,
18 no, and run away until Leroy left. Danny went
19 an average of three times in the four years
20 before his death, and every time he was brought
21 home early because Leroy couldn't deal with his
22 violent outbursts. Once he claimed that Danny
23 almost broke his nose. Leroy was very aware of
24 Danny's violence but he just didn't care as long
25 as it wasn't shoved in his face. He just didn't

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care as long as it wasn't shoved in his face.

That is Leroy Leubner to a tee. Leroy has never been an active father in any of his three children's lives.

MR. VARGASON: Judge, I'm sorry. I'm going --

THE COURT: I'm going to allow it.

MELISSA LEUBNER: Kimmy saw him the most at an astounding four hours a week. I pray my sarcasm wasn't lost on you.

Leroy never knew Danny. He didn't want to know Danny.

This message goes out to all of you associated with the press. Leroy Leubner is wasting your newspaper space with his oh, so heartfelt cries and all of his teary-eyed ramblings. He has put on the face of the caring father in hopes that Cayuga County and the rest of the world would fall for it, and sadly, it appears most of you have.

I could list for paragraphs all of the things Leroy has done but I'll save you all of that.

Leroy was classified by a school

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psychiatrist as a minimal father and I agree wholeheartedly.

One year he was so upset at Kimberly that he refused to give any of us any birthday or Christmas gifts. I doubt he even bought any. He couldn't spend --

THE COURT: Again, I ask you to slow down, please.

MELISSA LEUBNER: I'm sorry. I get nervous.

THE COURT: I understand.

MELISSA LEUBNER: He couldn't spend 32 cents on a stamp for my birthday one year, card one year, and instead merely dropped a card into a mailbox while he drove by.

As I aforementioned, visitation with Kimmy, the only one even halfway interested in seeing him, was once a week for four hours. I think in her entire life she has slept over at his house less than five times.

Leroy Leubner may be a father in blood but at heart he is nothing more than a phony posing for the media, and I hope that none of you will be fooled from now on.

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Recently there's been a perfect example of the type of person Leroy Leubner is.

THE COURT: Well, I don't mean to interrupt but Leroy is not the person --

MELISSA LEUBNER: I know.

THE COURT: Is this going to go on much longer? Have you got much more?

MELISSA LEUBNER: Hum?

THE COURT: Do you have much more?

MELISSA LEUBNER: It'll take only a few more minutes.

THE COURT: All right.

MELISSA LEUBNER: May I continue?

THE COURT: Yes.

MELISSA LEUBNER: Thank you.

My mother on April 14, 2000 went to pick up my sister for her visitation. I was in the car with her and she had permission from the jail officials to go do this. It was a beautiful day outside, and out of fear of confrontation we made sure to park in front of the house next to the Leubner/Parsons' household.

Sure enough, they were outside and sure

1
2 enough, Leroy's woman couldn't help but open her
3 mouth: "Come on, Kimmy, she cried, coming
4 closer to the car with her every word, your
5 super mom is here, your super mom is here to
6 come bring you for your visitation. Aren't you
7 excited that your super mom is here?"

8 Now, ladies and gentlemen, I'm a normal
9 sixteen-year-old girl and I'm not an angel by
10 any means so I heard this woman saying this
11 stuff I couldn't help but let an obscenity out
12 of my mouth.

13 This did it. She came over to the car
14 screaming in my mother and my faces and Leroy
15 soon joined her screaming at my mother.

16 His significant other had the audacity to call
17 me a future child killer and threw other such
18 comments at me, and Leroy did nothing to stop
19 her, spewing trash at my mother while wearing
20 his "Remember Daniel" tee shirt. This was as
21 planned as it could be.

22 My mother remained silent the whole time,
23 except to tell him to let Kimmy in the car and
24 that he was in violation of his court order,
25 which specifically spelled out that neither of

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them were allowed to say derogatory comments in front of Kimmy or myself.

Leroy responded with saying that since mom was incarcerated, the order was null and void.

Kimmy came to the car in tears saying that they had promised her beforehand that they wouldn't do anything like that.

Now, ladies and gentlemen, any man who would break a promise like that to his daughter and would have the audacity to do something like that in front of a ten-year-old girl is not a real father and I hope that you will not be fooled.

Even if I had started the attack, which I didn't, the fact that he allowed it to go on that long is just inexcusable. As adults they should both know better, and the fact that they didn't shouldn't go unnoticed. He is no father at all and don't let anybody fool you otherwise.

As for his parents, Sally and Leroy, Sr., ignore them --

MR. VARGASON: Judge, please.

THE COURT: Yes.

I'm sorry. You're way off the -- the

1
2 issue here is a sentencing and your relationship
3 between you and your father really -- I've
4 listened to for a long time, but it is not the
5 issue before the Court.

6 MELISSA LEUBNER: I just want you to know
7 that all of his tales are just as contrived as
8 he's claiming ours are.

9 THE COURT: I appreciate it. Thank you.

10 MELISSA LEUBNER: And I -- can I please
11 read my last paragraph which has nothing to do
12 with them?

13 THE COURT: All right.

14 MELISSA LEUBNER: My mother is a wonderful
15 lady, everybody. She did nothing but care for
16 each of us unconditionally. Yes, sometimes it
17 felt like she gave Danny more attention than she
18 should have but that's because she seemed to
19 feel guilt for Danny's disability.

20 My sister or I were never neglected. She
21 was the perfect mother in every single way, and
22 I hope that she isn't taken away for long. I
23 want to start a new life with my mother and my
24 sister, one that isn't ruled by Danny's whims.

25 I love my brother, but I hated what he

1
2 did. Yes, he is the victim in this case but
3 there are many other victims as well, and I hope
4 that we are not ignored as well.

5 If you have to send my mother away, Your
6 Honor, please use leniency. Let us finally have
7 a normal life before I have to go away for
8 college and my new life begins. Please let us
9 be able to finally go to a restaurant to eat
10 without fear that Danny won't be okay without
11 his mother. Please let me be able to sleep
12 soundly with the comfort that my mother is okay.
13 Please let us be able to live without fear.
14 Please.

15 THE COURT: All right. Thank you.

16 Mr. Elkovitch?

17 MR. ELKOVITCH: Yes, Judge. Thank you.

18 First of all, Judge, I would be remiss in
19 my defense if I really didn't say something
20 regarding what has been in the paper recently
21 that was presented by Mr. Leubner, and I think
22 pursuant to the statute I can rebut basically
23 what was said.

24 In June of 1999 Mr. Leubner called Social
25 Services and reported Michelle Davis for

1
2 neglect. He wanted Daniel seen by a doctor that
3 he wanted. He thought Melissa was on the
4 computer too much, he did not think Melissa
5 could handle Danny at home.

6 The Child Protective Unit's report stated
7 that the father has never accepted the autism of
8 Daniel. He thought that if the diagnosis was
9 changed, that Danny will change.

10 Mark Cahill, the Auburn School Personnel,
11 told Child Protective Services that Michelle
12 does her best and the father tries to stick it
13 to Michelle Davis.

14 Pat Oxford, the BOCES Psychologist, said
15 that Dan's problems are severe, he is violent
16 and aggressive and that Mr. Leubner is very
17 resentful that Dan will not visit him.

18 After the Committee on Special Education
19 at the school in May of '99 Mr. Leubner
20 confronted Michelle and threatened her with
21 Child Protective Services. Pat Oxford went on
22 to say that Michelle Davis is doing a good job.

23 The report also stated that the father had
24 visited Danny three times in the last two years.

25 Melissa basically, as she told you, has

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refused to be with him. She hasn't seen her father in quite sometime.

Once she accepted his invitation hesitantly to go to dinner and he never showed up.

He was asked by Michelle to take Kimmy out of the situation for one day, one day this summer while Michelle Davis tried to regulate Danny's medication but he refused. She only wanted to get her out of the house for the day.

From -- I'm going to read some from the Child Protective Services report, that "Michelle is conscientious with her parental responsibilities. The children are well cared for and adequately supervised. Michelle understands his need."

They conclude by saying, "The report is unfounded. The father is attempting to control the children from afar. The father has very little direct contact with the children. His visitation pattern has been sporadic and minimal. The father left home ten years ago and has chosen not to have substantial contact with the children. The mother is very appropriate

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and involved in the children's lives."

And in Mr. Leubner's own words to the Child Protective Unit he described Danny as "five foot seven inches, 180 pounds, explosive and physically violent."

Mr. Leubner put an editorial in the paper about his son's 14 birthday. He also said that the physical abuse was just an occasional short-lived outburst that resulted in no significant injury. He described the son as five seven, 180, explosive and physically violent. He was present with the principal at Daniel's school after Daniel gave a teacher a concussion. He knows how violent he can be.

Mr. Leubner on July 19, 1999 was with Michelle Davis visiting Dr. Seetharam in Syracuse concerning changing Daniel's medicine. In the report that was reported in front of Michelle Davis and Leroy Leubner that Daniel has "become more aggressive and violent and even with the slightest provocation would beat the mother."

The report states that, "The parents report that Daniel reportedly understands the

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2 consequences of his actions and doesn't show
3 similar aggressiveness towards his stepfather or
4 the real father. The mother was in tears
5 explaining his aggressive behavior and she is
6 even afraid to lie down at night thinking that
7 he may come up and beat her up."

8 "Daniel has been diagnosed," and this
9 continues with the doctor's report, "diagnosed
10 to have autistic spectrum disorder and now has a
11 significant problem with his behavior and
12 impulse control."

13 Your Honor, this wasn't a young man who
14 had an occasional short-lived outburst. This is
15 a young man who had no inhibitions.

16 On June, June 7th of '99, just a few
17 months before the fire, Mr. Leubner sent a
18 letter to Jim Gregory, the Administrator of
19 Student Services at BOCES, and mentioned in the
20 letter, "As Daniel has been violent in the past,
21 assaulting a teacher with a chair in one
22 instance, he poses a potential threat to the
23 well being of all concerned."

24 Your Honor, Mr. Leubner abandoned his
25 family when he found out Daniel was autistic.

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He could not deal with it or accept it.

Social Services stated, "The father left ten years ago and has chosen not to have substantial contact with the children."

The report from Social Services stated that, "Mr. Leubner does not agree with the diagnosis of autism. Danny has severe behavior problems. Mr. Leubner thinks if the diagnosis is changed, the child will change. The problem is the behavior remains constant."

The report goes on to state that, "Dan's problems are severe. He is violent and aggressive." This report was generated by the Social Services Department just this last June.

When I was first called in on this case, Your Honor, I asked myself, since it might have been a prospective capital case, how can I take this case, a mother accused of killing her handicapped son, a prospective death penalty case? I have a learning disabled son. How would I feel in that situation?

As time went on I learned just how difficult it was for Michelle Davis, the constant abuse, the violent abuse she suffered.

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2 After speaking with Michelle and the
3 people who knew her family situation I knew why
4 I had the case. The violence and the horror
5 living in a house waiting for catastrophes to
6 happen, people needed to know what life was in
7 the Davis family, how Melissa, the
8 sixteen-year-old feared for her safety and the
9 safety of her mother and younger sister. People
10 needed to know how life is with a higher
11 functioning autistic person.

12 He was not the little boy as he is
13 portrayed in the paper. Daniel Leubner was five
14 six, five seven and weighed 175 to 180.

15 You just can't compare and say, I would
16 have done this or I would have done that in this
17 situation. Unless you live the situation, you
18 really don't have any idea what it's like.

19 Everyone has heard the old adage, you want
20 to walk a mile in their shoes to see what it's
21 like. It does not fit in this case. You must
22 walk for years in Michelle Davis's shoes to see
23 what she endured.

24 I'm not going to stand here and denigrate
25 Danny or make him out to be a predator, but the

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2 Court needs to know what life was like in the
3 Davis house. She endured violent beatings.

4 School is threatening lawsuits over her
5 son's actions, took the chair and crashed it
6 over a teacher's head and gave her a concussion.
7 He head butted aides, hit a principal in the
8 face, and on September 3, 1999 Michelle Davis
9 was beaten and raped by her own son.

10 Daniel got his way whenever he wanted to.
11 If he didn't have his own television shows, he
12 became violent; his own computer video games, he
13 became violent.

14 People who sent letters to the Court on
15 Michelle Davis's behalf saw Danny on a daily
16 basis, not just once in a while.

17 Mrs. Marland, the BOCES Special Education
18 Aide for Danny from 1996 to 1998, including
19 summers, stated in her letter to the Court,
20 "Often Michelle was called to the school because
21 Danny had become so violent and aggressive he
22 had to be removed for the safety of the staff in
23 our room. She always came." This was about 20
24 to 30 times per year.

25 She described Danny as manipulative. He

1
2 knew how to get what he wanted. If he didn't,
3 he became violent.

4 As the letter continues, "Danny grew
5 older, around 11 years old, he reached puberty,
6 which caused him to display sexual tendencies
7 that were inappropriate such as constant
8 masturbation, pinching women staff in the
9 breasts and trying to hug his body up against a
10 woman staff's body from the front and pushing
11 himself against her in a sexual manner. We
12 always stopped him and redirected him."

13 Dr. Burgess testified in this court as to
14 the symptoms of rape trauma syndrome, that
15 Michelle Davis had every one.

16 Dr. Burgess has treated, counseled and
17 studied thousands of rape victims and she stated
18 without hesitation that Michelle Davis suffered
19 from rape trauma syndrome.

20 Dr. Burgess is the top person in her
21 field. Her credentials are beyond reproach.
22 Her expertise is beyond question. She
23 administered accepted tests to Michelle Davis.
24 Her score was high on each test.

25 Michelle Dave was raped. She had all the

1
2 symptoms of rape trauma.

3 Danny was autistic. He lacked any sense
4 of what behavior is appropriate. Danny hit
5 puberty and his teacher for the past two years
6 stated, "Danny is a visual learner. He learns
7 by seeing it done. He learned visually and
8 could recite as well as act out videotapes he
9 was shown. Unfortunately Danny learned about
10 sex on his own watching an adult film."

11 Mrs. Marland observed Danny for the two
12 years and as she continued in her letter, "He
13 often became violent when being asked to perform
14 a scholastic task. His anger was displayed by
15 swinging his open-faced hands at you or throwing
16 sharp pointed pencils at your face at close
17 range, grabbing, pinching, usually the breasts,
18 hands, arms or neck, screaming, kicking, trying
19 to trip you as you walked him to a safe place,
20 biting, banging his head against your head and
21 throwing any object he can get his hands on at
22 the staff who was assisting him."

23 "One time he threw a plastic chair with
24 metal legs at teacher Denise Clark and hit her
25 in the head. She ended up in the emergency room

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with a concussion."

"In our classroom the staff intervened when he was attacking one of us. Usually 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 only directed at staff but the last few months I was a teacher's aide in his room he began to show his anger towards other students also. Danny, even though he was a child, was growing larger and was extremely strong."

"I cared about Danny as a human being but I must admit that in the eight years I was a teacher's 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."

She goes on to state that, "He would head butt, spit in the person's face who he had targeted when things weren't going the way he

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2 wanted to. I personally came home from the
3 classroom with bruises on my face, neck,
4 breasts, arms, stomach and legs from Danny's
5 physical abuse so often that I was almost always
6 bruised for the whole two years I worked as his
7 aide. His physical abuse was so explosive and
8 unjustified that I never trusted him even though
9 I wanted to."

10 Also, Your Honor, I'm going to read a few
11 paragraphs from Eric Corcoran's letter. He was
12 Daniel's special education teacher from
13 September, 1997 until August, 1999.

14 He states that, "Because of the nature of
15 his behavior, Daniel was placed in a classroom
16 created to serve students who exhibit extremely
17 disruptive or violent behaviors. There are five
18 students in the class and four adults to manage
19 the five students."

20 "Documentation clearly shows that he had a
21 propensity for violent outbursts. During times
22 of anger or fear Daniel could be expected to
23 yell, spit, slap, pinch, kick, bite and throw
24 objects such as pens and chairs. These
25 outbursts could occur daily in the school

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2 setting and often occurred more than once in a
3 given school day. As Dan grew in size and
4 strength each display of violent behavior
5 carried more potential risk."

6 "In the spring of 1999 Daniel also began
7 to display inappropriate sexual behaviors. He
8 inappropriately touched, hugged and attempted to
9 kiss a female classmate. He also once mimicked
10 intercourse with a male classmate. During the
11 summer of 1999 he tried several times to
12 persuade a female classmate to kiss him and to
13 disrobe."

14 "If ever Dan was sick or uncontrollable at
15 school, she," Michelle, "was quick to come in to
16 help us."

17 "In our daily communication book Michelle
18 gave brief accounts of almost nightly violence.
19 Daniel was prone to blind fits of rage at school
20 and was aggressively intent, at times, on doing
21 physical harm to classroom staff. It seemed
22 that he was now displaying that level of
23 aggression at home."

24 "I problem-solved with Michelle and she
25 tried a few of my suggestions with varied

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2 success. At one point I called her nightly to
3 make sure she was safe."

4 "Never once did she speak negatively about
5 Daniel or blame him for his disability. She
6 loved him and accepted him as he was. Every
7 interaction I saw between them was nurturing.
8 She always tried to be positive and hopeful.
9 However, Michelle blamed herself for many of
10 Dan's difficulties and often looked for
11 reassurance that she was a good mother. I could
12 honestly assure her that she was a great
13 mother." That's from someone who was in the
14 situation on a daily basis for two years.

15 Your Honor, Michelle Davis was concerned
16 for the safety of her two daughters, concerned
17 of the possibility of sexual abuse and violence
18 against them. She, she suffered the greatest
19 harm possible, a rape, not by a stranger, but by
20 her own son. No wonder she did not remember it
21 for over a week. No wonder she did not mention
22 it until almost three weeks after it occurred.
23 This is part of rape trauma syndrome. Who would
24 tell anyone what happened? There are three to
25 four beatings a week. This was her son whom she

1
2 loved. How could she say anything to anyone?
3 She did not want to lose her son and certainly
4 did not want to send him away.

5 After each of the beatings that Daniel
6 would give his mother he would quiet down, come
7 up to her and say, but I love you mom. Michelle
8 would then hug and kiss Danny.

9 Dr. Jackman in his report stated the
10 history of physical abuse that Michelle had
11 suffered. She basically, Your Honor, put Danny
12 ahead of her own kids and, own two daughters,
13 and this was a detriment. He needed the most
14 help. He was handicapped. It's only natural.

15 My son needs more help than my other three
16 children. It's just the way it is, and you do
17 what you have to.

18 Michelle basically gave her son
19 everything. If he could not watch the shows on
20 television, he became violent so he had his own
21 television, he had his own video games, went to
22 Blockbuster each week, pizza each week, received
23 a toy from Wal-Mart each week.

24 Danny had his routine and if he did not
25 get his routine, he became violent.

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2 Your Honor, I received a few letters from
3 mothers in Central New York who have autistic
4 children and I'd like to read a few comments
5 from them as it kind of tells what it is like
6 with an autistic person in the house.

7 This is from Lorraine Besset, all Central
8 New York, and they are unsolicited. I didn't
9 ask anyone for anything.

10 "My youngest son is autistic. He is
11 unable to ask why things are happening to him as
12 he develops or why he feels certain things. His
13 most common method of learning about anything is
14 to first act on his urges and discover how the
15 adults in his world will respond to his actions.
16 Sometimes the adult reactions are enough to curb
17 a behavior and sometimes they are not."

18 "Questions about his thoughts or feelings
19 may never be a part of his life. I am very
20 concerned about what will happen when he goes
21 through puberty. I am concerned about how this
22 will change my child and if I will be able to
23 help him get through this stage of his life. I
24 have no idea how it will impact my family or if
25 he will be able to keep living at home if I am

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unable to handle his behavior."

"I am a certified teacher and have devoted my entire Masters Degree to further study autism. I continue to study daily to try and help my son."

"I worked for three years as a case manager for developmentally disabled adults with transition beginning as early as 16 years of age. Many of the people on my case load were autistic. Many were violent and had to be restrained daily to ensure their own safety and the safety of other people around them. I have had injuries and many of my staff were injured during behavioral interventions. Two of staff members were permanently disabled even though there were several staff members available to assist with interventions. Often the most violent episodes were involving teen-age and young adults."

She goes on to state that, "There is very little help for autistic children in New York. There are several programs on paper that claim to provide assistance for families who so desperately need it. Unless you have lived with

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2 the unpredictability of an autistic person you
3 can never imagine what it's like. You never
4 sleep too soundly because an urge to go to the
5 nearest river may overtake your child in the
6 night. The fact that shattering glass is a
7 sound that brings him pure joy will ensure that
8 you watch every move he makes and -- once he
9 learns that windows break and create that joy.
10 His love of heights will ensure that you never
11 own a ladder or leave an upstairs window
12 unlocked."

13 "I have spent the last 11 years seeking
14 help. My own frustration level after 11 years
15 is so high that whenever I think too long about
16 the situation, I want to cry. I want to run,
17 hide and let someone else do this for a while.
18 I want the professionals who have read all the
19 books but can't return phone calls to come and
20 live for just one 24-hour period with no sleep
21 and no support. I want them to feel the terror
22 when they are too afraid to fall asleep for fear
23 of waking up and finding one of the children
24 dead because no one was awake to anticipate what
25 would happen next. I feel this way almost

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daily."

Another mother had written, Margo Hazard from Central New York. She states, "I too am a mother of an autistic child and there but for the grace of God go I. There is no deeper, darker place you can go parentally than to watch all of your efforts to help your child be fruitless."

"When our home became a torture chamber for our other two children, when I could no longer hide the effects of the abuse inflicted on me by my own child, but at the same time, and not be able to outwardly admit it was my own child doing it, when we tried every single intervention we were made aware of, none with any measurable or long-lasting outcomes, I prayed that if this was all there was in store for this child, please, God, please take her away."

"I was pounded on top of the head with fists, head banged, scratched, kicked, punched, slapped. Seldom was there any warning signal. I lived with the constant stress of a potential outburst. It was 24 hours a day caretaking to

1
2 catastrophe, always on the alert, always at the
3 ready, always. No matter what, you are the
4 mother and you are the one responsibility falls
5 on, the one on guard."

6 "I heard about Michelle Davis in the media
7 after the tragedy like most everyone else. I
8 spoke with Michelle Davis. Then I read the
9 article about Michelle Davis. I could have been
10 Michelle Davis."

11 "The circumstances were different in
12 several ways. I have a daughter, not a son, and
13 she never got bigger than me."

14 "Another difference, my husband stayed
15 home, putting us in another minority. There is
16 a system at work that paints a very pretty
17 picture about all the available help out there
18 and it, it does look good on paper. Believe me,
19 I have lots of those pretty papers stating
20 assistance. We can't implement any of it."

21 "Thanks to another circumstance Michelle
22 Davis and I differ in that I still have my
23 daughter. The fact that when things were their
24 most bleak, the wait for a bed for her in a
25 residential facility was not the year that we

1
2 were informed it would be, and that alone was
3 our salvation."

4 "I believe one other major difference
5 between the two of us lies in that I would have
6 taken my life along with my child's life. I
7 would have thought that my husband can care for
8 our other two children without me but never our
9 autistic child too and I couldn't have stayed
10 behind."

11 "There aren't words with enough potency in
12 our language to describe what life is like when
13 you are a 24-hour a day, seven-day a week, 52
14 weeks a year, year after year caretaker to
15 catastrophe, caretaker to a child that upon birth
16 looks so normal and happy, exceptionally good
17 looks, piercing eyes that were lights showing you
18 great promise, filling you with joy and hope,
19 your child who looks so beautiful and normal,
20 the same child who starts slipping away at
21 around one-and-a-half years and you sense it.
22 You can't make anyone believe it yet but you
23 will."

24 "You will also lose valuable time trying,
25 going from doctor to doctor, test after test but

1
2 eventually the subtle signs you saw will become
3 obvious to many and you will get the diagnosis,
4 autism."

5 "These autistic children can go days
6 without sleeping. These children can scream a scream
7 that no one can understand unless they hear it.
8 They can tear a house apart in the time it takes
9 to use the bathroom. They have incredible
10 strength, some say because they are
11 uninhibited. The fact remains that they can
12 make any object a projectile that can do
13 incredible damage."

14 "These children are in turmoil and the
15 parents are the ones who are always left to pick
16 up the pieces when the interventions fail."

17 "Michelle will live the rest of her life
18 in horror over what happened. Her children have
19 lived their young and formative years in a
20 house that can be calm one second and with
21 absolutely no warning can become twisted,
22 screaming battleground the next."

23 "We failed as a society to help that child
24 when he was alive to escape his inner turmoil, a
25 terrifying thing to witness your child going

1
2 through."

3 Your Honor, Denise Kaley was Danny's
4 teacher for the second, third and fourth grade.
5 She was so concerned that she wrote a letter to
6 Dr. Monreal, who is Danny's neurologist, and I
7 quote, "Danny's aggression has increased
8 tenfold. He is very strong and has hurt many
9 adults trying to work with him."

10 THE COURT: What was the date of this
11 letter, Mr. Elkovitch, if you know it? Well, I
12 thought you had it in your hand. Don't stop.

13 MR. ELKOVITCH: I've got it right here,
14 Your Honor. This is when he was in fourth
15 grade. So if he was in eighth, probably three
16 years ago.

17 THE COURT: Okay.

18 MR. ELKOVITCH: In a report when Danny was
19 in fourth grade, this is the same, the same
20 area, same year, Dr. Monreal writes, "His
21 behavior, possibly coinciding with early puberal
22 hormonal change, has become more aggressive. He
23 hits, is more fearful, has unpredictable rage
24 attacks."

25 Mr. Leubner was there when Michelle.

1
2 appeared at the doctor in the fourth grade so
3 everyone was aware of how aggressive he was.
4 When the beatings became more violent in the
5 spring and summer of 1999 Michelle Davis sought
6 help.

7 No parent, and I mean no parent wants to
8 hear that you should place your child in an
9 institution. The child is yours and you as
10 parents feel you're the best able to care for
11 your child. Sometimes it just doesn't work.

12 In an institution who would take Danny for
13 pizza, who would take him to Blockbuster or go
14 to Wal-Mart for a toy? Sometimes you need help.

15 Michelle did check into getting Danny into
16 a home for autistic children in Canandaigua.
17 There was at least an eight-month to a year
18 wait.

19 Michelle asked Danny's father for help.
20 There was none. As Lorraine Bessette and Margo
21 Hazard wrote, there is nowhere to turn. You
22 can't go out for an evening. What respite
23 person is going to come into your house knowing
24 that you have a violent child and you do not
25 know when the violence is going to start?

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You're not going to get anyone to come into the house.

Unfortunately the rape of September 3rd was more than anyone can handle. The degradation, humiliation, the undeserved guilt. Michelle Davis asked herself what did I do to deserve this?

Dr. Burgess in her last report summarizes it as follows: "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 four to five 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 that she knew she 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."

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2 Through the newspapers the District
3 Attorney said that he poured over thousands of
4 pages of evidence, none insinuated any kind of
5 sexual encounters.

6 I also requested from the Auburn School
7 District and BOCES the reports. I didn't make
8 one request. I made it four or five times. I
9 gave them specific instances after speaking with
10 the aides, speaking with the teachers. They
11 told me about the incidents. I said, I want the
12 incident where he was imitating intercourse with
13 the boy, gymnastics man up at East Middle
14 School. There were none; when he was thrown off
15 the bus because he was hurting another
16 individual and they had to come and take a bus
17 for him, there were no reports. There were no
18 reports. I've asked four or five times.

19 Obviously the School District was or the
20 BOCES are trying to protect themselves against
21 getting sued. They can say, we were unaware, we
22 don't have any reports.

23 If you talk to the teachers, you talk to
24 the aides, you get the full flavor.

25 An investigator spoke with Eric Corcoran,

1
2 Daniel's teacher for the last two years. I
3 guess the right questions weren't asked of him
4 about what it was like in the classroom. In his
5 letter to the Court he described it. Eric wrote
6 to the Court on how violent Daniel was.

7 District Attorney quoted in the paper
8 saying, there was an isolated incident where
9 Daniel acted aggressively in school but it was
10 not a sexual incident. The fact may have been
11 that he may have acted out in some physically
12 aggressive nature doesn't make him any different
13 than any other boy. One incident in school? I
14 don't know where the information came from.
15 Gave a teacher a concussion. Head butted
16 teachers aides, punched, kicked threw pencils.
17 It took at least two people to control him. The
18 teachers and the aides reported violent
19 incidents occurring more than once in a given
20 day. It's just not something that comes just
21 once in a while.

22 The medical reports from August of 1998
23 from Dr. Monreal note Daniel's violence. "Bouts
24 of rage come with no warning, sometimes in the
25 middle of a very good day. In the last three

1
2 months he has been showing more temper tantrums
3 or bouts of rage that sometimes will go on with
4 aggression for a good fifteen to twenty minutes
5 at a time before he settles down."

6 Even the 1998, 1999 comments from Daniel's
7 speech therapist states, "When angry, Dan can
8 become violent." Here someone that no doubt saw
9 him once or twice a week for a half an hour.

10 This Court has before it the letters from
11 the people who saw Daniel on a daily basis, from
12 the teachers aides and others. All stated he
13 was violent and all mentioned his sexuality. I
14 ask that all these factors be considered by the
15 Court.

16 This tragedy is indeed sad for everyone
17 concerned. The circumstances and facts about
18 Michelle Davis and her family warrants
19 consideration.

20 (Whereupon there was a break in the proceedings.)

21 THE COURT: Everybody ready?

22 Okay. You may proceed, Mr. Elkovitch.

23 MR. ELKOVITCH: Thank you, Judge.

24 Judge, it was the horror of the rape and
25 the beatings, not the every-day stresses that it

1
2 was testified by Dr. Burgess and Dr. Jackman,
3 life-threatening stress, stress upon stress.

4 Michelle Davis is not a threat to the
5 community. She is not a threat to herself. A
6 sentence should reflect the safety for the
7 community. She is not a threat to anyone.

8 She was under extreme mental and physical
9 stresses that we cannot even imagine. We cannot
10 even begin to feel what was going on in her
11 mind, what thoughts she must have been thinking.

12 She was a great mother. Social Services
13 said so. Friends, neighbors, co-workers said
14 so. The teachers said so.

15 Something happened that dreadful night,
16 something awful happened. Michelle Davis was
17 raped. She thought of her two daughters.

18 An earlier issue that was brought up in
19 the newspapers is that autistic people cannot
20 commit sex crimes, have sex or do what was
21 stated by Michelle Davis.

22 A letter from Dennis Debbaudt addressed
23 the issue. He's an advocate, active advocate
24 for autistic people. His 16 year old son is
25 autistic. Mr. Debbaudt travels outside United

1
2 States and world speaking on autism and the
3 police, how police should approach autistics.
4 He trains the police.

5 He is aware of incidents occurring in the
6 U.S. where autistic people have been charged and
7 convicted of sexual crimes. There was a
8 kidnapping, rape and murder in Colorado.
9 There's incest, sex crimes, same sex crimes.

10 Dr. Monreal's letter of June also sheds
11 light on the subject. He goes through his
12 credentials and then states, "I have seen
13 autistic youngsters very sexually explicit
14 demonstrating even in my office clear sexual
15 behaviors that made their mothers' faces turn
16 red with embarrassment, such as touching,
17 reaching, grabbing in front of me their mother's
18 or other female company's breasts or upper thigh
19 area, going even under their skirt in front of
20 me without the least inhibition."

21 "I have been reported frank sexual
22 attempts at forcing themselves on others, female
23 family members or not, and have had a couple
24 with autism who had to appear in Syracuse in
25 front of a Judge accused of making sexual

1
2 advances at local neighborhood young girls. In
3 these cases as relatives admit to me in
4 retrospect, I believe 'officially-not-occurring'
5 incest, with or without partial consent from the
6 other person, is extremely common."

7 "In my medical opinion and as a result of
8 years of experience with such autistic cases
9 that sexual behaviors, impulses, needs,
10 frustrations, ways to search for outlets and for
11 gratification in them are no different than in
12 normal persons of equivalent age with much
13 variation from individual to individual. When
14 the impulse, opportunity, temptation reaches
15 zenith in such youngsters, because of a lack
16 of inner inhibition, they may actually be more
17 prone even at a younger age to be explicit, to
18 act out the impulse and exhibit full sexual
19 behaviors without social, moral or inappropriate
20 constraints, even to force themselves upon a
21 relative, more likely than a normal youngster of
22 similar age."

23 Your Honor, the acts of Michelle Davis
24 were so far out of character that something
25 contributed to this aberration, the physical and

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sexual abuse.

She has no prior criminal history. Her offense was contrary to everything she has done in the past and believed in. She is and can be a productive member of society.

There was -- where was the help for the Davis family? She asked Leroy Leubner to help. The Sheriff's Department knew of the violence. They suggested taking him to the emergency room. He would be back in one day and back on the same violent track.

As stated by the mothers of autistic children, there is no place to turn in New York.

Your Honor, the newspapers in this case have not remained neutral in presenting the facts. They have gone against Michelle Davis every inch of the way.

They have questioned everything done by the defense.

They call up so-called experts and keep looking until they find one who will refute the defense. They find an expert who listens to what facts they have.

You know, the only expert they couldn't

1
2 find an opinion against was Dr. Burgess who
3 testified that Michelle Davis suffered from rape
4 trauma syndrome. She suffered degrading,
5 humiliating rape but the District Attorney
6 doesn't believe the rape occurred. He believes
7 every sentence in Michelle Davis's six-page
8 statement except for the one about the rape.

9 You can't pick and choose. You either
10 believe it all or you believe none of it.

11 Because you don't believe in the rape you
12 hold the needle of death over her head?

13 Joe Weeks testified that after the
14 polygraph was given to Michelle Davis she
15 requested to talk to him and her first words out
16 of her mouth were, he raped me. He testified
17 that she started to sob and cry uncontrollably.

18 The Sheriff's Department knew of the
19 physical abuse suffered by Michelle Davis. In a
20 one-week span in July of 1999 they were called
21 out to the house twice. The report of July 23rd
22 stated, "Dispatcher could hear sounds that
23 verified son was assaulting her while she was on
24 the phone."

25 The report by deputy Applebee said that,

1
2 "Davis is being very protective of her child and
3 the patrol is concerned for the safety of the
4 mother and her daughter."

5 Your Honor, this was never a murder first
6 or even a murder second case. There was enough
7 evidence to show extreme emotional distress.
8 The abuse was there if anyone cared to look for
9 it.

10 When the rape was finally spoken, why
11 wasn't SAVAR contacted or Social Services?
12 Because someone didn't believe it happened. No
13 services were called.

14 The local newspaper on May 31st of this
15 year listed ten telephone numbers to call for
16 abuse victims. None was called on her behalf.

17 Your Honor, I'm finished now and want to
18 play for the Court a few minutes from a 911 call
19 on January 23, 1999, an incident I just
20 described. There was concern for the safety of
21 Michelle Davis and her daughter Kimmy. Just
22 remember, this call was made at the end of an
23 incident, the end of the incident at the Davis
24 home and was just one of many.

25 Ask yourself, what must it have been like

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for Michelle Davis for years every week, every day, every hour, every minute not knowing when Danny would go off and become violent?

We would ask the Court to take all of this into consideration and that justice without compassion is not justice at all.

(Tape played.)

THE COURT: Okay. Mr. Elkovitch --

MR. ELKOVITCH: Thank you, Judge.

THE COURT: -- I think we get the flavor of the telephone call.

MR. ELKOVITCH: That's all I have, that and I know Michelle Davis would like to address the Court.

THE COURT: I know she would but she seems to be someone upset.

Would you like a short recess, compose yourself?

THE DEFENDANT: Please.

THE COURT: All right.

MR. ELKOVITCH: Thank you, Judge.

THE COURT: Take a short recess.

(Whereupon there was a break in the proceedings.)

THE COURT: Miss Davis, the law gives you

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the right to make any statement you may wish to make.

THE DEFENDANT: Okay. I wrote some things, Your Honor.

THE COURT: Sure.

THE DEFENDANT: I want want to talk about Danny. I was never ashamed of Dan. I would not let society or the medical professionals tell me that my son had no future.

I did my best to get him all the services that were available and to make sure that he had an appropriate education, but most of all he knew he was loved. I loved him with all my heart and it broke my heart to see him struggle with his autism.

He couldn't hold a conversation but he did talk to his sisters and me. He could use full sentences if he wanted to. We enjoyed many wonderful times with Danny and accomplished many achievements.

My husband Robert taught Dan to use the bathroom like a big boy at age seven. I was overjoyed.

His sisters taught him to type at the

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2 computer and he would often write us amusing
3 short stories.

4 We spent countless hours swimming in the
5 lake together and he was an avid video game
6 player. He loved to watch videotapes and listen
7 to music. Danny loved to swing and I often had
8 to replace the chains on his swings because he
9 was getting so large he would break the chain
10 links from his weight.

11 Autism brings with it strict routines and
12 we followed Dan's routines, the video store
13 twice a week, the toy store once a week, pizza
14 on Wednesday, Mc Donald's on Friday and Wal-Mart
15 once a week.

16 When I lost Dan I lost a huge part of my
17 normalcy. I miss all the structure and routine
18 that I had been accustomed to. I miss Dan.
19 These are the good memories I will cherish
20 forever.

21 It was never my intention to expose or
22 exploit Dan's abusive behavior. I tried very
23 hard to keep these painful issues private and it
24 was not by my hand that the news media was made
25 aware of my physical and sexual abuse by Daniel.

1
2 I never wanted anyone to know. What mother
3 would?

4 I continue to suffer from this assault and
5 to have it posted all over the news was
6 devastating to my family and me. However, since
7 the media has gone to great lengths to expose
8 everything, whether it be truthful or not, I
9 feel compelled to tell you about the true
10 hardships in our household. I do want to state
11 that I am speaking specifically about life with
12 my autistic son, not all autistic individuals.
13 Each autistic person is unique and it is wrong
14 to, to assume that all autistic persons share
15 the same behavior.

16 If you did not know my son, then you
17 cannot claim knowledge of his capabilities, good
18 or bad.

19 Life was difficult, at times hell with --
20 in our home. Danny's violence was extreme,
21 random and daily. I was no match for my son as
22 he outweighed me by 45 pounds and was three
23 inches taller than I was.

24 There were never any signs that he was
25 going to agitate and it broke my heart to see

1
2 him struggle and lose his ability to control his
3 impulse behavior, and I knew it would result in
4 a beating for me. I couldn't understand why he
5 was hurting the one person who loved him
6 unconditionally.

7 I had grown accustomed to Dan's aggressive
8 behavior such as pinching and hair pulling, but
9 at age ten he started becoming violent with me
10 at home. I called this time his rage attack
11 times. I had several incidents of severe
12 violence from being hit in the face with
13 videotapes and his fists, to be kicked, punched,
14 bitten, my hair was pulled and he just raged out
15 of control.

16 My husband Bob often would have to pull
17 him off me and bring him to the bedroom to
18 restrain him.

19 We brought him to a neurologist who
20 started him on medication.

21 I had a brief calming from age 11 to 12.
22 He would still pinch and scream, have fits but
23 his violence had curbed somewhat.

24 Shortly after his 12th birthday life
25 became hell with Danny. Dan had grown to be

1
2 very large, weighing close to a hundred and
3 eighty pounds and standing about five foot
4 seven. His violence never ceased.

5 I cannot tell you what life was like
6 living every day on egg shells, knowing that I
7 would suffer a beating from my son sometime
8 during that evening. I dreaded coming home from
9 work.

10 I tried to protect my girls but in reality
11 I didn't protect them at all.

12 It started as a pinch or a punch, slap and
13 I would cry and then Dan would stop. After a
14 while nothing stopped my son. He was out of
15 control and all I could do was protect my girls
16 and endure his beatings until he was done, which
17 was anywhere from 15 minutes up to an hour.

18 Dan was prone to screaming fits. He used
19 every item as a weapon and I was beat with
20 shoes, fly swatters, kitchen utensils and
21 brooms. He broke lamps, he threw cans of soda
22 and containers of coins, scissors, staplers.

23 At one point my mother bought me chain
24 locks for the bedroom doors and I tried to
25 escape to the bedroom. He broke the door off

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the hinges to come in and beat me.

I had numerous bruises, black eyes, swollen lips, sore ribs and he pulled my hair and scratched a lot.

Nothing provoked him. He always wanted to hit me in the face. It became one of his autistic routines.

My son needed assistance for many of his personal needs. I still showered him because he wouldn't use -- put the shampoo or soap in his hand. He needed help wiping after a bowel movement. I had cut his hair because he wouldn't have any part of sitting in a barber's chair. I had to brush his teeth and cut his fingernails and his toenails, and even though I was trying to help my son, he often agitated during these times.

I had to mix Dan's medication with juice and use a dropper to get in his mouth since he wouldn't swallow a pill, and medication time was often met with screaming fit and it was very difficult to fight with him to take it.

He demanded a new toy every week and the minute he got home he destroyed it by slamming

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it on the sidewalk until it broke.

He threatened his sisters and they suffered some abuse by their brother.

My girls and I did not challenge Danny in any way and maybe I was wrong to not challenge him. If we were watching TV and he wanted to change the channel, we let him. If we were listening to music and he didn't like the song, we changed it.

To challenge Dan was -- in any way only escalated his violence and you pick your battles, and I didn't want a beating over a TV show.

My girls became recluses. Melissa confined herself to her room and Kimberly always ran outside to escape. My girls became angry at my passive and defensive attitude towards Dan. I watched my girls deteriorate and begin avoiding coming around Danny altogether.

I was blinding myself to their cries for help because I couldn't stand the thought of letting Danny go. We were his world, but ignoring my girls I was destroying theirs and it was always my girls who helped me after the

1
2 beatings.

3 I, I have never experienced such
4 overwhelming feelings of distress, helplessness
5 and total fear as I did the last two years.

6 I also felt an overwhelming commitment to
7 my son and shielded him from exposure of his
8 violence. I could now looking back realize some
9 of the things Dan was doing should have set off
10 warning signs to me that he was developing,
11 developing sexual awareness and urges but I have
12 to say that I didn't want to believe that Dan
13 was capable of doing what ultimately happened.

14 There were many signs from his constant
15 erections and masturbation to aggressive groping
16 of my breasts and behind. He, he became obsessed
17 with undressing my girls' dolls and wearing my
18 bra and underwear.

19 He wanted to kiss Melissa on the lips all
20 the time and demanded hugs from Kimmy only to
21 try to press up against her. She's only nine.

22 My girls resisted all his attempts and I
23 paid the price.

24 He wanted me to wash his genitals when I
25 was showering him and I always refused, which

1
2 angered him.

3 He became sexually aggressive in school
4 and made attempts to disrobe, mimicked
5 intercourse with another student.

6 This is the most difficult thing I have to
7 speak about, but the perception is that autistic
8 person can't rape and that is not true.

9 Daniel was a 13-year-old young man first,
10 he had autism second and his autism did not stop
11 him from being a normal human being with sexual
12 drives; and although he was 13, he had a man's
13 body.

14 His autism contributed to his sexual
15 obsession and was the reason I endured so much
16 because I knew he couldn't control himself, but
17 no one can ever tell me that he didn't know what
18 he was doing. I know he did.

19 On September 3, 1999 my son did rape me
20 and it was the only time I raised my hands to
21 fight him back, the only time I ever struck him.

22 I tried to run to the bedroom with the
23 lock and I wasn't fast enough and he hit me in
24 the head and knocked me down.

25 I will not describe the rape in detail but

1
2 I can tell you that it was the most horrific and
3 violent act that any woman can experience. I
4 cannot escape the flashbacks and the nightmares
5 I have on a frequent basis and I doubt I will
6 ever be able to have an intimate relationship
7 with my husband again.

8 I love my son. I forgive him. I will
9 never forget.

10 After I told the Sheriff investigators
11 about this assault they didn't take me to a
12 doctor, they didn't give me any mental health
13 personnel. They did nothing to help me, except
14 put me in the jail cell.

15 I want you to know that I did reach out
16 for help to many sources: First Danny's doctors
17 who prescribed several antipsychotic medications
18 to try. They never did any blood work or tests.

19 The sheriffs who were called to my home
20 twice in one week's time, their only option was
21 to take Danny to the ER after he had calmed
22 down. They told me to learn self-defense, even
23 though I wouldn't raise my hands to strike any
24 of my children. They, they never contacted a
25 domestic violence agency or battered women.

1
2 They didn't inform Child Protective, even though
3 the officer's own report said that he was
4 concerned for the safety of mother and daughter.

5 I stopped calling them for help because it
6 became obvious that they could not assist me.

7 I went to see an advocate for families
8 with special needs members, and although she
9 offered a lot of information, she also told me
10 that there is no immediate crisis intervention
11 in effect in Cayuga County that handles violent
12 members with special needs. She told me to
13 continue to call the sheriffs. She also told me
14 about respite care but advised me to find
15 someone who would watch Dan because the respite
16 workers are hesitant to work with violent
17 individuals.

18 School officials helped me by calling
19 every night to make sure I was okay.

20 I'm not going to go into big detail about
21 Leroy Leubner. I am only going to confirm the
22 fact that he has been absent in Daniel's life
23 and in Melissa's life and Kimberly, and it
24 disturbs me that he knew and was well aware of
25 the violence going on in my family.

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He came with me to the doctor, he was at the teacher's meetings.

He filed Child Protective on me and said his son was violent and aggressive. He knew of the Sheriffs coming out.

I asked him for help, please take Kimberly. He didn't.

He saw his son a total of four times in the last three years and brought him home to me early every time complaining of his violence. He had liberal visitation rights, never chose to exercise his rights and never took his children any where.

He never filed for custody prior to this fire, ever.

If he wanted a relationship with Dan, he should have made some attempt to come to my home and interact with him, swim with him, play a video game with him.

I will not tell you that Dan would have accepted his offer since he was, Leroy was always met with a, no, dad, but he could have tried.

He can't answer the simplest of questions

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2 regarding Dan, what was his favorite song or
3 artist, his favorite place to go, what size
4 shoes or clothing did he wear? He cannot answer
5 because he could only remember things prior to
6 first grade.

7 I would have welcomed help from Leroy. I
8 would have welcomed help from the paternal
9 grandparents, which I haven't heard -- had
10 contact with in over ten years, and the aunts
11 and uncles in this room my children never knew.
12 I would have welcomed any help from any of them
13 at any time. They never offered and it never
14 came.

15 Your Honor, I pray that you will realize
16 that I don't pose a threat to no one. Society
17 has nothing to fear from me.

18 I would like to thank the members of the
19 community who have been thoughtful of my
20 daughters and tried to shield them from all
21 this, who have made it a point not to speak to
22 them negatively or with malice.

23 I want my girls to feel safe and happy in
24 their community, and I thank you for letting
25 them feel that way.

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2 In closing, it is imperative that this
3 community establish or fund a crisis
4 intervention program for families that are
5 struggling with abuse by a special needs member.

6 All the programs currently available
7 assume that the batterer is a spouse or
8 boyfriend. Where can you turn to when the
9 person hurting you is your special needs family
10 member?

11 Mental disabilities should not justify
12 abuse. You may not want to see it or admit it,
13 but there are many other families who
14 desperately need somewhere to turn to. There
15 has to be somewhere for these families to go.

16 Through my research I came across Governor
17 Pataki's press releases regarding the grants he
18 has allocated for violence against women and
19 battered women programs.

20 According to the Governor's releases,
21 Cayuga County has received over \$160,000 since
22 1998 for domestic violence programs. I pray
23 that some of these funds will be used to develop
24 some type of crisis intervention program.

25 Blinding yourselves to this problem will

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not make it disappear.

I want to say that I will give my life for Danny now. I miss him, I love him, I always will love him and I did my best.

I just could not -- my girls, I just could not expose them to a rape.

I love all my children, and I accept responsibility, Your Honor. Thank you.

THE COURT: Anything else, Mr. Elkovitch?

MR. ELKOVITCH: Nothing else, Judge.

Thank you.

THE COURT: Thank you, everyone.

I guess the first lesson that one learns in Journalism 101 is to answer the questions of who, what, where, why, when; and with the plea of Miss Davis on March 14th we found out who, what, where and when but then left the question of why unanswered and in doubt.

It remains a wide chasm between the position of the District Attorney and the defense even on this morning.

The plea of March 14th does give us some idea, however, in that it was agreed that the homicide was committed under the influence of

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2 extreme emotional disturbance. Again, exactly
3 what that emotional disturbance consisted of is
4 in conflict between the parties and must be
5 decided by this Court.

6 If indeed the defendant was raped by the
7 victim and their picture of sexual and physical
8 aggression is accurate, it would serve as
9 serious mitigation for her subsequent act of
10 homicide.

11 The Court has listened to the positions of
12 the District Attorney and the defense counsel
13 and must decide where the truth lies.

14 There's no question that the victim,
15 Daniel Leubner, was diagnosed with autism on
16 September 23, 1991 by Dr. James Coplan of the
17 State University of New York Health and Science
18 Center.

19 There's no question that he was physically
20 aggressive toward others, including the
21 defendant. This was alleged not only by the
22 defendant and the siblings, but by teachers who
23 dealt with the victim on a daily basis between
24 1996 and 1998.

25 I apologize if I am repeating some of what

1
2 has been said here by counsel but Nancy Marland,
3 a teacher's aide during that period, stated, "As
4 Danny grew older, around 11 years old, he
5 reached puberty, which caused him to display
6 sexual tendencies that were inappropriate, such
7 as constant masturbation, pinching women staff
8 in the breasts and trying to hug his body up
9 against female staff's body from the front and
10 pushing himself against her in a sexual manner."

11 Miss Marland also stated in the
12 pre-sentencing report that one time he threw a
13 plastic chair with metal legs at a teacher and
14 hit her in the head. She ended up in the
15 emergency room with a concussion.

16 "Danny, even though he was a child, was
17 growing larger. He was extremely strong, that
18 in eight years that I was a teacher's aide he
19 was only student that I was afraid of."

20 Eighth grade teacher Eric Corcoran stated,
21 "In the spring of '99 Daniel also began to
22 display inappropriate sexual behaviors.
23 Michelle indicated at that time that Dan had
24 been expressing sexual interest in females on
25 television and in magazines. At points

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2 throughout the spring of 1999 he inappropriately
3 touched, hugged and attempted to kiss a female
4 classmate. He also mimicked intercourse with a
5 male classmate. During the summer of '99 he
6 tried several times to persuade a female
7 classmate to kiss and disrobe. It seemed as
8 though Daniel was becoming increasingly sexually
9 aware and curious."

10 The Court is forced to conclude from the
11 statements of outside objective persons who had
12 contact with Dan that he was physically and
13 sexually aggressive and apparently had learned
14 the facts of life concerning sexual intercourse.

15 The mother's claim to have been raped by
16 the victim, which is disputed by the District
17 Attorney, bears some credibility from the
18 following sequence: The defendant was
19 interviewed on September 21, 1999 from
20 approximately four o'clock in the afternoon
21 until 8:30 that evening at the Cayuga County
22 Sheriff's Department.

23 On the following day she voluntarily
24 appeared at the New York State Police
25 Headquarters in Canandaigua to submit to a lie

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2 dectector test, which according to the testimony
3 commenced at approximately ten a.m. in the
4 morning and continued through 4:30 that
5 afternoon.

6 Having maintained her innocence through
7 that period of time, at approximately 4:30 she
8 made her first admissions to Investigator Joe
9 weeks who testified at the grand jury as
10 follows: "We were discussing the events of the
11 evening of the fire and she all at once started
12 shaking. She had been looking at the floor
13 during the entire interview and never really
14 would look at me. When I talked to her she
15 started shaking uncontrollably and looked right
16 up and looked me right dead in the eye and said,
17 he raped me, and then she just started blurting
18 out admissions at that point."

19 This testimony of Investigator Weeks
20 concerning the events of that day would indicate
21 that the allegation of rape was not contrived
22 but was a spontaneous outburst giving
23 credibility to its veracity.

24 In addition to the above, two medical
25 experts testified that the defendant was

1
2 suffering from the symptoms of rape trauma
3 syndrome. Dr. Ann Wolbert Burgess, a renown
4 psychiatrist in that field, testified, "It is my
5 expert opinion that Michelle Davis is a victim
6 by her autistic son Daniel and is suffering from
7 symptoms of rape trauma syndrome."

8 Dr. Jackman of Ithaca testified or stated,
9 "It is my opinion to a reasonable degree of
10 medical certainty that Mrs. Davis was severely
11 psychologically impaired from the time of being
12 raped by her son through the dates of the arrest
13 on September 22nd. Mrs. Davis was severely
14 traumatized by the rape and suffered rape trauma
15 syndrome."

16 So in addition to that, there is some
17 physical evidence which substantiated the
18 defendant's claim. After advising the
19 investigators at the Sheriff's Department of the
20 rape on the evening of the 22nd she was
21 photographed by and exhibited a bruise on her
22 breast which was substantiated by the
23 investigator.

24 This Court accepts as fact that the victim
25 was an autistic child who manifested physical

1
2 and sexual aggression against others and in
3 particularly against his mother.

4 It is a finding of this Court that the
5 evidence clearly indicates the defendant was
6 physically abused and sexually assaulted by the
7 victim.

8 Having made that conclusion, the Court
9 looks further to the material available through
10 the probation report and the plan supplied by
11 the Center For Community Advocates (sic), which
12 is a part of the record and available to anyone
13 who wishes to view it.

14 Both paint a picture of a loving, devoted
15 mother who was the principal person supervising
16 an autistic child.

17 This child had developed a large and
18 strong stature and had become increasingly
19 physically and sexually aggressive during the
20 spring of 1999.

21 The biological father, Leroy Leubner, was
22 not a factor in the child's upbringing. The
23 record indicates through the Cayuga County
24 Department of Social Services which answered a
25 complaint made by Mr. Leubner in the spring of

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2 1999, in essence that Mr. Leubner had never been
3 part of the child's life, visited approximately
4 twice or three times over a three or four-year
5 period, never accepted the fact that the child
6 was autistic and indicated that the child, in
7 fact, was not autistic and that all of the
8 doctors who had made these studies were in
9 error.

10 The long and short of it was that the
11 biological father was no support to the mother
12 and was never a part of this child's life.

13 The Social Services report is clear and
14 substantiates that position outside of any
15 personal feelings of the defendant and/or the
16 siblings of the victim.

17 The stepfather, Robert Davis, who appeared
18 to have a handle on the situation and helped
19 with the problems which arose from the victim's
20 actions, left the home on or about September
21 1st. This too added to the situation that
22 existed on September 3rd.

23 I further find that the defendant had
24 asked for help and was advised that an
25 eight-month waiting period was necessary before

1
2 help could be supplied.

3 Now the reason, part of the reason I
4 accept that, I sat as a Family Court Judge for
5 20 years and I had innumerable times sat and had
6 reports indicating that a child who is either a
7 juvenile delinquent or a PINS person needed
8 mental help and was somewhat violent and I am
9 invariably told by the Department of Social
10 Services that there are no beds, the waiting
11 period for that type of help may be a year away,
12 may be 18 months away, Judge, we have nothing to
13 do, we have no place to put these children.

14 Thus, a picture emerges of an individual
15 who was overwhelmed by circumstances and a
16 tragic act takes place.

17 The defendant was faced with the reality
18 of an autistic son whose physical and sexual
19 aggressiveness was out of control.

20 Fear for herself and her daughters created
21 a paradox with her fear that reporting the
22 actions of the autistic son would result in his
23 incarceration or institutionalization.

24 The biological father, who is of no help,
25 the stepfather, who was the only person who

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2 could control David (sic) had left -- Daniel had
3 left the residence, calls for help were unheeded
4 and the ultimate result was a tragic decision by
5 the defendant which took the life of her son.

6 In addition to the loss of life, we have
7 the bereavement of the parents, the bereavement
8 of the siblings, a defendant who will be forever
9 reminded and haunted by her actions, two young
10 daughters who will be deprived of their mother's
11 love, affection and nurturing by virtue of the
12 sentence to be imposed by this Court.

13 The Court does not believe that the
14 defendant poses a threat to society in the
15 future and I would hate to believe that the
16 residents of this community need to be reminded
17 or sent a message to the effect that it is
18 improper to commit homicide.

19 And in conclusion, I would say there is
20 certainly more than enough blame to go around in
21 this entire situation: Certainly the decisions
22 of the defendant were abominable and atrocious,
23 the biological father failed to accept his share
24 of the responsibility for the upbringing of his
25 child, the stepfather when he left on September

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2 1st certainly knew he was leaving behind a
3 serious, catastrophic and dangerous situation
4 and society's neglect for the people who truly
5 need prompt services all added to this
6 overwhelming stress that this Court believes
7 confronted the defendant on the evening in
8 question.

9 Accordingly, it is the judgment of this
10 Court in connection with the charge of
11 manslaughter in the first degree, that the
12 defendant be served -- sentenced to a
13 determinate sentence of imprisonment of six
14 years.

15 In connection with the arson in the second
16 degree, it is the judgment of this Court that
17 the defendant be sentenced to an indeterminate
18 (sic) term if imprisonment of six years.

19 Those sentences will run concurrently.

20 I will advise the defendant that she has
21 the right to appeal this judgment. The clerk
22 will hand to her a notification of her right to
23 appeal and the manner she may perfect that
24 appeal.

25 In addition, I will impose a \$210

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surcharge payable to the Superintendent of the
facility to which she will be sentenced.

Court will stand in recess.

(Court Exhibit 1, 911 tape, was marked for
identification and received into evidence.)

* * * *

REPORTER'S CERTIFICATION

I, Lisa M. Giacona, do hereby certify that I am an Official Court Reporter of the County Court at Auburn, New York, duly appointed.

That I reported in stenotype shorthand the Sentencing had before the HON. PETER E. CORNING, County Court Judge, on the 8th day of June, 2000, in the matter of THE PEOPLE OF THE STATE OF NEW YORK vs. MICHELLE DAVIS, DEFENDANT; and

That the transcript herewith numbered pages 1 through 100 is a true, accurate and correct transcript of those stenotype shorthand notes.

DATED AT: Auburn, New York

this 20th day of June, 2000

Lisa M. Giacona