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ADRIAN
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A victim of the state



You could easily argue that Jason Davis is lucky.

Lucky to be where he is in an assisted-living residence in Marlborough, lucky to be anywhere after his treatment in the care of the Massachusetts Department of Mental Health.

Davis, who was 27 at the time, committed himself to Westborough State Hospital in May 1993. His problems included schizophrenia coupled with drug and alcohol abuse. His mental illness had first been diagnosed when he was 15; he had been in and out of institutions since then.

On Aug. 12, 1993, Davis and another patient escaped from the hospital and went to a nearby liquor store. Eventually, they were found by police in some nearby woods.

After being returned to the hospital, Davis was taunted by a group of staff members and then set upon by as many as eight of them. One, Phillip Bragg, punched Davis at least half a dozen times. According to a report filed by a security officer who witnessed the attack, Bragg proceeded to twist Davis's neck so hard the trooper feared it was snapped.

That officer, Gregg Plesh, testified that Davis was in a semiconscious state, that his eyes seemed to be rolling out of his head.

But Davis survived and eventually filed suit against his attackers and their supervisors, contending that his civil rights had been violated. He won a six-figure judgment, and is now the owner of a piece of paper that says Phillip Bragg owes him \$758,593.64.

For Davis, that hasn't counted for much. Bragg was fired shortly after the attack, and is said to have no means to pay the judgment. His supervisors were found at trial to bear no liability.

The state, whose lax hiring made the whole thing possible, has neatly avoided any responsibility.

"The department is not liable for the judgment against Phillip Bragg, and you are free to pursue whatever legal remedies you may have against him," wrote DMH Commissioner Marylou Sudders in a letter to Davis's lawyers, Brendan J. Perry and Associates of Holliston, a few weeks ago. In other words, goodbye and good luck. She did not return a call seeking comment yesterday.

According to court records, Bragg was hired to work with mentally ill patients despite a history of violence, including a conviction for assault and battery with a deadly weapon stemming from his shooting of a 16-year-old in the eye — hardly the ideal temperament for working with the mentally ill.

Yet the department that hired this man — against its own regulations — to supposedly care for vulnerable people has seized on legalities to avoid responsibility for the results. This is not exactly a proud moment for state bureaucracy.

The DMH's loophole opened because Davis was voluntarily confined when the beating took place. Had he been committed by a court, under federal law the state could have been a defendant in the civil rights case. It would have been legally responsible for what happened to Davis behind its walls, as well it should be. By confining himself, Davis essentially stayed, legally speaking, at Westborough at his own risk.

This might be easily dismissed as a squabble over so much money, but it isn't. Doctors who have examined Davis have testified that his mental health has deteriorated as a result of his beating at Westborough, and believe he probably will never be able to live outside an institution. The money, should he ever see it, would only go to maintain what figures to be a dreary quality of life.

The state's once-notorious mental health system has come a long way in a relatively short time, but that isn't much solace to people who have been victimized by a system most of us don't want to look at too closely. And apparently, people like Jason Davis are supposed to consider themselves lucky to make it out alive.

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ADRIAN WALKER

State of denial



From his retirement home in Pennsylvania, Frank Davis has watched the Joshua Messier case unfold with keen interest and painful familiarity.

Messier is the young man who died while being restrained by guards at Bridgewater State Hospital in 2009. Governor Deval Patrick has called the death "disgusting" and has disciplined several officials deemed responsible.

But before the death of Messier, there was the beating of Jason Davis, Frank Davis's son. He, too, was a mental patient at a Massachusetts state hospital — in his case, Westborough State Hospital. He suffered a beating at the hands of guards, in 1993.

Davis wasn't killed during his beating. But it was, his father says, a tragic turning point in a life that ended too early a decade later. The Davis family is still waiting for the justice that courts say it is owed.

Jason Davis was 28 at the time of his assault. He had been diagnosed with schizophrenia and bipolar disorder and had been in and out of mental hospitals since he was 17. He had been committed to Westborough for threatening to kill his father.

The string of events that led to his assault, as outlined in multiple court decisions, began harmlessly enough.

On Aug. 12, 1993, Davis and a fellow patient slipped out of the hospital — it was not a locked facility — and headed for a nearby liquor store. Davis's father believes he was disappointed because his birthday had come and gone two days earlier with no visitors.

The two men were in the woods near the hospital drinking beer and wine coolers when a State Police officer assigned to the hospital tracked them down and took them back to the hospital, turning them over to hospital officials without incident.

The men were placed in separate "restraint" rooms when a couple of guards began to taunt Davis, according to court documents.

In the room at this point were six guards, the nurse, and Davis, who became increasingly agitated. He kicked at one of the guards, missing him. At least four guards then held him down while one, Phillip Bragg, did most, if not all, of the punching, and the nurse cheered them on, according to court documents. Bragg was later fired.

The State Police officer who had returned Davis to the hospital broke up the beating, which started when he was out of the room.

"There was blood all over the place," said attorney Christopher Perry, who represented Davis in his successful lawsuit. "At trial, one of the defendants said [Davis] looked like a fighter looks like when he comes out of the ring."

Davis sued the state employees responsible for his assault, winning a string of judgments in state and federal court between 1998 and 2001. The state's attorney general, Tom Reilly, attempted to appeal the state's losses to the US Supreme Court. The high court in 2002 refused to hear the state's appeal, effectively upholding the decision of the First Circuit Court of Appeals.

The award was divided into seven parts, one for each of the state employees found culpable in the beating. They were sued individually, because the state itself could not be sued under the applicable federal civil rights law.

With accrued interest, the judgment now stands at \$2,085,000, according to Perry, but Davis's family has seen almost none of it. The defendants have maintained in court documents that they cannot afford to pay the judgment.

Given that the beating happened while Davis was in state care the obvious solution is for the state to pay the judgment. But a measure that would have done just that, sponsored by

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Representative John Rogers, a Norwood Democrat, was removed from a supplemental budget appropriation a couple of weeks ago.

"In my mind, the liability of the Commonwealth has always been crystal-clear," Rogers said last week.

Oddly, the state chose, years ago, to pay a small part of the judgment — a \$177,000 verdict against one of the guards —

to do so, and refused further hospitalization. He died in 2004 from alcohol poisoning. His mother died five months later.

"It all affected my family considerably," William Davis said Sunday.

Besides being an avoidable tragedy, the case of Jason Davis was a missed opportunity. It might have been an early chance to establish and rigorously enforce standards of conduct for caring for mentally ill

patients. It might have taught the state a lesson. It might not be too much to think it might even have saved a life.

while appealing on behalf of the other defendants. Why it has resisted paying the other awards has never been clear, said Rogers, who took up this cause a decade ago, while serving as chair of the House Ways and Means Committee.

Perry said the case has become something of a landmark — cited, by his count, in 167 other federal decisions. Still, the awards have never been funded.

"It is ironic that the state will sent a loud, clear message to the Commonwealth which would have avoided Joshua Messier's death entirely," Perry argues.

Rogers said the Legislature can still address the issue before the session ends later this year, and he hopes to persuade his colleagues to do the right

thing.

pay verdicts for harm that is accidentally occasioned but it will not pay verdicts from harm which results from an intent to hurt our mentally ill — the most voiceless, vulnerable, and defenseless members of our society," Perry said.

Jason Davis recovered from his beating physically. He was transferred to Bridgewater State Hospital after the incident and taken off his psychiatric medications. He left state care the moment he was legally free

Meanwhile, Frank Davis lives with a hollow legal victory. "The state should have been held accountable for all this stuff and they weren't," Davis said. "They were held accountable in court, but what kind of accountability is it when there are no consequences?"

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