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December 4, 2015

The Honorable Charles D. Baker, Jr., Governor
Commonwealth of Massachusetts
Massachusetts State House
24 Beacon Street
Office of the Governor
Room 105
Boston, MA 02133

Dear Governor Baker:

I hope you are well.

As you know, I have represented Jason Davis and his family for more than 20 years. I seek your assistance to right an acute injustice perpetrated by the Commonwealth upon Jason Davis in 1993. To date, the Commonwealth has refused to even acknowledge its wrongdoing. I cannot right this wrong without your help.

I attach a March 10, 2014 Boston Globe article written by Adrian Walker which describes the gruesome violence exacted upon my mentally ill client, Jason Davis, by staff while he was an involuntarily committed inpatient at the Westborough State Hospital on August 12, 1993.

Two of the staff members, who perpetuated this violence, were convicted violent felons at hire which the Department of Mental Health knew. A number of staff members had pinned Jason Davis to the floor as one of their own beat him bloody and nearly broke his neck. A staff cover up ensued and false allegations of wrongdoing were filed by staff against the Special State Police Officer who stopped the bloody carnage. This Police Officer was actually a hero.

Jason Davis won a civil rights verdict in the Federal District Court in Boston in 1998, after a one month trial, which the First Circuit Court of Appeals ("First Circuit") and the Supreme Court affirmed after the Commonwealth's Attorney General unsuccessfully appealed twice. This matter constitutes, as the reported opinions demonstrate, one of the most horrific

circumstances in the history of the Massachusetts' Department of Mental Health.¹ My client's psychiatric and other injuries were acute as the reported legal opinions also make clear. The judgment entered upon the jury verdict now stands at approximately 2.2 million dollars.

In its 2001 reported opinion the First Circuit recalled the brutalization of Jason Davis through the trial testimony of Special State Police Officer Greg Plesh, who stopped the attack, Jason Davis and eyewitness Nicholas Tassone:

[Special State Police Officer Greg Plesh] recounted: 'Jason is lying down the hallway, head is away from me, feet are towards me. Staff is encircling him. And it's not what I saw, it's what I felt. I initially felt the thud through the [concrete slab] floor and then heard a thud.' Plesh said he looked up and saw Bragg punch Davis in the head four to five times. Plesh continued: I turned to [Charge Nurse] Joyce Wieggers who was on my right shoulder. When I saw Jason Davis being punched, I said, 'Did you see that? Are you going to do anything about this? Are you going to allow this to happen?' She didn't say anything, and I really wasn't waiting at that point. Some more was occurring and at that point I decided to intervene. As the MHWs (Mental Health Care Workers) began rolling the patient onto his stomach, Bragg twisted Davis's neck to the side and Plesh climbed over the other MHWs to push Bragg away. Davis testified about the punching: 'It was over and over and over and over again. It was like it would never stop. And then I was calling for help and nobody was stopping them and they kept hitting me. I felt the blood; it was, you know, it was coming down my face.' Plesh said that Davis' 'eyes were rolling out of his head,' that '[t]here was swelling, bruising all in his face,' and that he checked to make sure that Davis's neck had not been broken. Tassone said that Davis's face was cut and bloody. (brackets supplied).

Davis, 264 F. 3d, at 94 (brackets supplied).

Eyewitness Nicholas Tassone testified that Jason Davis looked like "a fighter looks after they get out of the ring, how sometimes they get cut on their eye, and they have blood dripping down their face." He testified further that he observed a "puddle" of "blood" beside Jason Davis' head. The Charge Nurse actually told Jason Davis, after the beating, that "[t]his is what you get when you act – this is what you get when you act like this." Davis, 264 F. 3d, at 94-95;

The First Circuit also recounted the acute psychiatric injuries sustained by Jason Davis, as per his treating psychiatrist, within its 2001 reported opinion:

Davis presented additional medical evidence at trial from Dr. R. Amos Zeidman, his treating psychiatrist for periods beginning in 1991. In late 1996

¹ See Davis v. Rennie, 264 F. 3d 86 (1st Cir. 2001); Davis v. Rennie, 997 F. Supp. 137 (D. Mass. 1998); Davis v. Rennie, 553 U.S. 1053 (2002); Davis v. Rennie, 178 F. Supp. 2d 28 (D. Mass. 2001).

or early 1997, Dr. Zeidman diagnosed Davis with Post Traumatic Stress Disorder (PTSD) as a result of the physical restraint at Westborough. He said that Davis ‘was horrified’ by the event because ‘[h]e thought he was going to die.’ Dr. Zeidman said that Davis’s PTSD symptoms included insomnia, anxiety, panic states, flashbacks, nightmares, and an inability to concentrate. He said that Davis was having difficulty making progress in therapy because he was afraid to trust anyone and that ‘[t]he quality of his life has suffered terribly for this.’ Here, the evidence supports a finding of significant actual and potential harm. According to Dr. Zeidman, the psychological harm Davis has suffered from the incident has seriously affected his quality of life, causing a range of PTSD symptoms, demonstrating the reasonable relationship between the injury and the amount of the award. (emphasis supplied).

Id., at 95, 116 (emphasis supplied).

Three Massachusetts Governors have turned a blind eye and a deaf ear to the plight of Jason Davis. **Governor Patrick only recently vetoed a Legislative Bill aimed at paying a portion of the Davis judgment after having actually urged the Davis family to file this very legislation.**²

We, as a society, are only as good as the treatment we bestow upon our most vulnerable citizens. No Executive Branch official has ever publicly acknowledged the tragedy that is the Jason Davis case. In fact, no public official, with the exception of Senator Spilka³ and Representative John Rogers, has ever publicly acknowledged this tragedy. Our current Attorney General, Maura Healey, did, however, observe that the Davis case is “a very sad situation” in a 2014 email to the family. At no time did any Massachusetts public official commend Jason Davis or his family for the profound contribution which Jason made to the national constitutional landscape in the mental health arena.⁴

²This veto was unanimously overridden by the House and Senate but the Bill was never funded. However, it is fair to say that there is legislative support for the Davis case within the House and Senate. Executive Branch leadership would prove to be dispositive.

³In 2014 Senator Spilka filed legislation seeking payment of the entire judgment. Representative Rogers has been a supporter of justice for Jason Davis and his family for approximately 13 years.

⁴*Davis* was the first case in the history of the United States to specifically hold that the Due Process of the Fourteenth Amendment to the United States Constitution forbids Doctors, Nurses and Mental Health Care Workers from standing idly by while one of their own physically brutalizes an involuntarily committed mentally ill inpatient in a State hospital. *Davis v. Rennie*, 264 F. 3d 86 – 116 (1st Cir. 2001). This case has been cited literally hundreds of times, throughout the Country, since it was decided. The *Davis* case is manifestly a landmark civil rights case in the mental health arena. The Massachusetts legislature has expressly acknowledged as much. The Commonwealth, for its part, argued in three federal courts – including the U.S. Supreme Court - that there was no constitutional obligation for health care workers to stop fellow employees from physically brutalizing mentally ill inpatients. This position was not only immoral but, if embraced, would have forever jeopardized the safety of the mentally ill inpatients in this State. All three federal courts rejected the Commonwealth’s flawed and immoral constitutional contention. The First Circuit wrote at length as to precisely why the Commonwealth’s position was blatantly unconstitutional. *Davis*, 264 F. 3d 86 – 116. Suffice it say that the Commonwealth wanted to “win at any

It is time that the Commonwealth did the right thing after a 22 year legal and legislative battle by Jason Davis and his family. It likewise time for the Commonwealth to stop lurking in the shadows and step forth into the bright light of day. After all, change only comes through full accountability. Mr. William Davis, the father of Jason Davis, made the following observation in a 2014 letter to the Massachusetts Senate:

I know that money will never bring back my son nor will it fully compensate our family for the torment visited upon him on August 12, 1993. However, what I do know is that the payment of the judgment in my son's Federal Civil Rights case will finally mark a place in time where the Commonwealth admits that it was both wrong and not above law. It will also cement the proposition that the historic laws Jason made will be neither in vein nor unappreciated by the very government which subjected him to the torment which he suffered on August 12, 1993 and thereafter. Improvement, after all, only comes through full accountability. I respectfully submit that Governments should be characterized by integrity and honor which, to date, have been absent here. My son was actually a hero. Although plagued by mental illness and suicidal ideations, he endured a four week trial and two federal appeals in route to making historic constitutional law which now protects all mentally ill throughout our Nation. He should be treated like a hero and not the criminals who both attacked him and were then subsequently protected by the Commonwealth's Attorney General in a host of legal proceedings.

It was President Kennedy who said, while attending a ceremony for his landmark mental health legislation, that "Mental retardation ranks with Mental Illness as a major health, social, and economic problem in this country. It strikes our most precious asset, our children. The mentally ill and the mentally retarded need no longer be an alien to our affections or beyond the help of our communities." On that seminal night in June of 1963, when he made "The Speech", he also observed that "the rights of every man are diminished when the rights of one man are threatened."

There can be no doubt where the great civil rights leaders of our time would stand on the Jason Davis case. Their message whispers loudly to us through the sands of time. Twenty-two years have passed. Inaction has been met with further inaction. Delay has been met with further delay. Yet still, Jason Davis, the involuntarily committed mentally ill inpatient whose civil rights were egregiously violated at the hands of the State, awaits his turn at the table of justice. This matter can no longer be met with repressive actions and illogical denials. The time to act is at hand. The time for delay has long since passed.

I hope that this letter is not met with a constituent form letter thanking us for the "information". It is time to do what great leaders would do in the face of these same circumstances. The silence of the Commonwealth has been deafening since August 12, 1993.

cost" even if it impaired the safety of the mentally ill. Jason Davis is the one of the real heroes here for he sought and obtained justice when the Commonwealth had no interest in doing so. He did its job.

I would ask that you meet with the Davis family, publicly acknowledge the Davis case for the first time in the history of the Executive Branch and publicly support and spearhead legislation aimed at paying the entire Davis case judgment forthwith. The continued silence of the Executive Branch would be simply intolerable in a civilized society like ours is supposed to be.

I look forward to standing elbow to elbow with you as the Government looks itself in the eye on this matter for the first time in 22 years.

I must say, with all due respect, that enough is enough.

Sincerely,
BRENDAN J. PERRY & ASSOCIATES, P.C.

By: /s/ Christopher M. Perry
Christopher M. Perry

CMP/pmc
Enclosure (3.10.14 Boston Globe article)

William H. Davis
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Certified Mail Return Receipt Requested No. 7012 0470 0000 2376 3349
Federal Express Tracking No. 8092 4329 2770

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ADRIAN WALKER

Jason Davis case a missed opportunity for Mass.



By [Adrian Walker](#) | GLOBE COLUMNIST MARCH 10, 2014

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.

CONTINUE READING BELOW ▼

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.

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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 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 — 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 chairman 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 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 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.

"The Davis case should have 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.

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?"

Adrian Walker is a Globe columnist. He can be reached at walker@globe.com. Follow him on Twitter [@Adrian_Walker](https://twitter.com/Adrian_Walker).

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