LAW OFFICES
BRENDAN J. PERRY & ASSOCIATES, P.C.
95 Elm Street
Post Office Box 6938
HOLLISTON, MASSACHUSETTS 01746

BRENDAN J. PERRY (1928-2010) TEL: (508) 429-2000
CHRISTOPHER M. PERRY FAX: (508) 429-1405

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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

Maura Healey, Esquire
Attorney General – Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1518

Governor Baker and Attorney General Healey:

I. INTRODUCTION

Before a Joint Session of Congress on March 15, 1965 President Johnson stated that "I speak tonight for the dignity of man and the destiny of democracy. I urge every member of both parties, Americans of all religions and of all colors, from every section of the Country, to join me in that cause. At times history and fate meet at a single time and place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama."

So it is today in Boston, Massachusetts. It is now time, "for the dignity of man and the destiny of democracy," to stand up for the civil rights of the mentally ill here in the Commonwealth.

President Reagan said "don't be afraid to see what you see."

I would ask Governor Baker and Attorney General Healey not to be afraid to see what you see. Many before you have been including each of you. I ask that you not look away again. We must end the moral and legal corruption which has plagued the Executive Branch, Department of Mental Health and the safety of our institutionalized mentally ill inpatients for decades.

This letter calls upon the Commonwealth to end numerous morally and legally corrupt actions, omissions and practices which have injured, maimed and killed our institutionalized mentally ill for more than 24 years. In plain speak we call upon the Commonwealth to obey the rule of law. If it chooses to again ignore it we will take solace in the fact that this letter will remain in the Massachusetts' archives in perpetuity where future generations can examine the Commonwealth's corruption and concomitant refusal to end practices which injure, maim and kill our institutionalized mentally ill.[1]

I have been practicing in this pocket of the Federal Civil Rights law since 1996. I represented Jason Davis[2] in a series of cases that spawned some of the most important constitutional rulings for the involuntarily committed mentally ill ever articulated by any U.S. Court including a hallmark opinion by the United States Court of Appeals First Circuit Court ("First Circuit"). See Davis v. Rennie, 264 F. 3d 86 (1st Cir. 2001); (47/1-28); 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). (50/1-11). Jason Davis was the prevailing party in all three federal courts. The landmark nature of the First Circuit Davis opinion is evidenced by the fact that its seminal constitutional holdings have been cited some 227 times by other courts, tribunals, legislative bodies, administrative bodies and law review journals as per Shepard's Citator. (48/1-49). Numerous United States Courts of Appeal have cited the Davis case as have a good number of Federal District Courts throughout the Country. (48/1-49). **The Nation has taught us precisely how important the Davis case is to our constitutional landscape.** (48/1-49). The Commonwealth though has steadfastly refused to embrace the importance of this case. The Davis series of cases was, in and of itself, legal notice of numerous Department of Mental Health ("DMH") atrocities and constitutionally flawed policies as were the 200 or so exhibits introduced at trial in 1998, the 1998 verdict, the 1999 judgments and the 2001 First Circuit opinion. The 1998 trial exhibits themselves proved a wave of historical violence at the DMH which was grotesque and barbaric.[3]

The atrocities committed and the constitutionally flawed policies exposed in the Davis series of cases did not end though in 2002 when the United States Supreme Court denied Attorney General Thomas Reilly's Petition for a Writ of Certiorari. (11/1). No, these atrocities continued through 2014 to present given Governor Patrick's, Governor Baker's, Attorney General

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[1]References to the 50 exhibits contained on the enclosed thumb drive shall be to the Exhibit Number and page, e.g. (47/1-28). Each of these exhibits is expressly incorporated herein.

[2]The law firm of Brendan J. Perry & Associates, P.C. represented Jason Davis from 1996 to his death in 2004. This firm has, as well, represented the Davis Estate and family from 2004 to present date. Attorneys Brendan J. Perry, Christopher M. Perry and Terance P. Perry represented Jason Davis and his Estate in all litigation related matters.

[3]The Davis case trial exhibits, which are still part of the record in the Federal District Court, First Circuit and United States Supreme Court ("Supreme Court"), prove the documented commission of the very worst types of crimes against mentally ill inpatients at the Westborough State Hospital including Rape, Torture, Indecent Sexual Assault and Battery, Criminal Battery, Criminal Assault, Physical Violence, Physical Abuse, Neglect, Threats, Emotional Abuse, Intimidation, Swastika Branding and Verbal Abuse by staff. (5/1-22).

Coakley's and Attorney General Healey's participation in the Davis legislative and indemnification process combined with their continued incubation of the Davis culture. Joshua K. Messier was killed in 2009 by State workers simply because those in power failed to take notice of the Davis series of cases and the many rules of law these cases implemented. (17/1; 18/1-11; 47/1-28). The Davis and Messier cases alone evidence acute governmental corruption[4] over a twenty-four year period which has caused and continues to cause an acute corrosion of the constitutionally mandated safety of our institutionalized mentally ill. We need to cleanse the system of this corruption if we truly seek to achieve real safety for our institutionalized mentally ill. We need leaders with the courage to eradicate this corruption in the system. To date, we have had none.

It is essential to look at both the Davis and Messier cases with a magnifying glass, both in and out of the Courtroom, because - when we do so - we see a massive and coordinated Governmental cover up, governmental corruption, the "circling of the wagons," the blind eye, the deaf ear, acute hypocrisy, governmental revenge, the total failure of governmental leadership, illegal governmental conduct, the "cat and mouse" games played with the law by State Attorneys General, corrupt indemnification policies and the acute moral depravity of Executive Branch officials since August 12, 1993 around issues of mental health. This culture, continuing uninterruptedly as it has since at least 1993, is precisely why the mentally ill continue to be injured, maimed and killed in the Commonwealth. To some this might sound like nothing more than a bunch of inflammatory attorney rhetoric. It is not. Empirical data unflaggingly supports each of these contentions. This empirical data consists exclusively of reported legal cases, uncontroverted court filings, uncontroverted legislative filings, court opinions of State and Federal Judges and data generated by the Commonwealth itself.

This is the culture in which the Davis case was incubated. It continued in the Messier case. Executive Branch officials have been so consumed with "beating" Jason Davis, both in the Courtroom and Legislature, that they failed to heed the lessons which the Davis case could have so clearly taught them. The failure to learn these lessons was the proximate cause of the Messier homicide. The failure to learn the lessons, which both the Davis and Messier cases could have collectively taught the Commonwealth and its Executive Branch, has resulted in injuries and harm to hundreds of other mentally ill inpatients since 1993. Who will be the next Jason Davis, Joshua Messier or Sandra Johnson? Savage atrocities against the mentally ill have occurred in 2017 within the DMH. These atrocities also could have been avoided if the Commonwealth listened in the aftermath of Davis. There certainly will be other atrocities unless drastic change is immediately implemented.

[4]Black's Law Dictionary defines corrupt as "spoiled; tainted; vitiated; depraved; debased; morally degenerate. As used as a verb, to change one's morals and principles from good to bad." Black's Law Dictionary, p. 311 (5th Ed. 1979). Black's Law Dictionary defines corruption as **"an act done with an intent to give some advantage inconsistent with official duty and the rights of others.** The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." Id. (emphasis supplied).

II. THE DAVIS AND MESSIER CASES EVIDENCE MASSIVE AND COORDINATED GOVERNMENTAL COVER UPS, GOVERNMENTAL CORRUPTION, THE "CIRCLING OF THE WAGONS" BY THE GOVERNMENT, THE BLIND EYE, THE DEAF EAR, ACUTE HYPOCRISY, GOVERNMENTAL REVENGE, THE TOTAL FAILURE OF GOVERNMENTAL LEADERSHIP, ILLEGAL GOVERNMENTAL CONDUCT, "CAT AND MOUSE" GAMES PLAYED WITH THE LAW BY THE GOVERNMENT, CORRUPT INDEMNIFICATION POLICIES AND THE ACUTE MORAL DEPRAVITY OF EXECUTIVE BRANCH OFFICIALS SINCE 1993 ATTENDANT TO MENTAL HEALTH ISSUES

We must first look at the Davis incident itself so that we can precisely see who was notified of what when the case concluded with a hallmark Federal Civil Rights reported opinion by the First Circuit and the subsequent denial by the Supreme Court of the Writ of Certiorari filed by then Attorney General Thomas Reilly. (11/1).

On August 12, 1993 Jason Davis was an acutely mentally ill inpatient housed within a locked unit at the DMH's Westborough State Hospital facility. On said date he was beaten bloody by one Mental Health Care Worker (Philip Bragg) while several other Mental Health Care Workers, including Paul Rennie, pinned him to the floor to perpetuate the beating. Philip Bragg and Paul Rennie were both convicted violent felons at hire which the DMH knew.[5] Charge Nurse Joyce Weigers looked on and encouraged the beating of Jason Davis by her fellow employees. A month long Federal Civil Rights trial in Boston Federal Court ensued. Jason Davis won a jury verdict which now stands at approximately 2.3 million dollars. The Commonwealth, through its Attorney General, appealed to the First Circuit and then filed a Writ of Certiorari with the Supreme Court. (11/1); Davis, 264 F. 3d, at 86-116. The Commonwealth lost to Jason Davis in all three Federal Courts. The 2.3 million dollar judgment remains unpaid by the Commonwealth. (36/1-9; 37/1-2; 44/1-6; 13/1-9; 14/1-2; 15/1-6; 16/1; 19/1-3; 23/1-8; 26/1-2; 27/1-20; 31/1-36; 11/1; 25/1-29; 47/1-28).

The Commonwealth's Attorneys General, together with all Governors sitting since 1993, never looked inward after the Davis case in search of reform. They failed to do so after Messier as well. If they had, there would have been a bevy of legal, medical, personnel and psychiatric data for them to examine with an eye towards meaningful and acutely needed reform. Failing to pay the entirety of the Davis judgment evidenced acute moral depravity on the part of all Executive Branch officials – there were many – who touched the Davis case. The pain and agony suffered by Jason Davis and his family since 1993 has been immeasurable. Much more abhorrent though was the utter failure of numerous Executive Branch officials to learn the lessons which were taught to us by the Davis and Messier cases and implement change aimed at insuring that others would not be injured, maimed and killed as a result of numerous constitutionally flawed policies of the Department of Mental Health and the Executive Branch. The Executive Branch was simply too fixated on beating Jason Davis - in the Courts and

[5]The DMH placed Philip Bragg and Paul Rennie in direct patient care capacities even though they posed an extreme risk of harm to mentally ill inpatients given Department of Justice recidivism statistics alone. See *infra.* (1/2).

Legislature alike - to take the time to pause, reflect and change the conduct which produced his bloody assault by the convicted violent felons entrusted with his care. This fixation proximately caused Joshua Messier to be killed and has caused many others to be injured and maimed as well. The corruption within the Department of Mental Health and the Executive Branch continues to prevent the Commonwealth from complying with its constitutional obligation to keep our institutionalized mentally ill safe. It is necessary to review the Davis case with exacting scrutiny so that we can pinpoint the substantial corruption which continues to this day in both the Department of Mental Health and Executive Branch.

The venerable Senior District Judge Morris E. Lasker[6] made the following ruling, after the jury verdict was rendered in the Davis trial, in response to then Attorney General Scott Harshbarger's motion to set aside the verdict:

> Assessing the evidence from the perspective of the plaintiff, in whose favor the jury decided, the jury could reasonably have concluded, as it did, that Bragg was acting under color of state law on August 12, 1993; that Bragg punched and assaulted Davis; that the use of such force by Bragg was excessive and unreasonable; that each of the defendants was present at the scene of the alleged use of force by Bragg; that each of the defendants actually observed Bragg using excessive force; that each of the defendants was in a position where he or she could have realistically prevented the use of excessive force by Bragg; and that there was sufficient time for each moving defendant to prevent Bragg's excessive use of force, which none of them did. The jury could have also reasonably found, as it did, that in connection with the two so-called 'take downs', each of the defendants implicated (namely, Rennie and Hanlon in the 'open quiet room take-down,' and all movants in the 'hallway take-down') participated in the unreasonable restraint of Davis. Accordingly, the defendants' motion for judgment as a matter of law under Rule 50(b) must be denied. (50/3).

In its seminal 2001 opinion the First Circuit recalled the brutalization of Jason Davis – during the course of a purported "physical restraint" – through the trial testimony of Special State Police Officer Greg Plesh,[7] Jason Davis and eyewitness Nicholas Tassone:

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[6]Senior District Judge Morris E. Lasker sat for 25 years in the United States District Court for the Southern District of New York (Manhattan) and 15 years in the United States District Court for the District of Massachusetts (Boston). He was appointed by President Johnson in 1968 upon then Senator Robert F. Kennedy's recommendation. He was a nationally recognized civil rights jurist before his 2009 death and is widely regarded as one of the greatest Federal District Court judges to ever to serve our Nation. Senior District Judge Lasker laid all foundational constitutional bricks in the Davis case none of which were disturbed. (50/1-11); Davis v. Rennie, 997 F. Supp. 137 (D. Mass. 1998); Davis v. Rennie, 178 F. Supp. 2d 28 (D. Mass. 2001); Davis v. Rennie, 264 F. 3d 86 (1st Cir. 2001); Davis v. Rennie, 553 U.S. 1053 (2002); (47/1-28). http://www.nytimes.com/2009/12/29/nyregion/29lasker.html?mcubz=0

[7]Special State Police Officer Greg Plesh was one of the heroes in the Davis case insofar as he came upon the scene and stopped the physical abuse.

> [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 Weigers 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' 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; parenthesis in original).

A Davis case defendant, Nicholas L. 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. (8/61, 60). The Charge Nurse 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. This testimony was recounted by Special State Police Officer Greg Plesh. Id. After Jason Davis was savagely beaten he was then barbarically strapped to a Four Point Mechanical Restraint Table. (42/3). Two of the principal culprits in Davis, as noted, were convicted violent felons which the DMH knew at hire.[8] (2/1-4; 3/1-2; 4/1-6). It still placed

[8]Philip Bragg and Paul Rennie were each hired pursuant to the DMH's internal written hiring policy. Philip Bragg had been indicted for assault with intent to murder and assault and battery with a dangerous weapon (gun) prior to commencing employment for the DMH. He pled guilty to assault and battery with a dangerous weapon (gun) and was sentenced to 10 years of incarceration in a Massachusetts prison (one year served) prior to commencing employment for the DMH at the Westborough State Hospital. Philip Bragg's felony prison sentence resulted from his having shot a 16 year old boy in the eye with a gun at short range. He was released from prison only a short time before he began employment for the DMH at the Westborough State Hospital in a direct patient care capacity. Philip Bragg also had a history of employment related violence and abuse upon patients prior to the incident involving Jason Davis. A former DMH Commissioner, Eileen P. Elias, testified under oath at trial that Philip Bragg should never have been employed as a Mental Health Care Worker in 1992 - one year before the Davis incident - given his violent proclivities. Paul Rennie was indicted for two counts of armed robbery and one count of assault and battery with a dangerous weapon prior to commencing employment for the DMH at the Westborough State Hospital in a direct patient care capacity. Paul Rennie sought to steal a car from one victim by striking him with a metal pipe and to rob money from yet another victim at gunpoint. Paul Rennie pled guilty

these employees in direct patient care capacities and Jason Davis, not surprisingly, was savagely beaten by them. These two convicted violent felons were fresh out of prison at hire by the DMH. (2/1-4; 3/1-2; 4/1-6). Philip Bragg's and Paul Rennie's employment by the DMH at the Westborough State Hospital constituted an extreme risk of harm to all mentally ill inpatients subject to their "care", including Jason Davis, given their histories of violence and the national recidivism rate of 34.6 % amongst convicted violent felons.[9] In short, placing Philip Bragg and Paul Rennie in direct patient care capacities was not unlike placing a fox in a henhouse. Not surprisingly, Bragg and Rennie were the principal aggressors in the two beatings of Jason Davis on August 12, 1993.

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 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' 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.

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

Following the Davis incident a cover up ensued on the part of Davis case defendants, as observed by the First Circuit, which included false allegations against Special State Police Officer Greg Plesh and the alteration of medical records by Charge Nurse Joyce Weigers. (41/1-2); See Davis, 264 F. 3d, at 94-95, 115-116.[10] Many of the Davis case defendants kept their jobs for years after the Davis verdict was rendered. Jason Davis' life went into a

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to these two counts of armed robbery and one count of assault and battery with a dangerous weapon. He was incarcerated in a Massachusetts prison for one year prior to his DMH employment. (2/1-4; 3/1-2; 4/1-6).

[9]See Recidivism of Prisoners released in 1983 (Bureau of Justice Statistics Special Report – Department of Justice). (1/2).

[10]In her nurse's notes Charge Nurse Joyce Weigers indicated "unknown when or how injury sustained" and "unknown to writer precipitants to occurrence" of injury to Jason Davis yet the Special State Police Officer asked her, during the attack, whether she was going to put a stop to it. (41/1); Davis, 264 F. 3d, at 94, 95, 115-116. Further, she advised Jason Davis, after the assault, "[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. She also completed an internal complaint form which alleged that Special State Police Officer Greg Plesh engaged in "improper and disturbing arrest of a staff member (Philip Bragg)" who was the principal assailant. Id., at 95; (41/2). (parenthesis supplied).

downward spiral, after the events of August 12, 1993, and he died six (6) years after his trial. (30/2). Jason Davis was just 38 years old when he died. His Mother died soon thereafter. (30/2).

Given the gory details of the Davis incident one would think that a massive overhaul of the restraint and direct patient caretaking process would have been undertaken forthwith relative to the hiring, personality testing, training, screening, retention and supervision of those employees charged with implementing restraints and caring for patients generally. At bottom, intensive employee screening should have been immediately employed after Davis to insure that the personality types of those hired or retained to implement restraints and care for patients were conducive to the tasks at hand. Patient, understanding and compassionate personality types, with high frustration levels and "long fuses", should have been preferred over those possessing quick tempers who sought to resolve "problems" with physical violence. CORI checks should have been immediately conducted on all then current and new direct care employees to insure that none were convicted violent felons. All direct care employees should have received extensive education relative to the symptomology of all the psychiatric disorders so that they became acutely skilled relative to the de-escalation techniques which are so critical to patient care in this arena. **Camera technologies should have been immediately deployed in every room of every mental health facility in the State.** Lastly, all direct care staff should have been trained as to all constitutional holdings by the First Circuit in Davis which addressed direct care activities attendant to the restraint process. Davis, 264 F. 3d, at 86-116. See infra. The Davis case is a literal hornbook in this regard. Id.

Policies are still in place in the DMH and Executive Branch which have injured, maimed and killed our institutionalized mentally ill for decades. These policies could have been eradicated after Davis if the Executive Branch took note of the Davis case and had it not been so bent on exacting revenge against Jason Davis.

A. THE LEGAL REPRESENTATION POLICIES OF THE ATTORNEY GENERAL, RELATIVE TO REPRESENTATION OF STATE EMPLOYEES WHO HAVE PHYSICALLY ABUSED THE INSTITUTIONALIZED MENTALLY ILL, HAVE BEEN LEGALLY AND MORALLY CORRUPT SINCE 1996

Precisely who did Attorney General Scott Harshbarger and Attorney General Thomas Reilly represent in the Davis case and what does it say about their true motives in that case? They represented convicted violent felon Paul Rennie (two armed robbery convictions) during the one month Davis trial in Federal Court, in the First Circuit and in the Supreme Court. See Davis, 264 F. 3d, at 86-116; Davis v. Rennie, 178 F. Supp. 2d 28 (D. Mass. 2002); (11/1; 12/1). This litigation took seven years to complete. Why would any Attorney General ever represent such a person against a mentally ill inpatient who had been savagely brutalized by this person?[11] After all, State Attorneys General and Governors actually have a constitutional

[11]The jury found that Paul Rennie provoked Jason Davis in the Quiet Room and then employed the resulting behavior as the basis to "restrain" him through the utilization of excessive force. The jury also found that Paul Rennie helped pin Jason Davis to the floor so that fellow convicted violent felon Philip Bragg could then beat him bloody and attempt to break his neck. (50/1-11); Davis, 264 F. 3d, at 103, 108 -111, 115-116, 86-116.

obligation, given their oath of office under the Constitution and the Due Process Clause of the Fourteenth Amendment, to insure that the institutionalized mentally ill are kept safe from violence against their persons by State employees. “The State has a duty to protect incarcerated prisoners and involuntarily committed mental patients from harm by a state actor.” Davis, 264 F. 3d, at 98; See also Deshaney v. Winnebago County Department of Social Services, 489 U.S. 189, 199 – 200 (1989). The Commonwealth has had this duty since no later than 1982. See Youngberg v. Romeo, 457 U.S. 307, 314-324 (1982). Ingraham v. Wright, 430 U.S. 651, 673 (1977); Greenholtz v. Nebraska, 442 U.S. 1, 18 (1952); Graham v. Connor, 490 U.S. 386, 395-396 (1989); Cortes-Quinones v. Jimenez-Nettleship, 842 F.2d 556, 558 (1st Cir. 1988). How was this obligation met when Attorneys General Harshbarger and Reilly represented Paul Rennie and several others of his ilk who had savagely brutalized Jason Davis on August 12, 1993? Every person who these two Attorneys General represented at trial and on appeal – including all those State employees who pinned Jason Davis to the floor so he could be beaten by Philip Bragg - were found by the Federal Court jury to have acted with ill will and evil motive. In other words, these defendants evilly sought to injure and maim Jason Davis. They did just that. (9/1-16; 10/1-9; 47/1-28; 50/1-11). See Davis, 264 F. 3d, at 86-116.

Throughout the appellate process, in both the First Circuit and Supreme Court, Attorney General Thomas Reilly also represented Charge Nurse Joyce Weigers even though Scott Harshbarger had refused to do so during the one month Federal Civil Rights trial. What was it at trial that made the Commonwealth’s new Attorney General determine that justice would best be served by his representing Joyce Weigers in the First Circuit and U.S. Supreme Court? It was Charge Nurse Joyce Weigers after all who told Jason Davis, following his beating, that "[t]his is what you get when you act – this is what you get when you act like this…" as recounted by the Special State Police Officer in the First Circuit’s opinion. Davis, 264 F. 3d, at 94-95, 115-116; (41/1-2). Joyce Weigers was also actually only one of two Davis case defendants against whom the Federal Court jury awarded $500,000 in punitive damages further evidencing her acutely evil motives and bad intent toward Jason Davis. (10/9; 9/14-15); Smith v. Wade, 461 U.S. 30, 56 (1982). The First Circuit also pointed to evidence that Charge Nurse Joyce Weigers altered medical records in an attempt at a cover up and lodged a baseless complaint against the Police Officer who arrested the principal culprit. Id. at 94-95, 115-116; (41/1-2). Yet Attorney General Reilly represented her in the First Circuit and the U.S. Supreme Court. Why? There simply was no justice, in taking on Joyce Weiger’s appellate cases, it was just a matter of the Commonwealth “circling the wagons”, attempting to redirect blame against State institutions, trying to advance its contorted legal theories and eliminating ostensibly inconsistent contentions by private counsel which could obscure the win at any cost mentality espoused by Attorney General Reilly and his predecessor.

These are the clients – literally criminals[12] – who Attorneys General Harshbarger and Reilly represented in the Davis case against a mentally ill inpatient who they had beaten bloody. Upon receipt of the rather lengthy First Circuit opinion, reciting as it does one of the most

[12]It is self-evident that all Davis case defendants found civilly liable concurrently violated 18 U.S.C. §242 which is the criminal cousin of 42 U.S.C. §1983. Thus, all civil defendants – not just Philip Bragg and Paul Rennie – were criminals. Their conduct alone teaches us that, as does the Davis verdict. Davis, 264 F. 3d, at 86-116. (10/1-9; 9/1-16; 50/1-11).

sordid tales in the history of the Massachusetts Department of Mental Health, one would have thought that Attorney General Reilly would have put his sword down and done justice by the Davis family. Such was not the case. He doubled down by filing a Writ of Certiorari with the Supreme Court. The filing of this Writ was merely a continuation of Thomas Reilly's and Scott Harshbarger's attempt to pervert the law to the detriment of the entire class of mentally ill inpatients.

The principal constitutional contention asserted by Attorneys General Harshbarger and Reilly, in the Davis line of cases, was that the United States Constitution does not obligate Mental Health Care Workers, Charge Nurses or other health care personnel to stop one of their fellow employees from savagely brutalizing a mentally ill inpatient even if they have both the time and opportunity to stop such a beating. Simply put, their core constitutional position was that Mental Health Care Workers, Charge Nurses and other health care personnel can simply look the other way and do nothing when the mentally ill are being brutalized in their presence. Davis, 264 F. 3d, at 86 – 116. This position was not only barbaric, immoral and unconstitutional but, if embraced, would have forever jeopardized the safety of mentally ill inpatients in this State and the entire First Circuit as well.[13] Doctors, Nurses and Mental Health Care Workers simply would have been provided with a perpetual constitutional license to stand idly by while fellow workers beat mentally ill inpatients bloody in their presence. Senior District Judge Morris E. Lasker, sitting in the District of Massachusetts, the First Circuit[14] and then the Supreme Court, through its denial of the Commonwealth's Certiorari Petition, rejected this flawed constitutional contention. (50/5-9; 11/1). The First Circuit wrote at length as to precisely why the Commonwealth's position was blatantly unconstitutional. Davis, 264 F. 3d, at 86 – 116. The U.S. Supreme Court summarily rejected Thomas Reilly's Certiorari Petition. Davis v. Rennie, 553 U.S. 1053. (11/1). What kind of State Attorneys General could ever argue for such a legal position? What does it say about them as leaders, attorneys and Attorneys General? What does it say about them as people? Famed Collegiate Basketball Coach John Wooden once said that "the true test of a man's character is what he does when no one is watching." When nobody was watching Attorneys General Harshbarger and Reilly were content to not only defend the very criminals who brutalized Jason Davis – instead of indicting them - but also make "law" which provided them with a license to engage in further brutalities. Attorneys General Harshbarger and Reilly simply wanted to "win" at any cost even if they had to make some "bad law" along the way. There was obviously no end to which the Massachusetts Attorneys General would not go to beat Jason Davis and redirect blame against the institutions of the Commonwealth.

The speciousness of this core constitutional argument by Attorneys General Harshbarger and Reilly is evidenced by the fact that reviewing Courts resorted to age old and fundamental U.S. Supreme Court precedent to summarily reject it. (50/1-11); See Youngberg, 457 U.S., at 314-324; Deshaney, 489 U.S., 199-200; Davis, 264 F. 3d, at 97-99. The Romeo case was decided

[13]If the First Circuit had ruled in the Attorneys' General favor it would have constituted binding legal precedent in Puerto Rico, Maine, New Hampshire, Massachusetts and Rhode Island relative to all State and federal proceedings in which the implicated constitutional issues arose. The Davis rules of law now control in these Districts.

[14]Senior Circuit Judge Lipez authored the panel opinion for the First Circuit in Davis.

some 11 years before the Davis incident even occurred. Thus, these two Attorneys General not only attempted to disadvantage an entire class of our most vulnerable citizens but their unsuccessful attempt to do so was predicated upon a contorted view of the law which was entirely at odds with long standing constitutional protections for the mentally ill. Once again, a "win at any cost" mentality. This was hardly the only alarming legal position, taken by the Massachusetts Attorneys General in the Davis case, which evidenced a "win at any cost" mentality to the detriment of the mentally ill as a class.

A nuance of the Due Process Clause is that one must be involuntarily committed to enjoy its protections while an inpatient at a State operated mental health facility. Deshaney, 489 U.S., at 199-200; Youngberg, 457 U.S., at 314-324; Davis, 264 F. 3d, at 97-99. Attorney General Scott Harshbarger attempted to dismiss the entire Davis case premised upon the contention that Jason Davis was not involuntarily committed to the Westborough State Hospital. His contention was that since Jason Davis had signed himself into the Westborough State Hospital, via a "voluntary admission form", he was not entitled to any Due Process Clause relief whatsoever. However, when Jason Davis admitted himself into the Westborough State Hospital on May 12, 1993 he was medically incompetent to do so which vitiated the effect of any purported "voluntary admission form" under then age old and long standing Supreme Court precedent. See Zinermon v. Burch, 494 U.S. 113, 131-132 (1990). Long standing psychiatric, medical and contractual principles predate this constitutional ruling by decades. One who is not medically competent simply cannot contract.

Senior District Judge Lasker summarily determined that there was not even a shred of viability to any argument made by Attorney General Scott Harshbarger in this regard. Judge Lasker's rulings resulted in yet another reported opinion in Davis. See Davis v. Rennie, 997 F. Supp. 137 - 140 (D. Mass 1998). It was a strong rebuke to a State Attorney General who again put forth his "win at any cost" strategy. Quotes from the Judge Lasker's reported opinion include lengthy excerpts from uncontroverted deposition transcripts of the psychiatrists who consulted with Jason Davis on the very day (May 12, 1993) he was admitted to Westborough State Hospital. The Judge held as follows:

> "The following excerpts from [Dr.] MacDonald's deposition support plaintiff's contention that on May 12, 1993, Davis was legally and medically incompetent to appropriate the significance of his action in signing any admission document and that his admission to Westborough State Hospital on that day was therefore involuntary:
>
> Q: Well, that is okay. The point is, though, Jason Davis was incompetent on May 12, 1993 when he was admitted to the Westboro State Hospital?
>
> A: He was incompetent when this [the admission document] was written. (brackets in original)
>
> Q: Jason Davis was incapable of exercising informed consent on May 12, 1993 when he –
>
> A: At the time this was written, this was written, yes.

Q: On May 12, 1993, Jason Davis was psychotic.

A: Yes.

Q: On May 12, 1993, Jason Davis was acutely paranoid?

A: Yes

Q: Jason Davis was acutely paranoid?

A: Yes.

Q: Jason Davis was acutely psychotic?

A: Yes.

Q: Jason Davis, on May 12, 1993, was delusional?

A: Yes.

Q: And Jason Davis was hallucinogenic on May 12, 1993?

A: Correct.

Q: Doctor, you just testified that Jason Davis was acutely paranoid, acutely psychotic, delusional and hallucinogenic on May 12, 1993 at the time of his admission?

A: Yes.

Id., at 138-139.

Senior District Judge Lasker then ruled that "[a]s vivid as are the statements quoted above, they constitute only the climax of Dr. MacDonald's 121-page deposition. Nothing stated by Dr. MacDonald in his deposition is inconsistent with the conclusions quoted above. The defendants have offered no evidence in affidavit form or otherwise, to challenge or refute any of Dr. MacDonald's testimony (which is of course consistent with that of Dr. Goodman)." Davis, 997 F. Supp., at 139 (parenthesis in original; brackets supplied). Judge Lasker then held that Scott Harshbarger's legal argument was likewise devoid of merit. "In Zinermon, [v. Burch, 494 U.S. 113, 131-312 (1990)] the fact that a patient was incompetent to exercise informed consent as a voluntary admission demonstrated that his presence in the institution was involuntary. Defendants turn this logic upside-down by arguing that the lack of proper procedures for involuntarily committing a patient shows that his presence is voluntary." Id., at 140 (brackets supplied). Once again, we see the "win at any cost" mentality put forth with the total absence of any viable factual or legal predicate. Once again, the Courts resorted to age old and fundamental U.S. Supreme Court precedent to summarily reject the Attorney General's baseless position. Id., Ibid. Attorney General Harshbarger was attempting to return the law to a

time, before Zinermon, when incompetent mentally ill inpatients were stripped of their constitutional rights at the front door by virtue of their execution of “voluntary admission forms.” The mentally ill are fortunate that Senior District Judge Lasker rejected this constitutionally baseless argument by Attorney General Harshbarger. Davis, 997 F. Supp., at 137-140.

Massachusetts Attorneys General are legally required to refuse litigation representation if it "will not further the interests of the Commonwealth and the public." Clerk of Superior Court for Middlesex County v. Treasurer and Receiver General, 386 Mass. 517, 526, 437 N.E. 2d 157 (1982). The Attorneys General status as the attorneys for the Davis defendants was illegal and corrupt on many different fronts: (i) they argued for the advancement of legal positions which would have resulted in unchecked brutality against all mentally ill inpatients housed in our State mental health facilities; (ii) they defended those who brutalized the mentally ill knowing full well that such brutalization had occurred given their own Disabled Persons Protection Commission’s findings together with the arrest report and trial testimony of Special State Police Officer Greg Plesh; (iii) they ignored the arrest report and trial testimony of Special State Police Officer Greg Plesh and, ironically enough, attempted to discredit their own law enforcement officer at trial and on appeal; (iv) they violated their oaths under the Constitution to uphold it; (v) they violated the strict dictate of Youngberg requiring, as it does, States to insure that the involuntarily committed mentally ill be kept free from physical violence upon their person by State workers; (vi) they violated, and sought to eviscerate entirely, the strict dictate of Zinermon which forbids loss of constitutional rights by mentally ill inpatients when they contract while incompetent; (vii) they attempted to advance legal positions, on behalf of a limited number of clients, which were adverse to the interests of the entire class of mentally ill persons; (viii) they shirked their responsibility to prosecute the very clients they defended; and (ix) they had no interest in obtaining justice for Jason Davis.(47/1-28).

The State Attorney General is the lead prosecutor and lead law enforcement official in the Commonwealth of Massachusetts. In 1935 the Supreme Court held, relative to the analogous role of the United States Attorney, that:

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. United States, 295 U.S. 78, 88 (1935).

Attorneys General Harshbarger and Reilly were bent on insuring that guilt would "escape" and innocence would "suffer" in the Davis case. Id. They not only struck "hard blows" they struck "foul ones". The cold, hard record of the Davis case makes this all too clear. The Commonwealth's biggest concern in these mentally ill inpatient brutality cases is to "circle the wagons" and corruptly deflect blame against the Commonwealth's institutions at the expense of the safety of the mentally ill. They start the process off by having its Attorneys General defend the very people they should indict. They did this in Davis and Messier. This "legal representation policy" literally forecloses any meaningful reform because those who are charged with the duty to reform - the Attorney General, Governor and Executive Branch – are too busy defending the very criminals whose conduct mandates the needed reform. You simply cannot ride two horses at the same time. It is a bit like tasking a fox with the obligation to offer reform policies concerning his very own hen house savagery. The lessons not learned in Davis, relative to when and under what circumstances an Attorney General should endeavor to represent State employees who have abused the mentally ill, came home to roost again in Messier.

Joshua K. Messier had been dead for more than three years (DOD: 5.4.09) when Attorney General Coakley entered her appearance on August 27, 2012 for ten (10) defendants ("Ten Messier Defendants") in the Messier Estate's civil rights case filed in the Suffolk Superior Court. ("Messier Civil Rights Case"). (21/1-13). When we look at the state of the evidence in the Messier Civil Rights Case on August 27, 2012 we see that the intent of Attorney General Coakley – like Scott Harshbarger and Thomas Reilly before her in the Davis case – was to defend the very criminals whose conduct mandated substantial reform, "circle the wagons" on behalf of the Commonwealth, engage in what amounted to a legal cover up and deflect blame against Massachusetts institutions. Her subsequent withdrawal from this case amid acute public outcry, followed by her subsequent indictment of three of her very own civil clients, prove as much. (24/1-2; 39/1-3; 34/1-9; 33/1-28). The Death Certificate (Generated: 5.22.09), Report of Autopsy (Generated: 2.2.10) and Messier Videotape (Generated: 5.4.09) provided express notice to Attorney General Coakley – more than two full years before she entered her appearance in the Messier Civil Rights Case – that criminal conduct was afoot and that her civil clients had committed it. (17/1; 18/1-11; 33/1-28; 34/1-9). The dictate of Clerk of Superior Court for Middlesex County, 386 Mass., at 526, her oath under the Constitution, her legal obligations as the lead law enforcement officer for the Commonwealth, Youngberg, 457 U.S., at 314-324 and raw principles of morality foreclosed Attorney General Coakley from civilly defending any Commonwealth employee who "restrained" (killed) Joshua K. Messier on May 4, 2009. That a homicide was committed on May 4, 2009 is very clear from just a viewing of the Messier Videotape which was generated on May 4, 2009. The evidence within the Death Certificate, Report of Autopsy and Messier Videotape, all available before February 3, 2010, flat out prove that Attorney General Coakley knew her clients' conduct was criminal and that it caused Joshua K. Messier to be killed when she entered her appearance on August 27, 2012 in the Messier Civil Rights Case.[15] The Death Certificate, Report of Autopsy and Messier Videotape contain chilling evidence of a homicide. It is briefly recounted here.

[15]Indeed, a Statewide Grand Jury indicted three of the Ten Messier Defendants premised on this very evidence which was also the predicate for the Messier inquest report generated in the Messier Criminal Case. ("Inquest Report"). (33/1-28; 34/1-9). See *infra*.

On May 4, 2009 Joshua K. Messier was an acutely psychiatrically ill inpatient housed at the Bridgewater State Hospital for the purposes of psychiatric observation. On said date he was killed during the course of a four point mechanical restraint which went horribly awry. He was 23 years old. His Death Certificate was generated and executed on May 22, 2009 by Medical Examiner Mindy J. Hull, M.D. who also performed his autopsy. (17/1; 18/1-11). Joshua K. Messier's Death Certificate lists "homicide" as his "manner of death" and his "cause of death" as "cardiopulmonary arrest during physical restraint, with blunt impact of head and compression of chest, while in agitated state." (17/1). Joshua K. Messier's Report of Autopsy was generated and executed on February 2, 2010 by Medical Examiner Hull. (18/1-11). The Report of Autopsy lists "homicide" as his "manner of death" and his "cause of death" as "cardiopulmonary arrest during physical restraint, with blunt impact of head and compression of chest, while in agitated state." (18/2). The Report of Autopsy depicts, with exactitude and precision, numerous blunt force trauma injuries to Joshua K. Messier's head, brain, neck, torso and extremities. (18/3-4). Joshua K. Messier suffered brain bleeding from the attempt to implement the four point mechanical restraint upon him on May 4, 2009 according to the Report of Autopsy. (18/3-4).

The Messier Videotape[16] provides visual proof that Joshua K. Messier was killed on May 4, 2009 as a result of intentional, willful and malicious excessive force having been employed upon him. The Death Certificate, Report of Autopsy, Messier Videotape and numerous State generated documents prove and depict the fact that the lethal, illegal and psychiatrically/medically proscribed "clam shelling" technique was employed upon Joshua K. Messier on May 4, 2009 and that it proximately caused him to suffocate, sustain cardiopulmonary arrest and die. (18/1-11; 17/1; 46/13, 14, 22, 1-25; 33/1-28). In the aftermath of the purported four point mechanical restraint it was evident, as per the Messier Videotape, that Joshua K. Messier was both lifeless and seriously injured yet no "red alert", cardiac pulmonary resuscitation or other emergency medical treatment was rendered for approximately ten (10) minutes. State employees let him die when they knew he was grievously injured. This is the collective evidence which Martha Coakley knew on the very day (8.27.12) she entered her civil appearance for the Ten Messier Defendants.

On March 31, 2014 Attorney General Martha Coakley abruptly withdrew her appearance for the nine guards responsible for "restraining" (killing) Joshua K. Messier on May 4, 2009. (24/1-2). Why? The State of the evidence had not changed since the Death Certificate, Report of Autopsy and Messier Videotape were generated years before Martha Coakley entered her appearance. What then was the precipitant for this rather sharp turn of events? It was, plain and simple, public outcry, claims of whitewashing and a fierce firestorm lead by Attorney General Coakley's own boss – Governor Deval Patrick. (28/1-2). When the Messier case was first thrust into the public eye in the winter of 2014 it was reported by the *Boston Globe* – on February 20, 2014 and March 2, 2014 - that Governor Deval Patrick characterized it as an "awful", "tragic" and "disgusting" case.[17] There was a proverbial fly in the ointment for the

[16] https://www.bostonglobe.com/news/local/massachusetts/2014/02/15/bridgewater-state-hospital-surveillance-video-joshua-messier-restraint-and-death/VxHidCOaYM2KfVrB9ciw2J/story.html

[17] <u>See</u> *Boston Globe* articles dated February 20, 2014 and March 2, 2014 (Joan Vennochi, Michael Rezendes).

Patrick Administration and Attorney General Coakley though and it was a monumental one. The very people, who Governor Patrick determined had acted in an "awful", "tragic" and "disgusting" manner, were then actually being represented by his very own Attorney General. A Governor simply cannot, on the one hand, call out employees for engaging in "awful," "tragic" and "disgusting" conduct - which is both criminal and unconstitutional - yet permit his Attorney General to concurrently defend this conduct and the individuals who committed it in the Courts of the Commonwealth. This is precisely why Attorney General Coakley immediately withdrew her appearance. But for the *Boston Globe* articles Martha Coakley never would have withdrawn her appearances on behalf of these defendants. That much is clear. (28/1-2). But for the *Boston Globe* articles Martha Coakley never would have indicted her own clients. That much is also clear. She had represented these clients for nearly two years and the thought of indicting them never crossed her mind until, that is, the *Boston Globe* wrote a series of stories on the Messier case. It was only then that she sought to be on the law and order side of justice.

When nobody was watching Martha Coakley was content to defend the very criminals whose conduct mandated substantial reform, "circle the wagons" on behalf of the Commonwealth and engage in what amounted to a legal coverup at the expense of both the public good and the plight of the mentally ill. She was clearly assisting criminals so that the Commonwealth could avoid blame directed toward its institutions. However, when the bright light of day (*Boston Globe* articles) shined upon her conduct she quickly withdrew her appearances for those who killed Joshua K. Messier and caused them to be indicted by her office via the appointment of a Special Prosecutor (24/1-2; 34/1-9; 39/1-3; 28/1-2; 33/1-28). How is that for a turn of events? She goes from representing the alleged killers on the civil side to ***indicting them*** on the criminal side in one fell swoop.

Martin K. Murphy ("Attorney Murphy") was the Special Prosecutor who Attorney General Coakley appointed on September 4, 2014. (21/1-13; 39/1-3). On April 30, 2015, a mere eight months after he was appointed, Attorney Murphy indicted three of the Ten Messier Defendants (George Billadeau, Derek Howard and John Raposo) that Attorney General Martha Coakley had defended in the Messier Civil Rights Case. (34/1-9; 21/1-13). The brevity of time, between the appointment of the Special Prosecutor and indictment of Martha Coakley's former clients, is made even more remarkable because an intervening inquest ("Inquest") was conducted by the Honorable Mark S. Coven which was not completed until March 31, 2015.[18] The Inquest Report was issued by Judge Coven on said date. (33/1-28). George Billadeau, Derek Howard and John Raposo ("Messier Criminal Defendants") were all indicted on two criminal counts (collectively "Six Indictments") each by the Statewide Grand Jury convened by Attorney Murphy ("Messier Criminal Case"). These counts consisted of Involuntary Manslaughter (M.G.L. c. 265, §13) and Criminal Civil Rights Violations (M.G.L. c. 265, §37) resulting from their actions and omissions on May 4, 2009.[19] Judge Coven also concluded, in his Inquest

[18] Judge Coven is the presiding First Justice at the Quincy District Court.

[19] The text of M.G.L. c. 265, §37 reads as follows: "No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States. Any person convicted of violating this provision shall be fined not more than one thousand dollars or imprisoned not

Report, that probable cause existed to assert these six criminal charges. (33/1-28; 34/1-9). During the five year period between May 4, 2009 and September 4, 2014 neither the Attorney General nor any District Attorney secured any indictments against any of the individuals who killed Joshua Messier. Yet Attorney Murphy did it in 8 months. Why? The answer is simple: corruption on the part of Attorney General Coakley and District Attorney Cruz.

We must not forget that Attorney General Coakley was the boss of the very District Attorney (District Attorney Cruz) who was responsible for indicting any of the nine prison guards who killed Joshua K. Messier on May 4, 2009. Was District Attorney Cruz ever really in a position where he could have even attempted to indict Attorney General Coakley's civil clients? He was not. If he had indicted her civil clients he would have: (i) proved that Attorney General Coakley was presently defending a number of criminals in violation of the law; and (ii) disemboweled Attorney General Coakley's ability to "successfully" defend her civil case clients.[20] The lingering question is easily answered: the Commonwealth did not indict any of the eventual Messier Criminal Defendants, in the five year period following his death, because its Attorney General was too busy defending them on the civil side. The wheels of justice cannot root out evil when our District Attorneys are forced to stand down because the Attorney General is too busy "circling the wagons", engaging in legal cover ups and attempting to redirect blame against our State institutions. The truth be told though it is all too clear that both Attorney General Coakley and District Attorney Cruz were bent on insuring that none of the Messier prison guards would be brought to justice within the criminal courts. This is proved by four simple circumstances: (i) Attorney General Coakley represented the Messier Criminal Defendants on the civil side; (ii) Attorney General Coakley did not indict any of the Messier Criminal Defendants until public fury and claims of white washing forced her hand;[21] (iii) the Inquest Report (33/1-28); and (iv) the return of the Six Indictments by the Statewide Grand Jury. Five years. No action by Attorney General Coakley or District Attorney Cruz. Why? Yet Attorney Murphy indicted these same individuals within 8 months.

Attorney General Coakley literally poured "salt on the wound" while concurrently proving just how broken her representation related policies actually were when she observed, six days (March 25, 2014) before her civil withdrawal (March 31, 2014), that as "a former district attorney, I know that DA's are constantly reviewing death investigations as fresh information becomes available…I have confidence that District Attorney Cruz will continue to evaluate this case if new, relevant information becomes available and take appropriate action based on

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more than one year or both; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both."

[20]The doctrines of res judicata and collateral estoppel would have permitted the Plaintiffs in the Messier Civil Rights Case to employ any plea agreement or jury verdict, entered in the criminal case, as the basis to establish civil liability. Thus, District Attorney Cruz's indictments and subsequent convictions would have spelled disaster for Attorney General Coakley's defense in the Messier Civil Rights Case.

[21]See letter remitted to Attorney General Coakley by four mental health groups. The gist of the letter was that the Messier criminal case was being "whitewashed" by her and others. (28/1-2).

facts and the law."[22] Where was Attorney General Coakley from May 4, 2009 to March 25, 2014 and why was her call to arms not made on the date of the Messier death (May 4, 2009)? Attorney General Coakley's asserted hope - that "new, relevant" evidence might permit District Attorney Cruz to again look at the at the possibility of convening a grand jury - was nothing more than a shallow, disingenuous and transparent attempt by her to protect and distance herself from claims of whitewashing and corruption for her refusal to indict the State employees who were responsible for Joshua K. Messier's homicide. (28/1-2).

It is incontrovertible that: (i) no "new" evidence was needed to indict the Messier Criminal Defendants; and (ii) the evidence which was used to indict them existed two full years before Attorney General Coakley even began defending the Ten Messier Defendants on the civil side. Since when do you ever have a videotape of crimes being committed? Hardly ever; right? There was one in the Messier case. Judge Coven, who presided over the Inquest, focused on two principle predicates as the basis for his having concluded that probable cause attached: (i) excessive force by State employees during the course of a restraint; and (ii) failing to intervene to stop excessive force by a fellow State employee during a restraint. (33/22, 27, 21-28). Judge Coven's determinations, in this regard, were extracted straight from the Messier Videotape as per his explicit findings. (33/21-28). Indeed, Judge Coven ruled that "[e]xcessive force was, however, used in controlling Messier during the application of restraints. While restrained by mechanical restraints, Messier was placed in a position that compromised his ability to respire. Over two hundred pounds were placed upon Messier's back causing him to be pushed forward into a claim shell position. Howard kept him in this position for **fifty-four seconds** and Raposo aided Howard in maintaining Messier in this position." (33/22) (emphasis suppled). "As the supervising officer Billadeau stood by and passively allowed over 200 pounds of pressure to be applied to Messier's back causing him to fold forward to a near 45 degree angle for a period of **54** seconds. He made no attempt to intervene." (33/27) (emphasis supplied).

The cited predicate for criminal liability was entirely premised upon the Messier Videotape which is self-evident from Judge Coven's language in the Inquest Report, including the dispositive "54 second" reference, and a simple viewing of the Messier Videotape itself. All one needed to do, to have formed a viable conclusion that probable cause existed in the Messier Criminal Case, was to watch the Messier Videotape and quickly review a copy of M.G.L. c. 265, §37 both of which existed on the very day Joshua K. Messier was killed (May 4, 2009). The Death Certificate (5.22.09) and the Report of Autopsy (2.3.10) further augmented already clear criminal liability and were available more than two years before Attorney General Coakley entered her civil appearance. Attorney General Coakley's theory, I guess, was that there was no malfeasance on her part because any impending criminal prosecution would need to resort to "new" evidence to get off the ground. This position, however, was – as proved by the recited empirical evidence - devoid of merit and reeks of whitewashing and corruption. One just needs to review the Messier Videotape to make this conclusion.

[22] See *Boston Globe* article dated March 26, 2014 (Michael Rezendes). As an aside, it was clearly unethical to call for the criminal investigation of your own clients, in this context, given that Attorney General Coakley did not actually withdraw her appearance until March 31, 2014. (24/1-2).

The acute irony here is that the First Circuit reported opinion in Davis would have been the best legal authority for Attorney General Coakley to have consulted in determining that probable cause existed in the Messier case. As noted, Judge Coven determined that criminal liability attached because: (i) excessive force was employed by State employees during a restraint; and (ii) a State employee failed to intervene to stop this excessive force. (33/22, 27, 21-28). The First Circuit opinion in Davis is largely devoted to these two precise constitutional issues in holding that the Due Process Clause of the Fourteenth Amendment is violated when either of these conditions occur. See Davis, 264 F. 2d, at 96-99,102-107, 110.[23] Had Attorney General Coakley been conversant with the rules of law articulated in Davis she would have had both the factual and legal predicates in mind to indict at least some of the Ten Messier Defendants. It must be pointed out that M.G.L. c. 265, §37 provides for State criminal liability when State employees violate the Federal Constitution. Thus, the First Circuit's reported opinion in Davis – reciting as it does the basis for the excessive force and failure to intervene federal constitutional claims - provided an impenetrable basis for establishing ***criminal liability*** in the Messier case under M.G.L. c. 265, §37. The claim that "new, relevant" evidence was needed to push the criminal case over the top, as of March 25, 2014, was patently untrue and entirely inconsistent with the empirical state of the evidence in existence well before Attorney General Coakley entered her appearance on the civil side in 2012. This position was also entirely inconsistent with the rules of law laid down in the Davis case by the First Circuit in 2001. See Davis, 264 F. 2d, at 96-99,102-107, 110. Why did Attorney General Coakley not "hope" for "new, relevant" evidence, to bolster the criminal case, when she was representing the Ten Messier Defendants on the civil side for nearly two years? The answer is simple: Martha Coakley's principal objective was to redirect blame against the institutions of the Commonwealth which required her to represent known criminals. She did so willingly. Martha Coakley certainly had no interest in pursuing a criminal prosecution until a political firestorm erupted and she was engulfed in claims of whitewashing. (28/1-2). Only then did she clamor for the rights of Joshua K. Messier. The Attorney General's representation policy is criminally corrupt.

There are certainly a number of residual and disadvantageous circumstances which occur, relative to the ability of criminal victims to secure justice, when the Attorney General's initial civil defense of State employees is followed by her indictment of her very own clients. These circumstances permanently affect the viability of these criminal prosecutions and verdicts rendered in them. As a threshold matter one disadvantageous circumstance, relative to the victim's rights, is uncontroverted. The Special Prosecutor noted in an affidavit filed in the Messier Criminal Case that his "appointment was made due to the conflict of interest arising from the Attorney General's representation of the Defendants in the [Messier Civil Rights Case]." (brackets supplied). (39/1). Thus, through her initial representation of the Ten Messier Defendants on the civil side, Attorney General Coakley permanently foreclosed the lead law enforcement official in the Commonwealth from ever participating in any criminal prosecution of any of the Messier Criminal Defendants. In short, she took her best home run hitter right out of the lineup as a direct result of the patently corrupt State employee representation policy on the civil side. This is not the manner in which the Attorney General for the Commonwealth

[23]As part and parcel of its constitutional assessment the First Circuit addressed a four part test used to determine if a physical ability to intervene exists. Davis, 86 F. 3d, at 96-99, 102-107, 110. This test supports criminal liability in Messier.

should administer the laws on behalf of our citizenry. This is hardly the only affect which Attorney General Coakley's initial civil representation had upon the Messier Criminal Case. These other affects are actually much more damning in nature.

There are a number of lingering legal issues in the Messier Criminal Case which: (i) threaten this prosecution; and (ii) arose exclusively because of Attorney General Coakley's initial representation on the civil side. While she represented the Ten Messier Defendants on the civil side Attorney General Coakley generated an assortment of internal documents which the Messier Criminal Defendants – a subset of the Ten Messier Defendants - contend constitute a predicate for dismissing the Six Indictments. The Messier Criminal Defendants served a subpoena seeking these documents from the Attorney General to which the Attorney General objected. Motion practice ensued in the Messier Criminal Case. The Judge presiding over the Messier Criminal Case ("Criminal Judge") observed that the Messier Criminal Defendants' "theory is that these documents may reveal a conflict of interest under Rule 1.7 of the Rules of Professional Conduct or a breach of confidential client information in violation of Rule 1.6 that could be used to support a motion to dismiss the indictments for prosecutorial misconduct." (38/4). The Criminal Judge observed that the Attorney General "takes the position that these documents are confidential, constitute work product, were created for internal use only, and are not part of the [criminal defendants'] client files to which they are entitled." (38/4). The Criminal Judge rejected each of the Attorney General's objections. (38/15). These documents certainly threaten the Messier Criminal Case.

Regardless of whether the legal effect of these documents will actually result in the initial dismissal of the Messier Criminal Case in the trial court it certainly will be a bargaining chip in plea discussions and viable fodder for the appellate mill. It is manifest that these issues arose exclusively because of Attorney General Coakley's initial civil representation. Simply stated, had there been no such representation there would have been no potentially exculpatory documents (prosecutorial misconduct) to discover and no possible threat of dismissal or appeal of these issues. It is at least probable that these issues could have a disadvantageous effect upon the victim's rights in the Messier Criminal Case. There is yet another circumstance, arising from Attorney General Coakley's initial civil representation, which already has had a disadvantageous effect upon the victim's rights in the Messier Criminal Case.

The Messier Criminal Defendants filed a motion to dismiss the indictments on myriad grounds including, inter alia, conflict of interest, transactional immunity, use immunity and derivative use immunity attendant to the Messier Criminal Defendants "statements to a Department of Correction investigator during a 2014 internal investigation…" (40/2). The Criminal Judge ruled that the "court finds that the defendants' 2014 internal investigation interviews are subject to use and derivative use immunity under the Fifth Amendment. The parties are directed to produce briefs addressing whether an evidentiary hearing is necessary to establish the facts of use and derivative use of the immunized testimony in the grand jury presentation…" (40/24). The grant of use and derivative use immunity by the Criminal Judge, premised exclusively as it was upon Attorney General Coakley's initial civil representation, has had and will have a disadvantageous effect upon the victim's rights in the Messier Criminal Case given that certain evidence is now inadmissible and could possibly affect the propriety of the Six Indictments. The Criminal Judge noted in his motion that his order was

only interim, that he did not reach the claim as to whether the indictments should be dismissed under McCarthy and that other evidence collection and further rulings would likely be forthcoming. (40/24). Once again, the predicate for this trial court motion will be a bargaining chip in plea discussions and viable fodder for the appellate mill.

Lawyers should not, from an ethical and legal standpoint, represent a client on a matter and then represent another party against that client relative to that same matter. This is precisely what Attorney General Coakley did when she first represented the Messier civil defendants and then indicted them through a Special Prosecutor (Attorney Murphy), whom she appointed through her office, on the criminal side. (39/1-3). The initial inclination to cover up the crimes has now actually jeopardized the ability to prosecute them. See Commonwealth v. Raposo, et al, Plymouth Superior Court, Docket No. PLCR2015-00208. (38/1-15; 39/1-3; 40/1-24; 34/1-9; 33/1-28). The Motion to Dismiss the Messier Criminal Case was again on for a hearing on September 22, 2017. One thing is certain: Martha Coakley's initial representation of the Ten Messier Defendants has tainted the criminal case and threatens to unravel it entirely. Her initial representation of the civil defendants, coupled with her subsequent indictment of her very own clients through a Special Prosecutor, is rife with possible illegalities, conflicts and ethics violations. Martha Coakley knew, when she entered her civil appearance in the Messier Civil Rights Case, that any criminal case would be acutely jeopardized by this act alone. Any lawyer would know this. She forged ahead nonetheless.

The policies of the Attorney General's Office, relative to its representation of State employees accused of physically abusing the mentally ill, are clearly broken. The recited empirical evidence proves that Martha Coakley's, Thomas Reilly's and Scott Harshbarger's principal objective was to defend criminals rather than aid the mentally ill, "circle the wagons", engage in legal cover ups, attempt to redirect blame against the institutions of the Commonwealth and bestow political favors on criminals all the while perpetuating injustices on the mentally ill. Martha Coakley was merely following suit. This has been the policy of the Office of the Attorney General since 1996. These policies proximately foreclose any semblance of justice, on both the civil and criminal sides of the courts, relative to the most sacred constitutional rights of the committed mentally ill. These broken policies had Attorneys General Coakley, Harshbarger and Reilly all defending State employees on the civil side while concurrently thwarting even the hint of justice on the criminal side. All the while any chance at reform, relative to the safety of the mentally ill, was entirely lost. Eighteen years after Scott Harshbarger first entered his appearance in the Davis case these same representation policies were deployed again by Martha Coakley in the Messier case in 2014.[24] When a sitting Attorney General defends civil clients which she could indict, on the same matter, she engages in criminal corruption. That is precisely what Martha Coakley, Scott Harshbarger and Thomas Reilly did in the Messier and Davis cases. State Attorney Generals are, after all, the lead law enforcement officials in the Commonwealth charged with prosecuting – not covering up - criminal conduct. The lessons which should have been learned in the aftermath of the Davis case, relative to the legal representation policies of the State Attorney General's Office, were not. Nobody cared to learn these lessons so the legal representation related transgressions of

[24]The Davis case was filed in the United States District Court for the District of Massachusetts in 1996. (Civil Action No. 96-11598-MEL).

Attorneys General Scott Harshbarger and Thomas Reilly were repeated by Attorney General Martha Coakley in the Messier case.

On June 12, 2014 – some two months after she withdrew from the Messier Civil Rights Case – the *Boston Globe* reported that Attorney General Martha Coakley observed that "[t]he circumstances of the death of Joshua Messier and the treatment of patients at Bridgewater, including the use of restraints and isolation, are deeply concerning…I believe they warrant a thorough review by our office and others to ensure that we are treating people with mental illness humanely and in a way that represents the best efforts to help them."[25] Martha Coakley was not "deeply" concerned with the welfare of the mentally ill when she entered her appearance in the civil case for a number of criminals which she later indicted full well knowing that they had engaged in criminal conduct years before. Sadly, and as proximate result of her inaction and the inaction of Governor Patrick, the gruesome restraint and seclusion practices at Bridgewater State Hospital continued uninterruptedly from Joshua K. Messier's May 4, 2009 death through, at least, 2014. In this five (5) year period many other Bridgewater State Hospital patients were caught in the Commonwealth's net of physical abuse. Indeed, the *Boston Globe* reported on January 30, 2015 that four patient abuse lawsuits had been filed, in the aftermath of the Messier incident, against Bridgewater State Hospital.[26] If Governor Patrick and Attorney General Coakley had policies in place, which called for them to be immediately notified in the event of a death of or serious injury to any mentally ill inpatient, they could have implemented change without waiting five years to do so. A policy of this sort would have prevented the intermittent violence against the mentally ill which transpired from 2009 through 2014 when the Executive Branch first grappled with the Messier case.

The Commonwealth of Massachusetts needs to forthwith enact a statute which bars the Attorney General from defending, in litigation or administrative matters, any State employee who is alleged to have physically assaulted or emotionally abused a mentally ill person. One would think that the "kneejerk" reaction would always be to represent the allegedly abused mentally ill inpatients - not their assailants - given the Executive Branch's and Attorney General's constitutional obligation to keep the involuntarily committed mentally ill safe from violence at the hands of State employees. See Youngberg, 457 U.S., at 314-324; Deshaney, 489 U.S., at 199-200; Davis, 264 F. 3d, at 97-99. Such is not the case. The Attorney General's Office has a dire conflict of interest, given the cited authorities, when it represents the abusers of the mentally ill. The automated response by the Attorney General though, from 1996 to present, has always been to represent the abusers. The manner in which the Attorneys General are using their office is inconsistent with the manner in which the Commonwealth should constitutionally administer its own laws. These practices are illegal, unconstitutional and corrupt. Attorneys General Harshbarger, Reilly and Coakley engaged in corrupt activities when they illegally represented State employees in the Davis and Messier cases. Through such

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[25]See *Boston Globe* article dated June 12, 2014. (Michael Rezendes).

[26]See *Boston Globe* article dated January 30, 2015. (Michael Rezendes).

representation they sought to achieve corrupt results.[27] We can no longer leave it up to the Attorneys General to do the right thing because they are not doing it.

B. THE PROSECUTION RELATED POLICIES OF THE DISTRICT ATTORNEYS, RELATIVE TO THOSE STATE EMPLOYEES WHO PHYSICALLY ABUSE THE INSTITUTIONALIZED MENTALLY ILL, ARE BROKEN AND PERPETUATE FURTHER VIOLENCE AGAINST THE MENTALLY ILL

The District Attorneys in the Commonwealth perpetually posit that these mentally ill abuse cases are "tough" cases to bring on the criminal side. They are not. The abuse is as clear as a bell in these cases and there for all to see unless you turn your head or cup your ears. The Commonwealth failed to prosecute numerous defendants in the Davis case even after the civil trial concluded and the evidence was there for all to see. Attorney General Reilly actually doubled down and defended his criminal clients in the First Circuit and in the Supreme Court instead of indicting them. The evidence clearly existed in the aftermath of the civil trial to indict them albeit through a Special Prosecutor. This evidence existed before trial as well but it was ignored. Attorney General Reilly would have no part of it. In the Messier case District Attorney Cruz refused to commence a criminal prosecution. Attorney General Coakley likewise refused to commence a criminal prosecution given her civil representation of the would be criminals.

That these criminal cases can be expeditiously asserted is proven by Judge Coven's and Attorney Murphy's work in the Messier Criminal Case. (33/1-28; 34/1-9). It is also proven by the First Circuit's opinion in Davis. (47/1-28); Davis, 264 F. 3d, at 86-116. There are no insurmountable obstacles to bringing these cases on the criminal side for very simplistic reasons. It is a violation of state and federal criminal law when there is a ***federal civil rights violation***. See 18 U.S.C. §242, M.G.L. c. 265, §37. Thus, in the context of these restraint abuse cases, one would just have to prove one of two circumstances to assert State or federal criminal charges based on antecedent violations of the federal civil rights laws: (i) excessive force was employed by a State employee during a restraint; and (ii) a State employee failed to intervene to stop this excessive force. (33/22, 27, 21-28). Judge Coven authored a concise dissertation of the applicable legal principles which pertain to the two prongs referenced above. (33/21-28). The Davis case is also a literal hornbook on these two prongs. See Davis, 264 F.3d, at 86-116;

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[27] State Attorneys General and Governors, as noted, have a constitutional obligation, given their oath of office under the Constitution and the Due Process Clause of the Fourteenth Amendment, to insure that the institutionalized mentally ill are kept safe and free from violence against their persons by State employees. See Deshaney, 489 U.S., at 199 – 200; Youngberg, 457 U.S., at 314-324; Davis, 86 F. 3d, at 97-99; Ingraham, 430 U.S., at 673; Greenholtz, 442 U.S., at 18; Graham, 490 U.S., at 395-396; Cortes-Quinones, 842 F.2d, at 558. When Governors and State Attorneys General advance positions adverse to the physical safety of the mentally ill they violate their oath of office under the Constitution and the Due Process Clause of the Fourteenth Amendment. State Attorneys General Harshbarger, Reilly and Coakley all advanced positions, policies and legal arguments which were acutely adverse to the physical safety of the mentally ill thus violating their oaths of office under the Constitution and the Due Process Clause.

Youngberg, 457 U.S., at 314-324. These cases almost always include an assault and battery claim on the criminal side as well. See M.G.L. c. 265, §13A.

The prosecution related policies of the District Attorneys, relative to when and the manner which they choose to prosecute those who have physically abused the mentally ill, are clearly broken. They are broken not only because District Attorneys are compelled to stand down when the Attorney General defends on the civil side they are also broken due to the independent disinclination on the part of District Attorneys to prosecute in the first place coupled with their refusal to embrace the long standing legal principles which control. The ostensible ability to restrain does not carry with it the ability to inflict capricious violence upon the institutionalized mentally ill. Applicable legal principles have been set forth in the First Circuit opinion in Davis since 2001 and the Supreme Court's opinion in Youngberg since 1982. See also M.G.L. c. 265, §37 (Criminal Civil Rights violations); Davis, 264 F. 3d, at 86-116; Youngberg, 457 U.S., at 314-324; Deshaney, 489 U.S., at 199-200. As noted, they can also be extracted from Judge Coven's Inquest Report. (33/21-28). The State simply does not want to point its finger at the State. It is that simple. It is pure politics and pure corruption. The Executive Branch simply does not want to make the Executive Branch look bad. The Executive Branch, it must be recalled, is responsible for the safety of the mentally ill so when harm comes to them from State employees it can blame only itself. It will not. The Messier case proves the point.

One of the bases upon which the District Attorney Cruz refused to prosecute was a lie concocted by him. Why is it that the Inquest and a Statewide Grand Jury yielded justice so quickly while District Attorney Cruz maintained that no criminal laws could possibly have been violated? Joshua K. Messier's mother (Lisa Brown) said it best: "The idea that District Attorney Cruz could falsely state that the Medical Examiner blamed my son for his own death, and then use this rationale not to prosecute over the many years, deserves universal condemnation and further investigation."[28] Her lawyer also observed that "if a defense lawyer or citizen had engaged in such actions, he or she would face an immediate investigation…[w]e can no longer accept such a double standard in law enforcement investigation of misconduct, whether that misconduct involves police officers, prison guards, or even prosecutors."[29] As previously noted, Medical Examiner Hull, who authored both the Death Certificate and Report of Autopsy, found that the "manner of death" was "homicide" which is defined as the killing of a human by another. (17/1; 18/1-11). However, in November, 2013 District Attorney Cruz issued a press release, following a meeting with Medical Examiner Hull, in which he claimed that she had informed him that "[i]n her opinion it was the conduct of Joshua Messier in fighting and maintaining the struggle against the guards that caused his extremely agitated state and ultimately his death."[30] Chief Medical Examiner Nields and Medical Examiner Hull rejected this contention when this press release was finally emailed to them.[31] Medical

[28] See *Boston Globe* article dated May 13, 2015 (Michael Rezendes).

[29] See *Boston Globe* article dated May 13, 2015 (Michael Rezendes).

[30] See *Boston Globe* article dated May 13, 2015 (Michael Rezendes).

[31] See *Boston Globe* article dated May 13, 2015 (Michael Rezendes).

Examiner Hull also rejected this contention while testifying under oath during the recent Inquest proceeding. (43/110-117).

During the Inquest hearing Medical Examiner Hull specifically testified that: (i) she was "angry" about District Attorney Cruz's press release because she did not see it before it was made public; (ii) the statement attributed to her in the press release was wholly inaccurate and never uttered by her; and (iii) she never informed District Attorney Cruz that Joshua K. Messier caused his own death by fighting, maintaining a struggle against the guards or in any other manner. (43/110-117). It is manifest that District Attorney Cruz unabashedly refused to prosecute the Messier Criminal Defendants premised upon a falsehood which he concocted. This falsehood was entirely inconsistent with the Death Certificate, Report of Autopsy and Messier Videotape. (17/1; 18/1-11). Judge Coven, who presided over the Inquest, also thoroughly rejected the contention that Joshua K. Messier caused his own death and did so in the very first sentence of the "Legal Conclusion" section of his Inquest Report. (33/21). "It is first incumbent upon the Court to note that in no way did Joshua Messier cause his own death. As Dr. Hull stated, Messier's death was a homicide at the hands of another." (33/21). This statement alone was a wholesale rejection of District Attorney Cruz's basis for failing to indict the Messier Criminal Defendants. It was certainly no accident that this "housekeeping" statement by Judge Coven was the leadoff sentence in the Legal Conclusions section of the Inquest Report. (33/21).

The basis of District Attorney Cruz's failure to prosecute was not only factually devoid of merit – Medical Examiner Hull never made such a statement – but it was medically and legally devoid of merit as well as proven by Judge Coven's Inquest Report. (33/1-28). In fact, the Inquest Report, coupled with its recited legal principles, make clear that District Attorney Cruz intentionally ignored and intentionally refused to consider the rudimentary legal concepts which dictated that criminal conduct was afoot. The intentional refusal by District Attorney Cruz, to consider these plainly applicable legal concepts, is made clear throughout Judge Coven's twenty-eight (28) page Inquest Report. (33/1-28). The Inquest Report is actually a full throated rebuke to District Attorney Cruz in regard to his legal contentions in the Messier Criminal Case. (33/1-28). The return of the Six Indictments by the Statewide Grand Jury, like the generation of the Inquest Report itself, was also a full throated rebuke to both District Attorney Cruz and Attorney General Coakley for their collective ten years of inaction in the Messier Criminal Case. (34/1-9; 33/1-28).

The principal legal predicates upon which District Attorney Cruz failed to prosecute in the Messier Criminal Case were threefold: (i) the Medical Examiner supposedly withdrew her conclusion that the manner of death was a homicide; (ii) the Medical Examiner supposedly contended that Joshua K. Messier caused his own death; and (iii) it was impossible to know the specific cause of death. The first two were one and the same lie concocted by District Attorney Cruz as shown. (43/110-117). The third predicate is a crude misstatement of the law. As the Messier family Attorney stated, upon release of the Inquest Report, "[u]nder the district attorney's rationale, if several parties shot a victim, the entire group might evade a homicide prosecution because it would be impossible to determine which bullet was the fatal one."[32]

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[32]See *Boston Globe* article dated May 13, 2015 (Michael Rezendes).

This is not the state of Massachusetts law as Judge Coven made axiomatic in his Inquest Report. (33/23). To be a cause of a death, in the criminal context, a defendant's actions need not be the sole or exclusive cause. Judge Coven quoted Commonwealth v. Perry, 432 Mass. 214, 225 (2000) in his Inquest Report: "'Where a defendant causes an injury which, along with other contributing factors or medical sequella of the injury, leads to death, jurors may determine that the defendant's actions were the proximate cause of injury.'" Id., at 225. (citation omitted). (33/23).

As noted, Judge Coven determined that probable cause existed in the Messier case because: (i) excessive force was employed by State employees during a restraint; and (ii) a State employee failed to intervene to stop this excessive force. (33/22, 27, 21-28). The First Circuit opinion in Davis, as noted, is largely devoted to these two precise constitutional issues insofar as the First Circuit held that the Due Process Clause of the Fourteenth Amendment is violated when either of these conditions occur. See Davis, 264 F. 2d, at 86-116. As part and parcel of its constitutional assessment the First Circuit also addressed the four (4) part test used to determine if a physical ability to intervene exists. Davis, 86 F. 3d, at 96-99, 102-107, 110. This test supports criminal liability in Messier. The irony here – once again – is that if District Attorney Cruz had been conversant with the rules of law articulated in the Davis opinion he could have used them, in conjunction with M.G.L. c. 265, §37, to bring criminal charges in the Messier Criminal Case.

The prosecution related policies of District Attorneys, relative to when they choose to prosecute State employees who physically abuse the mentally ill, are broken for three principle reasons: (i) the District Attorneys are necessarily compelled to stand down when the Attorney General defends on the civil side; (ii) District Attorneys intentionally refuse to apply the long standing legal principles which control; and (iii) District Attorneys are disinclined to prosecute these cases because of politics. When the District Attorneys stand down in these cases the safety of the institutionalized mentally ill is impaired because State employees know that they are effectively immunized from prosecution. The District Attorney stood down in Davis and Messier as did the Attorneys General. This impairs the safety of all mentally ill patients housed in our State operated mental health facilities.

C. THE POLICIES DEPLOYED BY THE EXECUTIVE BRANCH, OFFICE OF THE GOVERNOR AND THE OFFICE OF THE ATTORNEY GENERAL EVIDENCE A COMPLETE FAILURE TO INSURE THE SAFETY OF THE INSTITUTIONALIZED MENTALLY ILL AND AMOUNT TO NOTHING MORE THAN A PATCHWORK QUILT OF REACTIVE REMEDIAL MEASURES IMPLEMENTED WITHOUT A GLOBAL STRATEGY

Governor Patrick's first reaction to the Messier case, in February and March of 2014, alone underscores the acute deficiencies of the policies of the Executive Branch and the Office of the Attorney General attendant to the safety of the mentally ill. These policies linger to this day. On March 2, 2014 the *Boston Globe* reported that "Governor Deval Patrick on Saturday announced sweeping disciplinary measures against three prison guards and three high-ranking Department of Correction officials for the roles they played in the 2009 death of 23-year-old

Joshua K. Messier as guards attempted to restrain him..."[33] The timing of this disciplinary action is, in and of itself, proof of a variety of deficient government policies and procedures around the safety of the mentally ill. This timing alone begs many questions:

1. Where was Governor Patrick during the five (5) year period between Joshua K. Messier's 2009 death and the disciplining of these six employees in 2014?

2. Why did all six of these employees retain their jobs for 5 years after the incident given the objective state of the evidence in the immediate aftermath of the May 4, 2009 homicide of Joshua Messier?[34]

3. Why was no criminal case commenced until April 30, 2015 which was nearly six years after the incident?

4. Why was it that the Governor and the Attorney General were not notified on the very day that a mentally ill person was killed in State custody (5.4.09) so that substantial reform could have been immediately undertaken?[35]

5. Why was it even possible for Attorney General Coakley to represent any of the culprits in the Messier Civil Rights Case given the objective state of the evidence in that case during the years prior to the date on which Attorney General Coakley entered her appearance for the Ten Messier Defendants in 2012?

6. Why was it even possible for Attorney General Coakley to represent any of the culprits in the Messier Civil Rights Case given evidence on the Messier Videotape which was available on May 4, 2009?

7. Why is it that the Commonwealth has a predisposition to represent those who engage in vile physical violence against the mentally ill at the expense of the public good, the safety of the mentally ill as a class and the rights of the mentally ill victim?

Governor Patrick's 2014 calls for "restraint" reform, some five years after Joshua K. Messier was killed, is proof positive that he necessarily had a blind eye and a deaf ear when it came to the plight of the mentally ill. Who could ignore a savage and videotaped death of a mentally ill inpatient for five years? How could he not know about this death for five years? That actually

[33]See *Boston Globe* article dated March 2, 2014 (Michael Rezendes).

[34]Many of the Davis defendants also retained their jobs notwithstanding their criminal conduct. Once again, the lessons which could have been learned in Davis were not.

[35]Statutory reform is needed on this issue alone. When any person suffers an unnatural death in a Massachusetts jail, prison or mental health facility the Governor and Attorney General should be notified that day. When they only find out about the death - five years later by reading a newspaper article – the needed reform is delayed and others are injured, maimed or killed as a result. The Messier case proves the point.

points to a broken system. These long overdue calls for "restraint" reform also evidence a complete failure of governmental leadership by him and Attorney General Coakley.[36] On February 20, 2014 Governor Patrick proposed that physical restraints not be employed on the mentally ill, except in cases of extreme emergencies, because the involuntarily committed mentally ill "should not be tied down, limb by limb, in the 21st century here in Massachusetts."[37] If Governor Patrick had actually paid attention to the Davis incident – which occurred in the 20th Century some sixteen years before the Messier death and which was personally known to him - Joshua K. Messier would be alive today and others would have been saved from torment.[38] (13/1-9; 14/1-2; 15/1-6; 16/1). Jason Davis, it must be recalled, was "tied down, limb by limb, in the [20th] century here in Massachusetts" by ill trained and ill qualified mental health care workers.[39] Ill trained and ill qualified State employees also killed Joshua K. Messier. Where was Governor Patrick on reform in the aftermath of the Davis case? Where was Attorney General Coakley? Attorney General Coakley had all the case files in her office.

That the Mental Health Care Workers in Davis were ill qualified and ill trained is proved by the jury verdict, trial exhibits and the First Circuit's reported judicial opinion. Davis, 264 F. 3d, at 86-116; (10/1-9; 47/1-28; 50/1-11). The Mental Health Care Workers in Davis not only failed to comply with salient medical and psychiatric protocols for implementing restraints they also resorted to criminal conduct during each of the two "restraints". To suggest that the Davis defendants were ill trained and ill qualified is an acute understatement. It is also manifest that all Davis defendants lacked the requisite personality types to render direct patient care in a locked psychiatric ward much less implement restraints in these locked wards. When a number of Mental Health Care Workers set upon and pin a mentally ill patient to the floor, so that their co-worker can beat him bloody and try to break his neck, they all are unfit to render psychiatric care and treatment of any kind. Given the gory details of the Davis incident one would have thought, as noted, that a massive overhaul of the restraint and direct patient caretaking process would have been immediately undertaken relative to the hiring, personality testing, training, screening, retention and supervision of all those employees charged with implementing restraints and caring for mentally ill inpatients generally in any Massachusetts Department. The Davis "restraints" occurred in 1993. Some 16 years later the Ten Messier Defendants "restrained" Joshua K. Messier. They committed a homicide during this purported restraint. The Ten Messier Defendants were likewise ill qualified and ill trained as the Messier Videotape alone proves.

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[36]It is manifest, with all due respect, that Governor Patrick was running his administration through press clippings insofar as his disciplinary actions and calls for reform did not come until the *Boston Globe* reported on the Messier incident some five years after its occurrence. This is not in accord with best medical and psychiatric practices.

[37]See *Boston Globe* article dated February 20, 2014. (Michael Rezendes).

[38]Governor Patrick's February 20, 2014 call for reform also missed the mark. Limitations on restraints were needed but it was the training and continuing supervision of the people ***implementing them*** which was the real dire need.

[39]See *Boston Globe* article dated February 20, 2014. (Michael Rezendes).

This videotape contains uncontroverted visual proof that Joshua K. Messier was killed on May 4, 2009 through intentional, willful and malicious excessive force having been employed upon him. The Death Certificate, Report of Autopsy, Messier Videotape and numerous State generated documents also prove and depict the fact that the lethal, illegal and psychiatrically/medically proscribed "clam shelling" technique was employed upon Joshua K. Messier on May 4, 2009 and that it proximately caused him to suffocate, sustain cardiopulmonary arrest and die. (33/1-28; 18/1-11; 17/1; 34/1-9; 46/13, 14, 22, 1-25). Written Massachusetts policies expressly prohibited the use of this "clam shelling" technique well before the incident occurred. (46/22, 14; 33/14). The fact that this technique was used during the Messier "restraint" is proof positive that the Ten Messier Defendants were both ill trained and ill qualified to perform restraints. Sadly, it is also proof positive that the Commonwealth did nothing in the aftermath of the Davis case to insure its employees were qualified and adequately trained to implement restraints from both a psychiatric and medical standpoint. The Mental Health Care Workers in Messier also failed to employ salient medical and psychiatric protocols and likewise resorted to criminal conduct during the "restraint" itself. If the Messier restraint was not bad enough – it certainly was – the Ten Messier Defendants subsequently refused to aid Joshua K. Messier, in the immediate aftermath of the "restraint", even though it was evident that he was both lifeless and grievously injured. However, no "red alert", cardiac pulmonary resuscitation or other emergency medical treatment was rendered for approximately ten (10) minutes. Thus, not only were the Ten Messier Defendants ill trained and ill qualified to perform the restraint ***itself*** but they also had absolutely no training or the requisite qualifications which would have enabled them to detect grievous bodily injury, proximately caused by their "restraint", and then provide emergency care and treatment so that the patient would not die. The lessons which could have been learned in the Davis case were not and that is precisely why Joshua K. Messier was killed on May 4, 2009 at the hands of the State.

The Legislative Branch even had long standing knowledge that the Davis case involved restraints which were performed by ill qualified and ill trained State employees which resulted in injury. Representative Rogers was quoted by Janet Wu (WCVB TV), on March 11, 2014, as follows: **"The facts are uncontested. They [Department of Mental Health] hired, failed to train and failed to supervise these workers and to allow the State to walk away is just wrong."**[40] Governor Patrick also had personal knowledge that the Davis case involved a series of impermissible "restraints", which were performed by ill qualified and ill trained State employees, no later than 2006. This knowledge resulted from a series of five letters exchanged between the Davis Estate and him. These letters recount the gory violence of the Davis case, the circumstances which demonstrate that the "restraints" at issue went horribly awry, the ill qualified personnel and the legal citations for the Davis line of cases. (13/1-9; 14/1-2; 15/1-6; 16/1; 2/1-4; 3/1-2; 4/1-6). Governor Patrick likewise had instantaneous access to the 200 or so exhibits introduced at the Davis trial in 1998, the 1998 verdict, the 1999 judgments and the 2001 First Circuit opinion.[41] The 1998 trial exhibits, as noted, themselves proved a wave of

[40] http://www.wcvb.com/article/family-waits-years-for-millions-after-son-beaten-at-hospital/8034736

[41] His Attorney General possessed these records since her predecessors tried and appealed the Davis case twice. Governor Patrick is a lawyer himself so he full well knows how to access and read a reported legal opinion. Thus, the reported legal opinions referenced in the Davis letters were accessible by him, his gubernatorial legal counsel and his Attorney General.

historical violence at the DMH which was grotesque and barbaric.

The supposed "restraint" reforms which Governor Patrick put into place on February 20, 2014 should have been put into place immediately upon his receipt of the Davis letters in 2006, 2007 and 2008. **Had he done so Joshua K. Messier would be alive today and many others would have avoided injury.** The Commonwealth had its chance to do the right thing. It refused to do so. Governor Patrick was too fixated, in conjunction with Attorney General Coakley, on exacting revenge against Jason Davis so they could not see clear to implement the reforms mandated by the Davis verdict, trial exhibits and seminal First Circuit opinion. See Davis, 264 F., at 86 -116; infra. The Davis case certainly taught all those inclined to learn that there needed to be a massive overhaul of the restraint and patient caretaking process including the hiring, personality testing, training, screening, retention and supervision of those employees charged with implementing restraints and caring for patients generally. Id. Governor Patrick and Attorney General Coakley would not listen and, because they did not, Joshua K. Messier was killed and many others were injured and maimed.

D. POLICIES PERMITTING DISTRICT ATTORNEYS TO ACT IN AN INSUBORDINATE MANNER AND DERISIVELY CHIDE THEIR BOSS FOR ATTEMPTS TO ADMINISTER JUSTICE, ON BEHALF OF INSTITUTIONALIZED MENTALLY ILL INPATIENTS WHO HAVE BEEN PHYSICALLY ABUSED BY STATE EMPLOYEES, IMPUGN THE INTEGRITY OF THE JUDICIAL PROCESS AND INTERFERE WITH THE ADMINISTRATION OF JUSTICE

The policies of the Attorney General, which allow her subordinates to deride her strategy for seeking justice for physically abused mentally ill inpatients, are broken, impugn the integrity of the Grand Jury and interfere with the administration of justice. It is shocking to recount District Attorney Cruz's continuing litany of observations in the Messier Criminal Case as it proceeds through the Inquest and Grand Jury phases of the criminal process. His conduct and continuing observations have been corrosive, derisive, insubordinate, inconsistent with the rule of law, violative of his oath to uphold the Constitution, corrupt and such that they undermine and impugn the integrity of Inquest Proceeding and the Statewide Grand Jury itself. Moreover, his conduct could well poison the prospective pool of trial jurors and might well even arm criminal defense lawyers with viable defenses.[42]

When Attorney General Coakley expressed her hope that District Attorney Cruz would look at the Messier Criminal Case anew it was met with a four (4) page single spaced press release articulating precisely why criminal charges could never be brought by him. (29/1-4). This press release included reference to an alleged corroborative analysis performed by the Essex County District Attorney. (29/1-4). Although District Attorney Cruz never applied the correct legal

[42]The 6.11.14 and 4.30.15 press releases authored by District Attorney Cruz sure look like they could be employed by an imaginative and enterprising criminal defense lawyer. (29/1-4; 35/1). Some might say if he is such an expert, as to the innocence of the Messier Criminal Defendants, then why not put him on the witness list? Who could be a better witness for the defense than the sitting District Attorney who professes that all defendants are innocent following his exhaustive review of the matter?

principles (supra) to the Messier Criminal Case his press release was, nonetheless, a scathing rebuke to Attorney General Coakley. District Attorney Cruz is so consumed with distancing himself from claims of corruption that he strikes out against all those seeking justice in the Messier Criminal Case. His agenda is not based on justice; it is based on self-preservation and raw ego.

District Attorney Cruz then derided Attorney General Coakley for appointing a Special Prosecutor when it was announced on August 27, 2014 that she had done so. District Attorney Cruz felt compelled to again reiterate his long held and oft stated position that "[t]here is insufficient evidence to charge anyone criminally in the death of Joshua Messier."[43] How did his view advance the administration of justice in any way? The findings of the Inquest and the Statewide Grand Jury make District Attorney Cruz's oft stated contentions specious and corrupt. When a jury returns verdicts of guilty will District Attorney Cruz again claim that "[t]here is insufficient evidence to charge anyone criminally in the death of Joshua Messier."[44] Since when are District Attorneys permitted to "go rogue" and chide a sitting Attorney General for seeking justice on behalf of mentally ill criminal victims?[45] District Attorney Cruz reiterated his position - that there was insufficient evidence to charge any Messier Criminal Defendant - when the Six Indictments were returned by the Statewide Grand Jury. He did so through a press release which was released to the public on the very day (4.30.15) that the Statewide Grand Jury returned its Six Indictments. (35/1; 34/1-9). He was then deriding Attorney General Healey who succeeded Attorney General Coakley.

District Attorney Cruz's boss is the Attorney General. When she makes the determination to appoint a Special Prosecutor her underlings should never be permitted to deride this appointment or contend that criminal liability does not attach to the conduct at issue. This conduct by District Attorney Cruz was not only derisive but it was clearly insubordinate, inconsistent with the rule of law, violative of his oath to uphold the Constitution, corrupt and such that it undermined the administration of justice by the Office of the Attorney General through its Attorney General and Special Prosecutor. As it turns out, District Attorney Cruz's liability assessments were patently incorrect as the Inquest and Statewide Grand Jury proceedings proved. The bigger question though, in the context of this acute insubordination, is who is "running the show"? Since when is it permissible for a District Attorney, who incompetently and corruptly bumbles his way through an assessment of a criminal case, to belittle and deride his boss (Attorney General) for having sought to obtain justice, on behalf of a mentally ill victim who was killed by others, through the appointment of a Special Prosecutor? District Attorney Cruz's continuing litany of observations constitutes an unnecessary sword through the heart of justice and smacks of cowardice on the part of his superiors. **How come District Attorney Cruz has not been terminated for this acute insubordination and conduct interfering with the administration of justice?** His continued

[43]See *Boston Globe* article dated August 27, 2014 (Michael Rezendes).

[44]See *Boston Globe* article dated August 27, 2014 (Michael Rezendes).

[45]We know that Martha Coakley did not appoint a Special Prosecutor because she was concerned about justice. She was concerned only with the public fury that was raging and the claim that she was engaged in corruption. (28/1-2). However, despite her subjective motives, the appointment of a Special Prosecutor was, in the abstract, justice for the Messier family which District Attorney Cruz failed to respect.

employment as a District Attorney thwarts the administration of justice. He should be terminated immediately.

E. THE MORALLY CORRUPT INDEMNIFICATION POLICIES OF THE COMMONWEALTH, ATTENDANT TO CLAIMS ASSERTED BY THE INSTITUTIONALIZED MENTALLY ILL WHO HAVE BEEN PHYSICALLY ABUSED BY STATE EMPLOYEES, PERPETAUTE CONTINUING HARMS TO THE ENTIRE CLASS OF INSTITUTIONALIZED MENTALLY ILL INPATIENTS AND DISPARATE TREATMENT AMONGST THEIR MEMBERS

The collective conduct of Governor Patrick, Attorney General Coakley, Attorney General Harshbarger, Attorney General Reilly, Governor Baker and Attorney General Healey, around Davis settlement issues and the Davis legislative process, evidences the dire need for substantial statutory reform to the Commonwealth's indemnification policies.

Prior to trial in the Davis case informal mediation was conducted before Senior District Judge A. David Mazzone in Boston Federal Court.[46] Attorney General Harsbarger offered Five Hundred Thousand ($500,000) Dollars at mediation, in complete settlement of the case, with the caveat that Jason Davis receive nothing. His proportionate share, Attorney General Harsbarger then argued, would be remitted back to Commonwealth as payment for "back rent" for his having been an inpatient at the Department of Mental Health for so many years. Jason Davis and his lawyers adamantly rejected this offer of settlement which they deemed to be morally reprehensible. They expressed this sentiment to Attorney General Harsbarger and Senior District Judge Mazzone during mediation. Judge Mazzone informed Attorney General Harshbarger, before mediation concluded, that Jason Davis was going to "ring the bell" at trial. He did.

On the date of the of the initial pretrial conference in the Davis case, which was held in the "old" Federal Courthouse in Boston, Massachusetts in May of 1998, an assistant Attorney General, Richard H. Spicer, Esquire, approached two of Davis' lawyers (Christopher M. Perry and Brendan J. Perry) in a hallway abutting the courtroom where the pretrial conference was scheduled to be held. Richard H. Spicer then informed the Attorneys Perry that Attorney General Scott Harshbarger "had a message for you (Christopher M. Perry)". The message was as follows: "Mr. Perry, Scott [Harshbarger] wanted me to tell you that he will pay the entire jury verdict if you win but that he will never have to pay you because you will never win." I told Mr. Spicer I would hold the Attorney General to his word. The nearly 2.3 million dollar Davis judgment remains unpaid.

Prior to filing a Notice of Appeal in the First Circuit on March 31, 1999 Attorney General Thomas Reilly, who had taken office in January, 1999, offered Jason Davis the sum of Seven Hundred and Fifty Thousand ($750,000) Dollars which he withdrew after offering it. This sum was substantially less than half of the judgment entered on the jury verdict. After losing at the First Circuit the Attorney General again offered Seven Hundred and Fifty Thousand ($750,000) Dollars before he filed his Petition for a Writ of Certiorari with the Supreme Court.

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[46]Senior District Judge Mazzone was not then a "professional mediator" as that term is used in M.G.L. c. 233, §20. Thus, its confidentiality provisions have no application here.

He again withdrew his offer of settlement. He never made another one. On the very day that the Attorney General's Petition for a Writ of Certiorari was denied by the Supreme Court he withdrew his representation of all State employees in the Davis case so, inter alia, he would not have to wrangle with Davis' lawyers regarding any payment or collection issues attendant to the judgment entered against his clients. See Davis, 178 F. Supp. 2d, at 28-29; (11/1; 12/1). When it came time to make good on Attorney General Harshbarger's express promise to pay, after his and Thomas Reilly's barbaric legal positions were rejected by three federal courts and after the Commonwealth wasted literally hundreds of thousands of taxpayer dollars on vexatious legal contentions, Attorney General Thomas Reilly ran for the proverbial hills. He could though under the controlling State indemnification statute ("Indemnification Statute")[47] the face of which concededly does bar payment of intent based civil rights claims asserted by physically abused mentally ill inpatients. Some of these claims, however, do get paid but only when it suits the whimsy of those at the top of the Executive Branch. Quelling a political firestorm, having a prominent position in State government or having prominent contacts in State government should not be the qualifiers for statutory indemnification in this context but they are.

The raw reality of the Indemnification Statute is that it is deployed with an "evil eye and an unequal hand."[48] One of its central harms is that it thwarts litigation by private civil rights litigators most of whom simply cannot afford the luxury of spending literally thousands of hours on a case only to not get paid in the end. This disincentive to litigate produces an evil result in the channel when combined with the stand down representation policies of the Attorney General and District Attorneys. When these civil rights cases are not brought the great benefit which private civil rights litigators provide – including highlighting system errors, mandating reform and creating valuable constitutional precedents – is lost forever. The Supreme Court has long recognized the benefits of what it refers to as these "private attorneys

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[47]The text of M.G.L. c. 258 §9 is as follows: "Public employers may indemnify public employees, and the commonwealth shall indemnify persons holding office under the constitution, from personal financial loss, all damages and expenses, including legal fees and costs, if any, in an amount not to exceed $1,000,000 arising out of any claim, action, award, compromise, settlement or judgment by reason of an intentional tort, or by reason of any act or omission which constitutes a violation of the civil rights of any person under any federal or state law, if such employee or official or holder of office under the constitution at the time of such intentional tort or such act or omission was acting within the scope of his official duties or employment. No such employee or official, other than a person holding office under the constitution acting within the scope of his official duties or employment, shall be indemnified under this section for violation of any such civil rights if he acted in a grossly negligent, willful or malicious manner. For purposes of this section, persons employed by a joint health district, regional health district or regional board of health, as defined by sections twenty-seven A and twenty-seven B of chapter one hundred and eleven, shall be considered employees of the city or town in which said incident, claim, suit, or judgment is brought pursuant to the provisions of this chapter."

[48]"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and unequal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." Yick Wo v. Hopkins, 118 U.S. 356, 373-374 (1886). "When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power." Id., at 369-370.

general". "As an initial matter, we reject the notion that a civil rights action for damages constitutes nothing more than a private tort suit benefiting only the individual plaintiffs whose rights were violated. Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms. See Carey v. Piphus, 435 U. S. 247, 266 (1978). And Congress has determined that 'the public as a whole has an interest in the vindication of the rights conferred by the [Federal Civil Rights Act], over and above the value of a civil rights remedy to a particular plaintiff…'" City of Riverside v. Rivera, 477 U.S. 561, 574 (1986) (brackets supplied). Jason Davis has provided extensive benefits to the Commonwealth, as a private attorney general, through his reported legal opinions. Through this letter he provides yet additional benefits to the State as a private attorney general. The Davis and Messier cases highlight, amongst other things, the corrupt trappings of the Indemnification Statute and the "evil eye and an unequal hand" with which it has been administered. Yick Wo, 118 U.S., at 373-374.

On March 25, 2014[49] Governor Patrick and Attorney General Coakley both agreed that the intent based civil rights claims,[50] asserted by the Messier family, should be paid notwithstanding the fact that these claims were not subject to indemnification under M.G.L. c. 258, §9. The fact that statutory indemnification was not available was acknowledged by the attorney representing the Messier family in the Messier Civil Rights Case. When the settlement was first announced he observed that it was "fair because it does away with the risk of the state denying payment and the risk inherent in any jury trial."[51] The State would have no ability to "deny payment" if statutory indemnification were mandated. It was not. The Messier family

[49]This March 25, 2014 agreement was later reduced to a writing. (32/1-11). See *Boston Globe* article dated March 26, 2014 (Michael Rezendes).

[50]The first words contained in the Messier Civil Rights Complaint are as follows: "This is a civil rights action…" (20/1). The first three counts of the Complaint are expressly premised upon State and Federal civil rights statutes and assert intent based civil rights claims. (20/7-10). Counts IV, V and VI of the Messier Complaint sound in Assault, Battery and Intentional Infliction of Emotional Distress each of which are also not subject to indemnification under M.G.L. c. 258, §9. (20/10-11). Negligence based claims were asserted in the Messier Complaint, in the alternative, but they are collectively capped at $100,000 under M.G.L. c. 258, §2. (20/11). Thus, even if the Messier Civil Rights Case were actually based on negligence – it could not legally have been - it would have been capped at $100,000. Id. Moreover, under ancient Massachusetts law, an action cannot at once be both negligent and intentional – it is one or the other. See Waters v. Blackshear, 412 Mass 589, 590 (1992); Filippone v. Mayor of Newton, 16 Mass. App. Ct. 417, 427 (1983); Pinshaw v. Metropolitan District Commission, 402 Mass. 687, 697 (1988); City of Boston v. Boston Police Patrolemen's Association, Inc., 48 Mass. App. Ct. 74, 76 (1999); Sabatinelli v. Butler, 363 Mass. 565, 567 (1973). The manner of death was "homicide", the Inquest Judge ruled that probable cause existed to charge the Messier Criminal Defendants with criminal civil rights violations and the Statewide Grand Jury indicted three assailants for criminal civil rights violations. (17/1; 18/1-11; 34/1-9; 32/1-11; 33/1-28). In literally seconds of viewing the Messier Videotape one can instantly ***see*** that the civil rights threshold of liability (intent based conduct or deliberately indifferent conduct) is met. Joshua K. Messier simply suffocated (200 pounds on his back) while he was "clam shelled" by his assailants. (33/1-28). Another culprit looked on and did nothing. (33/21-28). This is precisely what Judge Coven found in his Inquest Report. (33/21-28). A criminal civil rights verdict will likely be returned. There is no room to contend here that the claims asserted and indemnified in the Messier Civil Rights Case were not, in fact, intent based civil rights claims just like the claims in Davis. They were. The Messier settlement agreement unequivocally indemnified intent based civil rights claims. (32/1-11).

[51]See *Boston Globe* article dated March 26, 2014 (Michael Rezendes).

simply confronted the same problem that the Davis family did but they did so in the middle of a political firestorm for Attorney General Coakley, who was running for Governor, and Governor Patrick. However, as was made plain to Governor Patrick, and as Governor Romney already knew from his having indemnified a member of his administration for intent based civil rights violations, indemnification is not precluded under the Indemnification Statute if it comes from another State monetary source. This is precisely how the Messier family and Governor Romney's employee were indemnified. (32/1-11; 15/2-3, 6; 17/1; 18/1-11; 33/1-28). See M.G.L. c. 258, §9.

On the very day that the settlement of the Messier Civil Rights case was publicized (March 26, 2014) the Davis family forwarded the following email to Attorney General Martha Coakley:

> I read with great interest today's article in *The Boston Globe* by Michael Rezendes regarding the settlement in the Joshua Messier case. As you know, the Davis v. Rennie case mirrors the tragedy that occurred in the Joshua Messier case. Jason Davis obtained a judgment in 1998 from the Federal District Court here in Boston which now stands at nearly $2.1M which judgment was upheld by the the First Circuit Court of Appeals in 2001 and then the U.S. Supreme Court in 2002 through its denial of certiorari. We humbly expect and would respectfully request, given the swift resolution by your office of the Messier case, that you immediately move to pay the judgment on the State's behalf in the Davis v. Rennie case. I would like to meet with you as soon as possible to discuss specifically how this matter could be resolved in the short term. I sincerely appreciate your attention to this matter.[52] (23/1).

The Messier settlement was announced on March 26, 2014[53] and settlement papers were executed on July 31, 2014 between the Messier family and the State. (32/1-11). During this period the Davis family filed legislation ("Bill") in the Massachusetts State House which sought payment of the entire Davis case judgment. The Massachusetts Executive Branch had long rejected attempts by the Davis family to have its judgment paid. The persistent contention had always been that it could not pay intent based civil rights claims under M.G.L. c. 258, §9. The Davis family was, however, bursting with excitement at the prospect that ***it*** finally was going to obtain justice in the Spring of 2014 given payment of the intent based civil rights claims in Messier.

One of the biggest predicates for this excitement, around the possibility of justice, was Governor Patrick himself. The Davis family was then mindful that Governor Patrick was a well

[52]Interestingly, notwithstanding a string of emails to Attorney General Coakley by the Davis family starting on March 26, 2014, she informed a constituent on May 13, 2014 (Holliston Democratic Town Committee Breakfast) that "I never heard of the Davis case." This statement was made in response to a query by the constituent as to what Martha Coakley planned to do about the Davis case. This was a rather odd comment by the Attorney General given not only the email chain but the hallmark nature of the First Circuit opinion providing, as it does, protections for the mentally ill for whom Martha Coakley was responsible. (23/1-8; 27/1-20).

[53]See *Boston Globe* article dated March 26, 2014. (Michael Rezendes).

known Civil Rights leader and Civil Rights lawyer. They also then knew that he had been the Head of Civil Rights Division for the Department of Justice under President Clinton. (7/1-4). They thought Governor Patrick would be fair minded. The Davis family's expectation of justice though was entirely based upon the rule of law and equality: (i) Governor Patrick and Attorney General Coakley had just agreed to indemnify intent based civil rights claims in an identical context; (ii) Governor Patrick had previously instructed the Davis family in 2008 to file legislation as a methodology to ***sidestep*** the Indemnification Statute; and (iii) the Davis family had taken great pains to point out to Governor Patrick in 2008 that the Legislature had previously approved legislation proposed by Governor Romney which paid a judgment[54] entered against a State employee for his intent based civil rights violations. (15/2-3, 6; 16/1; 31/1-36). Thus, no less than two precedents existed in support of the proposition that the State ***could*** indemnify intent based civil rights claims notwithstanding the dictate of the Indemnification Statute. Indeed, Governor Patrick and Attorney General Coakley had done just that on March 26, 2014.[55] (32/1-11; 31/1-36; 23/1-8; 27/1-20). Governor Romney had previously done the same thing. (15/2-3,6).

The following notation was placed upon the Bill at filing:

> Note: The payments ordered hereunder are so ordered because: (i) the litigant in Davis v. Rennie, et al. prevailed on a novel issue of substantial federal constitutional significance to the entire citizenry of the Commonwealth of Massachusetts; (ii) this substantial issue of federal constitutional significance was the subject matter of a precedential (reported) opinion which binds all State and Federal Courts in Massachusetts, Rhode Island, Maine, New Hampshire and Puerto Rico; and (iii) the litigant in Davis v. Rennie, et al. was required to defend the propriety of this constitutional issues (sic) in no less than three (3) federal courts wherein he prevailed in each such proceeding. (25/5).

As noted, Representative Rogers, who filed the legislation on behalf of the Davis family, was quoted by Janet Wu (WCVB TV)[56] on March 11, 2014 following his having filed the Bill: **"The facts are uncontested. They hired, failed to train and failed to supervise these workers and to allow the State to walk away is just wrong."** (25/6). Representative Rogers has stood with the Davis family since 2002 following the denial by the Supreme Court of Attorney General Reilly's Certiorari Petition. (11/1; 12/1). There was unanimous support for the Davis Bill across both parties and in both chambers. (25/24, 29). Attorney General Coakley and Governor Patrick were of a different mindset though in the Spring and Summer of 2014.

Attorney General Coakley specifically informed Massachusetts legislators, in the Spring of 2014, that she was desirous of defeating any legislation which would have resulted in any payment being made to the Davis family. Intermediaries in her office also made her position

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[54]The judgment was entered upon a jury verdict just like Davis. (15/2-3, 6; 10/1-9; 19/1-3).

[55]See *Boston Globe* article dated March 26, 2014. (Michael Rezendes).

[56] http://www.wcvb.com/article/family-waits-years-for-millions-after-son-beaten-at-hospital/8034736#!C6502

known to legislators. What type of person, much less Attorney General, would seek to defeat this legislation? Why would any Attorney General ever take this tack especially when she was literally in the midst of insuring that another family's intent based civil rights claims - in an identical legal context - were going to be indemnified? This position runs counter to justice in all its myriad forms. In 2012 Attorney General Coakley authored an "Op Ed" in the Boston Herald titled "Society Must Stand Up for the Mentally Ill". (27/19-20). Why did she fail to stand up for Jason Davis? Why did she seek to hurt his cause? Was his cause not a worthy one from her standpoint?

It was the "Blue Wall" which was the crux of precisely why Attorney General Coakley was so steadfast in her resolve to defeat the Davis legislation even while concurrently working feverishly to insure that the Messier Civil Rights claims would be indemnified. Attorneys General Scott Harshbarger and Thomas Reilly litigated the Davis case for seven years (1996-2002). They spent an enormous amount of the taxpayer's time and money to do so. They played "cat and mouse" with Jason Davis over payment and withdrew from the litigation on the very day that they lost in the Supreme Court. (11/1; 12/1); Davis, 178 F. Supp. 2d, at 28-29. They too were steadfast in their resolve that Jason Davis was never going to get any justice in his case. Their actions and the cited empirical data make this all too clear. It was Jason Davis and his pesky lawyers, after all, who refused that morally depraved offer of $500,000 and then went on to defeat the Massachusetts' Attorneys General in a one-month federal trial and in two federal appeals. The Office of the Attorney General has always had great disdain for the Davis case. Instead of using it as a teaching tool it has just sought to insure that injustice would always be inflicted upon Jason Davis and his family. To date, it has been.

On May 13, 2014 the Davis family sent an email to then Attorney General candidate Maura Healey which set forth the gory and rather sordid details of the Davis case. (26/1-2). This email requested that Maura Healey "stand with the Davis family this week in support of the payment of the entire Davis verdict" through the then pending legislation. This was the same legislation which her then boss (Attorney General Coakley) was trying to defeat. (26/1-2; 25/6). Maura Healey responded to this email as follows:

> Thanks for sending these materials along. I'm reviewing now. It's a very sad situation. It was nice meeting you in Holliston. Did anything happen with the legislation this week? (26/1-2).

It appears though that the Davis case though was not "sad" enough for Maura Healey to do the right thing or, for that matter, ***anything***. Maura Healey refused to stand with the Davis family or support its legislation. I had met then Attorney General Candidate Maura Healey at the Holliston Democratic Town Committee Breakfast where she spoke on May 13, 2014 to a rather energetic crowd. By my count she used the words "civil rights" no less than eight times in her speech. This is precisely why I emailed her in the immediate aftermath of the event after having first talked with her about the Davis case. (26/1-2). Maura Healey served as Head of the Civil Rights Division, in the State Attorney General's Office, prior to her current tenure as the Attorney General.

Martha Coakley saw to it that no justice would be provided to the Davis family in accord with the empirical data which proves that this is precisely what Attorneys General Scott Harshbarger and Thomas Reilly had in mind all along. Martha Coakley honored their wishes in this regard by seeking to defeat the Davis legislation and have others do so as well. The Davis family simply could not get over the "Blue Wall" which Martha Coakley and her predecessors constructed. Attorney General Healey followed suit when it was her chance to stand up for the Davis family. She too stood down. (26/1-2; 44/1-6; 27/1-20). Martha Coakley and Maura Healey stood down because of the Blue Wall. That really is the heart of the indemnification matter. Why else would Martha Coakley ostensibly seek justice[57]for one family while concurrently seeking to inflict injustice on another in an identical context? Attorney General Coakley's position, in this regard, was pure, unadulterated evil[58] and without defense, justification or excuse. Spite, caprice and the Blue Wall were at the center of this indemnification storm.[59] They still are. Governor Patrick, for his part, followed suit.

On July 11, 2014 Governor Patrick vetoed the Davis Bill which sought less than one fourth ($500,000) of the Davis Judgment ($2,300,000). (25/6, 17; 19/1-3). He stated in his veto that "I am vetoing this item because state law [M.G.L. c. 258, §9] prohibits indemnifying employees under these circumstances." (25/17; brackets supplied). This logic would have foreclosed any payment to the Messier family and Governor Romney's employee as well. Governor Patrick was, as noted, in the process of indemnifying the Messier family when he vetoed the Bill. (25/13, 17; 32/1-11). It is shocking to note that Governor Patrick vetoed the Davis Bill notwithstanding the fact that he ***specifically advised*** the Davis family on June 20, 2008 to file it

[57]A series of extensive and detailed press accounts, concerning the Messier Case, made it a very substantial political issue for Martha Coakley and Deval Patrick beginning in January, 2014. Indeed, a pollical firestorm raged at that time concerning this case. The Messier Settlement effected by Martha Coakley and Deval Patrick was undertaken by them only to serve their own political agendas and to escape from the public outcry that ensued once the facts surrounding Joshua K. Messier's brutal death came to light. It is manifest that the Messier settlement was not effected by Martha Coakley and Deval Patrick for pure hearted reasons, such as justice and honor, because such reasons would have concurrently commanded a payment to the Davis family as well which they made sure never occurred. Martha Coakley and Deval Patrick need not have paid the Davis judgment simply because no press accounts had caused a political firestorm to swirl around it. Two *Boston Globe* articles authored by Adrian Walker ("Victim of the State" and "State of Denial") were printed on 11.16.00 and 3.10.14, respectively, but failed to garner any substantial public attention or outcry. (22/1-3). The Davis story, as recounted herein, has never been told.

[58]The Federal Civil Rights Act provides compensation for "evil" conduct. "We hold that a jury may be permitted to assess punitive damages in an action under §1983 when the defendant's conduct is shown to be ***motivated by evil motive or intent***, or when it involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56 (1982) (emphasis supplied). Thus, the use of the word "evil" is not attorney rhetoric but rather an accurate characterization of Martha Coakley's legal conduct toward the Jason Davis case.

[59]The reported cases, court filings, trial exhibits, trial transcripts, appellate court filings and findings, limited press reports and the Writ of Certiorari denial, generated in relation to the Davis Case, have been and continue to be a source of great embarrassment and humiliation for the Office of the Attorney General and the Executive Branch alike. This result obtains since these documents portray the Executive Branch in a poor light relative to its hiring policies, training policies, the parties it represented, the failure to commence criminal prosecutions against these parties, the manner in which it conducted itself, its clear objective to win at any cost, the barbaric civil rights positions it took and the substantial errors made by government lawyers at trial and on appeal. These circumstances and others have fueled the injustices inflicted upon Jason Davis and his family.

as the methodology to sidestep the very authority (M.G.L. c. 258, §9) which Governor Patrick then employed on July 11, 2014 to veto the Davis Bill. (25/17, 6; 16/1-2; 31/1-3; 19/1-3). The Massachusetts Senate unanimously overrode the veto (39-0) as did the Massachusetts House (152-0) but the Bill was never funded by the Patrick administration. (25/6, 24, 29). Why? Spite, caprice and the Blue Wall. The Massachusetts Legislature has long supported the Jason Davis case and his family very much appreciates this long standing and ardent support. (25/5, 6, 7, 24, 29, 1-29). Representative Rogers and Senator Spilka both actually proposed payment of the entire Davis judgment in 2014. (25/7, 2, 5).

In the late summer of 2014 the Davis family filed a second lawsuit through which it sought to be treated on an equal footing with Governor Romney's employee and the Messier family in terms of the payment of its judgment. (49/1-77). Attorney General Coakley and Maura Healey vigorously defended against this new lawsuit principally upon the dictate of M.G.L. c. 258, §9 (Indemnification Statute). Attorney General Coakley and Attorney General Healey each sought to deprive Jason Davis, in the context of this new lawsuit, of the ability to have his Federal Civil Rights judgment paid. They were successful. (45/1-16).[60] If the Commonwealth can

[60]The Davis Estate posits, with all due respect, that the courts which ruled on this most recent Davis case committed gross legal error which applicable law makes abundantly clear. (45/1-16). I invite all to read the Petition for Rehearing En Banc, which was filed in the First Circuit on 9.28.15, insofar as it highlights additional illegal conduct of the Commonwealth and the gross legal errors of the reviewing Courts. (45/1-16; 33/1-28; 34/1-9). The Commonwealth's principal position in this last Davis civil case was simply that the Indemnification Statute could not be used to pay the Davis judgment because a jury ***had found*** that the Davis defendants engaged in intent based civil rights violations which, the Commonwealth contended, precluded the ability to indemnify these claims under the Indemnification Statute. The Indemnification Statute concededly does bar payment of these intent based civil rights claims. The Davis Estate has never contended otherwise. The Commonwealth's position in this last case, specifically the position of Attorneys General Coakley and Healey, was that since there was no finding by any jury in the Messier Civil Rights Case the State was simply free to conclude that the subject conduct was merely negligent and thus indemnifiable under the Indemnification Statute. These contentions were patently incorrect on several fronts: (i) the Indemnification Statute does not distinguish between a claim, settlement or jury verdict which simply means that untried intent based civil rights claims are still precluded from indemnification under the facial dictate of the statute; (ii) the Messier Death Certificate, Report of Autopsy and Messier Videotape all demonstrated that a homicide was committed with wanton and reckless indifference both of which take the Messier Civil Rights Case outside the ambit of the Indemnification Statute; (iii) the intent based civil rights claims in the Romney case ***were*** indemnified even though these claims also resulted from a judgment entered on jury verdict just like the Davis case; (iv) the mere fact that no judicial liability determination has been made in a case does not dictate that the level of culpability of the assailants is mere negligence; and (v) the Commonwealth incorrectly contended that no finding of intent based conduct had ever been made in the Messier case but yet, during the pendency of this last Davis civil case, both a Judge (Judge Coven) and Statewide Grand Jury found, in March and April, 2015, probable cause to believe that the Messier Criminal Defendants actually ***did engage*** in wanton and reckless civil rights violations under State criminal law. (33/1-28; 34/1-9; 45/7-8). See M.G.L. c. 265, §37. Thus, depending entirely upon the court where it found itself, the Office of the Attorney General put forth diametrically opposed legal positions to suit its then present needs. It asserted that the conduct of the Messier civil defendants was merely "negligent" in the last Davis civil case to place said defendants within the ambit of the Indemnification Statute and avoid cries of inequality by the Davis Estate. However, in the Inquest and Statewide Grand Jury proceedings the Commonwealth's contention, which was adopted by both Judge Coven and the Statewide Grand Jury, was that probable cause existed to believe that at least three of the Messier civil defendants engaged in wanton and reckless violations of Joshua K. Messier's civil rights under a State criminal statute (M.G.L. c. 265, §37). This latter conduct, per force, precluded indemnification under the Indemnification Statute. Arguing two divergent legal positions at the same time in different courts on the same matter violates the doctrine of judicial estoppel as articulated by the Supreme Court. See New Hampshire v. Maine, 532 U.S. 742, 750 (2001). "'Absent any

squirm away from indemnifying the Davis judgment – based upon the Indemnification Statute - this teaches us precisely how corrupt this statute must be given what the State has done to Jason Davis and his family for the last twenty-four years. We need no further proof of the statute's brokenness or corruptness.

While this new litigation was pending the Davis family sent a letter (February 9, 2015) to Attorney General Healey a portion of which reads as follows:

> Although technically I guess we are "adversaries" we need not be. We were not in May, 2014 [when we met at the Democratic Town Committee Breakfast in Holliston, Massachusetts]. **The Davis case actually presents a series of law and order issues around morality, equality and fair handed justice.** The Davis family has suffered long enough at the hand of the State. It should suffer no longer. I would respectfully request that you, I and Mr. Davis meet in the short term to resolve the Davis case on a footing equal with and in the same manner that the Messier case was resolved. I seek only to save Jason's Father and family from further torment, heartache and trauma of the type and kind which they have endured for the last 22 years. (44/4; emphasis in original; brackets supplied).

Attorney General Healey refused to acknowledge the letter, meet with Mr. Davis or help insure that the Davis judgment was paid in full. Her position has not changed since 2015 notwithstanding her position on May 13, 2014. (26/1-2).

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good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory.'" Id., at 749 (citation omitted). (45/10-11). Once again, the Commonwealth was bent on insuring that Jason Davis would never obtain justice by depriving him of the payment of his judgment. For the record, in this last Davis civil case, the Davis Estate did not argue that it was entitled to relief under the Indemnification Statute as contended by the Attorneys General and the reviewing courts. Instead, it argued that it was entitled to have its claims paid on an equal footing with the Messier and the Romney cases neither of which was or could have been paid under the plain text of the Indemnification Statute. See M.G.L. c. 258, §9. Instead, these claims were paid pursuant to an Executive Fiat and an Executive Custom. (49/48, 58-59; 45/1-16). The Davis Estate argued that its claims were entitled to be paid under this same fiat and custom. Indeed, the Complaint filed in this last Davis case proves precisely that. (49/48, 58-59; 45/1-16). **The reviewing courts basically held that the Davis Estate asserted a claim which it never asserted and then dismissed this unasserted claim based upon its failure to state a claim upon which relief could be granted.** (45/1-16). The reviewing courts opinions were in gross error for this reason alone. The Davis Estate did not have the resources to file a Writ of Certiorari with the United States Supreme Court so it was left with these clearly erroneous court decisions. Regardless of these gross errors by the Commonwealth and the reviewing courts one thing is still clear: The indemnification system is both broken and corrupt. If the Commonwealth can refuse to pay Jason Davis' claims, after all it did to him, then the State indemnification system must clearly be broken and corrupt. (45/1-16). It would seem to me that when a Federal Court jury specifically determines that convicted violent felon State employees intentionally injure and beat bloody an institutionalized mentally ill person then these claims certainly should be paid directly from the State coffers without a 20 year delay. There are very few claims more deserving of payment than these. What does it say about our State that the most powerful persons in the Executive Branch can arbitrarily pick and choose those claims which will and will not be paid depending upon their mere whim and caprice? The fact that the Davis claims have not been paid demonstrates both the black hearted nature of the Executive Branch and our patently corrupt Indemnification Statute.

On December 4, 2015 the Davis family sent a letter to Governor Baker which set forth the gory and rather sordid details of the Davis case. (36/1-9). The concluding paragraphs of the letter read as follows:

> 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. 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. (36/4-5).

Governor Baker refused to meet with the Davis family, publicly acknowledge the Davis case or publicly spearhead legislation aimed at paying the Davis case judgment. Instead, he just deferred to the legislature and recited the Indemnification Statute as the reason the Commonwealth would not pay the Davis judgment. (37/1-2). He stood down when he clearly should have stood up. (36/1-9; 37/1-2; 15/2, 3, 6; 32/1-11).

Why is the indemnification statute morally and legally corrupt and what can be done to fix it? The collective conduct of Governor Patrick, Attorney General Coakley, Attorney General Harshbarger, Attorney General Reilly, Governor Baker and Attorney General Healey, around Davis settlement issues and the Davis legislative process, evidences a dire need for substantial statutory reform to the Commonwealth's indemnification policies. The legislative related activities of Governor Patrick and Attorney General Coakley around the Davis case, coupled with their concurrent indemnification of the Messier Civil Rights claims, are literally the "poster child" for statutory indemnification reform. The indemnification of Governor Romney's employee is equally compelling. Quelling a political firestorm (Messier), having a prominent position in state government (Romney Case) or having prominent contacts in State government (Romney Case) should not be the qualifiers for statutory indemnification in this context. Justice should be the only one.[61] The dichotomy of treatment, amongst the Davis, Messier and Romney cases, highlights the moral depravity and corruptness of the Indemnification Statute. Statutory reform is needed immediately so those at the top of the Executive Branch are no longer empowered to unconstitutionally and arbitrarily decide who, if anybody, will be indemnified. The Governors' and Attorney Generals' disparate, arbitrary and whimsical treatment, across these three cases, affronts the most fundamental tenets of the Due Process Clause of the Fourteenth Amendment. See Jones v. SEC, 298 U.S. 1, 23-24 (1936).

[61]The Messier case most assuredly should have been paid. The undersigned, Mr. Davis and the Davis Estate are very glad it was paid but it was paid for reasons which had nothing to do with justice or the rule of law. This payment also points to a broken indemnification system. The Messier case should have been paid out of a sense of justice and for no other reason. This payment likewise should have been divorced from the whimsical discretion within the Executive Branch. Otherwise, the value of the "private attorney general" is lost.

That Jason Davis did not have connections, political might or the ability to create a political firestorm should not be determinative of his ability to have his claims paid. The need for justice, equality and even handedness mandates statutory reform.[62]

In the Davis case the State placed Jason Davis in an institution where an historical wave of violence was acute, ongoing, documented and well known to all who cared to know. It also provided care takers to him which included convicted violent felons hired pursuant to a written DMH hiring policy. When expected and statistically probable harm befell Jason Davis, the State, relying as it could on the raw text of the Indemnification Statute, told him to take up payment of his judgment with the convicted violent felons who brutalized him insofar as it was washing its hands of the matter. The inequities which the Indemnification Statute perpetuate are too numerous to list here but none is more vexatious than the hollowness which it brings to many of our constitutional provisions. The Commonwealth of Massachusetts was ***itself*** charged with the obligation to keep Jason Davis safe under the United States Constitution. See Youngberg, 457 U.S., at 314-324; Davis, 264 F. 3d, at 86-116. Yet when it failed miserably in this regard it informed Jason Davis and his family to take the matter up with the convicted violent felons who attacked him. These violent felons were not, however, charged with insuring his safety; this was the State's obligation under the Constitution. Id. The State eviscerates federal constitutional protections when only its employees are responsible for protecting them. If States are immunized from and not held accountable for the payment of damage claims in this context, resulting from their failure to provide the very protections which the Constitution compels ***them*** to provide, such protections will simply not be provided. They were not in Davis or Messier. If we talk to fathers, whose sons have been injured in Massachusetts mental health facilities, we immediately learn how important accountability is to them.

On the day when his son's case was settled Mr. Messier stated that "it is heartening to see the attorney general's office exhibit leadership and compassion in recognizing this wrong and bringing about some measure of accountability for these troubling actions…"[63] Similarly, Mr. Davis noted in a June 20, 2014 letter to the Massachusetts Senate that:

> 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

[62]A simple observation about the Indemnification Statute illustrates its inequities especially when conflated with the State's federal constitutional obligation to keep the institutionalized mentally ill safe. A serial murderer, who has been both convicted and while still incarcerated, may have his intent based civil rights claims paid under state statutory law yet the abused mentally ill do not have this same statutory luxury. See M.G.L. c.258, §§9, 9A. Convicted serial killers are constitutionally foreclosed from possessing rights which eclipse those of the mentally ill. Youngberg, 457 U.S., at 314-324. They presently do.

[63]See *Boston Globe* article dated March 26, 2014 (Michael Rezendes).

> 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. The Governor recently characterized the Messier case as "awful", "horrible", "tragic" and "disgusting". He was right. The same can be said about my son's case. It is time that the Commonwealth of Massachusetts became fully accountable for what it did to my son on August 12, 1993. I call for the entire payment of the third amended judgment entered in his case which amount presently is 2.1 million dollars. No Father, in my circumstance, could rest until justice was done for his son. I never will. (30/3; 19/1-3).

Mr. Davis is right: improvement comes only through full accountability. The Indemnification Statute, however, makes nobody accountable for anything so needed change is never forthcoming. The Indemnification Statute, the kneejerk inclination of the Attorneys General to defend the mentally ill abusers on the civil side and the disinclination on the part of District Attorneys to prosecute – as we have seen in Davis and Messier – is a toxic and lethal combination which seriously impairs the safety of the mentally ill. Statutory reform, which provides indemnification for intent based civil rights claims asserted by the institutionalized mentally ill, will make our Mental Health institutions safer principally because of the private attorneys general. They are the civil police inside the civil rights arena. **The crux of the problem with the Massachusetts Indemnification Statue though is that it permits the Commonwealth to refuse to pay jury verdicts earned by the institutionalized mentally ill who have been savagely brutalized and attacked by State employees within locked psychiatric wards. This effect of the statute is pure, unadulterated evil.**

Statutory reform will also eliminate the "cat and mouse" games played by the Attorneys General around settlement issues as Thomas Reilly and Scott Harshbarger did with Jason Davis and his family. Mentally ill inpatients and their families should never be subjected to this treatment at any point in their civil rights litigation much less after successive federal court wins followed by an Attorney General's failure to honor the promises to pay made by his predecessor.

III. THE COMMONWEALTH'S INSTITUTIONALIZED MENTALLY ILL ARE HOUSED IN A SYSTEM WHICH FAVORS THEIR ABUSERS

The institutionalized mentally ill in this State live in a system where those who abuse the mentally ill have a favored status with those in power. The legal representation policies of the Office of the Attorney General favor representing those who have criminally assaulted and battered the mentally ill instead of indicting them. The prosecution related policies of the District Attorney favor standing down even in the face of obvious criminal conduct having been exacted against the institutionalized mentally ill. In our current system policies also

permit rogue District Attorneys to deride, ridicule and chide the Attorney General for seeking justice on behalf of the institutionalized mentally ill. Executive Branch officials, for their part, ignore precedential opinions (Davis) and fail to take the corrective actions which these opinions mandate should be taken. Our morally corrupt indemnification statute perpetuates litigation inaction by private attorneys general and our consequent inability to obtain needed system improvements, reforms and precedential opinions resulting from this litigation. **This statute also insulates the Commonwealth from any liability even when it has blood on its hands as it did in the Davis case.** Further, the Executive Branch policies are years late on arrival and, even then, amount to nothing more than an acutely deficient patchwork quilt of reactive measures implemented without a global strategy.

Some 25 years have passed since the then the sitting District Attorney for Worcester County (John J. Conte) expressed his concern that Human Rights Officers, employed within the DMH, were of the opinion that crimes committed against the institutionalized mentally ill "might be slipping through the cracks". (6/1-2). They did in Davis. They did in Messier. They are still slipping through the cracks today. Crimes have slipped through the cracks in 2017 in the DMH. Crimes have been slipping through the cracks for decades. Why? The answer is a simple one: the system is "built", given the above policies, to internalize, coverup and whitewash allegations of wrongdoing by the State employees who "care" for our mentally ill. The interaction of these policies creates a literal perfect storm whereby whitewashing, corruption and violence against the mentally ill thrive. This system emboldens direct patient care employees who clearly feel insulated from allegations of wrongdoing given the culture in which they operate. The corruption in the system though, and the place where the criminal activity starts "slipping through the cracks", gets its foothold within the DMH's investigatory process. Such was the case in Messier and Davis when the investigatory process became nothing more than a whitewash. These corrupt investigations have been a long running staple of the DMH. It is helpful, in this regard, to compare ancient DMH investigatory practices with those which currently prevail. This shows how far we have not come.

In 1988 a Jewish "client was found with a swastika on his buttocks written in pen. Human Rights Office reports that patient is blind and dependent and has been victimized before." (5/1, 4). The patient had been blind since birth. (5/5). The patient's incompetency precluded him from identifying the person who wrote on his left buttocks. (5/5). The disposition of the complaint was as follows: "Substantiated. One staff terminated. One staff received five-day suspension. One staff received a letter of reprimand." (5/1). "The swastika was discovered on the left buttock of [the patient] about three inches below the belt line on September 30, 1988 by Linda Amarillo, R.N." (5/7). "During interviews into the swastikas being drawn on the census board it was learned, through witnesses and her own admission, [that] Leona Whitney, R.N., had drawn on the left buttock of [the patient]. Mrs. Whitney denied her drawing was a swastika." (5/7). Although Leona Whitney, R.N., denied drawing the swastika she admitted drawing a "beauty mark" on the patient's left buttocks. (5/16). Leona Whitney, R.N., lied in her first interview since she denied writing anything on patient's left buttocks. (5/16). Leona Whitney, R.N., later admitted writing on the patient's left buttocks only in the aftermath of another witness having first reported that she saw Leona Whitney, R.N., write something on patient's buttocks. (5/22, 6). In his decision the Chief Operating Officer of Westborough State Hospital, Alan J. Zampini, suspended Leona Whitney, R.N., for five days but determined that

"it could not be concluded who drew the swastika on [the patient]." (5/21-22). Another employee (Michael Gordon) was placed on probation for having drawn swastikas on the census board. His subsequent termination resulted only because he failed to complete employment probation not because of his original wrong. (5/21). It could not be proved who drew the swastika? Everybody knew who drew that swastika and there was enough evidence to prove it. Alan J. Zampini, it must be recalled, was the same person who approved Philip Bragg's employment at the DMH in a direct patient care capacity after Bragg's release from prison. (3/2). No staff member was terminated for having drawn a swastika or "beauty mark" on the buttocks of a Jewish, blind and incompetent inpatient. (5/1-22).

The unconsented to touching of another's buttocks is now and was a felony (Indecent Assault and Battery) under Massachusetts law in 1988.[64] See M.G.L. c. 265, §13H; M.G.L. c. 274, §1. When Leona Whitney ***admitted*** that she drew ***something*** on the patient's buttocks she ***admitted*** that she committed indecent assault and battery yet she was only suspended for five days, never terminated and never prosecuted. (5/1-22). This is a prime example of a fatally flawed investigatory process leading to serious and deeply disturbing "crimes slipping through the cracks". (6/1-2). Moreover, this "investigatory process" lead to the retention of a dangerous employee. An egregious felony committed against a blind, incompetent patient went unprosecuted and the employee (criminal) received nothing more than a slap on the wrist. This was a disgusting display of the DMH's "investigatory process". Nothing has changed since 1988. Some 29 years later these flawed and deeply disturbing investigations are still the order of the day. The fatal flaws in the DMH's investigatory process, together with the Commonwealth's "dark ages" and illegal approach to implicated psychiatric issues, still pervade our State mental health institutions. These practices, just like those in 1988, perpetuate unprosecuted criminal conduct upon the mentally ill. It is not only the "stand down" policies of our Attorney General and District Attorneys which cause our mentally ill to be injured, maimed and killed. The DMH's investigatory process perpetuates these same harms. Indeed, it gets its foothold there. The Commonwealth then hides behind these constitutionally infirm investigations.

A. THE DMH INVESTIGATORY PROCESS IS CONSTITUTIONALLY FLAWED[65]

I recently had occasion to review a DMH investigatory report which was generated by DMH employee Michelle Morey during July of 2017. This report evidences precisely how far we have not come since the 1988 swastika branding incident. The continuing flaws in the investigatory and reporting process are of a constitutional nature and foreclose any such report from being constitutionally viable. The flaws in the DMH investigatory and reporting process currently infect most, if not all, of its investigations.

[64] "[I]t is a criminal act in Massachusetts to touch the breasts, abdomen, buttocks, thighs and pubic area…" Commonwealth v. De La Cruz, 15 Mass. App. Ct. 52, 59 (1982). An incompetent mentally ill inpatient obviously cannot consent to having staff draw a swastika or beauty mark on his buttocks. See Zinermon, 494 U.S., at 131-132. (5/1-22).

[65] In this Section the terms DMH and DOC shall be used interchangeably.

The Commonwealth routinely conducts investigations which do not include interviewing the actual victim. This investigatory process is fatally flawed in a constitutional sense. It has been oft stated that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . .[And] no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 170-172 (1951) (ellipses and brackets supplied). "For more than a century, the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right, they must first be notified.'" Fuentes v. Shevin, 407 U.S. 67, 80 (1972) (citation omitted). "It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' " Id, at 80 (quoting Armstrong v. Manzo, 380 U. S. 545, 552 (1965)). Victims need to be heard if they are to have any chance to retain the constitutionally mandated safety to which they are entitled.

There is a second fatal constitutional flaw in the DMH investigatory process. In the litigation context it has been said that:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. **To this end, no man can be a judge in his own case, and no man is permitted to try cases where he has an interest in the outcome.** That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' Tumey v. Ohio, 273 U. S. 510, 273 U. S. 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But, to perform its high function in the best way, 'justice must satisfy the appearance of justice.' Offutt v. United States, 348 U. S. 11, 348 U. S. 14.

In Re Murchison, 349 U.S. 133, 136 (1955) (emphasis supplied).

The DMH currently investigates ***itself*** against allegations that ***it*** abused mentally ill inpatients. That is not unlike getting into a car accident, suing your adversary and then appearing at trial only to find out that your adversary is also the judge. The DMH has actual bias in the form of an actual interest in the investigation – not just possible bias – and it is clearly judging its own cases. An examination of the last five years of DMH investigations would truly show how perverted the investigatory process is because of this flaw alone. All we need do is look at the swastika branding case. This is precisely the manner in which DMH investigations are normally conducted. They are nothing more than exercises in corruption, whitewashing and violence perpetuation.

A third constitutional flaw in the DMH's investigatory process is its wholesale failure to consider and generate critically relevant evidence. When violence occurs within a DMH facility there is no mandated DMH policy which requires it to take photographs of the injuries sustained by a mentally ill inpatient. Likewise, there is no policy which requires the DMH to obtain medical records generated by outside medical facilities during its investigation. Many times this medical (forensic) evidence is the most critical evidence which exists. The Due Process Clause mandates, in the name of fairness, that there be a consideration of all relevant evidence which bears upon the ability to assess precisely what occurred. See Joint Anti-Fascist Refugee Committee, 341 U. S., at 170-172; Fuentes, 407 U.S., at 80.

A fourth constitutional flaw in the DMH's investigatory process is its wholesale disregard of the constitutional principles which teach us precisely when and under what conditions physical and four (4) point mechanical restraints can be imposed. The failure to address and include a discussion of these constitutional principles in DMH investigatory reports is proof positive that not only is the DMH investigative process fatally flawed - for this reason alone - but that no policies have been put into place in the locked wards which compel incorporation of these principles. From the date when the First Circuit authored its hallmark opinion in Davis (2001) to present date no DMH investigation, investigatory process or investigatory report – which relate to the legal permissibility of restraints - have ever considered the rules of law articulated by the First Circuit in Davis or, for that matter, Youngberg or Deshaney. This alone amounts to corruption. Our mentally ill cannot gain the benefit of laws which aid their cause unless their caretakers actually ***know*** the law and apply it. You simply cannot make the legal determination, relative to whether abuse occurs in a restraint context, unless you have a firm understanding of precisely what the Constitution commands in this regard. As we all know, the Constitution is the "supreme Law of the Land" which must be considered first - not last. U.S. Const. Art. VI; Marbury v. Madison, 5 U.S. 137, 177-179 (1803); Cooper v. Aaron, 358 U.S. 1, 18 (1958); Baker v. Carr, 369 U.S. 186, 211 (1962); U.S. Const. Amend. V, XIV. When State restraint abuse investigations do not consider the dictate of the Constitution, in determining if abuse occurred and whether the restraint was legal, the State not only violates the Constitution but mandates that its conclusions are necessarily void because of it. State law, state regulations, state policies and state protocols cannot conclude that a restraint is "legal" when the Constitution dictates otherwise. Baker, 369 U.S., at 211.

The ability to employ restraints, within the confines of a State operated mental hospital, involve the convergence of psychiatric, medical and constitutional principles which the First Circuit analyzed with great care in the Davis opinion. See Davis, 264 F. 3d, at 97-99, 108 – 111, 115-116; Youngberg, 457 U.S., at 314-324. These are the principles which control when determining if a restraint can be implemented in the first place and, if it can, the level of force which can be employed during its implementation.[66] Id; Ibid. These First Circuit holdings have

[66]"The State has a duty to protect incarcerated prisoners and involuntarily committed mental patients from harm by a state actor." Davis, 264 F. 3d, at 98. "Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." Davis, 264 F. 3d, at 99 (quoting Youngberg, 457 U.S., at 321-322). It has been oft stated that "'[l]iberty from bodily restraint always has been recognized as the core of liberty protected by the Due Process Clause from arbitrary governmental action.'" Youngberg, 457 U.S., at 316 (quoting Greenholtz, 442 U.S., at 18). "This interest survives criminal conviction and incarceration. Similarly, it must also survive

been in play since 2001. The barroom brawls rules of order do not control in locked psychiatric wards at State mental health facilities. You cannot set upon someone for reasons which might sanction this conduct on the street. Davis, 264 F. 3d, at 97-99, 108-111, 115-116. In locked wards only psychiatric, medical and constitutional principles carry the day. It is pertinent to set forth some of the Davis case rulings which bear upon when and under what conditions restraints may be permissibly implemented under the Constitution. These are the constitutional rulings which the DMH must consider in its investigations, investigatory process and investigatory reports if it is to avoid viable complaints of constitutional infirmity.

In Davis the First Circuit made a series of rulings which must be considered when assessing the constitutional viability of a restraint. To illustrate the applicability of these rulings to restraints in a general sense it is first necessary to briefly recount the first restraint in the Davis case.

- **First Circuit Facts in Davis – First restraint in the seclusion room**

The First Circuit held in Davis that "[a]s we have said, Davis testified that he started doing karate kicks into the air in response to Rennie's taunts, and that Rennie had choked him and threw him to the mat. Davis said: 'That was an assault…What Paul Rennie had done, grabbing someone by the neck and throwing them down is not a restraint.'" Davis, 264 F. 3d, at 110.

- **First Circuit Davis Ruling – Use all reasonable measures to avert the need for force and force should be used as sparingly as possible**

"When Rennie took Davis to the mattress, the patient was by himself in an empty room. It is difficult to see how Rennie could have reasonably perceived a threat to himself or the other MHWs standing by, all of them could have moved out of the way or closed the door when Davis began karate kicking. Yet Rennie did not try to avert the need for force by taking such measures…" Davis, 264 F. 3d, at 110. The "State's duty to protect those it confines because of mental illness requires that force be used as sparingly as possible." Davis, 264 F. 3d, at 111.

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involuntary commitment." Youngberg, 457 U.S., at 316. "If it is cruel and unusual punishment to hold convicted violent criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed – who may not be punished at all – in unsafe conditions." Youngberg, 457 U.S., at 315-316; Davis, 264 F. 3d, at 108 – 111. "We have established that Romeo retains liberty interests in safety and freedom from bodily restraint". Youngberg, 457 U.S., at 319. Davis and Youngberg are manifestly clear that "there is a constitutionally protected liberty interest in…freedom from bodily restraint." Youngberg, 457 U.S., at 318, 316, 319; Davis, 264 F. 3d, at 97-99. Thus, the implementation of a restraint not sanctioned by the constitution is, in the abstract and without the concurrent employment of excessive force, a constitutional violation. Youngberg, 457 U.S., at 316-324; Greenholtz, 442 U.S., at 18. The words "freedom from bodily restraint" mean just that under Youngberg, 457 U.S., at 316; Greenholtz, 442 U.S., at 18 and Davis, 264 F. 3d, at 97-99, 108-111. This phrase does not mean "freedom from bodily restraint" only if accompanied by excessive force. Although "excessive force" certainly gives rise to a cause of action for an unreasonable bodily restraint claim – if committed during its implementation - this element is not needed to assert a viable constitutional claim in this regard. Youngberg, 457 U.S., at 314-324; Greenholtz, 442 U.S., at 18 and Davis, 264 F. 3d, at 97-99, 108-111. This holding protects our constitutional right not be strapped to a restraint table for no medical or psychiatric reason.

- **First Circuit Davis Ruling – Caretakers cannot taunt a patient and then employ resultant conduct as the basis to constitutionally restrain**

The "evidence showed that Rennie provoked Davis by taunting him, and then, after the patient reacted, choked him and threw him to the mat." Davis, 264 F. 3d, at 110-111. The "jury could have found that Rennie taunted Davis in the quiet room to provoke him, and then used excessive force to unreasonably restrain him in the quiet room in response to the behavior he provoked." Id., at 115. The Court expressly ruled in Davis that when a caretaker taunts a patient the resulting patient behavior cannot then be employed as the constitutional basis upon which to physically restrain.[67] Davis, 264 F. 3d, at 108 – 111.

- **First Circuit Davis Ruling – Acting out by mentally ill inpatients is normal conduct which their caretakers cannot meet with any force until aversion techniques are first employed**

"Sadly, it is not unusual for a seriously ill mental patient to act out physically in the controlled and confined setting of a hospital. Davis's kicks fall within the norm of what mental health workers are expected to handle, and were less threatening than the circumstances described in Lewis." Davis, 264 F. 3d, at 108. The Davis defendants sought to use this conduct - the karate kicking – as the basis to restrain Jason Davis but the First Circuit rejected this position. These karate kicks might well have been met with violence if the barroom brawls rules of order controlled but they do not in locked psychiatric wards at State mental health facilities. This is where, once again, there is the convergence of psychiatric, medical and constitutional principles which carry the day. The law of the street does not. This is precisely why the First Circuit ruled in Davis that mental health care workers cannot set upon a patient – thereby restraining him and depriving him of his constitutional liberty – without seeking to "avert the need for force" by deploying alternative "measures" aimed at avoiding violence entirely. If you set upon a patient without first employing these measures you violate the Due Process Clause. Davis, 264 F. 3d, at 110 – 111. If force were used each time a mentally ill inpatient "acted out" they would be perpetually restrained without cause or need. As noted, the First Circuit ruled that all of the Mental Health Care Workers in Davis "could have moved out of the way or closed the door when Davis began karate kicking. Yet Rennie did not try to avert the need for force by taking such measures…" Davis, 264 F. 3d, at 110. It again is noteworthy to point out

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[67]This is indeed logical since all restraints, under both Davis and Youngberg, must be "reasonable" in nature. A restraint is necessarily inherently unreasonable when it is premised upon provocation by a caretaker simply because the entire premise for the restraint is wholly unrelated to the only circumstances germane to the restraint determination: the medical needs and condition of the patient. In short, it would be "arbitrary governmental action" if the government controlled when and if a patient were restrained by merely provoking behavior which served as the basis to implement the restraint. Youngberg, 457 U.S., at 316. In this scenario, the government would be deciding when and for how long to restrain (liberty deprivation) based entirely on the government's own acts of provocation and not the medical needs of the patient. This conduct would be "arbitrary governmental action" violative of Youngberg, 457 U.S., at 316, Greenholtz, 442 U.S., at 18 and Davis, 86 F. 3d, at 97-99, 108-111, 115-116.

that the "State's duty to protect those it confines because of mental illness requires that force be used as sparingly as possible." Davis, 264 F. 3d, at 111.

- **First Circuit Davis Ruling – If force is employed its use and severity must be tempered by the attendant circumstances**

If it is constitutionally permissible to implement a restraint the level of force, which may be implemented under Davis, must be governed and tempered by attendant circumstances. It is "proper to evaluate the need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by responsible officials, and efforts made to temper the severity of a forceful response." Davis, 264 F. 3d, at 110 (quoting Hudson v. McMillian, 503 U.S. 1, 7 (1992)).

The current investigatory process by the DMH includes no consideration of any of the parameters mandated by the Due Process Clause, the First Circuit in Davis or Youngberg. For this reason alone the process is fatally flawed from a constitutional perspective. One simply cannot engage in a legality determination without knowing or considering the paramount legal authority - the United States Constitution.

B. IF DMH AND DOC EMPLOYEES HAD BEEN TRAINED IN THE DAVIS HOLDINGS SINCE 2001 THE INCIDENTS OF UNCONSTITUTIONALLY IMPOSED RESTRAINTS WOULD HAVE BEEN DRASTICALLY REDUCED

As stated, the First Circuit ruled in Davis that when a caretaker taunts a patient the resulting patient behavior cannot then be employed as the constitutional basis upon which to restrain. Davis, 264 F. 3d, at 108 – 111, 115. This is a common theme on the locked wards. Jason Davis was taunted on August 12, 1993. Davis, 264 F. 3d, at 108-111. When a mentally ill inpatient is provoked all restraints employed in the aftermath of this provocation are unconstitutional under Davis and Youngberg. The restraints and resulting violence, in Fourth Amendment parlance, are nothing more than the "fruit of the poisonous tree". Wong Sun v. United States, 371 U.S. 471, 488 (1963).

The First Circuit also ruled in Davis that you must try to "avert the need for force" before implementing it. Davis, 264 F. 3d, at 110. Aversion techniques are as plentiful as the imagination is robust and include, for instance, an offer to: (i) engage in the patient's favorite activity; (ii) provide patient with his favorite food; (iii) allow patient to call his father, uncle or friend; (iv) talk with the patient about what is bothering him; (v) ask patient if he would like to listen to some music; or (vi) partake in some event which would distract patient him from whatever it is that is bothering him. The First Circuit opined that one great aversion technique is simply to "move[ ] out of the way…" Id., at 110.

In many of these State investigations (DMH and DOC) it is concluded that a physical or four point mechanical restraint is warranted based soley upon words alone as uttered by the mentally ill patient. Such is not the case. For instance, an alleged threat to "kill" a Mental Health Care Worker by a mentally ill inpatient, which is unaccompanied by any actual attempt

by him to engage in physical violence, is not a circumstance upon which a constitutional restraint can be implemented. When Jason Davis starting kicking karate kicks into the air, in response to being provoked by Paul Rennie, the First Circuit summarily dismissed this as a viable constitutional basis to restrain. The First Circuit held, in this regard, that "[s]adly, it is not unusual for a seriously ill mental patient to act out physically in the controlled and confined setting of a hospital. Davis's kicks fall within the norm of what mental health workers are expected to handle, and were less threatening than the circumstances described in Lewis." Davis, 264 F. 3d, at 108 (brackets supplied). If words alone could be used as predicates to restrain, in the absence of the deployment of aversion techniques, unreasonable bodily restraints would be routinely implemented against an inordinate share of patients living on locked wards in violation of Youngberg, Davis and the Due Process Clause. This demonstrates precisely why the overwhelming percentage of DMH abuse investigations are fatally flawed. This logic and basis to restrain unabashedly sanctions routine and systematic violations of both Davis and Youngberg. If the barroom brawls rules of order controlled, in these circumstances, then maybe a physical altercation or "restraint" would be warranted but they do not. A mentally ill inpatient's words like "Davis's kicks fall within the norm of what mental health workers are expected to handle…" Davis, 264 F. 3d, at 108.

One of the most bothersome cornerstones of the DMH and DOC investigatory and reporting process is their rather substantial devotion to the alleged violent history of the patient. In the Messier case, for example, the DOC investigatory report indicated that "Messier had a history of violence, assaulting approximately seventy (70) Department of Mental Health staff members in the past. Messier was just involved in a physical altercation with another inmate the day prior to his death (May 3, 2009)." (46/4; parenthesis in original). These recitations of prior violence are clearly intended to tilt the proceedings in favor of the abuser from the get go by poisoning the proverbial well. In short, DMH and DOC actually posit, in many of their investigatory reports, that the patient is both "crazy" and historically "violent" before getting to the "meat" of the "investigation". (46/1-25). However, neither of these criteria are constitutionally relevant under Youngberg or Davis and amount to nothing more than acutely prejudicial red herrings. The Messier Inquest Report and the Six Indictments returned by the Statewide Grand Jury teach us that as does the Davis verdict. (33/1-28; 34/1-9; 10/1-9). Violence by a patient for 1000 days in a row could not be used as the basis to restrain on a subsequent day. Likewise, attendant and pervasive symptomology of a patient's disorder does not give rise to the ability to implement a restraint, on a particular day, because of this persistent symptomology. Mentally ill patients simply may not be punished for prior violence or their symptomology under Youngberg and Davis. Restraints premised upon either of these two conditions violate the strict dictate and clear spirit of these cases. These two cases clearly foreclose us from considering anything but the circumstances then prevailing to discern if a restraint may be constitutionally implemented. Consideration of any other circumstance violates the Constitution. The correct constitutional inquiry centers only on the facts at play in the moments leading up to the restraint. The Commonwealth's restraint permissibility analysis though always centers on these two forbidden factors. This amounts to yet another fatal constitutional flaw in the investigatory and reporting process.

The fact that these State investigations are nothing more than exercises in corruption, whitewashing and violence perpetuation is nowhere better evidenced than in the Messier case

itself. The initial DOC investigation did find "misconduct…against Howard and Raposo" who were two of the assailants who caused the death. (46/14). However, they received nothing more than a "slap on the wrist". (46/13-15). Even this "slap on the wrist", however, was undone by Assistant DOC Commissioner Karen Hetherson who subsequently ruled that "based on the circumstances surrounding the investigation, no misconduct was found against staff." (46/17). How could any reasonable person make this finding given the videotape evidence alone and the ten minute period, following the restraint, when Joshua K. Messier was left to die by his caretakers? The Inquest Report and the Six Indictments prove that the Messier DOC investigation was simply a corrupt exercise in whitewashing and violence perpetuation. The DMH and DOC should never be allowed to investigate abuse again in this context.

IV. SUBSTANTIAL STATUTORY REFORM IS NEEDED TO REMEDY THE ACUTE PROBLEMS WITHIN THE DEPARTMENT OF MENTAL HEALTH

The following actions, statutory reforms and policy reforms should be implemented immediately:

1. District Attorney Cruz should be terminated forthwith for his corrupt and unconstitutional conduct all of which interferes with the administration of justice.

2. Camera technologies should be immediately placed in every room and hallway in every Massachusetts mental health facility.

3. The Office of the Attorney General should be statutorily foreclosed from engaging in the legal representation of State employees, who have been accused of physically assaulting or abusing the mentally ill, in any proceeding.

4. The prosecution related policy of the District Attorneys, which favors standing down even in the face of obvious criminal conduct having been exacted against the institutionalized mentally ill by State employees, should be eliminated.

5. All District Attorneys should be trained as to precisely how to prosecute these cases.

6. The current law enforcement policies, which permit rogue District Attorneys to deride, ridicule and chide the Office of the Attorney General Office for seeking justice on behalf of the institutionalized mentally ill who have been physically assaulted by State employees, should be eliminated.

7. Policies of the Executive Branch, which result in its ignoring critical precedential opinions (Davis) and the concurrent need to take the required corrective action which these opinions mandate should be taken, should be eliminated.

8. The morally and legally corrupt Indemnification Statute, which perpetuates litigation inaction by private attorneys general and inflicts acute injustices upon the brutalized mentally ill, should be repealed.

9. A Massachusetts statute should be enacted which: (i) explicitly obligates the Commonwealth of Massachusetts to pay the entirety of any monetary judgment, entered by any State or federal court situated in Massachusetts, through which it has been found that a Massachusetts State employee violated the civil rights of a mentally ill inpatient while said inpatient was being treated in a Massachusetts State mental health facility; and (ii) explicitly permits the Commonwealth of Massachusetts to voluntarily resolve and settle for a sum not in excess of Five Million ($5,000,000) Dollars, prior to or during litigation, any civil rights claim of a mentally ill inpatient which arose while said inpatient was being treated in a Massachusetts State mental health facility. For the purposes of this statute the terms "civil rights" and "civil rights claim" shall encompass any claim asserted, to be asserted or which could be asserted under 42 U.S.C. §1983, M.G.L. c. 12, §11I or associated constitutional provisions.

10. The policy of the Executive Branch of enacting corrective remedial policies, which are years late on arrival, should be eliminated.

11. A statute should be immediately enacted which compels the Governor and the Attorney General to be notified on the very day when a person dies from an unnatural cause in a Massachusetts jail, prison or mental health facility.

12. Restraint training policies and procedures should be revised to include salient principles under the United States Constitution.

13. The DMH and DOC should be statutorily precluded from investigating allegations of physical or emotional abuse by State employees upon mentally ill inpatients or prisoners.

14. An independent agency, with subpoena powers and administrative law judges, should be formed whose task it is to investigate allegations of physical or emotional abuse by DMH or other State employees upon institutionalized mentally ill persons.

15. These administrative law judges should be trained to understand and comprehend all salient psychiatric, medical and legal aspects of treatment, restraints and seclusions as per the United States Constitution.

16. All Massachusetts hospital physicians and health care personnel should be compelled to report to law enforcement officials all physical injuries sustained by any mentally ill inpatient who has presented himself for treatment regardless of the manner in which the patient's "caretakers" report that these injuries have been sustained.

17. The Executive Branch should be: (i) statutorily obligated to review all reported and unreported judicial opinions which address any issue concerning the physical or emotional safety of the institutionalized mentally ill; and (ii) statutorily obligated to generate all remedial policies which are responsive to and address any such reported or unreported judicial opinion.

A Blue Ribbon Commission should be convened, which has no affiliation with the State, with the following individuals: (a) four constitutional lawyers with a specialty in issues around the

mentally ill; (b) four psychiatrists with the requisite training; and (c) four human resource specialists. This panel should redraw all policies and regulations which preserve the safety of the mentally ill including all policies relating to mechanical restraints, chemical restraints, physical restraints and seclusions together with the performance of same. These redrawn policies should embed applicable concepts under the United States Constitution. In the short term, before these policies are reexamined and redrawn, the Commonwealth should engage in the following conduct to insure the immediate safety of all of our institutionalized mentally ill: (i) CORI checks should be instantaneously and systematically performed on all State employees who perform restraints; (ii) to the extent that any State employee, who currently performs restraints, has committed a violent crime they should no longer be permitted to perform or assist in the performance of restraints; (iii) to the extent that any State employee, who currently performs restraints, has been charged with a violent crime they should be removed from direct patient care and no longer be permitted to perform or assist in the performance of restraints until such time as it is determined that they are innocent of the asserted charges; (iv) all State employees who currently perform restraints should be forced to reapply for their jobs and undertake personality testing, prior to again being approved to implement restraints, to insure that they have the correct personality type to care for the mentally ill and restrain them; (v) camera technologies should be placed in all rooms and hallways within all Massachusetts mental health facilities with a control center in the State House which would allow the Governor to view every Massachusetts mental health facility in the State; (vi) all employees who perform restraints should be retrained as to the basic disorders from which the mentally ill suffer, symptomology of such disorders, aversion techniques and the manner to de-escalate mentally ill inpatients; (vii) employees should be screened, personality tested and monitored to insure retention and hiring of employees who have the correct personality type to perform restraints; (viii) compensation should be elevated for Mental Health Care Workers, Nurses and Doctors in the DMH so we can attract and retain a solid body of applicants who will possess the required employee attributes; (ix) any State employee who currently performs restraints should be foreclosed from doing same until time as they are cleared in any impending State investigation lodged against them through which they have been accused of physically assaulting or emotionally abusing a mentally ill inpatient; (x) there should be a review of all complaints of physical and emotional abuse of mentally ill inpatients which have been filed in the last three years in every DMH facility; and (xi) No State employee shall perform more than 20 hours of direct patient care in any seven day period nor more than 8 hours of direct patient care in any 24 hour period to reduce employment related anxiety.

We cannot, as a State, continue to say - “it is ok and everything will be all right”. It is not “ok” and it will not be “all right”. We need to take immediate action if we truly so seek to insure that the institutionalized mentally ill will not continue to be injured, maimed and killed in Massachusetts mental healthcare facilities. Our State mental health system and facilities need to adapt to a new era where even greater percentages of our populous will need to seek mental health care and treatment due, inter alia, to the opioid crises and an acute rise in societal stressors.

V. WHAT THE COMMONWEALTH DID TO JASON DAVIS WAS MANIFESTLY EVIL AND IT SHOULD NOW DO RIGHT BY THE DAVIS FAMILY

Governor Patrick, Attorney General Coakley, Attorney General Harshbarger, Attorney General Reilly, Governor Baker and Attorney General Healey inflicted injustice upon Jason Davis. The record proves this. There can be little doubt where the historically great Civil Rights leaders of our Nation would stand on the Jason Davis case and the issues presently before the Executive Branch as articulated in this letter. They would not stand for the black hearted conduct of the Commonwealth. Their message whispers loudly to us through the sands of time.

It was President Kennedy who said, while attending a ceremony for his own landmark mental health legislation[68] on February 5, 1963, 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."[69] President Kennedy's legislation was the most profound and comprehensive mental health legislation ever enacted in our Nation's history and has spawned literally hundreds of tentacle pieces of legislation. President Kennedy also famously observed in June of 1963 that "the rights of every man are diminished when the rights of one man are threatened." We erected the statue of President Kennedy on the South Plaza at the State House not just because he is one of the Commonwealth's favorite sons and our Thirty-Fifth President, but also because we aspire to his ideals, principles, courage and convictions. President Kennedy's commitment to issues around mental health is the stuff of legend. There is no doubt where he and other great civil rights leaders of our time would stand on the Jason Davis case and the issues in this letter. In President Kennedy's last speech on Boston soil (October 19, 1963) he spoke at length of how proud he was that Massachusetts was his home state given, among other things, its 150 year role as the Nation's leader in civil rights and associated callings.[70] He spoke proudly of his service to Massachusetts and his landmark Mental Health legislation in his last Boston speech. He would be ashamed of what the Commonwealth did to Jason Davis. Would President Lincoln stand with Governor Patrick, Attorney General Coakley, Attorney General Harshbarger, Attorney General Reilly, Governor Baker and Attorney General Healey on the Davis case? We know he would not. He would rail at the injustices that each of them have perpetuated upon Jason Davis and his family. Dr. King would too as would Fred Gray, Robert F. Kennedy, President Johnson, President Truman, Justice Marshall, Senator Edward M. Kennedy, Justice Brennan and President Franklin Delano Roosevelt to name just a few of the all-time greats.

Jason Davis' work as a private attorney general has left us with one of the Nation's most important constitutional cases ever decided in the mental health arena. This letter leaves us with more of his valuable work as a private attorney general. Twenty-four years have passed. Inaction has been met with further inaction. Delay has been met with further delay. Inequality has been met with more inequality. Yet still, Jason Davis, the involuntarily committed mentally ill inpatient whose civil rights were violated at the hands of the State, awaits his turn at the

[68] https://www.jfklibrary.org/JFK/JFK-in-History/JFK-and-People-with-Intellectual-Disabilities.aspx

[69] https://www.jfklibrary.org/Asset-Viewer/Archives/JFKWHA-236-002.aspx

[70] https://www.youtube.com/watch?v=wmZiQwrpntI

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.

Sometimes governments are forced to look themselves in the eye and confess that what they have done is wrong. In one of his finest hours President Clinton did just that. His apology for the Tuskegee Experiment in the East Room of the White House on May 16, 1997 – some 65 years after it commenced – sounds as if it was written for the ears of the Davis family. It certainly is equally applicable to it:

> The eight men who are survivors of the syphilis study at Tuskegee are a living link to a time not so very long ago that many Americans would prefer not to remember, but we dare not forget. It was a time when our nation failed to live up to its ideals, when our nation broke the trust with our people that is the very foundation of our democracy. **It is not only in remembering that shameful past that we can make amends and repair our nation, but it is in remembering that past that we can build a better present and a better future. And without remembering it, we cannot make amends and we cannot go forward.** So today America does remember the hundreds of men used in research without their knowledge and consent. We remember them and their family members. Men who were poor and African American, without resources and with few alternatives, they believed they had found hope when they were offered free medical care by the United States Public Health Service. They were betrayed. Medical people are supposed to help when we need care, but even once a cure was discovered, they were denied help, and they were lied to by their government. Our government is supposed to protect the rights of its citizens; their rights were trampled upon. Forty years, hundreds of men betrayed, along with their wives and children, along with the community in Macon County, Alabama, the City of Tuskegee, the fine university there, and the larger African American community. The United States government did something that was wrong — deeply, profoundly, morally wrong. It was an outrage to our commitment to integrity and equality for all our citizens. To the survivors, to the wives and family members, the children and the grandchildren, I say what you know: No power on Earth can give you back the lives lost, the pain suffered, the years of internal torment and anguish. **What was done cannot be undone. But we can end the silence. We can stop turning our heads away. We can look at you in the eye and finally say on behalf of the American people, what the United States government did was shameful, and I am sorry. The American people are sorry — for the loss, for the years of hurt. You did nothing wrong, but you were grievously wronged. I apologize and I am sorry that this apology has been so long in coming.**[71] (emphasis supplied).

[71] https://www.youtube.com/watch?v=Cz1g2b0q9sg

No Executive Branch Official has ever spoken out against the tragedy that is the Jason Davis case. The Commonwealth, through its current Governor and current Attorney General, should now expressly apologize to the Davis family in a forum not unlike the one in which President Clinton apologized for the Tuskegee Experiment. During this ceremony legislation could be proposed by the Executive Branch which addresses the myriad matters set forth within this letter. The Commonwealth could then expressly commit itself, at the ceremony, to paying the entire judgment entered in Davis case after first saying sorry to Jason Davis and his family. They deserve nothing less after all their pain and heartache over the last twenty-four years. President Clinton's words bear reiterating: "**What was done cannot be undone. But we can end the silence. We can stop turning our heads away. We can look at you in the eye and finally say on behalf of the American people, what the United States government did was shameful, and I am sorry."** Our Governor and Attorney General should not turn their heads away again. It is time to look the Davis family in the eye, say sorry and do the right thing. As Massachusetts State Representative John Rogers stated during March of 2014: **"In my mind the liability of the Commonwealth has always been crystal clear."**[72]

VI. DEMAND FOR RELIEF

A portion of Governor Patrick's April 21, 1994 speech, at his swearing in as Head of the Civil Rights Division within the United States Department of Justice, was as follows:

> This nation, as I see it, has a creed. That creed is deeply rooted in the concepts of equality, opportunity and fair play. Our faith in that creed has made us a prideful nation, and enabled us to accomplish feats of extraordinary achievement and uplift. And yet, in the same instant, we see racism and unfairness all around us. **In the same instant, we see acts of unspeakable cruelty and even violence because of race, or ethnicity, or gender, or disability, or sexual orientation. They present a legal problem, to be sure. But they also pose a moral dilemma.** How can a nation founded on such principles, dedicated to such a creed, sometimes fall so short? And let me assure you: That is a question asked not just by intellectuals and pundits of each other. It is asked by simple, every day people of each other and of themselves, in barber shops and across kitchen tables, in the mind's silent voice on the bus ride home from work, in the still, small times when conscience calls. **To be a civil rights lawyer, you must understand what the laws mean. But to understand civil rights, you must understand how it feels; how it feels to be hounded by uncertainty and fear about whether you will be fairly treated; how it feels to be trapped in someone else's stereotype, to have people look right through you. To understand civil rights, you must understand that the victims of discrimination feel a deep and helpless pain, and ask themselves bitterly the very question of morality I have just posed.** And what will be our answer? Will we sit back and claim that we have no answer, or that it is not our business to devise one? **Will we shrink from the moral dimension of our work? Well, let me tell you now: We will**

[72] See *Boston Globe* article dated March 10, 2014 (Adrian Walker).

> **not shrink. The answer to the question is, 'No.' There is a moral dimension. And we will assert it.** (emphasis supplied; 7/2-3).

Did Governor Patrick, Attorney General Coakley, Attorney General Harshbarger, Attorney General Reilly, Governor Baker and Attorney General Healey "shrink from the moral dimension of [their] work" and fail to "understand how it feels" to be an abused mentally ill person who suffered an acute civil rights deprivation? Yes. One of the central planks of the Democratic Party Platform has always been to protect and celebrate Civil Rights. I guess, in this modern era, this plank is one to which only lip service is paid and, even then, only when it is politically beneficial to do so. If one were to use the Davis case as a litmus test the Civil Rights plank of the Democratic Party Platform is now nothing more than a worm infested board with little strength left in it. Governor Patrick, Attorney General Coakley, Attorney General Harshbarger, Attorney General Reilly and Attorney General Healey are, with all due respect, hypocrites because they all come from the purported civil rights party yet they all intentionally turned a blind eye and a deaf ear to the Civil Rights of the mentally ill as a class and Jason Davis. **They all turned their heads away from Jason Davis.** This is precisely why Joshua K. Messier was killed and Jason Davis has been deprived of justice for twenty-four years. What each of them has done and not done is manifestly shameful. The adage that the King can do no wrong has no place in our society. We all must obey the rule of law. Justice is supposed to be blind. Justice does have a moral dimension.

Senior District Judge Morris E. Lasker, Senior Circuit Judge Lipez, Judge Coven, Representative John Rogers, Senator Spilka, Attorney Murphy, Greg Plesh, Jason Davis, the Davis jury, Kermit Brown,[73] Joshua K. Messier, the Messier family, the Davis family, lawyers for these families, Courts from around the Country and all those unnamed mentally ill, who have been injured, maimed or killed in the Commonwealth's facilities in the last several decades, have been trying to teach the Commonwealth a series of valuable lessons. It has never listened. The Commonwealth has utterly failed to learn the valuable lessons which could have been learned.

The Massachusetts Senate should immediately convene a committee of its members to investigate the corruption identified in this letter. This corruption is criminal in nature and in dire need of investigation. Applicable criminal prosecutions should be instituted through a Special Prosecutor. The Commonwealth should also forthwith create the requested Commission and implement the referenced reforms. If it does not more mentally ill inpatients will be injured, maimed and killed.

President Lincoln stated in his address at Lyceum that "towering genius disdains a beaten path. It seeks regions hitherto unexplored." It is time to explore the unexplored region of justice for the mentally ill in this Commonwealth. To date, the Commonwealth has lacked the integrity, honor and courage to do so. President Lincoln also said that the "highest calling of any citizen is to serve as a juror." It is time that the Commonwealth stopped disrespecting the Federal

[73]Kermit Brown was the lead Civil Rights Officer at the Westborough State Hospital on August 12, 1993. He generated, collected and preserved evidence in the Davis case which was critical in Jason Davis' quest to obtain justice.

Court jury verdict returned by the eight federal jurors who sat on the Davis case for one month in the Fall of 1998. **The Nation has taught us precisely how important the Davis case is to our constitutional landscape. (48/1-49).** The Commonwealth should now embrace what the Nation has long known.

It is time that the Commonwealth, through its Governor and Attorney General, apologized to the Davis family in a formal ceremony and do what justice demands ought to be done: pay the entirety of the Davis case Third Amended Judgment which presently sits at $2,271,170 (19/1-3).[74] The Davis case must be resolved on an equal footing with both the Messier and Romney cases in accord with the Fourteenth Amendment and rather crude concepts of morality. Demand is made for this payment from the sitting Governor and Attorney General.

The Commonwealth can no longer turn its head away from Jason Davis or the corruption which has invaded the Department of Mental Health and Executive Branch. The issues raised in this letter cannot be met with cowardice and baseless denials.

It is time to act as men and women should act when confronted with issues of this gravity.

I must say, with all due respect, that enough is enough.[75]

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

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

CMP/pmc

VIA FEDERAL EXPRESS PRIORITY TRACKING NO. 8088 9230 4801 (Governor Baker)

VIA FEDERAL EXPRESS PRIORITY TRACKING NO. 8092 4329 3261 (AG Healey)

William H. Davis
1200 Pine Street
Scranton, PA 18510

Stanley C. Rosenberg, Senate President
Massachusetts State House
24 Beacon Street
Room 332
Boston, MA 02133

[74] This calculation is through November 1, 2017 and runs at $139.40 per diem.

[75] In accord with cited and additional controlling legal principles, this letter is remitted preliminary to a contemplated legal proceeding which will be filed should an expeditious resolution not be at hand.

Representative John H. Rogers
Massachusetts State House
24 Beacon Street
Room 162
Boston, MA 02133