LAW OFFICES
BRENDAN J. PERRY & ASSOCIATES, P.C.
95 ELM STREET
POST OFFICE BOX 6938
HOLLISTON, MASSACHUSETTS 01746

BRENDAN J. PERRY (1928-2010)
CHRISTOPHER M. PERRY

TEL: (508) 429-2000
FAX: (508) 429-1405

February 9, 2015

Maura Healey, Esquire
Attorney General
Commonwealth of Massachusetts
Massachusetts Attorney General's Office
One Ashburton Place
Boston, MA 02108

Re: Jason Davis Case

Attorney General Healey:

I hope the opening weeks of your new administration have been good ones.

I met you at the Holliston Democratic Town Committee Breakfast on May 10, 2014 when you were a candidate for Massachusetts Attorney General. We exchanged emails about my client, Jason Davis, who was savagely brutalized while an involuntarily committed inpatient at the Westborough State Hospital. You were kind enough to read the materials I sent along and offer words of support. You responded to my first email as follows:

> **Thanks for sending the 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?**

Governor Patrick vetoed the legislation and it was thereafter overridden but never funded. It appears it will never be funded. The legislation sought only a small fraction of the judgment amount. My initial email to you, which prompted your "very sad situation" comment, contained the following paragraphs:

> I have been engaged in a 21 year legal battle against the State of Massachusetts, and two of its prior Attorney Generals, relative to an issue where my client is in the right and always has been. My mentally ill, involuntarily committed client was savagely and brutally beaten by Staff at the Westborough State Hospital in 1993 which beating caused him to sustain acute physical and psychiatric injuries. Two of the abusers were convicted violent felons at hire which the DMH knew. These circumstances, as to this abuse and the resultant injuries, were recounted in a rather robust reported opinion by the First Circuit Court of Appeals after a four

week federal civil rights trial in Boston Federal Court. See Davis v. Rennie, 264 F. 3d 86, 97-102 (1st Cir. 2001). The Commonwealth then filed a writ of certiorari in the U.S. Supreme Court – after its First Circuit loss – which was also denied. See Davis v. Rennie, 264 F. 3d 86 (1st Cir. 2001); Davis v. Rennie, 997 F. Supp. 137 (D. Mass. 1998); Davis v. Rennie, 553 U.S. 1053 (2002); Davis v. Rennie, 264 F. 3d 86, 97-102 (1st Cir. 2001). The Davis case was the first case in the Nation to hold that Doctors, Nurses and Health Care Workers cannot stand idly by, under the Constitution, when one of their own is brutally and savagely beating a mentally ill inpatient. Davis v. Rennie, 264 F. 3d 86, 97-102 (1st Cir. 2001). It would be the work of a million men and women to have a candidate for Attorney General support the Davis family – in the public eye and in its greatest time of need – as its travels the last leg of its 21 year legal journey this week.

When it was announced on March 26, 2014 that the Commonwealth would settle the Joshua Messier case I remitted an email to your predecessor which reads as follows:

> Dear Attorney General 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 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.

The Davis family should not be forced to wrangle in the Legislature or the Courts any longer. As you have said yourself, and I agree, it is a "sad situation".

The latest legal chapter of the Jason Davis line of cases resulted in the Davis Estate filing yet another Complaint ("Complaint") in Federal District Court in Boston, Massachusetts for the disparate treatment to which it was subjected at the hands of your predecessor and former Governor Patrick. This case pends at the United States Court of Appeals for the First Circuit (Docket Number 14-2306). Your office represents Mrs. Coakley and Mr. Patrick. The Davis Estate filed its 54 page opening brief ("Opening Brief") on January 22, 2015. The legal viability of the issues set forth in the Opening Brief is self-evident. Not only does the Complaint and its 26 incorporated exhibits state facially plausible claims they actually mandate that summary judgment be entered in my client's favor at once.

The central position of the former Governor and Attorney General, in the context of the newest District Court proceeding, was that since no "judicial determination" had been made in the Messier case this dictated that the Messier individual Defendants must have acted only

"negligently" which, in turn, purportedly permitted permissible indemnification under the Massachusetts indemnification statute. Such is not the case. The Davis Estate's Opening Brief proved, through the use of empirical, uncontroverted and objective data including the "homicide" finding by a Massachusetts Medical Examiner, that the "negligence" contention was without merit. The Davis Estate also proved, again through the use of empirical, uncontroverted and objective data, that a Murder 1 Charge (murder with extreme atrocity and cruelty) against the Messier individual Defendants could also be successfully prosecuted. For these two reasons alone – there are many more in the Opening Brief – it is acutely untenable to even suggest that the absence of a "judicial determination" would permit anybody to viably conclude that the Messier Defendants acted only "negligently". They did not. There is yet another reason which came to light after the 1.22.15 filing of the Davis Estate's Opening Brief.

On January 23, 2015 Special Assistant Attorney General Martin Murphy, a special prosecutor appointed by your predecessor to investigate whether the Messier Defendants should be criminally prosecuted, announced that an inquest into the death of Joshua K. Messier would be convened. It is highly probable that this inquest will lead to the indictment of the Messier Defendants given the public record available to us all some of which has been recounted in the Davis Estate's Opening Brief and Complaint. See Complaint, p. 19-28; Exhibits 1-26 to Complaint. Even though the absence of a "judicial determination" defense has already been proven to be specious, in the context of the Davis appeal, it is apparent that the continued assertion of this "defense" would become even more baseless now given that a "judicial determination" will soon be made by Judge Coven of the Quincy District Court. It is likely that this determination will be made during the pendency of the Davis Appeal. This determination most probably will perpetuate the return of indictments against the Messier Defendants given the empirical, uncontroverted and objective facts set forth in public domain, the Davis Estate's Complaint and the Opening Brief.[1]

If the former Governor and Attorney General were to ignore the pendency of the inquest in their soon to be filed opening brief and continue to assert the absence of a "judicial determination" defense it would be inherently unfair to the First Circuit panel and the Davis Estate to say the least. The findings of the inquest, indictments, criminal verdicts and any criminal pleas will all be admissible in the First Circuit proceeding given that the initial dismissal was implemented pursuant to Fed. R. Civ. P. 12(b)(6). See Fed. R. Evid. 201; Watterson v. Page, 987 F.2d 1, 3 (1st Cir. 1993); Haley v. City of Boston, 657 F.3d 39, 46 (1st Cir. 2011); Freeman v. Town of Hudson, ____ F.3d ____, Slip Op. at 7-11 (1st Cir. 2013). The Davis Estate expressly calls upon the Office of the Attorney General not to assert the absence of a "judicial determination" defense within the Appellees' impending opening brief for the reasons stated in the Davis Estate's Opening Brief and those stated above. A "defense" should not be asserted in any appellate proceeding if it has no basis in fact or law and it is utterly baseless. The absence of a "judicial determination" defense is just such a defense.

[1] Regardless of whether criminal indictments result from the inquest proceeding it is manifest that both Youngberg v. Romeo, 457 U.S. 367 (1982) and Davis v. Rennie, 264 F. 3d 86-116 (1st Cir. 2001) dictate, on the civil side alone, that the conduct of the Messier Defendants was intent based conduct thus taking it out of the ambit of permissible indemnification under the Massachusetts Indemnification Statute. See p. 19-28 of the Complaint; Opening Brief. Leaving a lifeless body on a restraint table for 10 minutes, without any emergency care, is itself sufficient to prove "intent based" conduct. Thus, the Davis case which pends at the First Circuit does not rise or fall on whether true bills of indictment are returned against the Messier Defendants.

You, Mr. Davis and I could put an end to one of the most sordid chapters in the history of the Department of Mental Health and, indeed, our State Government. There is simply no moral or legal justification for the treatment to which Jason Davis and his family have been subjected. After all, the Messier Estate was only recently awarded with a guaranteed payment of its intent based civil rights claims, under the supposed umbrella of a statute (State Indemnification Statute) which actually forbade such a payment, while the Davis Estate was informed that the payment of its intent based civil rights claims were forbidden under this very statute. **It is respectfully submitted that enough really is enough**. The Davis Estate again calls for equal treatment under the law.

Although technically I guess we are "adversaries" we need not be. We were not in May, 2014. **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 ask that you read the brief filed in the First Circuit so you ***personally*** are aware of the issues which pervade this new case.

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. If you see fit not to meet with Mr. Davis and I then we will simply try this case in the District Court, obtain yet a second verdict and collect the judgment. 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. Jason's Father put it best in his June 20, 2014 letter to the Massachusetts State Senate:

> I know that money will never bring back my son nor will it fully compensate our family for the torment visited upon him on August 12, 1993. However, what I do know is that the payment of the judgment in my son's federal civil rights case will finally mark a place in time when the Commonwealth admits that it was wrong and not above the law. It will also cement the proposition that the historic laws made by Jason will neither be in vain nor unappreciated by the very Government which subjected him to the torment he suffered on August 12, 1993 and thereafter. Improvement, after all, only comes with full accountability. I respectfully submit that Governments should be characterized by integrity and honor which, to date, have been absent here.

I hope you, Mr. Davis and I can meet in the ensuing days to bring to a conclusion a horrific event that terrifies the Davis family to this day. I invite you to read the entire letter which Mr. Davis remitted to the Massachusetts State Senate on June 20, 2014. It is heart wrenching.

I look forward to meeting with you. I respectfully submit that the taxpayers' money should not, once again, be deployed to deprive Jason Davis' family of the long overdue justice to which it is so richly entitled.

I attach as Exhibit 1 the following documents: (i) Your 5.13.14 email; (ii) my 5.10.14 email; (iii) my March 26, 2014 email to Attorney General Coakley; (iv) my June 7, 2014 email to Attorney General Coakley; and (v) Mr. Davis' June 20, 2014 letter to the Massachusetts State Senate.

Justice must prevail in this matter. The status quo and the grave injustices perpetuated to date are simply not palatable. The Executive Branch should right the wrongs here for the same reasons and on the same basis that it righted the wrongs in the Messier case.

Thank you.

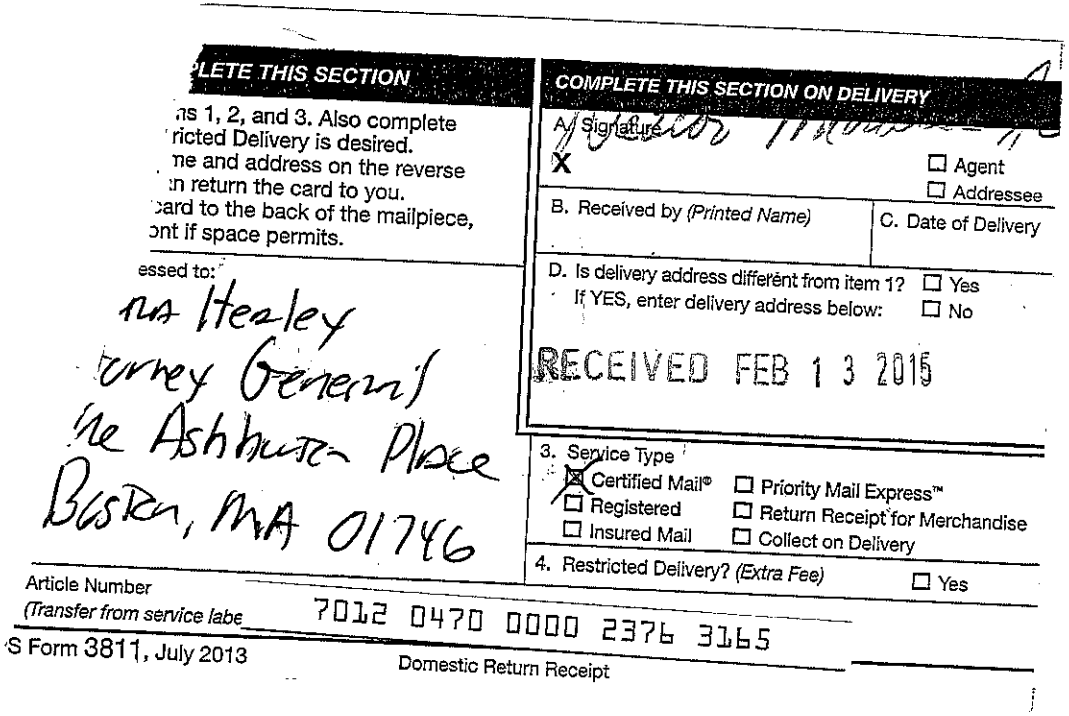
Sincerely
BRENDAN J. PERRY & ASSOCIATES, P.C.

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

CMP/pmc
Enclosures

Cc: William H. Davis
Terance P. Perry, Esquire

Certified Mail Return Receipt Requested No. 7012 0470 0000 2376 3165
Federal Express No. 8017 4238 0293
Email (personal/official)



LETE THIS SECTION

ns 1, 2, and 3. Also complete
ricted Delivery is desired.
ne and address on the reverse
n return the card to you.
card to the back of the mailpiece,
ont if space permits.

essed to:

Ma Healey
Torney General's
ne Ashburton Place
Boston, MA 01746

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED FEB 1 3 2015

3. Service Type

☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

Article Number
(Transfer from service labe 7012 0470 0000 2376 3165

S Form 3811, July 2013 Domestic Return Receipt