

WRITTEN TESTIMONY – H. 4570 – JASON DAVIS CASE

Dear Committee Members:

On August 29, 2020 both Senator Markey and Senator Warren called for justice for Jason Davis and the payment of his entire 2.491M Federal Court judgment:

[Father of Massachusetts man beaten by state hospital employees accuses Markey, Warren of neglecting calls for justice \(bostonherald.com\)](http://www.bostonherald.com)

We thank Senate President Spilka again for her long-standing support of the Jason Davis case which dates back to 2014. A heartwarming email from then Senator Spilka is contemporaneously provided. (Ex. A).

Two additional media links are as follows:

<https://www.wcvb.com/article/family-waits-years-for-millions-after-son-beaten-at-hospital/8034736>

[Jason Davis case a missed opportunity for Mass. - The Boston Globe](http://www.bostonglobe.com)

I have been the lawyer for Jason Davis and his family for nearly three decades and have represented them in all courts and legislative proceedings since 1993. The incident occurred on August 12, 1993. The family has been seeking justice for 29 years. This case went all the way to the United States Supreme Court. I provide a very brief overview below. All previously forwarded information can be disregarded as this Written Testimony and its Exhibits (Ex. A - H) are all inclusive.

I. INTRODUCTION

H. 4438 seeks to compensate the family of a committed mentally ill inpatient (Jason Davis) who was savagely attacked on August 12, 1993 by convicted violent felon State employee - caretakers during an inpatient stay at Westborough State Hospital. Jason Davis won a 1998 Federal Court jury verdict which will stand at (\$2,491,053) as of the hearing date (2.18.22) with a per diem of \$139.40. Davis was beaten bloody by these convicted violent felons and received gruesome psychiatric injuries as recounted by the Federal Appeals Court in its landmark Federal Civil Rights decision. The Davis family website can be found at jasonstrongma.com. Mr. Davis' heart wrenching 2014 letter to the Massachusetts Senate is attached. (Ex B).

II. REQUEST FOR AMENDMENT

It is respectfully submitted that there is a typographical error in the initial version of H. 4438. The numbers “\$100,000” should be replaced by the numbers “\$2,491,053” to reflect the stated objective of the Petition which simply is to pay the outstanding judgment entered in the Jason Davis Federal Civil Rights case. The Federal Court Judgment (Docket No. 96-CV-11598-MEL), entered after all appeals had been taken by the Commonwealth and resolved in Jason Davis' favor, is attached. (Ex. C).

III. CORE ISSUE AND LEGISLATIVE PRECEDENTS

As Governor Baker noted in his January 19, 2016 letter to the Davis family it is for the Legislature to decide if it desirous of indemnifying the intent based civil rights claims at issue in the Jason Davis case. (Ex. D, p. 2). *It decided in 2014 that it wanted to do just that.* See infra. The Legislature has indemnified intent based civil rights claims before in the Joshua Messier (3M)¹ and Dennis R. Smith (1M)² cases amongst others. The Dennis R. Smith case was actually the subject matter of a March 26, 2005 Boston Globe article precisely about the payment of these intent based civil rights claims.³ The Messier case received substantial publicity in the 2014 timeframe. It was settled before trial but after litigation had been filed whereas, in the Dennis R. Smith case, the Commonwealth indemnified a judgment entered upon a jury verdict after the conclusion of a jury trial. The Davis family forwarded an exacting legal analysis to Governor Patrick which proved that the Davis and Smith cases were legally indistinguishable in the indemnification context. See Ex 15, p. 1-6 @ jasonstrongma.com. In short, both cases involved intent based civil rights claims upon which jury verdicts and judgments were rendered. The Davis, Messier and Smith cases are all actually legally indistinguishable, in the indemnification context, insofar as each of them involved intent based civil rights claims.

IV. REASONS SUPPORTING PAYMENT OF JUDGMENT

BLOODY BEATING: On August 12, 1993 Jason Davis was an acutely mentally ill inpatient housed within a locked unit at the Department of Mental Health's ("DMH") Westborough State Hospital facility. On that date he was beaten bloody by one Mental Health Care Worker (Phillip Bragg) while several other Mental Health Care Workers pinned him to the floor to perpetuate the beating. Paul Rennie beat Jason Davis on a second occasion at this same time. 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. Blood puddles littered the ward and blood soaked the sheets of the Four Point Mechanical Restraint table where Jason Davis was barbarically strapped for one hour after the beatings. The Charge Nurse told Jason Davis, after the beatings, that "[t]his is what you get when you act – this is what you get when you act like this." Davis v. Rennie, 264 F. 3d 86, 94-95, 116 (1st Cir. 2001). Medical records were altered by the Charge Nurse to make it appear as if no beating had occurred in her failed attempt at a coverup. Id.

State Police Officer Gregg Plesh intervened to stop the bloody beating. His Police Report reads as follows:

¹ <https://www.ksl.com/article/29217272>

² See Ex 15, p. 6 @ jasonstrongma.com.

³ See Ex 15, p. 6 @ jasonstrongma.com.

As many as eight staff members were on top of Jason. Phillip Bragg was up by Jason's head. I observed him punch Jason Davis five or six times with extremely hard blows. I could hear every impact and instantly the patient started to bleed and swell in the area of the eyes, forehead and temple area. I moved in to stop Phillip Bragg but before I could get there he used a head twisting technique that I did have to stop. Extreme force was used, Jason's neck was being twisted to its limit. Phillip put a knee on Jason's head and with both hands was forcing Jason's head down into the floor. I moved Phillip off Jason's head and checked his neck to make sure it had not been broken. Jason calmed down as soon as his head was released.

State Police Officer Gregg Plesh testified as follows at trial:

The head twisting technique was so severe I went around the pile of people, around Phillip Bragg, and pushed Phillip Bragg off Jason Davis' head with my shoulder and then instantly went to his Jason's neck. **And at that point, I noticed that his eyes were rolling out of his head. You could see the whites of his eyes. The eyes were up to the top. He was in a, what I would call a semiconscious state.** There was some bleeding on the floor. There was swelling, bruising all in his face noticeable at that time...

A month long Federal Civil Rights trial in Boston Federal Court was conducted. Davis won a verdict which now stands at 2.491M. The Commonwealth, through two of its Attorneys General, appealed to the Federal Court of Appeals and the United States Supreme Court. The Commonwealth lost in all three Federal Courts. Jason Davis did not initiate any appeal or appeal any issue.

PSYCHIATRIC INJURIES AND THE MASSIVE COVER UP: The Federal Court of Appeals determined that Jason Davis sustained acute psychiatric injuries, as a result of the savage attack upon him, and that a massive cover up was undertaken by numerous Westborough Sate Hospital employees. Davis v. Rennie, 264 F. 3d 86, 95-95, 116 (1st Cir. 2001). The court specifically recounted the severe 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).

THE PRINCIPAL AGRESSORS WERE TICKING TIMEBOMBS: Evidence introduced during the course of the month-long Federal Civil Rights trial demonstrated that the principal aggressors, Phillip Bragg and Paul Rennie, were convicted violent felons upon hire at the DMH which it knew. Court records also prove that they were released from prison only a short time before they actually began working as Mental Health Care Workers at the Westborough State Hospital in direct patient care capacities. Bragg's felony prison sentence resulted from his having shot a 16 year old boy in the eye with a gun at short range. Rennie's felony prison sentence resulted from his two (2) armed robbery convictions (gun and a metal pipe). Prior to the incident Bragg and Rennie had a number of employment related "problems" which proved that they routinely employed physical violence and abuse upon the committed mentally ill inpatients within their "care."

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.⁴ It was statically probable that they would assault Jason Davis. They did. In short, placing Philip Bragg and Paul Rennie in direct patientcare 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.

A former Commissioner of the DMH, Eileen P. Elias, expressly testified at trial that Phillip Bragg should not have been employed as a Mental Health Care Worker in 1992 (one year before the incident) given his violent tendencies.

BASIC PRINCIPLES OF MORALITY: At is baseline the Davis case warrants payment by Commonwealth because Jason Davis was "right", the Commonwealth was "wrong" and the substantial constitutional law made by Jason Davis will benefit mentally ill persons in this Commonwealth and throughout the Nation for eternity. Jason Davis is a true American hero because, although acutely ill, initially involuntarily committed and suicidal throughout the appellate periods, he fought hard for substantial constitutional protections for an entire class of our most vulnerable citizens. Jason Davis' role in his own case was characterized by great honor. He fought courageously against his own government which was bent on insuring that the higher good would never be accomplished.

V. IMPORTANCE OF THE DAVIS FEDERAL CIVIL RIGHTS CASES

The Davis series of reported federal cases set forth some of the most profoundly important constitutional protections for the mentally ever articulated by our Federal Courts for our Nation. 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 was actually the first United States case to squarely hold that the Due Process Clause of the Fourteenth Amendment to the United States Constitution forbids Doctors, Nurses and Mental Health Care Workers from standing idly by while one of their own physically brutalizes an involuntarily committed mentally ill inpatient

⁴See Recidivism of Prisoners released in 1983 (Bureau of Justice Statistics Special Report – Department of Justice).

in a State hospital. Davis v. Rennie, 264 F. 3d 86 – 117 (1st Cir. 2001). This opinion by the Federal Court of Appeals has been cited literally hundreds of times, throughout the Country, since it was decided. It is manifestly a landmark Civil Rights opinion in the mental health arena.⁵ The Massachusetts Legislature has expressly acknowledged as much in its own legislative filings.

VI. 2014 LEGISLATION AND CURRENT SUPPORT

We have contemporaneously provided a portion of the Legislative Record (“LR/1-29”) and a Legislative Support Memo. (Ex. E, F). These documents depict some of the six Legislative Bills and Amendments filed on Jason Davis’ behalf during the last 29 years and our current legislative support at the State House. Representatives Turkington and Pedone each filed separate legislation some 20 years ago which has not been included.⁶ In 2014 both the Senate (39-0) and the House (152-0) unanimously voted to provide Jason Davis with a measure of justice but it was not funded by the Executive Branch. (LR/24, 29).

The importance of the Davis case has been acknowledged before by the Massachusetts Legislature. A notation (LR/5) on one of its Legislative Bills reads as follows:

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.

The heartwarming email from then Senator Spilka, as noted, is contemporaneously provided. (Ex. A). I spoke with the Speaker of the House twice last Winter about the Davis case and he seemed to embrace it. Representative John Rogers has supported the Jason Davis case for more than 20 years. He has filed a number of prior Bills in this matter.

What Representative Rogers has said about the Davis case bears reiterating here: **(i) “The facts are uncontested. They [Department of Mental Health] hired, failed to train and failed to**

⁵ A second seminal holding of the Davis line of cases was that the Due Process Clause of the Fourteenth Amendment is also violated when Doctors, Nurses and Mental Health Care Workers antagonize committed mentally ill inpatients and then use the resultant patient behavior as the basis to physically, mechanically or chemically restrain them. Davis v. Rennie, 264 F. 3d 86 – 117 (1st Cir. 2001).

⁶ The Davis case is specifically referenced on pages 1, 2, 4, 5-7, 12, 17, 24 and 29 of said Legislative Record. (Ex. E/p. 1, 2, 4, 5-7, 12, 17, 24, 29).

supervise these workers and to allow the State to walk away is just wrong.”⁷ and (ii) “In my mind the liability of the Commonwealth has always been crystal clear.”⁸

VII. CONCLUSION AND RELIEF SOUGHT

The Jason Davis case is one of the most grotesque and vile circumstances in the history of the Massachusetts Department of Mental Health. This case calls out for justice. Jason Davis is a national constitutional hero given his substantial contributions to the national constitutional landscape relative to the protection of the committed mentally ill. The Nation has taught us precisely how important the Davis line of cases really is.

Mr. William Davis, the 84 year old father of Jason Davis, is still seeking justice for his son after 29 years. He attended the entire one-month trial in 1998. His heart wrenching letter to the Senate is worth the read.

It is respectfully and humbly requested that the Committee allow H. 4438, after amending it by inserting “**\$2,491,053**” in place of “**100,000**”, and take any and all other actions necessary to ensure that the objectives of H. 4438 will be accomplished.

I have contemporaneously provided eight (8) lettered Exhibits as follows:

- A. Senator Spilka email;
- B. Mr. William Davis letter to the Senate;
- C. Federal Court Judgment;
- D. Governor Baker letter;
- E. Legislative Record;
- F. Legislative Support Memorandum; and
- G. HD 4569
- H. Probate Court Decree – Appointing William Davis as Personal Representative

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⁷ <http://www.wcvb.com/article/family-waits-years-for-millions-after-son-beaten-at-hospital/8034736>

⁸ <https://www.bostonglobe.com/metro/2014/03/09/jason-davis-beating-foreshadowed-joshua-messier-tragedy/JUTn1QniHkN8SCnrwqk9IK/story.html>