

June 20, 2014

Honorable Brian Dempsey, Chairman
House Committee on Ways and Means
State House, Room 243
Boston, Massachusetts 02133

Honorable Stephen Brewer, Chairman
Senate Committee on Ways and Means
State House, Room 212
Boston, Massachusetts 02133

Re: Jason Davis Legislative Bill
Senate Budget Amendment No. 143
House Budget Amendment No. 326

Dear Chairman Dempsey, Chairman Brewer, Members of the Conference Committee and Senator Spilka:

My name is William Davis. Jason Davis was my son. I would ask that all of you read this letter so that each of you can see what the Commonwealth did to my son.

I loved my son with all my heart and miss him dearly. He would have been 49 years old in August.

Much has been said about my son's tragedy in recent months; first in a Boston Globe article written by Adrian Walker and then in story aired by Janet Wu of WCVB-TV. However, the words which will ring in my ears forever cannot be found in newspapers or in television clips. These words, instead, come from trial transcripts and exhibits from my son's 1998 Federal Civil Rights trial in Boston Federal Court. I have read quotes from these documents over and over again during the last 16 years as part and parcel of my attempt to convince the Commonwealth to do justice by my son.

My son was an involuntarily committed mentally ill patient at the Westborough State Hospital in 1993. He was very ill for nearly his whole adult life and spent much of it in mental health facilities due to the severe and debilitating mental illnesses from which he suffered. On August 12, 1993, during his inpatient hospital stay at Westborough State Hospital, my son was badly beaten by one Mental Health Care Worker while several others pinned him to the floor. Two of these Mental Health Care Workers were actually convicted violent felons at hire which the Department of Mental Health knew. A Charge Nurse looked on and actually encouraged the beating. My son's Federal Civil Rights case was tried over the course of one month in 1998. He won a verdict which now stands at 2.1 million dollars. I attended the entire trial.

The quotes from the trial evidence, to which I refer above, come from a Special State Police Officer and one of the Defendants. Special State Police Officer Plesh, who came upon the scene and stopped the assault, testified at trial that he "noticed that [my son's eyes] were rolling out of his head. [He] could see the whites of his eyes. The eyes were up to the top." He was in what [Greg Plesh] would call a "semi-conscious state" as the beating was ongoing. Officer Plesh testified further that he "feared [that my son] had a hurt neck, that his neck might have been broken". Another eyewitness to the incident, the Defendant, Nicholas Tassone, observed that my son 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." Mr. Tassone testified further that he observed a puddle of blood beside my son's head at the scene of the incident. Employees wiped my son's blood off the floor after the assault. The Charge Nurse actually told my son, after the beating, that "this is what you get when you act – this is what you get when you act like this."

The Federal Appeals Court here in Massachusetts recounted the brutal attack on my son through the trial testimony of both Special State Police Officer Greg Plesh and my son:

He 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] 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 Joyce Wieggers who was on my right shoulder. When I saw Jason Davis being punched, I said, 'Did you see that? Are you going to do anything about this? Are you going to allow this to happen?.' She didn't say anything, and I really wasn't waiting at that point. Some more was occurring and at that point I decided to intervene. As the MHWs began rolling the patient onto his stomach, Bragg twisted Davis's neck to the side and Plesh climbed over the other MHWs to push Bragg away. Davis testified about the punching: 'It was over and over and over and over again. It was like it would never stop. And then I was calling for help and nobody was stopping them and they kept hitting me. I felt the blood; it was, you know, it was coming down my face.' Plesh said that Davis's '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.

The Federal Appeals Court here in Massachusetts also recalled the substantial psychiatric injuries which my son sustained:

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's PTSD symptoms included insomnia, anxiety, panic states, flashbacks, nightmares, and an inability to concentrate. He said that Davis was having difficulty making progress in therapy because he was afraid to trust anyone and that '[t]he quality of his life has suffered terribly for this.' Here, the evidence supports a finding of significant actual and potential harm. According to Dr. Zeidman, the psychological harm Davis has suffered from the incident has seriously affected his quality of life, causing a range of PTSD symptoms, demonstrating the reasonable relationship between the injury and the amount of the award. (emphasis supplied).

The trial was agonizing for my son Jason. He was suicidal throughout it as expressed by him to family members and his lawyer as well. His suicidality and suicidal ideations actually limited his ability to even attend his own trial. He was also suicidal throughout the four year period during which the Commonwealth filed appeals in the Federal Court of Appeals and the United States Supreme Court. My son Jason made moderate gains, in improving the quality of his life through regimented therapy, in the years prior to 1993. After the incident his life went into a downward spiral and he died six years after his trial at age 38. His Mother died soon thereafter.

Jason Davis was *my son*. I will not rest until the Commonwealth holds itself accountable for what it did to him. No father could. Not only did the Commonwealth refuse to prosecute the very employees who brutalized my son but it then defended them in Boston Federal Court. Two of these employees, as noted, were convicted violent felons. Worse yet, the Commonwealth, through its Attorney Generals, then actually asserted in three federal courts that there was no constitutional obligation - on the part of the staff who stood idly by and watched my son being brutally beaten - to intervene and stop the beating. Each of the three federal courts rejected this assertion.

The position which the Commonwealth has historically taken, in regard to the payment by it of my son's Federal Civil Rights judgment, is that it will not indemnify intent based civil rights claims asserted against individual State employees. This "position" comes from the supposed dictate of a State statute. However, literally only weeks ago, the Commonwealth agreed to pay 3 million dollars to the Messier family for the intent based civil rights claims it had asserted against individual culprits for the death of their son Joshua. I applaud this payment and the Messier family richly deserves this respect. So does mine. In 2005 the legislature, at Governor Romney's urging, also paid intent based civil rights claims (Smith case) asserted against an individual State employee. I respectfully submit that our State should not hide behind a morally corrupt state indemnification statute which it has sidestepped in the past to guard against injustice. Our government, after all, lies at the root of this entire problem: it hired the convicted violent felons who brutalized my son and it knew better than to place these felons in direct patient care capacities. It did so anyway. That acute physical and psychiatric harm was sustained by my son was a surprise to nobody.

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

My son was actually a hero. Although plagued by mental illness and suicidal ideations, he endured a four week trial and two federal appeals in route to making historic constitutional law which now protects all mentally ill throughout our Nation. He should be treated like a hero and not the criminals who both attacked him and were then subsequently protected by the Commonwealth's Attorney General in a host of legal proceedings.

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.

I would ask that the Commonwealth do justice for my son Jason so that he can rest in eternal peace. He belongs to the ages now but his work here is not yet done. It never will be until the Commonwealth admits that it was wrong. No jury verdict is ever respected until it is paid. The Commonwealth should respect the

Boston Federal Court jury verdict rendered by Massachusetts citizens 16 years ago. The time for justice is at hand.

Thank you.

Sincerely



William H. Davis

In Hand Service (Conferees/Addressees)

Cc:

Honorable Karen Spilka, Senate Majority Whip

Honorable Stephen Kulik, Vice-Chairman, House Committee on Ways and Means

Honorable Jennifer Flanagan, Vice-Chairman, Senate Ways and Means

Honorable Viriato DeMacedo, Ranking Minority Member

Honorable Richard Ross, Ranking Minority Member