

**Subject:** Re: [npap] damages in excessive detention cases

**From:** Marianne Dugan <mdugan@mdugan.com>

**Date:** Thu, 08 May 2008 11:56:46 -0700

**To:** jsolson@scofflaw.com

**CC:** npap@nationallawyersguild.org

At 06:56 PM 5/7/2008, you wrote:

PLN's website has a bunch of stuff on this already. If you have anything we don't have online already send it along and I am happy to put it in.

Here are some (with 2006 inflation adjustments) --

- Benson v. Oregon, 196 Or App 211, 100 P3d 1097 (2004) - \$106,500.00 - 43 days (\$2476 per day; over \$2600 adjusted for inflation)

- Oviatt v. Pierce, 954 F.2d 1470 (9th Cir. 1992) -- verdict of \$65,000 for 114 days of wrongful incarceration without arraignment (\$570 per day; \$860 adjusted for inflation); no indication plaintiff had been exonerated of charges

- Pitt v. District of Columbia, U.S. Dist. Ct., D.D.C., No. 01-CV-2225 (Aug. 22, 2003) - the jury awarded \$153,000 to a man detained wrongfully for 11 days (\$13,909 per day; over to \$15,000 adjusted for inflation)

- Toney-El v. Franzen, 777 F.2d 1224 (7th Cir. 1985) -- verdict of \$40,000 for 306 days of incarceration beyond release date (\$131 per day; \$240 adjusted for inflation) (court reversed on non-relevant grounds -- holding that there is no substantive due process right to an early release from prison; procedural due process procedures provided were adequate)

- Smiddy v. Varney, 803 F.2d 1469 (9th Cir. 1986) -- verdict of \$250,000 for four days of wrongful incarceration (\$62,500 per day -- court "reluctantly" remanded for remittitur of damages)

- Webb v. Sloan, 330 F.3d 1158 (9th Cir. 2003) -- verdict of \$80,000 for 19 days of wrongful incarceration (\$4211 per day; \$4600 adj. for inflation)

- Sevigny v. Dicksey, 846 F.2d 953 (4th Cir. 1988) -- verdict of \$112,000.00 in compensatory and \$21,000.00 in punitive damages; plaintiff held for two or three hours and forced to undergo state investigation regarding parental fitness

- Jones v. City of Chicago, 856 F.2d 985 (7th Cir. 1988) -- verdict of \$801,000 for one month of wrongful incarceration (\$26,700 per day; \$45,000 adj. for inflation)

- Goodwin v. Metts, 885 F.2d 157 (4th Cir. 1989) -- verdicts of \$60,000 and \$90,000 for two men; out-of-pocket expenses were \$3500; length of incarceration not clear but plaintiffs "were not incarcerated during the pendency of the criminal charges but were freed on bond immediately after booking and remained free throughout the grand jury proceedings and trial"; thus it appears that it was only a day or two for each

- Allen v. District of Columbia, 27 ATLA L. Rep. 269 (D.C. Sup. Ct. No. 2225-81, Jan. 26, 1984) -- verdict of \$250,000 for four hours of questioning at jail

- Hibma v. Odegaard, 769 F.2d 1147 (7th Cir. 1985) -- verdict of \$166,500 for 366 days of wrongful incarceration (\$455 per day; \$845 adj. for inflation)

- I settled a case in 2002 in which my client was wrongfully incarcerated for four days without arraignment. We settled for \$5000 (\$1250 per day; \$1400 adj. for inflation)

- I settled another case in 2002 in which my client was wrongfully incarcerated for three days. We settled for \$4500 (\$1500 per day; \$1680 adj. for inflation)

- I settled another case in 2004 regarding 160 days of wrongful incarceration (legal malpractice, extensive criminal history) - \$15,000 (approx. \$95 per day)

Verdicts and settlements for other miscellaneous wrongful police detention -

- Fee v. Michael, City of Salem, Oregon State Police, Marion Co. No. 89C-10257 - Jury verdict May 21, 1990 - Police had warrant with insufficient particularity, leading them to search the wrong house; broke down door, pointed guns, and searched for 20 minutes - Verdict for \$27,500 per plaintiff, plus attorney fees; \$44,000 adj. for inflation (PER plaintiff)

- Hunter v. City of Portland - D. Or. 92-1646 JO - jury verdict July 27, 1993 - Street encounter in North Portland without probable cause; unemployed plf refused to consent to search; police handcuffed, searched his pockets, and put in police car while checking for warrants, then let him go - \$10,000 on state law claims; for defendant on federal claims (\$14,700 adj. for inflation)

- Piper and Dickenson v. Magana and City of Eugene, D. Or. 04-6100-HO - settlement 2004 - \$11,250 to each plaintiff for invasion of their home and approximately one hour wrongful detention and search (\$11,900 adj. for inflation)

- Moore and Ross v. City of Eugene, Lane Co. 16-95-10542 and 16-95-10543; jury verdict September 11, 1996 - 16 year olds stopped at gunpoint by police while riding bikes to track practice, accused of bank robbery; one of them handcuffed; detention lasted 14 minutes. \$10,000 for each plaintiff on state law claims; for defendant on federal law (\$13,400 adj. for inflation).

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-----Original Message-----

From: Jennifer Tobin [<mailto:jtobin@pailp.org>]  
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Subject: [npap] damages in excessive detention cases

Dear colleagues,

I am seeking suggestions on damages calculations in an excessive detention case bringing § 1983 8th and 14th amendment claims. My client was detained a year and 2 months beyond his max release date. In 1989, the Third Circuit found that \$20.00/ day was the value of a day spent wrongfully incarcerated in Sample v. Diecks.. I think this is an excessively low number.

I'd appreciate any suggestions on amounts, supporting law, or methods of calculating this type of damages. Any circuit will do.

Thanks much,  
Jennifer Tobin

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"Life is short. Be swift to love! Make haste to be kind!"  
Henri Frederic Amiel, philosopher and writer (1821-1881)

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