WRONGFUL CONVICTION CASES

I. General Background

A. There is no cause of action for "wrongful conviction" under Section 1983.

1. Some states allow persons whose convictions are vacated to sue for damages without any finding of fault/liability.

2. New York – Court of Claims Act, Section 8-b, allows such lawsuits. Trial is to the Court of Claims judge. In settlements with New York state, the damages vary depending on whether the claimant has lost income claims and the circumstances of each case.

3. There is no bar to suing the State under Section 8-b, and suing municipal actors under Section 1983 at the same time. One judge in the Eastern District, however, has held that settlement with the State bars recovery of any Section 1983 damages for the same period of incarceration (discuss Judge Matsumoto's unreported EDNY decision.).

4. DNA evidence – usually admissible to prove the innocence of the plaintiff, where applicable.

B. Types of Section 1983 Claims:

1. Malicious prosecution claims. Discuss standard

2. Denial of Fair Trial Claims. Discuss standard.

II. Specific Wrongful Conviction Cases – Illustrations - Damages

A. *Newton v. City of New York* – jury awards $1.5 million per year, judge remits damages to $1 million per year.

B. *Limone v. United States*, 539 F.3d 79 (1st Cir. 2009) – Plaintiffs were awarded $1 million per year for 30 years, approximately (verdict after bench trial – 7/07). In this notorious case, U.S. District Judge Nancy Gertner (D. Mass.) awarded $1 million per year to four plaintiffs who were framed by the FBI in 1967, for the March, 1965, murder of Eddie Deegan in Boston. FBI agents framed the four plaintiffs by knowingly offering to the Suffolk County District Attorney the false account of the crime provided by an informant, Joseph "the Animal" Barboza. The FBI encouraged Barboza to give false testimony implicating the plaintiffs in order to protect the real killers – New England mafia associates – who were also FBI informants. In assessing damages for the four wrongfully incarcerated plaintiffs, the court found that "[i]n recent years both juries and courts sitting without juries have found that wrongfully imprisoned plaintiffs were entitled to compensation of at least $1 million per year of imprisonment." *Limone v. United States*, 497 F. Supp. 2d 143, 243-44 (D. Mass. 2007) (citing cases), *aff'd*, 579

F.3d 79 (1st Cir. 2009). Affirming the award, the First Circuit found that the damages were "extremely generous" and "approach[ed] the outermost boundary of what might be thought conscionable." *Limone*, 579 F.3d at 106 (citations omitted). Nevertheless, the First Circuit found that the amounts of $1 million per year were not an abuse of discretion. *Id.*

C. *Jimenez v. City of Chicago*, 732 F.3d 710 (7th Cir. 2013). Plaintiff was convicted of murder at the age of fifteen (15), and served sixteen (16) years in adult prisons before he was released based on the discovery of new evidence. He successfully sued the City of Chicago and an investigating detective, recovering damages of $25 million for sixteen (16) years in prison. None of the post-trial motions appeared to involve challenges to the damages awarded, *see Jimenez v. City of Chicago*, 877 F. Supp. 2d 649 (N.D. Ill. 2012), and therefore the courts did not have to decide whether the verdict was excessive. The plaintiff only had a handful of arrests prior to his conviction.

D. *White v. McKinley*, 605 F.3d 525 (8th Cir. 2010). Plaintiff, who apparently had no prior criminal record, was falsely convicted of sexually molesting his daughter, and was awarded $14 million in damages for five and one-half (5½) years in prison. The damages included lost income of approximately $1.6 million. *See White v. McKinley*, Case No. 05-0203-CV-W-NKL, 2009 U.S. Dist. LEXIS 24556, *68-69 (W.D. Mo. Mar. 26, 2009). The plaintiff's ex-wife and the investigating detective were found to have conspired to bring about the conviction, and the two defendants were having a sexual relationship at the time but concealed it. Both defendants were assessed punitive damages in the amount of $1 million each. In addition, the plaintiff suffered "physical abuse" while in prison, *see id*.

E. *Dominguez v. Hendley*, 545 F.3d 585 (7th Cir. 2008). Plaintiff, a fifteen-year old boy, was arrested, tried and convicted of a sexual assault. He was exonerated based on DNA test results after spending four (4) years in prison, having been released early for good behavior. He was awarded just over $9 million in damages for wrongful incarceration. He alleged and proved that the investigating detective, Paul Hendley, was responsible for his conviction because he withheld from prosecutors (1) an exculpatory medical report which contained inconsistent accounts of the crime by the victim, and (2) an impermissibly suggestive "show up" whereby the victim was brought to Dominguez' apartment security office and saw him through the office window. At the time of the viewing, detectives (including Hendley) asked the victim if Dominguez was "the guy" – even though he was taller than the assailant (6'0" as opposed to 5'8" to 5'9" as the victim described), spoke no English (the victim claimed that the assailant threatened her in English), had no tattoos or piercings (the victim had claimed that the assailant had an ear piercing and tattoo on one shoulder), and had short hair (the victim reported that the assailant had long, curly hair). The jury verdict was against the investigating detective only; the municipality was dismissed on Rule 50 motion at the close of the evidence. Before the municipality was dismissed, however, the plaintiff put into evidence a memorandum concerning Hendley's prior conduct (to

show notice to the municipality), stating in substance that corroboration was required in any case investigated by Hendley "because of the questions which exist about his credibility." *Dominguez v. Hendley*, Nos. 07-1004, 07-1005 & 07-3030 (7th Cir. Nov. 12, 2008) (slip op. at 15) (available on PACER). [Query whether this trial should have been bifurcated.]

F. *Sarsfield v. City of Marlborough*, No. 1:03-cv-10319-RWZ (D. Mass.) The defendant conceded liability, and after a bench trial on damages only, the court awarded $13.6 million to compensate plaintiff, including approximately $600,000 for lost income. The damages award comprised $2 million for damages prior to June 30, 1991, and $11 million for damages after that date including "future damages" (*see Sarsfield*, Dkt. 100, filed 10/4/06. The judgment is not clear as to why the court calculated damages in that fashion. The defendant did not challenge the award on appeal, so the circuit never decided whether the verdict was excessive. Plaintiff was convicted of a sex offense and was required to register as a sex offender. The plaintiff was also harassed by law enforcement officials after he was released, because his name was erroneously kept in the sex offender database. He presented extensive expert testimony at trial about his ongoing injuries.

G. *Johnson v. Guevera*, 1:05-cv-1042 (N.D. Ill.) The plaintiff was incarcerated for eleven and one-half (11½) years for murder and was awarded $21 million in compensatory damages. He presented expert testimony at trial supporting his claim that he suffered from severe post-traumatic stress disorder and paranoia. The damage award, therefore, appears to reflect future injuries in addition to past harm. In addition, it appears that the defendant did not challenge the award as excessive in his post-trial motions, and therefore, the courts did not review the award or determine whether it was excessive.

H. *Newsome v. McCabe*, 319 F.3d 301 (7th Cir.), *cert. denied*, 539 U.S. 943 (2003). Jury awarded $15 million for 15 years (jury verdict 10/29/01). Plaintiff was convicted of murder in 1980, based on suggestive or coercive conduct by police detectives. He was released by the Illinois state courts in 1994, after multiple post-conviction motions, and later pardoned by the Governor. At trial, he presented evidence that detectives (1) showed a suggestive photo array to one of the eyewitnesses before that witness viewed the lineup, which was contrary to Chicago police department procedure, (2) gestured in Newsome's direction during the lineup viewed by the second eyewitness, (3) told the third eyewitness to identify Newsome (seat # 3) at the lineup, and (4) withheld evidence that a fingerprint lifted at the scene did not match Newsome's. Newsome also introduced evidence, known at the time of the criminal trial, that two of the eyewitnesses identified others from mug shot books that did not contain Newsome's photo. At the civil trial, one witness recanted his identification testimony. Although the other two witnesses could not be found, evidence concerning misconduct with regard to their identifications appeared elsewhere in the record and was admitted. Newsome called an expert in the area of eyewitness identifications, who testified based on empirical research that the odds of three

witnesses mistakenly identifying Newsome, all by chance, was more than 35,000 to one. The verdict was affirmed, even though defendants learned that Newsome lied about his criminal past when he testified at the civil trial.

I. *Ellen Reasonover* - $7.5 million for 16 years (settlement 9/16/04). Plaintiff recovered this settlement against the Town of Dellwood, Missouri, and its police captain Dan Chapman. She was imprisoned for murder from 1983-99. She made the following allegations against Chapman: (1) she, the plaintiff, reported seeing the underlying crime (the shooting of a gas station clerk) as an eyewitness, and first spoke to Chapman when she called the police; (2) Chapman unreasonably focused on her as the target of the investigation shortly after she called, and (3) Chapman withheld from prosecutors a 58-minute tape recorded conversation between Reasonover and her boyfriend, Stanley White, which occurred while she was in custody awaiting trial, during which she denied involvement in the crime over twenty times and expressed confidence that the charges would be dropped. The only hard evidence offered against Reasonover at trial was testimony by two jailhouse snitches that Reasonover confessed. A third inmate testified that she was approached by police officers (the inmate could not recall names, and did not specifically name Chapman), and was threatened and offered money to testify at trial that Reasonover confessed. She refused to do so and later testified about the threats and attempted bribes.

J. *Madison Hobley* - $7.5 million for 16 years, including 10 years on death row (settlement in 12/07). Plaintiff was imprisoned for arson and murder from 1987-2003, when his death sentence was commuted and he was pardoned by Gov. Ryan of Illinois. He alleged the following police misconduct: (1) he claimed he was tortured in an effort to force him to confess to the crime, which he refused to do, (2) the torture involved three defendant officers' handcuffing him to a "wall ring" and beating him, handcuffing him to a chair and beating him, and suffocating him with a plastic bag until he passed out, (3) officers falsely testified at trial that he had confessed, claiming that their notes of the confession were destroyed when they supposedly got wet and the "ink ran," making them impossible to read, and (4) officers planted evidence against him, viz., a gasoline can allegedly used in the crime, which showed no evidence of fingerprints or burn damage.

K. *Arvin McGee* - $14.5 million for 14 years (jury verdict – 3/06) (later settled for $12.25 million). McGee was imprisoned for first degree rape based on eyewitness identification testimony by the victim and was exonerated by DNA testing in 2002. He alleged that the City of Tulsa failed to have in place written procedures for investigating sex crimes, which was proof of deliberate indifference. He also alleged and proved the following misconduct by the investigating detective, Randy Lawmaster, which he claimed was the result of the City's failure to adopt written policies for rape investigations: (1) use of a suggestive photo array in which McGee's photo differed materially from the four others, (2) failure to check McGee's medical records, which would have shown that McGee had a hernia when the crime was committed and could not have done what the victim described (she said she was abducted from her car, carried over

the assailant's shoulder to a deserted area and raped repeatedly), and (3) the detective told the victim after she made her identification that she picked the right guy, in words or substance. The victim specifically testified that she was not told who to pick out of the photo array or the subsequent live lineup. [NOTE: Defendants conceded the plaintiff's innocence but argued at trial that the police had done nothing wrong; trial transcripts are available on PACER.]

L. *Chris Ochoa* – $5.3 million for 12 years (settlement – 12/03). Plaintiff pleaded guilty to rape and murder and implicated another individual, Richard Danziger, in the crime (the rape and shooting death of a Pizza Hut store clerk in October, 1988). Ochoa alleged that his confession was coerced by police detectives after a two-day "interrogation" during which they fed him details of the crime and threatened the death penalty unless he implicated his roommate, Mr. Danziger, in the crime as well. Danziger was also convicted of rape and participation in the murder. Ochoa alleged that he was forced to testify against Danziger because he feared for his life if he did not. He was released when DNA tests implicated another man serving three life sentences for other rapes.

M. *Richard Danziger* – $9 million for 12 years (settlement – 12/03). Chris Ochoa's co-defendant, implicated by Ochoa's false testimony, received a higher settlement apparently because he was severely injured by another inmate while in custody, and sustained permanent brain damage requiring round-the-clock care after his release.

N. *Lafonso Rollins* – $9 million for 11 years (settlement – 1/06). Plaintiff, a minor special education student, alleged that he was maliciously prosecuted for a series of rapes that occurred in a Chicago housing project. He was incarcerated from 1993-2004, and released based on the results of DNA tests. He had been arrested by Chicago detectives because he resembled a composite sketch of the suspect and lived in the housing project where the rapes occurred. He signed confessions to the rapes but alleged that these confessions were coerced or fraudulently obtained. He alleged the following misconduct on the part of the officers: (1) detectives told him to sign a form in order to be released, but the form – which plaintiff did not write – was actually a confession to the crime (it is not clear whether the document was blank when plaintiff signed it, or if a separate signature page was later attached to another document, or otherwise exactly how the allegedly fraudulent confession was obtained); (2) detectives threatened him by saying they would "hang him out to dry" unless he "told the truth," and also beat him until he confessed; and (3) even though detectives took a saliva and hair sample from him, the evidence was never tested by the Chicago police department crime lab.

O. *Juan Johnson* – $21 million (all compensatory damages) for 11½ years (jury verdict – 6/09). Plaintiff was convicted of a 1989 murder that resulted from a street fight among members of several Chicago area gangs (all of whom were in attendance at a large birthday party at a downtown club). The victim was beaten to death with a wooden board. The day after the crime, Chicago detective

Reynaldo Guevara met with members of the victim's gang and told them that he "preferred" or "liked" certain members of a rival gang for the killing. He showed photos to these gang members and pointed out Juan Johnson as the person he "liked" for the murder. The witnesses then "identified" Johnson at a live lineup later that day. It was not disputed that Johnson was a member of the victim's rival gang or that he was present at the party where the fight occurred. One of the eyewitnesses also identified a wooden board as the murder weapon, even though the board had no evidence of blood (the victim was beaten bloody in the fight). According to the witnesses, Detective Guevara, a member of the police department's gang investigation unit, had a reputation for "hooking people up" (i.e., framing them) for crimes, and there were twelve (12) prior complaints against him for misconduct. (We do not know what these complaints alleged or whether any of them were admitted at trial.) Johnson was released in 2002, when the Illinois state courts vacated his conviction on the grounds that the evidence at trial was not sufficient to support the verdict, and on retrial he was acquitted. At the civil trial, two witnesses continued to maintain that Johnson committed the crime. Johnson also presented expert testimony by a psychiatrist who stated that Johnson suffered from severe post-traumatic stress disorder and paranoia.

III. Strategies for defending wrongful conviction cases

A. Summary judgment

B. Trial – defenses