

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

KIRK L. ODOM,
Plaintiff

v.

DISTRICT OF COLUMBIA,
Defendant

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Case No. 2013 CA 3239

Calendar 13 - Judge Kravitz

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 9, 1981, a Superior Court jury found Kirk L. Odom guilty, after trial, of multiple felony offenses arising from an armed rape and burglary Mr. Odom did not commit. Only nineteen years old at the time of trial, Mr. Odom testified that he knew nothing of the crime and was at home asleep when it occurred. The jury rejected Mr. Odom's testimony, however, and the judge presiding over the trial ordered Mr. Odom taken into custody immediately after the jury returned its guilty verdict. The judge later sentenced Mr. Odom to a total of twenty to sixty-six years in prison, and the Court of Appeals affirmed the judgment in an unpublished opinion.

Mr. Odom served more than twenty-two years in prison and an additional eight years on parole and as a registered sex offender for his convictions. Finally exonerated by DNA testing in 2012 at the age of fifty, Mr. Odom brought suit against the District of Columbia in 2013 under the District of Columbia Unjust Imprisonment Act, D.C. Code § 2-421 *et seq.* (2012 Repl.), a local statute that obligates the District to compensate, with money damages, certain qualifying people who have been convicted of and imprisoned for criminal offenses under the District of Columbia Code and have subsequently had their convictions overturned due to judicial or other authorized findings of actual innocence. Mr. Odom sought damages for his loss of liberty and his past and future emotional distress and lost income.

Mr. Odom's Unjust Imprisonment Act claim went to trial before this court, sitting without a jury, on November 3-12, 2014. The parties filed post-trial briefs on November 14, 2014 and presented closing arguments to the court on November 20, 2014. The parties then submitted supplemental post-trial briefs on November 26, 2014, and Mr. Odom filed a notice of supplemental authority on February 19, 2015.

The court has carefully considered the evidence presented at the trial and the many legal and factual arguments of the parties. The court now makes its findings of fact and conclusions of law in accordance with Rule 52(a) of the Superior Court Rules of Civil Procedure. Many of the court's findings of fact are based on stipulations reached by the parties and offered at trial. To the extent the court's findings of fact extend beyond the parties' stipulations, they are made by a preponderance of the evidence and are premised on the court's consideration of the credibility of the witnesses and the reliability and persuasiveness of all of the evidence.

FINDINGS OF FACT

Mr. Odom was born in the District of Columbia on July 13, 1962, the tenth of eleven children in a close-knit family living on Bay Street, S.E., near Robert F. Kennedy Stadium and the old District of Columbia General Hospital. Mr. Odom's father worked as a local freight truck driver when Mr. Odom was a small child, and Mr. Odom's mother was employed by the General Services Administration. Mr. Odom had loving, supportive relationships with both of his parents, and he was very attached to his three brothers, with whom he shared a bedroom at home and formed an inseparable group referred to within the family as the "four musketeers."

Mr. Odom's early childhood was mostly unremarkable. Mr. Odom attended the local public elementary school and, by all accounts, was a happy, healthy, and productive boy despite a diagnosed learning disability that often made schoolwork difficult for him. When Mr. Odom

was approximately eleven years old, however, his father died suddenly, and the unexpected loss devastated the entire family, both emotionally and financially. Mr. Odom was particularly affected by his father's death. He became withdrawn, and on a few occasions he destroyed some of his own belongings as a way of dealing with his anger over his loss. For a time, he attended the Area C mental health center in lieu of middle school.

Things gradually improved for Mr. Odom and his family following the initial shock of his father's death. Mr. Odom's mother remarried, and the family's financial situation stabilized. Mr. Odom transferred back to the public schools to obtain vocational training and then spent several months in the Job Corps program in Texas before returning at age sixteen to the District, where, instead of completing high school, he found work at Hechinger Mall and on an ice cream truck. Mr. Odom began dating a young woman named Teresa Parker after his return from the Job Corps program. The relationship grew in seriousness over time, and in late 1980 Ms. Parker became pregnant with Mr. Odom's child. As Ms. Parker's pregnancy advanced, Mr. Odom became increasingly excited about the prospect of becoming a father for the first time.

In February 1981, however, a violent armed rape was committed a few blocks from Mr. Odom's home – a crime that would dramatically and permanently alter the trajectory of Mr. Odom's life. In the early morning hours of February 24, 1981, a woman named S.Y. awoke in her bed to find an unknown man standing in her bedroom and holding a gun to her head. The man gagged, blindfolded, and bound S.Y. before ransacking her living room and stealing her money. The man then returned to the bedroom and raped and sodomized S.Y.

S.Y. provided the police with a physical description of her assailant and worked with a police sketch artist to create a composite drawing. S.Y. also looked at several hundred slides and photographs of possible suspects shown to her by the police but made no positive identification.

Approximately a month after the rape, a police officer familiar with the description provided by S.Y. saw Mr. Odom walking on the street near Eastern Market and thought Mr. Odom resembled the description. The officer stopped Mr. Odom and obtained his name and other identifying information. The officer did not arrest Mr. Odom, but the police used the identifying information to obtain a photograph of Mr. Odom taken two years earlier. The police placed the photograph of Mr. Odom in a photo array and showed the array to S.Y. on April 13, 1981. S.Y. made a tentative identification of Mr. Odom's photograph, stating that she believed the person shown was her attacker but that she could not be certain without seeing the person up close. The police then obtained a Superior Court warrant for Mr. Odom's arrest based on S.Y.'s tentative identification from the photo array. They arrested Mr. Odom on the warrant in early May 1981 and placed him in a police lineup on May 19, 1981. S.Y. attended the lineup and made a positive identification of Mr. Odom as the man who raped her inside her home on February 24, 1981.

The case proceeded to trial in this court in September 1981 on a grand jury indictment charging Mr. Odom with two counts of first-degree burglary while armed and single counts of rape while armed, sodomy, and armed robbery. S.Y. testified for the government and made an in-court identification of Mr. Odom as her assailant. S.Y.'s in-court identification was corroborated by her earlier out-of-court identifications and by an FBI expert in microscopic hair analysis who testified that a hair found on S.Y.'s nightgown matched a known hair sample from Mr. Odom's head. Mr. Odom took the stand in his own defense and denied any involvement, testifying that he was at home asleep at the time of the incident. Mr. Odom's mother testified as well, stating that to the best of her knowledge her son was at home in bed in the early morning hours of February 24, 1981.

The jury returned a verdict of guilty on all counts on September 9, 1981. Mr. Odom had been on pretrial release in the community leading up to the trial, but in the wake of the jury's verdict the judge revoked his release status and ordered him held without bond pending sentencing. Mr. Odom was immediately taken into custody, shackled, and transferred to the District of Columbia Jail. Four months later, on January 6, 1982, the judge sentenced Mr. Odom to a total of twenty to sixty-six years in prison.

Thus began for Mr. Odom an odyssey through as many as thirty different prison settings over a period of more than two decades leading up to his release on parole in 2003. Corrections officials returned Mr. Odom to the District of Columbia Jail in custody following his sentencing hearing, and from there they sent him to the Lorton Reformatory, the prison complex in Lorton, Virginia operated at the time by the District of Columbia. Mr. Odom served more than half of the next twenty-one years in various Lorton facilities – Youth Center, Maximum Security, Medium Security, and Modular Facility – and the rest in federal and state prisons in New York, Missouri, Pennsylvania, Alabama, Kansas, Indiana, Minnesota, West Virginia, Tennessee, Virginia, and Maryland.

Mr. Odom's time behind bars was brutally difficult. Mr. Odom lost his personal freedom and any ability to control his own activities. He was forcibly separated from his family, Ms. Parker, and his daughter, who was born to Ms. Parker a few weeks before the criminal trial. He was unable to work and support himself and his family. He lost all of his personal privacy and comforts and was forced to share cramped, filthy, and often rodent- and insect-infected cells with convicted murderers and other inmates not of his choosing. He was cut off from his friends in the community. And he had no stability in his placements, awakened repeatedly very early in the

morning, without any advance notice, and told he had only a few minutes to gather his belongings and prepare to be transferred to another prison in an unidentified location.

Particularly painful for Mr. Odom was the inability to play any role in the rearing of his daughter. Mr. Odom's mother and Ms. Parker occasionally brought his daughter along on visits to the prison during the first few years of Mr. Odom's incarceration, but those visits ended when Mr. Odom was transferred out of Lorton in early 1984. Mr. Odom's daughter was two years old at that point, and Mr. Odom and his daughter were effectively cut off from each other from then on. Mr. Odom was never able to build a meaningful relationship with his daughter, and his daughter was an adult, and entirely estranged from him, by the time of his release on parole in 2003.

Perhaps hardest of all for Mr. Odom, however, were the violence and threats of violence that permeated the correctional facilities in which he was housed. The uncompromising culture of physical violence in prison presented itself to Mr. Odom in stark terms on his first day at the Lorton Youth Center, where upon his arrival he witnessed an inmate-on-inmate stabbing that went uninterrupted by the prison guards present in the unit. This culture of violence, and the fear it bred, remained daily constants throughout Mr. Odom's extended period of incarceration. Mr. Odom knew, moreover, that as a convicted rapist he was at greatly increased risk of physical and sexual aggression at the hands of other inmates. Mr. Odom tried very hard to keep the nature of his convictions to himself, but other inmates told him they knew what he was there for, and their knowledge and threatening comments substantially increased his fear.

That fear turned out to be well founded. Mr. Odom was raped by other inmates on at least three occasions in the Maximum Security facility at Lorton in the early 1980s, and he was raped several additional times in the federal prison in Terre Haute, Indiana and back at Lorton in

the late 1990s. Mr. Odom also suffered physical assaults at the hands of other inmates on at least two occasions. He reported the early rapes to a guard in Maximum Security at Lorton – and even won a small settlement from the District in a civil case arising from those rapes – but he kept quiet about the rest of the sexual assaults he endured, always understanding it was more dangerous to report a sexual assault in prison than to try to deal with it himself. He also recognized the perils of trying to fight off sexual aggressors in prison, watching in horror as other rape victims were stabbed and seriously injured trying to resist the advances of sexual predators. As a result, Mr. Odom chose, as a matter of basic survival, to submit to several of the rapes he suffered – “sacrificing” himself, as he described it at trial. For a time in the late 1990s, Mr. Odom befriended a few other inmates in the Central Facility at Lorton. These other inmates, described by Mr. Odom as “transvestites” or “transsexuals,” tried to protect Mr. Odom from sexual assailants in the prison by letting him know when people were focusing on him or planning to cause him harm. Yet even this small amount of protection came at a steep price; Mr. Odom felt obligated to have an ongoing sexual relationship with one of the inmates trying to help him, and he had sex with that person several times as an unstated quid pro quo for the assistance provided.

Mr. Odom had many other negative experiences in the course of his incarceration. As one example, Mr. Odom’s younger brother, Brian, was murdered near the family’s home during Mr. Odom’s early years at Lorton. The family chose not to tell Mr. Odom about the murder out of concern for how much Mr. Odom was going through already, but Mr. Odom learned of his brother’s violent death during a prison class on local crime when he noticed his brother’s name on a list of recent homicide victims. Mr. Odom asked to be allowed to attend Bryan’s funeral,

but his request was denied by prison officials, who cited the length of Mr. Odom's sentence and the nature of his convictions.

Mr. Odom also contracted human immunodeficiency virus ("HIV") while in prison in the late 1990s. Prison records show that Mr. Odom tested negative for HIV in early 1999 and then positive in a second test conducted later the same year. In the interim, Mr. Odom was raped and anally penetrated several times by other inmates who did not use condoms. Although Mr. Odom also had a sexual relationship in this general time period with one of the inmates he befriended for protection, Mr. Odom testified that all sexual contact with that person was protected through the use of condoms. Moreover, Dr. Frederick Altice, an expert in the diagnosis, treatment, and consequences of HIV, with special expertise in the epidemiology of HIV within correctional institutions, testified to a reasonable degree of medical certainty that Mr. Odom contracted HIV from the rapes he suffered in the time period between the two HIV tests in 1999. Dr. Altice's testimony on this point stands uncontradicted in the record, and the court finds it persuasive.

Mr. Odom's HIV infection had a significant impact on his final years in prison. Mr. Odom does not contend that prison authorities at Lorton failed to care for him in a manner consistent with treatment options available at the time, and there is no evidence that his HIV infection ever progressed to a point at which he was in imminent danger of getting AIDS. Mr. Odom nevertheless had chronic diarrhea from the antiretroviral medication he was given in prison – a frequent and unpleasant side effect of the medication, according to Dr. Altice – and he had a severe panic attack when the prison temporarily ran out of medication, making him extremely anxious about what would happen if his medication regimen was not quickly reinstated. (The prison's supply of antiretroviral medication was promptly replenished.)

All of these many hardships had profoundly negative psychological effects on Mr. Odom. In addition to his ever-present fear and anxiety, Mr. Odom suffered throughout his imprisonment from severe loneliness and regrets due to his involuntary separation from his family and friends and his loss of a life of freedom in the community. Dr. Ryan Shugarman, an expert in general and forensic psychiatry who conducted a psychiatric evaluation of Mr. Odom in 2014, testified that as time went on – and, in particular, as Mr. Odom lost on appeal and his legal situation appeared more and more dire – Mr. Odom had an overwhelming feeling of hopelessness and helplessness that ultimately escalated into a sense of total resignation about his fate, a hazardous condition in which a person’s values, ideals, and self-identity are often abandoned.

Mr. Odom’s actual innocence of the crimes for which he was imprisoned exacerbated the negative psychological effects of his incarceration. Mr. Odom was confounded by the stark conflict between his innocence and the horrors he was experiencing in prison – a dissonance that created confusion on a daily basis and contributed significantly to his feelings of hopelessness and helplessness. Unlike most prison inmates, Mr. Odom never had any reason to look inward or to try to recognize his own role in causing his predicament; Mr. Odom knew he had no such role, and nothing he was forced to endure ever made any logical sense to him. Mr. Odom perhaps best expressed these sentiments himself, in a letter he wrote to his lawyer shortly after his sentencing in January 1982:

I want to know why I have to do time for something I don’t know about. That lady don’t know me and I don’t know her or [where] she live at, and I want to know why they [pick] me. Can’t we do something about it cause I don’t want to spend time in here away from my little girl. . . . All I know is I didn’t do it so can’t you do something about it cause I don’t want to stay down here for a long time. . . . I can’t take this any more cause I want to be with my family and my little girl before she gets big. I just don’t want to be down here cause I know I don’t belong down here.

Dr. Shugarman described Mr. Odom's psychological suffering in prison as "extreme," an expert opinion amply supported by other evidence in the trial record. Institutional mental health records show that Mr. Odom was distraught over the hopelessness of his situation and his inability to cope with the stress and anxiety caused by the unyielding circumstances he faced. Mr. Odom became severely depressed in prison and had repeated suicidal thoughts over many years. He actually attempted suicide in 1983 after learning that his appeal had been denied. Then, in what Dr. Shugarman described as a second suicide attempt, Mr. Odom lit the bed in his locked cell on fire in 1987 and became luridly psychotic, leading to a four-month in-patient stay at Saint Elizabeths Hospital, where he was diagnosed with schizophrenia and psychotic disorder NOS and treated for delusions and hallucinations, including visions of S.Y. telling him he was innocent and President Reagan coming to the hospital to rescue him. All of these psychological harms, Dr. Shugarman testified, flowed directly from the stressors caused by Mr. Odom's wrongful conviction and incarceration and the circumstances forcibly imposed on him in prison. The court credits this testimony and rejects the suggestion, advanced by the District at trial, that the psychological injuries Mr. Odom suffered in prison were caused, even in part, by the death of his father or other challenges he faced as a boy.

Finally, on March 19, 2003, after twenty-one years, six months, and eleven days in prison, Mr. Odom was released on parole. He was forty years old.

Mr. Odom went to live with his mother following his release, and he did his best to find work and resume his life. He was hampered, however, by his criminal convictions and the many restrictions attendant to his status as a parolee. He had to report to a parole officer at least once per week. He was required to register as a sex offender and to participate in sex offender counseling, during which he was asked repeatedly to admit his involvement in the rape of S.Y.

He was not allowed to travel outside the District of Columbia without a chaperone. His home was subject to search without notice or probable cause. He was sometimes placed on electronic monitoring and required to wear an ankle bracelet. He felt as if his criminal record made it more difficult for him to obtain a job.

Mr. Odom soon found himself back in custody when police arrested him for assault on July 14, 2003. Mr. Odom was released pending trial in the new case (a misdemeanor), but he was detained from August 6, 2003 through December 13, 2003 on a parole hold stemming from the re-arrest. The assault case went to trial before a judge of this court on May 18, 2004, and the judge found Mr. Odom guilty and sentenced him to ninety days in jail, of which Mr. Odom served seventy-nine. Parole officials then revoked Mr. Odom's parole in the rape case as a result of the assault conviction, and Mr. Odom was imprisoned on the 1981 felony charges until April 14, 2005. The parties have stipulated that Mr. Odom served an additional 383 days in the rape case as a result of his arrest and conviction in the 2003 assault case (over and above the seventy-nine days he served for the assault conviction). In total, therefore, Mr. Odom served twenty-two years, six months, and twenty-nine days in prison for his convictions arising from the 1981 rape of S.Y.

Mr. Odom was relieved to be back in the community on parole following his release from prison in 2005. He soon met a woman named Harriet Kopi while participating in an HIV support group, and he and Ms. Kopi started dating after he sent her a poem he had written. They were married on September 23, 2005, and they remained together throughout Mr. Odom's years on parole in what appears to have been a positive and supportive relationship.

The evidence showed, however, that Mr. Odom continued to experience significant psychological harms following his release on parole. Mr. Odom was anxious about going to

public places and particularly fearful of crossing paths with the men who had raped him in prison. He awakened early many mornings, replaying in his mind over and over the most horrific incidents of his imprisonment. He felt tremendous guilt and shame about the way he contracted HIV, and he feared his wife would leave him if she learned he had chosen not to resist the sexual assaults that led to his infection. He was sometimes unable to confide in and trust his wife and often felt an emotional distance from her, notwithstanding the many positive aspects of their relationship. He felt everything was stacked against him when he lost a warehouse job at Airborne Express due to logistical problems with an ankle bracelet he had to wear for electronic monitoring by parole officials. His registration as a convicted sex offender caused additional anxiety and carried great stigma in the community. His status as a parolee and convicted felon complicated his wife's efforts to gain United States citizenship and to bring her children (from a previous relationship) to this country from her native Botswana.

Mr. Odom also continued to suffer the ongoing effects of his HIV infection while on parole. Dr. Altice testified that HIV and the antiretroviral medications used to treat it have many serious medical consequences beyond the chronic diarrhea about which Mr. Odom testified. HIV and/or its treatment often lead to an elevated lipid level in the blood and create an increased risk of heart attack and stroke; they also can cause tuberculosis, diabetes, and testosterone deficiency. Dr. Altice told the court that Mr. Odom has a high lipid count (currently controlled by medication), latent tuberculosis, and testosterone deficiency. The evidence at trial made clear, moreover, that Mr. Odom has regularly felt the downward emotional pull of the shame and stigma in the community borne by many people infected with HIV.

On February 14, 2011, Mr. Odom, assisted by the Public Defender Service for the District of Columbia, filed a motion in the rape case seeking post-conviction DNA testing of

biological material pursuant to the District of Columbia Innocence Protection Act. *See* D.C. Code § 22-4133 (2012 Repl.). Questions had arisen concerning the reliability of the work of the FBI hair expert who testified at Mr. Odom’s trial in 1981, and a reconsideration of several cases in which the expert’s testimony was deemed material to the outcome was being undertaken. The United States Attorney’s Office, which prosecuted the case back in 1981, agreed on June 27, 2011 that Mr. Odom was entitled to post-conviction DNA testing. The forensic testing went forward as requested, and on June 20, 2012 the District of Columbia Metropolitan Police Department issued a “CODIS Match Report” identifying a man other than Mr. Odom as the person who committed the 1981 rape of S.Y.

Mr. Odom filed a motion under the Innocence Protection Act asking the court to vacate his convictions in the 1981 rape case and to dismiss the indictment with prejudice on the grounds of actual innocence. *See* D.C. Code § 22-4135 (2012 Repl.). The United States Attorney’s Office joined Mr. Odom’s motion, and on July 13, 2012 a judge of this court issued an “order and certificate of actual innocence” granting the relief requested. The judge found, by clear and convincing evidence, that the results of the DNA testing exonerated Mr. Odom – specifically, that the testing excluded Mr. Odom, to a mathematical certainty, as the source of a hair found on S.Y.’s nightgown and of semen and sperm left on S.Y.’s robe and pillowcase. The judge also found, by clear and convincing evidence, that “Mr. Odom did not commit any of the acts charged, nor did he commit any act, deed or omission in connection with the acts charged that constituted an offense against the United States, or any State, Territory, or the District of Columbia” and that “Mr. Odom did not by misconduct or neglect cause or bring about his own prosecution or conviction.” Finally, the judge found that “Mr. Odom has been the victim of a

grave miscarriage of justice” and that he “is actually innocent of the crimes for which he was convicted.”

Apparently by coincidence, the judge issued his “order and certificate of actual innocence” on the precise date of Mr. Odom’s fiftieth birthday. Nearly thirty-one years after Mr. Odom was convicted, as a teenager, for crimes he did not commit, Mr. Odom celebrated at home that evening with his wife and his mother, who was significantly weakened by then because of deteriorating health but was still sufficiently alert to cry with relief and happiness at the news of her son’s vindication.

Mr. Odom’s parole supervision and sex offender registration ended with the judge’s order of July 13, 2012. His psychological injuries, however, continued to affect him even after his exoneration. Mr. Odom was devastated when his mother died about a month later, and he felt as if there was no reason to continue living at that point. He took an overdose of pills and tried, once again, to kill himself. His suicide attempt was unsuccessful, but the pain from more than two decades of unjust imprisonment has stayed with him and, according to Dr. Shugarman, is likely to affect him for the rest of his life. In particular, Dr. Shugarman testified that Mr. Odom will most likely continue to suffer from a lack of trust in others, a fear of being wrongfully accused, a loss of optimism about the future, feelings of shame and guilt about the way he became infected with HIV, ruminations about the most horrible events of his incarceration, and frequent recurrences of depressive episodes. In testimony the court found fully credible, Dr. Shugarman described Mr. Odom’s ongoing symptoms as similar to those experienced by former prisoners of war and by persons suffering from post-traumatic stress disorder.

In November 2012, counsel for Mr. Odom served the Mayor of the District of Columbia with a written “notice of claim pursuant to D.C. Code § 12-309.” The notice was hand-delivered

to the Mayor on November 2, 2012, and a second copy was received by the Mayor, via certified mail, on November 6, 2012. The notice advised the Mayor of Mr. Odom's claim against the District of Columbia for damages under the District of Columbia Unjust Imprisonment Act and provided a detailed account of the facts underlying the claim. A claims specialist in the District's Office of Risk Management sent a letter to Mr. Odom's counsel on December 27, 2012 acknowledging receipt of the notice of claim and identifying the "event date" as July 17, 2012.

The parties have entered into several stipulations of fact consistent with the findings set forth in the "order and certificate of actual innocence" issued by the judge in the criminal case on July 13, 2012. Of particular relevance to the Unjust Imprisonment Act claim before this court, the parties have stipulated that (1) Mr. Odom's convictions for armed rape, sodomy, armed robbery, and burglary were set aside on the ground of actual innocence; (2) Mr. Odom did not commit any of the acts charged in the criminal case or any act, deed, or omission in connection with the acts charged that constituted an offense against the United States or any state, territory, or the District of Columbia, the maximum penalty for which would equal or exceed the imprisonment served; and (3) Mr. Odom did not by his misconduct cause or bring about his own prosecution.

On November 5, 2013, Mr. Odom reached a settlement of potential claims against the United States under the (federal) Unjust Conviction Act, 28 U.S.C. §§ 1495, 2513, and the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* As set forth in a formal "stipulation for compromise settlement and release of claims against the United States," the potential claims released pursuant to the settlement agreement were for damages arising from Mr. Odom's unjust conviction and incarceration for the armed rape, sodomy, robbery, and burglary of S.Y. on February 24, 1981, including but not limited to damages for "physical injuries and sickness,

personal injuries, physical illness, loss of income, and mental anguish and emotional distress.”

Mr. Odom’s settlement with the federal government was for a total of \$1,128,082.19, an amount calculated by multiplying \$50,000.00 (the maximum allowed per year of incarceration under the federal Unjust Conviction Act) times the total number of years (22.56) Mr. Odom spent in prison for his wrongful convictions. The settlement agreement between Mr. Odom and the United States expressly provided that Mr. Odom did not release, waive, or abandon any claims he may have against the District of Columbia under the District of Columbia Unjust Imprisonment Act or any other provisions of law.

ANALYSIS AND CONCLUSIONS OF LAW

The District of Columbia Council passed the Unjust Imprisonment Act in 1980 to create a legal remedy for persons suffering the “unique harm” and “tragic consequences” of incarceration for wrongful convictions of criminal offenses set forth in the District of Columbia Code. D.C. COUNCIL COMMITTEE ON THE JUDICIARY, REPORT ON BILL 3-251, THE “DISTRICT OF COLUMBIA UNJUST IMPRISONMENT ACT” (July 9, 1980) (“Committee Report”) at 2. The Council enacted the statute in the wake of the exoneration and release from prison of a man named Bradford Brown, who was determined to be innocent approximately three years after his conviction for a murder he did not commit. *Id.* at 2-3. Intended “to provide an adequate remedy” for persons unjustly deprived of their liberty due to errors in the criminal justice system in the District of Columbia, *id.* at 1, the Act “calls upon the District government to assume responsibility for the unjustified deprivation of a person’s liberty,” *id.* at 2. The Act makes the District strictly liable to qualifying claimants for “monetary compensation for harm imposed as a result of the unjust imprisonment,” *id.* at 5, with the amount of the District’s obligation to be calculated without any statutory “ceiling” or other “arbitrary” limit and “in accordance with the traditional legal

methods of assessing damages,” *id.* at 9. The Council stated: “Setting a ceiling on the amount of damages that can be awarded may serve to restrict recovery of the damages actually suffered by a person who has been unjustly imprisoned in an arbitrary fashion, and consequently is contrary to the purpose of this bill.” *Id.*

The text of the statute is brief and straightforward. The Act provides first that “[a]ny person unjustly convicted of and subsequently imprisoned for a criminal offense contained in the District of Columbia Code may present a claim for damages against the District of Columbia.” D.C. Code § 2-421. The statute then specifies the proof an exonerated prisoner must make to support his claim:

Any person bringing suit under § 2-421 must allege and prove:

- (1) That his conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction; and
- (2) That, based upon clear and convincing evidence, he did not commit any of the acts charged or his acts or omissions in connection with such charge constituted no offense against the United States or the District of Columbia the maximum penalty for which would equal or exceed the imprisonment served and he did not, by his misconduct, cause or bring about his own prosecution.

D.C. Code § 2-422. Satisfaction of the statutory requirements of proof entitles the claimant to seek compensation from the District for damages suffered as a result of the unjust imprisonment:

“Upon a finding by the judge of unjust imprisonment in accordance with the standards set by § 2-422, the judge may award damages.” D.C. Code § 2-423. The statute expressly makes punitive damages unavailable, *id.*, and excludes from the law’s reach “any person whose

conviction resulted from his entering a plea of guilty unless that plea was pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970),” D.C. Code § 2-425. Finally, the Act, which took effect on March 5, 1981, contains a limited retroactivity provision, making its remedy available to Bradford Brown and anyone else exonerated on or after June 1, 1979: “This subchapter shall apply to any person whose release from unjust imprisonment occurred on or after June 1, 1979: Provided, that the provisions of [D.C. Code] § 12-309 shall not apply to any cause of action for unjust imprisonment arising prior to the effective date of this subchapter.” D.C. Code § 2-424.

Mr. Odom contends that he is entitled to compensatory damages for all of the many harms and injuries he has suffered, and continues to suffer, as a proximate result of his wrongful conviction and unjust imprisonment. For the more than twenty-two years he spent in prison, Mr. Odom seeks damages for what he describes as “general harms” (his loss of liberty, privacy, and family relationships, including the ability to participate in the rearing of his daughter; his constant fear of sexual aggression and other physical assaults at the hands of other inmates; his loneliness, depression, and anxiety; and his heightened stress due to his actual innocence) and for what he identifies as “special harms” (his suicidal ideations and suicide attempts; the sexual and other physical assaults he suffered beyond the three sexual assaults in 1983 for which he has already been compensated; his psychosis and resulting in-patient treatment at Saint Elizabeths Hospital; and his HIV infection). For the eight years he then spent on parole, Mr. Odom seeks damages for limitations imposed on his liberty and privacy, the stigma of having to register as a sex offender, and the continuing adverse psychological and physical effects of his wrongful conviction and unjust incarceration, including his HIV infection and the side effects of its necessary treatment. For the period beginning with his exoneration in 2012 and extending into the future, Mr. Odom seeks damages for his ongoing psychological injuries and the continuing

physical effects of his HIV infection and treatment. For all three periods, Mr. Odom seeks damages for income lost as a result of his wrongful conviction and unjust imprisonment.

The District concedes that Mr. Odom's convictions have been set aside and his innocence sufficiently established to satisfy the proof requirements of the Unjust Imprisonment Act. The District nevertheless argues that Mr. Odom's claim must be rejected in its entirety due to Mr. Odom's failure to provide written notice to the Mayor of his intention to sue the District under the Unjust Imprisonment Act within six months of the date of his wrongful conviction – the point, the District contends, at which Mr. Odom's injury was "sustained" within the meaning of the District's pre-suit notice statute, D.C. Code § 12-309 (2012 Repl.). The District argues in the alternative that Mr. Odom's recovery must be limited to the periods of his actual imprisonment and, in particular, to post-sentencing periods of incarceration in District of Columbia prison facilities; that damages can be awarded only for Mr. Odom's loss of liberty, and not for the pain and suffering and other physical and emotional injuries caused by his imprisonment; that Mr. Odom may not recover damages for the intentional and criminal acts of third parties during his incarceration or for injuries and damages relating to his HIV infection; that Mr. Odom has not proved his entitlement to damages for lost income or future injuries; and that the District should receive a *pro tanto* credit against any award of damages in the amount of the \$1,128,082.19 Mr. Odom received in settlement of his potential claims against the federal government.

The court will address each of the parties' contentions in turn, with the discussion of the District's request for a dollar-for-dollar *pro tanto* credit reserved until the court has determined the total amount of Mr. Odom's compensatory damages.

Pre-Suit Notice to the Mayor

District of Columbia law makes timely pre-suit notice to the Mayor a prerequisite to the prosecution of a civil action against the District for unliquidated damages:

An action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section.

D.C. Code § 12-309. The principal purposes of the pre-suit notice requirement are “to ensure for the District a reasonable opportunity to investigate, and possibly to settle, any likely claims that might be brought against it.” *District of Columbia v. Dunmore*, 662 A.2d 1356, 1360 (D.C. 1995). Because § 12-309 “is in derogation of the common law principle of sovereign immunity,” *id.* at 1359, the statute “is to be construed narrowly against claimants,” *id.*, and compliance with its terms “is mandatory as a prerequisite to filing suit against the District,” *Hardy v. District of Columbia*, 616 A.2d 338, 340 (D.C. 1992).

The District argues that Mr. Odom “sustained” his injury within the meaning of § 12-309 back on January 6, 1982, when he was sentenced for his wrongful convictions and his unjust imprisonment began; the District thus contends that Mr. Odom’s written notice to the Mayor, received on November 2, 2012, came more than thirty years after the expiration of the six-month notice period, on July 6, 1982. Mr. Odom argues to the contrary that the notice period did not begin to run until his formal exoneration on July 13, 2012 and that his written notice to the Mayor, provided less than six months later, was timely. For the following reasons, the court concludes that Mr. Odom has the better argument.

The court begins with the language of § 12-309 and the Unjust Imprisonment Act. *See Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc) (a court interpreting a statute “must first look at the language of the statute by itself to see if the language is plain and admits of no more than one meaning.”). Although neither of the statutes expressly identifies the claimant’s exoneration (or any other event) as the point at which the six-month notice period begins to run, the language of both statutes strongly suggests it is a claimant’s exoneration and release from unjust imprisonment that triggers the claimant’s obligation to notify the Mayor of his intent to bring a claim against the District under the Unjust Imprisonment Act. Section 12-309 requires a claimant to state the “cause[] and circumstances” of his injury or damage as part of his written notice to the Mayor. This requirement, aimed at ensuring the District’s receipt of enough information “to conduct a prompt, properly focused investigation of the claim,” *Washington v. District of Columbia*, 429 A.2d 1362, 1366 (D.C. 1981) (en banc), has meaning only if it is understood to mandate a sufficient indication of the legal theory and essential facts on which the District’s liability rests. A potential claimant under the Unjust Imprisonment Act cannot satisfy this obligation of the notice statute until he has been formally exonerated, as the very essence of a claim under the Act is that the conviction for which the claimant has been imprisoned has been reversed or set aside based on a judicial or other authorized determination of actual innocence.

The reference to § 12-309 in the Unjust Imprisonment Act, moreover, falls within a provision of the statute that clearly implies the legislature’s intent to tie a claimant’s responsibility to provide notice to the District to the claimant’s exoneration and release from unjust imprisonment: “This subchapter shall apply to any person whose *release from unjust imprisonment* occurred on or after June 1, 1979: Provided, that the provisions of § 12-309 shall

not apply to any cause of action for unjust imprisonment arising prior to the effective date of this subchapter.” D.C. Code § 2-424 (emphasis added). The textual paring of the references to § 12-309 and the claimant’s release from unjust imprisonment leaves little doubt that the Council intended the six-month notice period for a claim under the Unjust Imprisonment Act to begin running at the time of the claimant’s formal exoneration.

The legislative history of the Unjust Imprisonment Act fully supports this interpretation and makes clear that the Council viewed a claimant’s release from unjust imprisonment as the triggering event for both the claimant’s cause of action under the Act and his obligation to give pre-suit notice to the Mayor under § 12-309:

Section 5 [of the bill, codified at D.C. Code § 2-424,] is a limited retroactivity provision, which permits suits by any person released from an unjust imprisonment, as defined by this bill, on or after June 1, 1979. In order to achieve this goal, this section also waives the general six month time limitation for giving notice to the District of claims of unliquidated damages for persons whose unjust imprisonment claim[s] arose before the effective date of this bill. As a result, claims by persons who were released from unjust imprisonment after June 1, 1979 and whose cause[s] of action arose before the effective date of the bill are not barred by the general time limitations contained in D.C. Code, sec. 12-309. However, this time limitation is not waived for claims by persons whose cause[s] of action arise[] after the effective date of this bill.

Committee Report at 9. It is apparent from this discussion that the Council was focused on the time of a claimant’s exoneration and release from unjust imprisonment – and not on the time of the claimant’s wrongful conviction – as the point at which an Unjust Imprisonment Act claim arises and the six-month period for providing pre-suit notice to the Mayor begins to run. *See id.*

Governing case law interpreting § 12-309 provides yet additional support for the court’s conclusion. The Court of Appeals has held, as a general matter, that the six-month notice period prescribed in § 12-309 begins to run at the point of actual injury rather than at the time a cause of

action accrues. *See Kelton v. District of Columbia*, 413 A.2d 919, 921 (D.C. 1980). Following this general rule, the Court of Appeals held in *DeKine v. District of Columbia*, 422 A.2d 981, 986 (D.C. 1980), that the notice period for a claim of false imprisonment begins to run when the claimant is unlawfully detained, not at the time the claimant is released from the unlawful detention. In *Allen v. District of Columbia*, 533 A.2d 1259 (D.C. 1987), however, the Court of Appeals examined the more pertinent question of whether pre-suit notice for a claim of malicious prosecution must be provided within six months of the initiation of the flawed prosecution, or whether the notice is timely as long as it is provided within six months of the claimant's acquittal in that prosecution. The Court held in *Allen* that it is the claimant's acquittal on the underlying criminal charge – an essential element of a claim of malicious prosecution – that activates the six-month notice period under § 12-309: “notice in writing to the District, dated less than two months *after his acquittal* on the criminal offense, was . . . timely under the terms of § 12-309.” *Id.* at 1263 (emphasis added).

Allen provides by far the most important and closely analogous ruling for the analysis here, as a claim of malicious prosecution, like a claim under the Unjust Imprisonment Act (and unlike a claim of false imprisonment), requires proof of the favorable termination of an underlying case as a necessary element of the claim. *See Morowitz v. Marvel*, 423 A.2d 196, 198 (D.C. 1980) (“To prevail in a claim of malicious prosecution, plaintiff must plead and prove four things: (1) the underlying suit terminated in plaintiff's favor; (2) malice on the part of defendant; (3) lack of probable cause for the underlying suit; and (4) special injury occasioned by plaintiff as the result of the original action.”). On the other hand, a false imprisonment claim, like the one at issue in *DeKine*, requires no such proof. *See Clarke v. District of Columbia*, 311 A.2d 508, 511 (D.C. 1973) (“The gist of any complaint for false arrest or false imprisonment is an unlawful

detention.”); 32 AM. JUR. 2D *False Imprisonment* § 7 (2007) (“The essential elements of false imprisonment are: (1) the detention or restraint of one against his or her will, and (2) the unlawfulness of the detention or restraint.”).

Finally, a reading of § 12-309 that required notice to the Mayor of a potential claim under the Unjust Imprisonment Act within six months of a claimant’s wrongful conviction would be inconsistent with the legislative purposes of both statutes. As counsel for the District candidly conceded in her closing argument, the District almost certainly would not have conducted a factual investigation or sought to compromise a potential Unjust Imprisonment Act claim had Mr. Odom sent a letter to the Mayor back in 1982 claiming he was innocent of the rape of S.Y. To the contrary, a presumptively valid criminal conviction was then in place, and there is no reason why the District would have second-guessed the jury’s guilty verdict or settled a claim that, at the time, clearly lacked legal sufficiency due to the absence of any proof of actual innocence or an order reversing or otherwise setting aside Mr. Odom’s convictions. The Unjust Imprisonment Act, moreover, is intended to advance the Council’s broad remedial purpose of “creat[ing] a civil cause of action against the District of Columbia on behalf of persons who are convicted and subsequently imprisoned for offenses which they did not commit,” Committee Report at 1 – a purpose entirely at odds with the District’s current efforts to foreclose Mr. Odom’s claim by extending the technical strictures of § 12-309 beyond their intended reach.

The court accordingly concludes that Mr. Odom’s formal exoneration on July 13, 2012 was the event that triggered the six-month pre-suit notice period under D.C. Code § 12-309 for his claim against the District for unliquidated damages under the Unjust Imprisonment Act. Mr. Odom’s letter to the Mayor of November 2, 2012 was therefore timely, and his claim is not barred by § 12-309.

Scope of Damages

As outlined above, the District has advanced a wide array of legal and factual arguments aimed at limiting the scope of damages available to Mr. Odom under the Unjust Imprisonment Act. Some of the District's legal arguments are directly refuted by the Act's legislative history, while others must be rejected based on longstanding common law principles governing tort liability in this jurisdiction. The District's factual arguments fare somewhat better, however, leading the court to conclude that Mr. Odom did not present sufficiently persuasive evidence regarding some of the legally permissible categories of damages sought.

The District argues first that damages are available under the Unjust Imprisonment Act only for loss of liberty and that Mr. Odom thus cannot seek compensation for his lost income, pain and suffering, or other physical and emotional injuries caused by his wrongful conviction and unjust imprisonment. The District contends further that the only time periods for which Mr. Odom is entitled to any damages are those in which he was actually serving his sentence and incarcerated in a District of Columbia correctional facility; the District argues, therefore, that Mr. Odom cannot recover damages for his incarceration for the period between his trial and his sentencing (September 9, 1981 through January 6, 1982), for the many years he spent in federal and state institutions outside of the Lorton Reformatory and the District of Columbia Jail, or for his continuing injuries following his release on parole in 2003 and his exoneration in 2012.

These arguments cannot be reconciled with the Council's plainly articulated intention to create a complete and adequate remedy for innocent persons proved to have been wrongly convicted of local felony offenses and unjustly imprisoned due to errors in the criminal justice system in the District of Columbia. First, the legislative history of the Unjust Imprisonment Act makes clear that the Council meant to impose no limit on the types of compensatory damages

available under the Act: “Since it is the intent of the bill to offer compensation for the tragic consequences of an unjust imprisonment, the bill does not limit the kinds of compensatory damages which may be awarded.” Committee Report at 10. The District’s contention that damages must be restricted to those based on Mr. Odom’s loss of liberty, and cannot extend to damages for pain and suffering and other physical and emotional injuries, therefore must be rejected. *See Phillips v. District of Columbia*, 458 A.2d 722, 725-26 (D.C. 1983) (holding, in a false imprisonment case, that damages for a loss of liberty – “the single fact of imprisonment, the deprivation of one’s right to move about” – are separate and apart from compensation for mental anguish and emotional distress caused by the confinement). Second, nothing in the Unjust Imprisonment Act or its legislative history suggests that the Council intended to allow recovery only for damages arising from time spent incarcerated in District of Columbia correctional facilities. To the contrary, the legislative history of the Act provides that qualifying claimants are entitled to receive “monetary compensation for harm imposed as a result of the unjust imprisonment,” Committee Report at 5, and that the amount of the compensation is to be determined “in accordance with the traditional legal methods of assessing damages,” *id.* at 9.

Those traditional legal methods focus on the rule of proximate causation – an established common law doctrine that requires a plaintiff to prove, by a preponderance of the evidence, that an act (here the claimant’s unjust imprisonment) played “a substantial part” or was “a substantial factor” in bringing about the injury or damage complained of and that the injury or damage was either a direct result or a reasonably probable consequence of the act. *See District of Columbia v. Carlson*, 793 A.2d 1285, 1288 (D.C. 2002); *District of Columbia v. Freeman*, 477 A.2d 713, 715 (D.C. 1984); *see also Butts v. United States*, 822 A.2d 407, 417 (D.C. 2003) (defining a “substantial factor” as one that “has such an effect in producing the harm as to lead reasonable

[persons] to regard it as a cause”). The District’s contentions about the time Mr. Odom spent incarcerated in correctional facilities outside the District of Columbia and his experiences while on parole and after his exoneration therefore must be rejected as well; to the extent Mr. Odom has proved that his injuries and damages in those settings and time periods were proximately caused by his wrongful conviction and unjust imprisonment, those injuries and damages are compensable under the Act.

More complex is the question whether Mr. Odom can recover damages arising from his incarceration in the District of Columbia Jail between the end of his trial on September 9, 1981 and his sentencing on January 6, 1982. The District argues that this period is not compensable because a formal judgment of conviction was not entered in the criminal case – and Mr. Odom thus was not unjustly imprisoned for a wrongful conviction – until the judge imposed sentence on January 6, 1982. Although this position arguably finds some support in the court’s rules, *see* Super. Ct. Crim. R. 32(d) (“A judgment of conviction shall set forth the plea, verdict or finding, and the adjudication and sentence.”), it is inconsistent with the legislative history of the Unjust Imprisonment Act. The Council clearly meant to preclude recovery for time spent in custody awaiting trial but otherwise appears to have intended to authorize recovery for all periods a person was incarcerated following a guilty verdict at trial. Nothing in the legislative history suggests that the Council was focused on (or even aware of) the fine legal distinction between a “conviction” by a jury at trial and the entry of a formal “judgment of conviction” at sentencing, and the legislative history strongly suggests that the Council viewed a jury’s guilty verdict as the point of conviction at which the District’s liability under the Act commences. The Council stated:

The cause of action created by this bill is limited: it does not address time spent in pretrial detention; it does not apply if a

person is unjustly convicted but is not sentenced to a form of incarceration; and it does not apply if the unjust imprisonment was a consequence of the defendant's own misconduct. Rather, this bill provides a remedy for persons who have been incarcerated for an unjust conviction, prior to an official acknowledgement that a mistake has been made, and who can prove, by clear and convincing evidence, that they did not commit the offense for which they were incarcerated or any other similarly imprisonable offense.

Committee Report at 1. Mr. Odom was incarcerated beginning on September 9, 1981 as a direct result of the jury's guilty verdict, and the court concludes it is the wrongful "conviction" by the jury and Mr. Odom's ensuing incarceration pending his sentencing hearing that triggered the District's liability here. The District conceded this point before trial and has raised it now only at the (regrettable) suggestion of the court. Because the court now sees that the District's pre-trial concession was well-founded, the court holds that the District faces liability for all damages and injuries shown to have been proximately caused by Mr. Odom's wrongful conviction and unjust imprisonment beginning on September 9, 1981.

The District argues next that Mr. Odom may not recover damages for injuries resulting from the criminal or other intentional acts of third persons or for injuries relating to his HIV infection. The District concedes that it is strictly liable under the Unjust Imprisonment Act for damages arising from Mr. Odom's loss of liberty during his incarceration but contends that the Council did not intend to supplant existing common law rules governing its liability, based on negligence, for other types of injuries and damages sustained by an inmate in a prison setting.

The court disagrees. As discussed above, the Unjust Imprisonment Act does not distinguish between damages for loss of liberty and other types of compensatory damages. Instead, the Act accepts full responsibility on behalf of the District of Columbia for the "tragic consequences" of the most profound mistakes in our city's criminal justice system, and it makes

the District strictly liable for all injuries and damages sustained by qualifying claimants as a proximate result of those mistakes. Nothing in the Act or its legislative history suggests any intent on behalf of the Council to apply the common law fault-based rules pressed here by the District, and questions of negligence and the foreseeability of intervening causes thus have no place in the court's analysis.

Moreover, the court readily finds by a preponderance of the evidence that Mr. Odom's unjust imprisonment was a proximate cause of the many sexual and physical assaults Mr. Odom suffered in prison and of his HIV infection. The court has credited Dr. Altice's expert testimony that Mr. Odom became infected with HIV during one of the rapes he endured while incarcerated at the Lorton Reformatory in 1999, and there can be no doubt, on this record, that Mr. Odom's wrongful imprisonment – and the culture of sexual and physical violence that dominated his life in prison – played a substantial part in bringing about the rapes and other assaults and the resulting HIV infection. Mr. Odom, therefore, is entitled to full compensatory damages for the special harms resulting from the many sexual and other physical assaults he suffered in prison (other than the rapes for which he has already been compensated) and from his HIV infection.

Lost Income

Mr. Odom presented the expert testimony of an economist named Dr. Richard Lurito in support of a claim for past and future lost income. Relying on census and other government data showing the earnings of fully-employed African-American males in the District of Columbia with less than a high school education, and using two different methodologies – “minimum wage” and “average earnings” – Dr. Lurito determined the amount of money Mr. Odom would have earned since September 1981 and into the future, through age 65, had he not been unjustly imprisoned. Dr. Lurito then compared that amount with Mr. Odom's actual earnings since 1981

to reach conclusions concerning Mr. Odom's lost income in three time periods: during Mr. Odom's incarceration, between Mr. Odom's release from prison and the time of the trial before this court, and between the trial and Mr. Odom's 65th birthday (in 2027). Based on Dr. Lurito's testimony, Mr. Odom seeks damages for lost income in the amount of \$670,628.00 (using the average earnings methodology) or \$521,443.00 (using the minimum wage methodology).

The District asks the court to reject Mr. Odom's lost income claim. First, the District contends that Dr. Lurito's analysis regarding the period of Mr. Odom's incarceration is fatally flawed in light of Dr. Lurito's failure to take into account the money Mr. Odom would have spent on living expenses had he been in the community and in a position to work. Second, the District contends it is impermissibly speculative to suggest that but for his imprisonment Mr. Odom would have consistently worked full-time and earned the amounts made by average or minimum-wage African-American workers without high school educations in the District of Columbia.

The District's first argument raises a difficult philosophical question: whether it is appropriate to deduct from a person's projected earnings the amount of money the person would have spent on living expenses had he not been unjustly imprisoned. Dr. Lurito concluded that estimated living expenses during the time of Mr. Odom's incarceration should not be deducted from his projected income, reasoning that it would be inappropriate to require a wrongly convicted prisoner to pay the costs of his personal maintenance in the community when the prisoner was wrongly incarcerated and thereby precluded from gaining any enjoyment from the inferred expenditures.

The court need not resolve this difficult question, because it concludes that Dr. Lurito's analysis was too speculative to support Mr. Odom's request for lost income in any of the three

time periods. The data on which Dr. Lurito relied was limited to African-American males in the District of Columbia who lacked high school educations but nevertheless worked full time. Dr. Lurito's conclusions thus took no account of the disturbingly high percentage of African-American males without high school diplomas in the District of Columbia who are, and have been, unable to find and maintain full-time employment (or any employment at all). *See, e.g.*, BUREAU OF LABOR STATISTICS, 2013 EMPLOYMENT STATUS OF THE CIVILIAN NONINSTITUTIONAL POPULATION IN STATES BY SEX, RACE, HISPANIC OR LATINO ETHNICITY, MARITAL STATUS, AND DETAILED AGE 15 (2013) *available at* <http://www.bls.gov/lau/table14full13.pdf> (showing an unemployment rate of 15.4% among African-American men actively seeking employment in the District of Columbia in 2013). Dr. Lurito conceded on cross-examination, moreover, that he had no basis to believe that the amount of Mr. Odom's actual earnings since his release from prison had been negatively affected by his unjust imprisonment. Thus, although Mr. Odom has always exhibited an impressive industriousness in seeking and maintaining employment, the court does not find by a preponderance of the evidence that Mr. Odom would have made the amounts predicted by Dr. Lurito – or any other particular amounts beyond those he actually earned – were it not for his wrongful conviction and unjust imprisonment. Dr. Lurito's testimony about the amount of money Mr. Odom would have earned had he not been incarcerated was simply too speculative, in the court's view, to support any award for lost income, past or future.

Future Injuries

Mr. Odom seeks damages extending into the future for his ongoing psychological injuries and for the continuing physical effects of his HIV infection and treatment. Mr. Odom presented no evidence at trial concerning his life expectancy, however, and the absence of any such evidence led the court to ask Mr. Odom's counsel in closing argument how a damages award for

future injuries could be determined without speculating about the length of the period of time to be covered by the award. In response, Mr. Odom filed a post-trial memorandum asking the court to re-open the record so as to take judicial notice of the United States Life Tables issued in 2014 by the United States Department of Health and Human Services. Those tables, appended to Mr. Odom's post-trial memorandum, state that an African-American male who has reached the age of 52 (Mr. Odom's age at the time of trial) has an average life expectancy of 24.5 years.

The District responded with its own post-trial memorandum objecting to Mr. Odom's request. The District argued that Mr. Odom had not shown good cause to re-open the record and that the Life Tables should be deemed inadmissible in any event without expert testimony establishing their applicability to Mr. Odom.

The court concludes, in its discretion, that it should re-open the trial record and take judicial notice of the 2014 Life Tables. The absence of expert testimony establishing the applicability of the Life Tables to Mr. Odom goes to the weight the Life Tables should receive but not to their admissibility. *See Kanelos v. Kettler*, 406 F.2d 951, 956 n.30 (D.C. Cir. 1968); *see also Charles H. Tompkins Co. v. Girolami*, 566 A.2d 1074, 1075-76 (D.C. 1989). The court, moreover, is satisfied that the District will not be unfairly prejudiced by Mr. Odom's late presentation of the Life Tables, in light of the court's statement during closing arguments that if it accepted the Life Tables after trial it would give the District an opportunity to present expert testimony establishing their inapplicability to Mr. Odom – an opportunity the District has not taken.

The court nevertheless finds, in the circumstances, that the Life Tables do not prove by a preponderance of the evidence that Mr. Odom is going to live for 24.5 more years or for any other particular length of time. Although Mr. Odom's HIV infection and elevated cholesterol are

presently controlled by medication and are unlikely ever to become life-threatening, the court has no reliable means of assessing the impact on Mr. Odom’s life expectancy of the extreme stress and psychological injuries Mr. Odom sustained in prison or of his ongoing depression and recent suicidal tendencies. Nor, on the current record, is the court able to evaluate the possibility that Mr. Odom’s life will be shortened by his increased risk of heart attack and stroke due to his HIV infection and treatment or the prospect that Mr. Odom’s HIV will lead to active tuberculosis or diabetes, the other life-threatening possibilities identified by Dr. Altice. In the end, there is nothing in any way average about Mr. Odom’s physical and psychological condition, and the court cannot simply assume that Life Tables projecting life expectancies for average people apply to Mr. Odom.

In seeking future damages, Mr. Odom had the burden of proving his life expectancy by a preponderance of the evidence. Because the court finds that the Life Tables, without more, do not rise to the requisite level of proof on this essential point, the court finds the proof lacking and concludes that the request for damages beyond the end of the trial (November 20, 2014) must be denied.

* * * * *

The Council recognized in the legislative history of the Unjust Imprisonment Act that “a monetary award cannot restore time spent wrongfully imprisoned or erase the horror of such a confinement.” Committee Report at 9. The court certainly shares this view. The court is nevertheless prepared to undertake its solemn charge under the Act of determining a damages award that fully and fairly compensates Mr. Odom for the injuries and harms proximately caused by his unjust imprisonment.

Mr. Odom lost more than two decades of his life to his wrongful incarceration. Every day, from age nineteen to age forty, Mr. Odom endured a world of deprivation permeated by sexual and physical violence and the terror it bred – a world in which he had no privacy, no control over his activities, no connection to his family and friends, and no opportunity to work or to raise his only daughter. Mr. Odom spent more than twenty-two years of what should have been the prime of his adult life behind bars for a crime he did not commit, in perpetual fear that he would be raped or otherwise assaulted by other inmates – a fear fully justified by the assaults he suffered and the seeming inability of prison officials to protect him. Dr. Shugarman was surely correct when he described Mr. Odom’s psychological suffering in prison as extreme. That suffering, minus the constant fear, then continued throughout the eight years Mr. Odom spent on parole following his release from prison, and it remained largely intact at the time of trial, more than two years after Mr. Odom’s exoneration, and more than thirty-three years after his wrongful conviction. The impact on Mr. Odom of all of the physical and psychological suffering has been truly profound. It was readily apparent to the court at trial that Mr. Odom is only a shell of the young man he was at the time of his wrongful conviction, and only a shell of the grown man he would have become had he not been wrongly convicted and unjustly imprisoned.

Mr. Odom spent a total of 8,247 days in prison (equal to twenty-two years, six months, and twenty-nine days) for his wrongful convictions. The court concludes that damages in the amount of \$1,000.00 per day, for a total of \$8,247,000.00, will fully and fairly compensate Mr. Odom for the general and special harms he suffered while incarcerated as a proximate result of his unjust imprisonment.

Mr. Odom also spent a total of 2,942 days on parole (equal to eight years and twenty days) prior to his exoneration. Given the serious and continuing nature of Mr. Odom’s

psychological injuries during this period, the court concludes that damages in the amount of \$250.00 per day, for a total of \$735,500.00, will fully and fairly compensate Mr. Odom for the harm he suffered while on parole as a proximate result of his unjust imprisonment.

Finally, Mr. Odom suffered continuing psychological harm for the 860 days between his exoneration on July 13, 2012 and the end of trial before this court on November 20, 2014. The court concludes that damages in the amount of \$200.00 per day, for a total of \$172,000.00, will fully and fairly compensate Mr. Odom for the harm he suffered during this period as a proximate result of his unjust imprisonment.

The court therefore finds, and concludes, that Mr. Odom's total damages for all compensable injuries and harms sustained in all compensable time periods are \$9,154,500.00.

* * * * *

The final matter to be addressed is the District's request for a set-off in the amount of the \$1,128,082.19 Mr. Odom received in settlement of his potential claims against the United States. The District principally argues that a failure to grant a dollar-for-dollar *pro tanto* credit would violate the common law principle that a plaintiff ordinarily may not receive a double recovery for a single injury. Mr. Odom counters by arguing that common law offset rules are inapplicable because the Council intended the remedy available under the Unjust Imprisonment Act to be independent of and not foreclosed or compromised by additional remedies available to claimants under federal law.

A "cardinal principle" of the common law in the District of Columbia "traditionally has limited the plaintiff to one recovery for a single injury: 'in the absence of punitive damages a plaintiff can recover no more than the loss actually suffered.'" *Berg v. Footer*, 673 A.2d 1244, 1249 (D.C. 1996) (quoting *Snowden v. D.C. Transit Sys., Inc.*, 454 F.2d 1047, 1048 (D.C. Cir.

1971)). The Council, however, has the power to override common law principles through legislation that “fairly express[es]” its intention to do so, *Martin v. Johnson*, 512 A.2d 1017, 1021 (D.C. 1986) (quoting *Dell v. Dep’t of Emp’t Servs.*, 499 A.2d 102, 107 (D.C. 1985)), and the legislative history of the Unjust Imprisonment Act clearly signals the Council’s intention that the remedy available under the Act be provided in addition to available remedies under federal law:

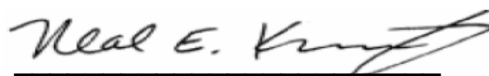
The creation of a new, local statutory remedy for unjust imprisonment is not intended to preclude a person from also seeking compensation under the more restrictive provisions of the current federal law, 28 U.S.C. secs. 1495 and 2513. This federal law, which was enacted in 1948, provides for the recovery of up to \$5000.00 in damages by persons “unjustly convicted of an offense against the United States and imprisoned”, a category which arguably includes D.C. Code offenders.

Committee Report at 5; *see also Richardson v. Green*, 528 A.2d 429, 430 (D.C. 1987) (relying on the legislative history of the District of Columbia Probate Reform Act to determine that the Council intended to abolish the common law doctrine allowing the non-judicial disposition of certain decedents’ estates). Congress has subsequently increased the amount of damages available under federal law (to the \$50,000.00 annual limit Mr. Odom received in his settlement with the United States), but the Council has never amended the Unjust Imprisonment Act to require a set-off or otherwise to curtail the unlimited damages made available under the Act at the time of its enactment. Indeed, as Mr. Odom points out in a post-trial memorandum, several members of the Council have introduced bills in recent years aimed at amending the Act to require a set-off or impose a limit on the amount of damages a claimant can recover from the District, but none of the amendments proposed in the bills has passed or even advanced in committee. The court therefore concludes that the District’s request for a *pro tanto* credit must be denied.

CONCLUSION

For the foregoing reasons, the court will issue a separate order entering a final judgment in favor of Mr. Odom and against the District of Columbia in the amount of \$9,154,500.00. *See* Super. Ct. Civ. R. 58.

Dated: February 27, 2015



Neal E. Kravitz, Associate Judge
(Signed in Chambers)

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