

LETTERS TO THE EDITOR

Paying Court-Ordered Damages for Free Speech

A January 21 editorial in The Washington Post commented upon the award of approximately \$10,000 each to 1,200 people illegally arrested on the Capitol steps on May 5, 1971. The editorial stated that the award was excessive, and that it was wrong for the taxpayers to be burdened with its cost.

We disagree. We believe the award was moderate, not excessive, and that government must be held financially accountable when it violates its citizens' rights.

The jury gave \$7,500 to each person arrested for violation of his/her First Amendment rights of free speech, assembly, and right to petition the government; \$500 for cruel and unusual punishment; \$50 for malicious prosecution, and additional amounts on a sliding scale based upon the length of detention.

The sworn testimony about detention removes any doubt that the awards over the basic \$7,500 were minimal. There were graphic accounts of no water, no toilets, no food, no medical care; people kept outdoors in 30-degree temperatures with no blankets, or jammed indoors 20 people to a two-person cell. Judge James Belson, who visited the detention centers, held that they "grossly violate minimum standards . . . the petitioners are experiencing cruel and unusual punishment."

What seems to trouble **The Post** is the award for First Amendment violations. After all, **The Post** implies, nobody was *really* hurt. First Amendment rights are fine for editorial salutes, but not when it comes to awarding hard cash for their violation.

The law, however, sets a higher value on constitutional rights than **The Post**. The law has always compensated for intangible injuries, which is why, for example, persons falsely arrested in department stores have frequently recovered verdicts from \$5,000 to \$50,000. Clearly, greater compensation is appropriate for violation of our most sacred constitutional rights. In scores of cases, where \$10,000 minimum damages must be shown to establish fed-

eral jurisdiction, the courts in this and other jurisdictions have repeatedly ruled that violation of constitutional rights — by itself — is sufficient to establish that minimum. They recognize that violation of constitutional rights is as grievous an injury as violation of our persons, and that moreover the injury to the individual victim echoes in each of us.

The Capitol steps arrests were especially outrageous, and its victims especially deserving of substantial damages. The police sanctioned the meeting in advance. The audience was there by invitation of their congressional representatives. The meeting was peaceful. It was a classic example of "the right of the people peaceably to assemble and to petition the government for a redress of grievances." The arrest of the audience served no law enforcement purpose. Its sole effect was to stifle free speech.

The **Post** says that it is troublesome that D.C. taxpayers will have to pay the bill. We agree. From the beginning the federal government directed the police Mayday operation: Attorney General Mitchell called the pre-Mayday strategy meetings; John Dean, representing the White House, sat in; Assistant U.S. Attorney Will Wilson took charge of the processing and detention of those arrested; Justice Department lawyers stood at the elbow of the D.C. prosecutor in court. The federal government was responsible for the illegalities of Mayday and should pay, not the D.C. government.

But having said that, we reject the general proposition that taxpayers should not be burdened with the government's mistakes:

Assessing damages is an essential way of calling government to account. To say that government should not pay damages when it pollutes the water, or runs a citizen down in a government vehicle, or beats a citizen up in a police station, is to say that government is free to commit crimes against its citizens with impunity.

To say that damages awards should be kept small because of the burden

on the taxpayer, is to impose a lower standard of justice on government than on a private wrong-doer.

Yes, the people must pay for the government's wrong-doing because the people *are* the government. That is the burden of democracy. Democracy's benefit is that the people can decide they will no longer tolerate the wrong-doing of their government and elect a new one.

In this case, the jury's award will ultimately save the taxpayers incalculable millions. The police of this city, or any other American city, will no longer engage in illegal mass arrests — arrests which place huge financial and administrative burdens on our system of justice. The importance of that deterrence cannot be underestimated. Following Mayday, Nixon administration officials urged the country's police departments to follow its example. D.C. Police Chief Wilson stated that he would not hesitate to employ the same techniques again.

Finally, a word about **The Post's** own attitude about Mayday. It is true that **Post** editorials made some belated and muted comments about illegal police actions during Mayday, but the overwhelming impact of its comment was praise for the police — their "forbearance," "skill" and "discipline." We noted no editorial in which the police actions were condemned as being "excessive" or "wholly out of proportion, grotesquely so," as was the verdict in this case.

We believe that the judgment of history will more closely agree with the verdict of the New York Times:

"The Bill of Rights got a boost this week. . . . If the Mayday ruling stands, the financial bite it has given the Bill of Rights may prove to be an effective, if unorthodox guarantor of constitutional liberties."

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