JUDICIAL BIAS IN THE J-6 CASE OF USA V. VINCENT GILLESPIE

(Prepared by Vincent Gillespie. Revised October 5, 2025.)

I am a “J-6er.” (U.S. District Court Case # 22-cr-00060.) I was a prisoner at the Fort Dix federal prison for almost 20 months, from 5/31/2023 to 1/20/2021, when I got pardoned by President Trump. This article discusses judicial bias and impropriety in my case. My judge, Judge Beryl Howell, was very biased against me; and this turned my trial into a “kangaroo court.” The following discussion explains a little about my case and presents some examples of her biased conduct:

Factual background

On 1/6/2021 I drove to Washington, D.C. (from Massachusetts, where I lived) with two friends and an acquaintance: to show some support for President Donald Trump at a time when I knew that he was under siege and the election was getting stolen; to listen to his speech; and to take a short vacation from my usual work and routine. (I generally do not watch TV and did not know until after 1/6/2021 that the election certification process was going on.)

I arrived at the area of the Capitol Building at about 3:30 p.m., after most or all of the events in which other protesters had entered the building had ended. While I was there I saw a commotion in the "tunnel” (an entranceway in the middle of the west side of the building) and I decided to join in. When I got into the tunnel (at 4:11 p.m.) I saw that there were protesters trying to get past a police line and into the building. I then also tried (unsuccessfully) to do the same. I did scuffle with police in the process but I did not hurt anyone, and I had no intention of doing so. (I never got into the building.)

My intention was simply to get past the police line and into the building (with some other Trump supporters) to protest and draw the public's attention to the fact that the 2020 election was getting stolen. Again, I had no intention of hurting anyone.

The actual actions I took for which I was prosecuted are the following: (1) I tried, unsuccessfully, to rush through a police line (while holding a police shield in front of me to protect my eyes from pepper spray) (2-3 seconds); (2) I pulled on an officer's arm to try to get him away from the police line in the hope that the line would break down and we protesters

could get into the building (7-8 seconds); and (3) I, along with many other protesters, pushed against the police line (several minutes).

I was arrested (on 2/18/2022) and charged with:

Count 1: 18 U.S.C. § 111(a)(1) (Assaulting, Resisting, Opposing, Impeding, Intimidating or Interfering with Certain Officers);
Count 2: 18 U.S.C. § 231(a)(3) (Civil Disorder);
Count 3: 18 U.S.C. § 1752(a)(1) (Entering and Remaining in a Restricted Building or Grounds);
Count 4 18 U.S.C. § 1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds);
Count 5: 18 U.S.C. § 1752(a)(4) (Engaging in Physical Violence in a Restricted Building or Grounds);
Count 6: 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building);
Count 7: 40 U.S.C. § 5104(e)(2)(F) (Act of Physical Violence in the Capitol Grounds or Buildings); and
Count 8: 18 U.S.C. §§ 1512(c)(2) & 2 (Obstructing an Official Proceeding).

After a jury trial I was convicted of Counts 1, 2, 5 and 7. (Counts 1 and 2 are felonies; Counts 5 and 7 are misdemeanors.) The jury hung on the other counts (and the prosecution opted not to retry me on them). Using several erroneous sentencing enhancements Judge Howell sentenced me to 68 months in prison plus fines totaling $27,235.

Biased action # 1:
Judge Howell changed the intent standard for Count 1 when the trial was almost over

Regarding Count 1 (Assaulting, Resisting, Opposing, Impeding, Intimidating or Interfering with Certain Officers), there is conflicting case law on the question of whether or not that charge requires an intent to injure (or threaten) in order to convict (as “assault”

generally does).[1] About three weeks before the trial my attorney and the prosecutor agreed that an intent to injure would be required for Count 1 in the jury instructions and they agreed to include language to that effect in the Joint Pretrial Memorandum. Knowing this, my attorney and I went ahead with a defense based largely on the premise that I had had no intent to injure. And this was the defense we presented at trial. (i.e., in my testimony I admitted to physically contacting officers but also testified that I had had no intent to injure anyone.)

But then, when the trial was almost over, Judge Howell announced that she would probably be changing the intent standard so that an intent to injure would not be required in order to convict (which made it much easier to get a conviction). All the witnesses besides me had already testified and I was the last witness and my testimony was over 80% finished. For Judge Howell to change the intent standard at that point was utterly unfair. My attorney emphatically protested and moved for a mistrial. But Judge Howell stood by her position and refused to grant a mistrial, and she went ahead and changed the intent standard. (See discussion about all this in Exhibit 1, the trial transcript dated 12/22/2022 9:03 a.m.; p. 35, line 14 to p. 45, line 3.)

If I had known that no intent to injure would be required I would never have agreed to proceed with the defense I used. Instead I would surely have conducted my defense very differently. For example, I would probably have done one or more of the following:

(1) I would probably have used the Necessity Defense.

(2) I would probably have introduced evidence showing that the 2020 election was, in fact, rigged.

(a) This evidence was of crucial significance because the entire massive program of the DOJ prosecuting J-6ers has been based on the premise that the election was not rigged and that the J-6ers were just "sore losers." Thus, evidence showing that

[1] USA v. Warnagiris, 2023 U.S. Dist. LEXIS 187584 at 20-21 (D.D.C. 2023) ("Two courts of appeals have held that assault [which includes an intent to injure or threaten] is always a necessary element for an offense under Section 111(a)...[fn omitted]"; "...a plurality of courts of appeals have concluded that assault is not a necessary element for any of Section 111(a)'s offenses [fn omitted]"; and "[t]he Second Circuit has taken a middle ground...[fn omitted]"). USA v. Anthony Neil Jim, 865 F.2d 211, 213 (9th Cir. 1989).

the 2020 election was, in fact, rigged, if properly presented, would have been (in my opinion) of pivotal importance.

(b) However, I allowed my attorney to talk me out of introducing this issue partly because I felt confident in my defense because I believed an intent to injure would be required.[2]

(3) I would probably have made a much greater effort than I did to find evidence to corroborate my testimony about the fact that I had helped an (apparently) injured police officer during the melee.

(a) While preparing for trial I was having difficulty in finding audio or video evidence to corroborate this part of my story. Partly because I believed that an intent to injure would be required (and since I knew I had had no intent to injure) I felt fairly confident in my defense and I stopped searching for this evidence (and did not present it at trial).

(b) After the trial and conviction, while I was in prison, I (working with a friend outside prison) was able to find several videos with audio recordings which corroborated my testimony on that incident. If I had had this evidence in the trial it might have significantly and favorably affected the jury's view of me and verdict. (These files can be listened to at: vincentgillespie.com.)

(4) I might have made sure that Officer Paul Riley was cross examined more thoroughly than he was.

(a) Prosecution witness Sergeant Paul Riley, a D.C. Metropolitan P.D. Police Officer (the officer whose arm I had pulled on for 7-8 seconds), testified in my trial and made a number of false allegations about me. For example, he testified that I had hit police officers with sticks and my fists.[3] These allegations are completely false.

(b) But my attorney did not challenge most of Officer Riley's false claims. All of my

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[2] At trial, without giving me any notice at all, my attorney, during direct examination, did ask me why I believed the election was rigged. But because I did not expect to address this I was not adequately prepared and did not answer anywhere near as well as I could and should have.

[3] See Exhibit 3, the 12/20/2025 transcript: p. 154, lines 10-12; and p. 155, lines 9-11.

(Also note that: on p. 155 (and elsewhere) of that transcript Officer Riley accuses me of having tried to pull him into the crowd. This is 100% false and there is no significant evidence to support this allegation of his.)

interactions with Officer Riley and most of my actions for the entire time that I was in the tunnel were recorded on video. Thus, on cross examination Officer Riley could easily have been confronted with the discrepancies between his false allegations about me and the videos. He would not have been able to provide a good answer.

(c) But by the time Judge Howell changed the intent standard Officer Riley's testimony was over and he had been released as a witness. If I had known in advance that no intent to injure would be required then I would probably have felt more vulnerable and been more attentive to Officer Riley's false allegations and there is a good chance I would have told my attorney to challenge them on cross examination. This would have shown the jury that he had made false allegations about me and that might have affected his credibility and the verdict.

(5) I might have utilized my constitutional right to remain silent.

And I would surely have done many other things differently for my defense if I had known that no intent to injure would be required to convict. And my attorney made a similar statement to Judge Howell. He said: “And simply, I would certainly have done things much differently had I known that the [jury] instruction was going to be changed on – (inaudible) – or that the instruction was going to be different.” (Exhibit 1, the trial transcript dated 12/22/2022 9:03 a.m, p. 37, lines 17-20.)

So Judge Howell's ruling (on the intent standard for Count 1) effectively tricked me (and my attorney) into relying on a defense that would disappear at the last minute; and I (and he) sort of got tricked out of using any of the above options as part of my defense. The point is that I was greatly harmed by the outrageous decision of Judge Howell's in my case to change the intent standard at the last minute.

Biased action # 2:
Judge Howell gave a very misleading answer relating to the intent standard for Counts 5 and 7 in response to a jury question

Another biased (verbal) action of Judge Howell's is as follows:

The conviction for Count 5 (Engaging in Physical Violence in a Restricted Building or Grounds), and possibly also that for Count 7 (Act of Physical Violence in the Capitol Grounds or Buildings), were induced by Judge Howell through a very misleading answer that she gave to a question from the jury about the intent standard required to convict on Count 5.

The jury instructions provided the following definition for "act of physical violence" (which applied to Counts 5 and 7[4]):

> The term "act of physical violence" means any act involving an assault with intent to harm or injure or other infliction of death or bodily harm on an individual or damage to or destruction of real or personal property.
>
> (Ibid., p. 111, lines 3-6.)

This definition can be divided into three sections (which will be referenced below). Section 1: assault with intent to harm or injure. Section 2: other infliction of death or bodily harm. Section 3: damage to or destruction of property. (i.e., any one of these three sections could constitute an "act of physical violence" in this definition.)

I had repeatedly testified that I had had no intent to injure anyone.[5]

During jury deliberations the jury sent the following questions to Judge Howell:

> We have a question on Count 5:
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> [Question 1:] Does an act involving "intent to harm" also apply to "infliction of bodily harm?"
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> [Question 2:] That is, does he need to have intended to commit bodily harm to be found guilty?
>
> [Question 3:] And does bodily harm include emotional trauma?
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> (Exhibit 4, the jury questions dated 12/23/2022 at 10:47 a.m.)

By inference we can see that these questions show the following: The jury was seeking to convict me on Count 5 but they were blocked from doing so because the definition of "act of physical violence" explicitly required an intent to injure for the first section of that

[4] See Exhibit 1, the 12/22/2022, 9:03 a.m. transcript: p. 110, lines 9-10; p. 111, lines 3-6; and p. 113, lines 18-20.

[5] See: Exhibit 2, the 12/21/2022 transcript: p. 238, line 20 to p. 239, line 2; p. 239, line 20 to p. 240, line 17; p. 240, line 25 to p. 241, line 20; p. 244, line 4 to p. 245, line 18; p. 249, line 4 to p. 250, line 4; p. 252, lines 14-20; and p. 260, lines 22-24.

definition, the assault section. Thus, the jurors were asking Judge Howell if they could convict me under the second section, the “other infliction of ... bodily harm” section; they were asking if they also needed an intent to injure for that section of the definition (as they did with the first section) in order to convict. (Judge Howell described this scenario similarly.[6])

In a discussion out of the presence of the jury Judge Howell proposed that she answer jury question # 1 by saying just "No."[7] My attorney strenuously and extensively objected.[8] He said: “How can we say no and not be more confusing about it?”[9] He urged Judge Howell to instead simply reread the definition of “act of physical violence” to the jury.[10] But over his objections Judge Howell answered the first question by saying only “No.”[11] (She did not answer question # 2. [Source: see fn # 11.])

This was very misleading because it could have led (and, I believe, did lead) the jury to think that they could convict under the second section of the definition (of “act of physical violence”), the “other infliction of death or bodily harm” section, even though I had not caused death or bodily harm.

In essence the jury was asking something like the following:

> We know we cannot convict under section 1 of the definition of “act of physical violence,” the assault section, because it states that an intent to injure is required. But what about section 2, the “bodily harm” section? Do we need an intent to injure (or commit bodily harm) in order to convict under that section?

And Judge Howell answered by saying simply: “No.” This was very problematic because it could have easily been construed by the jury as the judge saying (in essence) something like the following:

> No, you don’t need to worry about any intent to injure with the “bodily harm” section of the definition. You can go ahead and convict under that section.

In other words, Judge Howell’s answer could have simply sounded like a green light to go ahead and convict me under section 2 – *even though I had not caused death or bodily harm.*

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[6] See: Exhibit 5, the 12/23/2022 transcript, p. 16, line 18 to p. 17, line 5.
[7] Ibid., p. 18, line 22 to p. 19, line 2.
[8] See the entire discussion on this at: Ibid., p. 10, line 15 to p. 20, line 1.
[9] Ibid., p. 18, lines 8-9.
[10] Ibid., p. 10, lines 21-22.
[11] Ibid., p. 21, lines 17-25.

A clearer and less confusing answer (than simply “No”) which Judge Howell could have provided to the jury would have been something like the following:

> No, you don't need an intent to injure in order to convict under the “other infliction of death or bodily harm” section of the definition of “act of physical violence.” However, you can only use that section if you find that the defendant caused death or bodily harm.

Such an answer would have indicated to the jury that they could not convict under that section of the definition. But Judge Howell did not provide such an answer. And, I believe, the answer she did provide (just "No") misled the jury into convicting me on Count 5 (and possibly also on Count 7, which is similar).

In my view Judge Howell’s very misleading answer to this jury question reflects her strong bias against me; and that she tried to make sure that the jury would convict me.[12]

Biased action # 3:
Judge Howell refused to allow important voire dire questions

As discussed above, on 1/6/2021 I did scuffle with officers (although I had no intent to injure, I did not injure anyone, and my actions were unlikely to have done so). Some people (potential jurors) have complete bias against anyone who even touches an officer. Therefore, we (my attorneys and I) sought to ask voire dire questions which would identify such jurors.

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[12] Some additional comments relating to my alleged “violence:”

Perhaps the reader will think that even if my trial was unfair, the acts that I acknowledged doing (in my testimony and above in this letter) constitute a “crime of violence” - I “put my hands on a cop” - and therefore I was properly convicted.

My response:

While I did scuffle with police I believe my intentions were good. If our fundamental and constitutional right to elect our leaders gets negated (with a rigged election) the consequences for our country could be dire. I was endeavoring, on 1/6/2021, to stand up for the rule of law and the welfare of the country. And once again, I had no intention of harming anyone.

Furthermore, I would argue that my actions on 1/6/2021 were not “violent.” The Supreme Court stated that “...violent force ... is ... force capable of causing physical pain or injury to another person.” Johnson v. United States, 559 U.S. 133, 140 (2010). As far as I know I did not cause physical pain or injury to anyone on 1/6/2021.

Also, a felony conviction under 18 U.S.G. § 111(a)(1) (Assaulting, Resisting, Opposing, Impeding, Intimidating or Interfering with Certain Officers) - Count I in my case, the most serious charge I was convicted of - is not considered to be a violent crime under the Armed Career Criminal Act ("ACCA"). United States v. Ama, 684 Fed. Appx. 736, 742 (10th Cir. 2017) (“...because mere forcible contact suffices to sustain a conviction for a § 111(a) felony, and forcible contact does not necessarily rise to the level of physical force as defined in Johnson I, a felony conviction under § 111(a) is not a violent felony under the ACCA.”)

So in my view my actions on 1/6/2021 were not “violent.”

For example, proposed voire dire question # 7 asked the following: “Would learning the fact that someone used physical force against a law enforcement officer make it difficult for you to be a completely fair and impartial juror in this case?” (Exhibit 6, The 12/2/2022, 10:58 a.m. transcript, p. 40, lines 17-22.)

Judge Howell refused to allow this question (as well as the other three proposed voire dire questions which sought to weed out this type of bias). She stated the following:

> "THE COURT: Do you think that would be -- that would make them, you know, an inappropriate juror? Because it's like saying, I mean, do you -- would learning the fact that someone murdered another person, do you think that that would -- if you feel that that's illegal, would that make it difficult for you to be fair and impartial? I mean, like, what kind of question is that? That is nuts. I am not going to ask that question."
>
> (Ibid., p. 41, lines 15-22.)

Judge Howell was implying here that it was just as obvious: (a) that if someone committed murder his action would be illegal; as it would be (b) that if someone touched an officer he would (automatically) be guilty. (This is false, as there are some scenarios in which one could touch an officer without being guilty of the charges I was charged with.) In rejecting our proposed voire dire questions she was expressing just the type of bias that the questions were intended to weed out. (The full discussion between Judge Howell and my attorneys about all four of the voire dire questions which my attorneys wanted to introduce to identify this type of bias can be reviewed at: Ibid., p. 37, line 25 to p. 42, line 7.)

Thus, Judge Howell’s bias against me in my case led her to refuse to allow us to use several important voire dire questions and this may have compromised the impartiality of the jury in my case.

Conclusion

Judge Howell was very biased against me which helped to make my trial very unfair.

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EXHIBITS

List of exhibits

Exhibit 1 The trial transcript dated 12/22/2022, 9:03 a.m.

Exhibit 2 The trial transcript dated 12/21/2022.

Exhibit 3 The trial transcript dated 12/20/2022.

Exhibit 4 The jury questions dated 12/23/2022 at 10:47 a.m.

Exhibit 5 The trial transcript dated 12/23/2022.

Exhibit 6 The trial transcript dated 12/2/2022.