MUST READ… A Thousand Years of Prison Time Over A 6-Hour Delay of Congress: January 6 Show Trials Now Represent The Gravest Injustice In U.S. History

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Civil liberties leaders like ACLU and Amnesty International are silent.

GUEST POST: By Roger Roots, J.D., Ph.D.

Every student of the First Amendment knows about the infamous Alien and Sedition Acts, the Palmer Raids of World War I, the persecution of the Chicago 7, crackdowns on anti-war movements, and the FBI's infamous COINTELPRO abuses and surveillance of Martin Luther King and the Black Panthers.

But the single greatest mass infringement on fundamental First Amendment freedoms *is happening right now*. And the civil liberties establishment, which rakes in millions annually parroting the civil rights talking points of the 1970s, has turned its back on the greatest mass political persecution in American legal history: the railroading of January 6 defendants.

As these words are written, the US District Court for DC is approaching a grim milestone. Sometime in the next few weeks, a total of *a thousand years of prison time* will have been handed out to J6ers. January 6 injustices are eclipsing all other American legal disgraces of the past.

I myself am a J6 criminal defense attorney who has written hundreds of motions and participated in eight J6 jury trials. Although I have a comparatively winning record among other J6 defense lawyers—measured by total counts defeated adversely—I and my co-counsels have nonetheless lost every case.

After three years of litigation, the conviction rate for J6ers is 100 percent before juries; and 99.5 percent-plus before judges. This may go down as the very highest conviction rate for any specific category of criminal case in any court venue in history. The DC venue does not offer fair trials for opponents of the government who are deemed to be conservative, rightwing, or Republican.

The average prison sentences for J6ers are by far the longest in American history associated with rioting or demonstrating. Prison sentences associated with the Civil Rights movement, anti-war riots, labor demonstrations, or Red Scares don't even come close.

None of the Civil War's Confederate leadership served as much prison time as an average J6er who simply pushed against a police riot shield outside the Capitol on January 6. (Jefferson Davis himself served only two years.)

The longest prison term stemming from the infamous Alien and Sedition Act prosecutions of the 1790s—which every law student learns were the most tyrannical abuses of speech and political expression in early America—was 18 months. **The longest term served by Black Panthers who chased out the California legislature from the State Capitol with assault weapons in 1967 was one year in jail.**

Compare Eugene V. Debs' ten-year prison sentence handed down in 1918 for sedition, to the 22-year prison sentence of Proud Boy leader Enrique Tarrio for seditious conspiracy stemming from January 6. Debs' sedition conviction involved claims that Debs' anti-war speeches undermined America's military preparedness during World War I. (Note that President Harding commuted Debs' sentence in 1921.)

Today, civil libertarians regard Debs' conviction as a stain on the history of the First Amendment. But Enrique Tarrio wasn't even at the Capitol on Jan. 6; he was watching the events on the news from a Baltimore motel room. Prosecutors cobbled together a "sedition" case from Tarrio's social media posts and texts decrying 2020 election improprieties and generally praising the mass uprising on January 6. (Tarrio did not testify but later said the DOJ originally offered to release him if he would just say the Proud Boys attacked the Capitol upon Trump's instructions.)

Nothing—literally nothing—in the evidence linked the Proud Boys to any definitive or detailed planning behind the chaotic breach of the Capitol on Jan. 6. Ethan Nordean, the highest-ranking Proud Boy at the scene, merely led followers in a rambling march around the Capitol while drinking a can of Pabst Blue Ribbon. Nordean later entered the Capitol reluctantly, via a wide open door, after hundreds of others were already in. Nordean is now serving 18 years.

The same is true with Stewart Rhodes and the Oath Keepers. **Rhodes is serving an 18-year prison sentence for seditious conspiracy despite never going in the Capitol and urging followers not to go inside.** The Oath Keepers, in fact, provided actual security for speakers at Trump's rally earlier in the day—in coordination with the Secret Service—on the

morning of January 6. But the Secret Service texts on January 6, including texts regarding the finding of pipe bombs at buildings adjacent to Capitol Grounds, have mysteriously gone missing.

One J6er got 14 years for picking up a discarded spray container and test-spraying it. Another J6er, literally dying of cancer, was given 10 years for spraying pepper spray toward officers. The kind of pepper spray that can be purchased at 7-11, over the counter. Jacob Chansley was given 40 months for the crime of demonstrating in the Capitol while wearing a strange costume.

These long prison sentences for J6ers are derived by applying math tricks to the sentencing guidelines. Judges stack enhancement upon enhancement to arrive at stratospheric sentences, even for first-time offenders. For example, judges applied ridiculous “terrorism enhancements” to the Proud Boys and Oath Keepers by pointing to instances of property damage—such as the breaking of a window or the bending of a decorative fence—and then attributing such property damage to “intimidation or coercion.” Several Proud Boys, such as Tarrio and my client, Dominic Pezzola, didn’t even touch the fence they were accused of destroying; but jurors convicted them on strained “aiding and abetting” theories. (Tarrio was some 40 miles away at the time.)

Journalist Steve Baker has documented that prosecutors and government witnesses committed blatant perjury at Rhodes’ trial, and even presented false evidence that Oath Keepers terrorized a black officer inside the Capitol. But rather than investigate such perjury, the Department of Justice chose to charge Baker, the investigative journalist, with crimes.

Mainstream news media dutifully reports these exorbitant prison sentences as if the judges are being lenient to J6 defendants for issuing sentences below prosecutors’ recommendations or “the Guidelines.” Readers are left thinking Guideline ranges are calculated mechanically. The Guidelines do not dictate precise sentences but direct users to apply analogous sentences to crimes that aren’t specified in the manual. In every J6 case of disorderly conduct (a misdemeanor not specified in the manual), judges and prosecutors have applied a guideline range that applies to assaulting officers (a felony). And many judges punish J6 defendants with “obstruction of justice” enhancements if the defendants dare to testify in their own defense but are later (almost inevitably, given the venue) convicted.

Almost everyone who even touched a cop or pushed against a police shield on Jan. 6 is charged with assaulting a federal officer. After their near-certain convictions, these J6ers find their sentences are enhanced or designated as aggravated assault for sentencing purposes, upon a theory that they selected their “victim” due to his “official status” or committed the crime with the “intent to commit another felony.” Dozens of bogus assaulting-officers-with-deadly-and-dangerous-weapon convictions are based on acts such as spraying utterly nondeadly pepper spray or tossing a traffic cone or a plastic water bottle. One J6

participant named Ronald McAbee was even convicted of assaulting cops with a “deadly and dangerous weapon” for wearing biker gloves with reinforced knuckles—despite never punching anyone with the gloves.

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The cruelty of prosecutorial vindictiveness against J6ers has totally evaded the attention of America’s civil liberties establishment. Neither ACLU nor any other organization purportedly fighting injustice has bothered to notice. **At least sixteen J6ers who rejected government misdemeanor plea offers regarding their misdemeanor charges found themselves suddenly charged with felonies as punishment.** These superseding indictments frequently land immediately prior to the expected misdemeanor trial; accompanied by prosecutors’ insistence on no continuance of the trial date for the defendant to prepare against the new charges.

The DC jury pool is the most extreme pro-government jury pool in the United States, if not anywhere outside North Korea. DC residents vote for Democrats more than 90 percent of the time. Recent polling shows that almost half of DC residents think “life imprisonment or death” would be “a fair punishment” for J6ers. Almost 70 percent of DC residents believe “anyone who participated in the events” should serve hard time in prison.

This is while the rest of the country has softened discernably regarding J6ers. A USA/Suffolk University poll conducted at the 3-year anniversary of the event found that just 48 percent of nationwide voters said they thought the rioters were “criminals,” a significant drop from a survey conducted just after January 6.

Prosecutors know they can indict and convict a ham sandwich in DC (so long as they label the sandwich a Republican). I recently tried a J6 case involving a DC Metro cop who grabbed my client’s tiny fiberglass flagpole, maliciously broke it in two, and cut his finger on the fiberglass. My client is now jailed for “assaulting a federal officer, causing bodily injury”—one of the most serious charges in the U.S. Criminal Code, awaiting sentencing. The bodycam footage clearly showed the officer holding the flagpole between his two hands when he broke it.

I previously tried another case where a J6er excitedly spoke into his cell phone during a Facebook live stream, things such as “We’re storming the Capitol!” and “They can’t stop us!” while walking outside the building. Likely, no one around him could have even heard his statements; and a government official admitted that no one inside the building could have possibly heard the remarks. Nonetheless, the client was convicted of “obstruction of an official proceeding” and now awaits sentencing (up to 20 years).

Normally, this lopsided imbalance would provoke judges to step up to protect the rights of defendants. But in the cases of January 6 defendants, the judges have generally joined forces with prosecutors to maximize convictions and sentences. For example, J6 judges have fundamentally altered the basic law of pretrial detention and bail in J6 cases to detain more J6ers before trial. Several DC federal judges have used their benches as pulpits from which to denounce J6ers as insurrectionists and condemn “conspiracy theories” about covert government planning on January 6.

“Conspiracy theories,” at least such theories that challenge government narratives, are never, ever, ever, given any hearing in the District Courts of D.C. Any questions about the elusive pipe bomb “investigation,” or the presence of hundreds of undercover government agents among the rioters are strictly forbidden. Prosecutors object instantly whenever a defense lawyer asks about such things; and judges immediately sustain the objections.

Some of the most important instigators of the Capitol breach on Jan. 6 have never been apprehended, despite their features being plainly visible to millions on widely circulated videos. The fact that Vice President-Elect Kamala Harris was at DNC Headquarters near the “pipe bombs,” instead of the Capitol, at the most crucial moments of January 6, was kept top secret for almost a year after the event. Hundreds of indictments—which falsely said Harris was in the Capitol—had to be rewritten. This means that hundreds of grand jurors were lied to or misled; and that grand juries had to be recalled and re-instructed, at a likely cost of millions of dollars. The public still has not been provided any explanation.

By now it is obvious even to members of Congress that the “pipe bombs” were actually some type of blown sting operation or undercover FBI or Secret Service false-flag operation. But every question about the episode goes unanswered. Long ago the FBI released video of the “pipe bomber” that was deliberately grainy—at a frame rate slower than any video camera sold at WalMart. The FBI director told Congressman Massie that it was unable to track the “pipe bomber’s” cell phone because the phone’s signal was “corrupted.”

January 6 prosecutions have shattered boundaries of normalcy regarding criminal justice. Pre-dawn raids with flash-bang grenades and armored vehicles had never previously been used for misdemeanor arrests. In fact, almost no retiree of the FBI remembers the agency ever actually arresting anyone for misdemeanors. In the past, such petty charges were generally initiated by citations.

For J6 investigations, the FBI has employed the largest and most open-ended search warrants in history—so-called “geo-fence” warrants which compelled Google, AT&T, Verizon and other cell service providers to disclose location data of every cell phone near the Capitol on that day. These were essentially the largest general warrants in human history; based on the premise that anyone who showed up should be investigated for a crime—to be determined later.

Mentioning the First Amendment is Prohibited.

Prosecutors file motions to forbid mentioning the First Amendment prior to every trial. Judges grant the motions almost summarily. Prosecutors then use the judges' orders as an offensive weapon. I recently tried a J6 case where a prosecutor repeatedly assured the jury during closing argument that the defendant was "not" protesting. (The judge's pretrial ruling was that the defendant's actions such as holding a flag and chanting political slogans had no constitutional protection whatsoever and that the defendant was only at the Capitol to attack, terrorize, obstruct or disrupt.) So the prosecutor knew that she could falsely tell the jury that my client "was not" protesting while the defense could not tell the jury that the client "was" protesting.

Similarly, federal prosecutors are able to introduce any of a J6 defendant's social media posts about 'stopping the steal' as evidence of the defendant's corrupt intent to "overturn" an election; but defendants are prohibited from introducing other social media posts showing their good faith basis for their beliefs.

January 6 prosecutors and judges assert that J6 defendants forfeited all their First Amendment rights by breaking petty rules relating to trespassing or disrupting sacred government proceedings. Long-settled First Amendment decisions by the U.S. Supreme Court have been cast aside. For example, in Adderley v. State of Fla. (1966), the Supreme Court upheld trespassing convictions of protestors at a Florida jail but said the defendants would be protected by the First Amendment if the facility had been a legislative capitol.

Stay tuned!

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