

Robert Gehrke: Civil disobedience has consequences, but Sim Gill's charges don't fit the crime  
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By Robert Gehrke

In his six decades as a leader in the civil rights movement, John Lewis was arrested an estimated 45 times, for everything from using a whites-only bathroom in 1961, to leading repeated sit-ins at lunch counters, to his arrest at an immigration rally in 2013.

Getting hauled off to jail was not just a possibility when Lewis engaged in "good trouble," as he called it, it was expected.

A key component to civil disobedience is that there may be consequences. It's why Martin Luther King Jr. wrote his "Letter From a Birmingham Jail" and not a Birmingham Starbucks.

Lewis and King, at least to my knowledge, never threw paint on the street and government buildings or smashed windows in their cause, unlike a group of protesters angered by Salt Lake County District Attorney Sim Gill's decision not to prosecute two police officers who shot Bernardo Palacios-Carbajal as he ran from them after a pair of armed robberies.

The protesters' actions, as alleged, crossed the line from protest to vandalism and, if it's proven in court, there should be consequences. But if justice is the goal, then the consequences have to be commensurate with the crime.

So like many I was shocked when Gill charged these seven with rioting and criminal mischief, plus tacked on a gang enhancement. If convicted of these charges, most of the defendants could face up to life in prison.

One of the young women, Madalena McNeil, isn't even accused of having painted the property or smashed a window. She is accused of being part of the act because surveillance footage from a Home Depot showed her buying the paint.

In the ensuing protest, Gill's office alleges she shouted at officers, incited protesters (although no specifics are given) and balled up her fists and "shifted her weight as though to slam into" an officer with her body.

For those heinous acts she could, theoretically, die behind bars.

Salt Lake City Mayor Erin Mendenhall said Wednesday that "in this case when we're seeing the potential for an individual to spend a lifetime in prison for buying paint, that is too extreme."

"I do not agree with the extent and potential of these charges and I hope the criminal justice system won't take it that far," she said.

Of course McNeil is not going to end up rotting in a prison cell. Neither will any of the others accused of damaging Gill's offices.

And Gill knows that, too. He told me as much Wednesday: "Are these things that are going to be deserving of prison, for using paint? No."

So why charge these people with a crime for which, if they are convicted, they will spend a minimum of five years in prison — an outcome Gill knows would be unjust.

It certainly appears it's being done to apply as much pressure as possible to coerce them into pleading to reduced charges.

Here's how Gill explains the process: When his prosecutors screen cases they look at what statutes fit the alleged criminal activity. In this instance, property was destroyed, which falls under the criminal mischief statute. Under that law, if the amount of damage exceeds \$5,000 it is a 2nd degree felony.

Likewise, if two or more people act together to commit a crime, it technically meets the standard for Utah's gang enhancement.

Gill told me this is a starting point. He plans to turn the case over to an outside prosecutor — since he believes his office has a conflict in handling it — who will now have the ability to weigh specific factors and reach the "proper accountability."

That doesn't sit well with Jason Groth, an attorney with the American Civil Liberties Union, who said prosecutors are given discretion to consider the context surrounding an alleged crime, but here Gill has chosen to bring the toughest charges possible.

"There's just a lot of power being leveraged against these individuals who are, at the heart of it, protesting the police killing a community member," Groth said. "Does the punishment fit the allegation? I think that's most people's gut-check. When you read someone who dumped some paint all over the place and could spend the rest of their life in prison, that's problematic."

The heavy-handed approach also sends a clear message to other protesters and has the potential to deter not just vandalism but to chill protected expressions of free speech.

"You don't have to charge a case because it meets the exact criteria. There are more options in the tool kit," Groth said. "You have to think about what's in the interest of justice, what's in the interest of the community."

The problem with prosecutorial discretion, Gill said, is that it cuts both ways. People who like discretion when it favors police protesters might not like it if it benefitted white supremacists, for example, and injects bias at a stage — when charges are brought — that should be fact-driven.

Here's where he loses me: Tacking on a gang enhancement is not mandatory. It's discretionary and seems calculated to inflict as much pain on the defendants as possible.

(Side note, Utah's gang enhancement law is so poorly crafted that any two people who commit a broad range of crimes could be considered a gang — which is not what was intended when the law was passed. It ought to be revised.)

The bottom line is that the actions of these protesters were wrong. But nobody was killed. If anything, the protesters got the worst of the clashes with the police. So why threaten the same kind of prison time?

There was property damage, done to make a point. Just like John Lewis went to jail to protest unjust laws, there should be consequences for their attempt to highlight an unjust system.

But coming down on them with the full force of the legal system does nothing to make that system more just and, if anything, it makes it appear even more arbitrary and unjust.