

A Federal Jury Verdict Rules on Policing the Police at Protests

By Orin Snyder and Lee Crain

March 28, 2023

Gibson Dunn's Orin Snyder and Lee Crain highlight a litigation trend of more cases that aim to hold law enforcement accountable for police behavior during protests, citing Deon Jones v. Officer Peter Bueno as a recent example.

Throughout American history, protests and demonstrations have fueled political and social change. The right to protest, call out injustice, and advocate for reform is fundamental to the fabric of our democracy. That right is being eroded.

Peaceful protests increasingly are met with resistance and even violence by law enforcement. If people are afraid to protest out of fear they will be attacked by police in riot gear—on sunny streets in broad daylight, in public parks, or when they're holding signs—what will happen to protests in this country?

SHIFT IN LEGAL APPROACH

A federal jury in California answered that question on March 9 when it delivered a unanimous verdict for protester Deon Jones, finding a Los Angeles Police Department officer used excessive force in violation of Jones' rights under the US Constitution.

This groundbreaking victory is the first jury verdict for a protester victimized by the LAPD in connection with the 2020 mass demonstrations that occurred in the wake of the murder of George Floyd, and the first finding of wrongdoing by an LAPD officer in connection with those demonstrations.

Deon Jones filed the lawsuit after he was shot in the face with a rubber bullet by a LAPD officer during one of those

May 2020 protests. After deliberating for under four hours, the jury found the shooting was unconstitutional, malicious, oppressive, or in reckless disregard of Jones' rights. The jury imposed both compensatory and punitive damages.

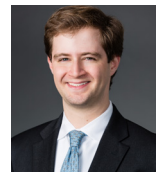
Although the lawsuit was captioned *Deon Jones v. Officer Peter Bueno*, the case was about more than Jones and the LAPD officer who shot him. The case was about deterring police officers in the future from putting peaceful protesters in harm's way when the public comes together to raise its voice in protest.

More cases are coming, too, seeking to hold law enforcement accountable—including the case our law firm is currently litigating in Washington, D.C.—*Buchanan v. Barr*—arising out of the unprovoked attack on peaceful protesters in Lafayette Park that occurred days after Jones was shot in Los Angeles. (This incident cleared the way for President Donald Trump to stage a photo-op holding an upside-down bible in front of a nearby church).

During the *Jones* trial, the judge instructed the jury that a primary purpose of punitive damages is to deter others from committing similar acts in the future. What does that mean now that the jury has issued its verdict and awarded punitive damages? Let's start with the definition of deter. The Oxford English Dictionary defines it as "to make somebody decide not to do something



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or continue doing something, especially by making them understand the difficulties and unpleasant results of their actions.”

NEED FOR DETERRENCE

That’s what the jury’s verdict is really about. Meaningful and lasting deterrence. And that’s exactly what we told the jury in our closing argument at trial. We explained that an award of punitive damages would put law enforcement on notice that the police cannot abuse their power and trample the public’s rights during mass demonstrations.

The jury responded. It rendered its verdict. It sent the message. The jury told law enforcement that when demonstrations get chaotic—when the job of being a police officer is the hardest—the public needs the police to be at their best. The public needs them to act lawfully and must have confidence that the police will not have license to shoot at innocent people—innocent people like Deon Jones.

During trial, the jury witnessed truly shocking acts. They saw the police officer shoot a peaceful protester standing on a roof. They saw him running down the street trying to hunt protesters down as they fled. They saw him shoot his rubber bullets at innocent people like Deon Jones who were standing on the street, exercising their constitutional rights, and posing no threat to anyone at all.

The jury has now spoken. They have put the police on notice that there will be consequences if they use excessive force against innocent people who are exercising their constitutional rights. They have sent the a message that will stop others—deter them—from taking similar reckless and unlawful actions in the future. They have told the world that protests and protesters need to be protected in a free society like ours. And they have commanded that police officers must preserve, protect, and defend First Amendment rights, even when doing so is difficult.

What’s perhaps most ironic and tragic about this case is that Jones and other innocent people like him were out there in the street that day protesting police brutality and excessive police force. They came together that day to

express their anger and anguish, and to call for reform, in response to the murder of George Floyd just days earlier in Minneapolis, Minn. Their calls for peace and progress were met with the very violence they came to protest.

But now, the jury’s first-of-its-kind verdict has held an LAPD officer accountable for his actions. That historic verdict and the message it sends has already started a broader discussion about how law enforcement should handle mass demonstrations to ensure the safety of protesters in the future.

And more cases like our litigation in *Buchanan* are coming—cases seeking to hold law enforcement accountable the way the jury did in *Jones*. It’s time for the nation to take notice. It’s time for law enforcement to listen and take corrective action.

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