

Excessive: Bail Isn't Meant to Enable the Holding of Political Prisoners

The US Constitution's Eighth Amendment forbids "excessive bail" in criminal prosecutions. That prohibition seems somewhat vague. I guess we're just expected to know excessive bail when we see it. Two current cases demonstrate not just excessive bail, but abuse of the whole idea of bail for the purpose of holding un-convicted defendants as political prisoners.

In August, podcaster Christopher Cantwell of Keene, New Hampshire traveled to Charlottesville, Virginia to join his fellow white nationalists in a violent race riot. Cantwell ended up as the central figure in a Vice documentary on the event — and under arrest for felony assault.

Cantwell's bail was initially set at \$25,000, but on appeal from the prosecutor it was revoked entirely and Cantwell was slapped into solitary confinement ("protective custody") at the Albemarle County jail until his trial, scheduled for November. Why the sudden turnabout? The prosecutor claimed that Cantwell a) was a flight risk, and b) had evil political views.

Cantwell was clearly not a flight risk. He turned himself in on demand, having stayed in Virginia and in touch with police in anticipation of doing so once he heard rumors of a warrant for his arrest. And Cantwell's political views should under no circumstances have been treated as relevant to bail. The purpose of bail is to incentivize a defendant to appear at trial, full stop.

Meanwhile in Georgia, Reality Leigh Winner languishes in the Lincoln County jail, also denied bail since her June arrest for "removing classified material from a government facility and mailing it to a news outlet."

The initial bail denial was premised on the possibility that she might have taken, and might disclose, more classified information. But in a second bail hearing, as in Cantwell's case, the judge's denial of bail was obviously conditioned solely on the content of Winner's supposed political beliefs.

Winner was not a significant flight risk. She had no criminal record, her passport had been confiscated, and her mother had offered to move to Georgia to act as her pre-trial custodian. The prosecutor's only real argument for denying bail was the claim that Winner's admitted admiration for fellow whistle-blowers Edward Snowden and Julian Assange indicated "contempt for our country and our security." The judge bought that argument.

Again: The sole legitimate purpose of bail is to ensure that the defendant shows up for trial so as to not forfeit some significant amount of money or property.

Conditioning bail on the defendant's political beliefs — or, worse, denying it entirely over those beliefs — is by definition "excessive." Judges who commit such violations of the Eighth Amendment in particular and of due process in general should be removed from the bench — and possibly given a taste of confinement themselves.