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THE U.S. PARK POLICE ATTACK ON PEACEFUL PROTESTERS AT LAFAYETTE SQUARE—PART 1

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UNANSWERED QUESTIONS ABOUT THE U.S. PARK POLICE'S JUNE 1 ATTACK ON PEACEFUL PROTESTERS AT LAFAYETTE SQUARE—PART 2

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

Monday, June 29, 2020 (Part 1)
Tuesday, July 28, 2020 (Part 2)

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OVERSIGHT HEARING ON THE U.S. PARK POLICE ATTACK ON PEACEFUL PROTESTERS AT LAFAYETTE SQUARE—PART 1

Monday, June 29, 2020

U.S. House of Representatives

Committee on Natural Resources

Washington, DC

The Committee met, pursuant to notice, at 12:02 p.m., in 1324 Longworth House Office Building, Hon. Raúl M. Grijalva [Chairman of the Committee] presiding.

Present: Representatives Grijalva, Napolitano, Costa, Sablan, Huffman, Lowenthal, Gallego, Cox, Neguse, Levin, Haaland, Cunningham, DeGette, Clay, Dingell, Brown, Soto, Horsford, Tonko, García; Bishop, Gohmert, Lamborn, McClintock, Westerman, González-Colón, and Fulcher.

The CHAIRMAN. Thank you very much. The Committee on Natural Resources will come to order.

The Committee is meeting today to hear testimony on the "U.S. Park Police Attack on Peaceful Protesters at Lafayette Square."

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chair and the Ranking Minority Member, or their designees. This will allow us to hear from the witnesses sooner, and help Members keep to their schedules.

Therefore, I am asking unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Clerk by 5 p.m. today, or at the close of the hearing, whichever comes first.

Hearing no objection, so ordered.

Without objection, the Chair may also declare a recess, subject to the call of the Chair.

As described in the notice, statements, documents, or motions must be submitted to the electronic repository at HNRCdocs@mail.house.gov.

Additionally, please note that, as with our fully in-person meeting, Members are responsible for their own microphones. As with our fully in-person meetings, Members can be muted by staff only to avoid inadvertent background noise. Anyone present at the hearing today must wear a mask covering their mouth and nose. The Speaker of the House and the Sergeant at Arms, acting upon the recommendations of the Attending Physician, require face coverings for all indoor gatherings over 15 minutes in length, such as Committee meetings.

Accordingly, to maintain decorum and protect the safety of Members and staff, the Chair will not recognize any Member in this hearing room to speak who is not wearing a mask. According to House Rule 17 and Committee Rule 3(d), the Chair retains the

right of recognition of any Member who wishes to speak or offer a motion. The right includes the responsibility to maintain decorum.

As permitted by the Sergeant at Arms guidance, the Chair will make exceptions for Members briefly removing their masks to facilitate lip reading by viewers who are deaf or hard of hearing, as I am doing presently.

Finally, Members or witnesses who experience technical problems should inform Committee staff immediately.

With that, I will recognize myself for the opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

The CHAIRMAN. A Minneapolis police officer pressed his knee on the neck of George Floyd for 8 minutes and 46 seconds. For 8 minutes and 46 seconds, we all have witnessed the slow and painful death of Mr. Floyd, and it has created a demanding, anguished cry for action to deal with the legacy of racism in this country.

And that cry, that anguished cry, has risen all across the Nation. Thousands of Americans have taken to the street to offer a strong declaration—that is really a plea for basic humanity—that Black Lives Matter. They protest to honor the all-too-many Black men, women, and children whose lives have been affected, cut short at the hands of racism and brutality. They protest to demand change and to demand that their constitutional rights be upheld, and call upon government for systemic response to the systemic racism that afflicts us as a legacy.

Astonishingly, instead of honoring this collective outcry for justice, this Administration answered demands to end police brutality with more police brutality. On the afternoon of June 1, President Trump called state governors and berated them for not being aggressive enough, saying, and I quote, "You have to dominate. If you don't dominate, you're wasting your time." He made clear this is a war, us against the protesters.

Of course, he was probably especially angry after we all found out that he had retreated to the White House bunker the night before.

That same afternoon, overwhelmingly peaceful protesters gathered at Lafayette Square Park. Park Police, National Guard, and other law enforcement lined the perimeter of the park. Then, around 6:30 p.m., nearly a half-hour before the DC curfew would take effect, the Park Police and their law enforcement partners suddenly moved in on the protesters.

Peaceful protesters, innocent bystanders, and members of the press were all caught up in a chaotic barrage of shields, batons, horses, projectiles, and tear gas. The militarized assault even hit people from the historic St. John's Church, neighbor to the White House, and a friend of presidents for many years. Clergy and church staff who were handing out water were reportedly pushed off their own patio by officers.

Once everybody had been forcibly expelled from the so-called battle space, the world witnessed something even more incredible. President Trump, accompanied by the Attorney General and other White House advisers—and, it should be added, top military brass—strolled through the park to St. John's Church, where he

posed with a Bible for a brief photo op. And St. John's had no idea the President was going to do this.

Peaceful protesters, church, and press all fell victim to this Administration's violent and senseless operation. Remarkably, these victims also embody our three main freedoms protected by the First Amendment: freedom of speech and assembly, freedom of religion, and freedom of the press.

The Trump administration is still scrambling to explain how this happened, often contradicting itself, ample video evidence, and the accounts of people at the scene, people who felt the batons hit their bodies, and the chemical munitions burn their eyes.

We are fortunate to have some of those people here as witnesses today, as well as the Bishop who presides over St. John's Church itself.

I want to thank all of you for giving of your time to help us answer the many questions still surrounding this indefensible attack on our own people and our basic freedoms.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, CHAIR, COMMITTEE ON NATURAL RESOURCES

On May 25, a Minneapolis police officer pressed his knee onto the neck of George Floyd for 8 minutes and 46 seconds. For 8 minutes and 46 seconds, this officer slowly and painfully murdered Mr. Floyd—a father, brother, and son—depriving him of his life, liberty, and pursuit of happiness.

The public response to George Floyd's murder has been loud and persistent. Thousands of Americans have taken to the streets to offer a fervent declaration that is really a plea for basic humanity: BLACK LIVES MATTER. They protest to honor the all-too-many Black men, women, and children whose lives have been cut short at the hands of racism and police brutality. They protest to demand change and to demand that their constitutional rights be upheld.

Astonishingly, instead of honoring this collective outcry for justice, this Administration answered demands to end police brutality with MORE police brutality. On the afternoon of June 1, President Trump called State Governors and berated them for not being aggressive enough, saying, "You have to dominate. If you don't dominate, you're wasting your time." He made clear: This is war—us against the protesters.

Of course, he was probably especially angry after we all found out he had retreated to the White House bunker the night before.

That same afternoon, overwhelmingly peaceful protesters gathered around Lafayette Square. Park Police, National Guard, and other law enforcement menacingly lined the perimeter of the park. Then, around 6:30 p.m., nearly a half hour before the DC curfew would take effect, the Park Police and their law enforcement partners suddenly attacked.

Peaceful protesters, innocent bystanders, and members of the press were all caught in a chaotic barrage of shields, batons, horses, projectiles, and tear gas. The militarized assault even hit people from historic St. John's Church, neighbor to the White House and a friend to presidents for many years. Clergy and church staff who were handing out water were reportedly pushed off their own patio by officers.

Once everyone had been forcibly expelled from the so-called battle space, the world witnessed something even more incredible. President Trump, accompanied by advisors and military brass, strolled through the park to St. John's church, where he posed with a Bible for a brief photo op. St. John's had no idea the president was going to do this.

Peaceful protesters, church, and press all fell victim to this Administration's violent and senseless operation. Remarkably, these victims also embody our three main freedoms protected by the First Amendment: freedom of speech and assembly; freedom of religion; and freedom of the press.

The Trump administration is still scrambling to explain how this happened, often contradicting itself, ample video evidence, and the accounts of people at the scene—people who felt the batons hit their bodies and the chemical munitions burn their

eyes. We are fortunate to have some of those people here as witnesses today, as well as the bishop who presides over St. John's Church itself.

I want to thank you all for giving your time to help us answer the many questions still surrounding this indefensible attack on our own people and our basic freedoms.

The CHAIRMAN. I would now like to turn to the Ranking Member, Mr. Bishop, for his opening statement.

Mr. Bishop, you are recognized.

Mr. BISHOP. Thank you, wherever you are.

STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. BISHOP. I know that when Democrats were in the Minority, they used to object to some of the titles which we had on our hearings. You guys have learned very well from that. I appreciate that.

Not only have you come up with new titles that are unique for yourselves, but this one is especially inflammatory and pejorative. So, congratulations on it.

There are issues that need to be discussed. That said, we have serious issues to address in the present, and we would be selling our society very short without ensuring that there is full truth as to what was going on that is recorded in our history, not just a myopic and biased view. And, unfortunately, that means that this hearing, as far as understanding truth of what went on, and coming up with a good history, is going to be invalid.

Two of the witnesses that we will be hearing from today are involved in litigation or investigations, and are here even before any of that stuff started, which may be legal, but it is highly questionable.

An invitation was given to some in the Park Service who volunteered to come in later, after the litigation period had at least begun, but that was rejected. And instead, we decided to move ahead with what can only be described as really good political theater.

I mean, there are questions that need to be answered.

There was a question of why the police moved prior to the curfew actually existing.

There are questions of why the DC Mayor decided to put a curfew on in the first place.

There are questions of was this part of a plan that was established 48 hours prior to the event or not.

There are questions of why three warnings with the decibel level that is equivalent to a jet aircraft taking off were not heard by people. Or were they actually there? And when were they done?

There is a question about the amount of violence that took place. Protests, as we all know, are legal. But arson is not. Destruction of property is not. Attacking police is not. We do know that in the Park Service police, within a period of 2 weeks within this there were 50 policemen that were attacked, that were harmed, that were injured. At least one went to the hospital, presumably to conduct surgery at the time.

All of those are legitimate questions. And all of those legitimate questions are not going to be addressed in this Committee hearing today. It is simply—the structure is not designed to do that. The

structure is not designed to come up with a historical statement. The structure is designed to come up with good drama.

Look, on the flight back here I was able to watch three movies. Two of them were historical dramas, historical fiction. They were well done. And what we are attempting to do today would fit nice into that genre of activities. The other was a musical. I wish you could do that one, that was more enjoyable.

But the Democrats here have now produced something that is not going to be substantive, that is not going to be historical, that is really a distraction. It is political theater as an attempt to do it.

So, Mr. Grijalva, for you and Watkins, you have learned this job very well. I would urge you to become producers of movies. You can do extremely well in that area. But please don't try to write a textbook, because you are leaving too many questions out that need to be part of the narrative, and need to be part of the answers.

With that, I yield back.

The CHAIRMAN. The gentleman yields back. And now I will introduce the witnesses.

Let me begin with Kishon McDonald, DC resident, and who was a peaceful protester on the day of the event.

Let me remind the witnesses that under our Committee Rules, they must limit their oral statements to 5 minutes, but that their entire statement will appear in the hearing record.

When you begin, the timer will begin, and will turn orange when you have 1 minute remaining. I recommend the Members and witnesses joining remotely use active speaker thumbnail view, so they may pin the timer on their screen, and see the Members in the room.

With that, Mr. McDonald, welcome. The time is yours, sir.

STATEMENT OF KISHON MCDONALD, CIVIL RIGHTS DEMONSTRATOR

Mr. MCDONALD. Chairman Grijalva, Ranking Member Bishop, and members of this Committee on Natural Resources, my name is Kishon McDonald. I am a 39-year-old resident of northeastern Washington, DC. I have been a resident here for the past 5 years. I was born and raised in Cleveland, Ohio. I honorably served my country in the U.S. Navy on the USS Leyte Gulf as a yeoman third class. I am employed with United Airlines as a mechanic at the Dulles Airport. I appreciate the invitation to share my experience with you today.

On June 1, I decided to join in a peaceful protest against racial injustice. I know that there was a curfew imposed for that evening, so I went down as part of my usual run, and planned to run back home by the curfew time of 7 p.m.

I arrived at 16th and 9th Street around 6 p.m. I observed military vehicles, uniformed soldiers, blocked-off streets, and a huge police presence. I began recording the scene from my phone: primarily, because I wanted to record this moment in history; second, for my safety, because Trump had made threats of ominous weapons and vicious dogs to be used on protesters.

I walked from 16th and I Streets directly toward Lafayette Park, and observed huge group of diverse, peaceful protesters chanting for George Floyd and for change. It was an overwhelming

experience, and it was powerful to be a part of it. The chanting continued around 6:25 p.m., when officers started approaching us as we stood on the north side of Lafayette Park along the fencing.

The officers stopped for a few minutes about 10 to 15 yards away, and they moved closer, as if we were posing a threat, which we were not. They got directly in front of us, to the point we could have a conversation with them. They got very close to us in a threatening kind of way. They gave no instructions, and just a show of force.

We stood our ground. We told them we were peaceful and we wanted no trouble. We were met with silence. At no time did I hear any instructions to move. And if we did hear instructions, I would have moved. I am sure the crowd would have moved, because we were very peaceful during the entire time before we were attacked.

Right before 6:30 p.m., I observed a line of police in riot robocop gear coming in from my left. Now, at this point the soldiers were communicating, but it was yelling, "Move, move." They were not walking. They were pushing and running toward us with their shields, and people started to panic. A word of confusion ensued. I could not really understand what was going on, why they were responding in that manner, seeing it was way before curfew, 30 minutes before curfew.

I observed a Black male fall to the ground and protesters circled around him and demanded it please stop so a medic could assist him. The officer stopped briefly on the south side of St. John's Church. We grabbed the male and started to retreat.

Police started throwing tear gas and flash bang grenades at us for no reason. We were retreating. We didn't need any help retreating. Using weapons on us was ridiculous. It just made the situation dangerous.

Even before the officers charged us or fired their weapons, it had been peaceful. This is the most important block in the world. We are in front of the most powerful governing house in the world. It is citizens who are being attacked by their own government just for asking and protesting for change. I was scared, confused, and angry.

I did CS gas training boot camp. This group of demonstrators were not soldiers. This wasn't a battle station test, but it was similar to a boot camp drill. It is unacceptable to treat protestors that way in our own city and Nation.

Once I got home, I reviewed my footage and pictures. It was then I noticed U.S. Park Police on one of the officers who forced us up from the left as we stood along the fence in Lafayette Park. I joined a lawsuit challenging the attack on me and other demonstrators, so someone will be held accountable. At this moment, it is a forgotten history.

I have seen footage of this kind of attack on African-American prisons in the 1960s when we wanted change. The dogs and water cannons from the 1960s have turned into tear gas and flash bangs today. It hurts, as a Black man, to see it is 2020 and we still have a government that will do this again, over something that seems so right to protest about.

The damage was done the minute the President decided to violate our First Amendment right. How was it the KKK can hold

a rally in DC and be protected, but when a Black man is killed we protest in honor of him and we are attacked? How can you not perceive this attack on a Black Lives Matter movement?

I served this country so everyone could enjoy the freedoms granted to us under this Constitution. If anyone had the right to be there, it was me. I should not have been forced to move and attacked with tear gas and flash bangs as I was peacefully protesting for change. Thank you.

[The prepared statement of Mr. McDonald follows:]

PREPARED STATEMENT OF KISHON MCDONALD

My name is Kishon McDonald, and I am a 39-year-old resident of Northeast Washington DC. I've been a resident here for the past 5 years but was born and raised in Cleveland, Ohio. I honorably served my country in the U.S. Navy on the USS Leyte Gulf as a YN-E3. I'm currently employed with United Airlines as a mechanic at the Dulles airport. I appreciate the invitation to share my experiences with you today.

On June 1, 2020, I decided to join in the peaceful protest at Lafayette Park against racial injustice. I know there was a curfew imposed for that evening so I went there as part of my usual run and planned to run back home by the curfew time of 7 p.m.

I arrived on 16th & I Street around 6 p.m., and I observed military vehicles and uniform soldiers, blocked-off streets and a huge police presence. I began recording the scene on my phone primarily because I wanted to record this moment in history and second for my safety because Trump had made a threat of "ominous weapons" and "vicious dogs" to be used on protesters.

I walked from 16th & I Street directly toward Lafayette Park and observed a huge group of diverse peaceful protesters chanting for George Floyd and for change. It was an overwhelming experience, and it was powerful to be a part of it. The chanting continued until around 6:25 p.m., when officers started approaching us as we stood on the north side of Lafayette Park along the fencing. The officers stopped for a few minutes about 10 to 15 yards away, then moved closer to us as if we were posing a threat, which we were not. They got directly in front of us to the point we could have a conversation with them. They got very close to us in a threatening kind of way. They gave no instructions. It was just a show of force.

We stood our ground. We told them we were peaceful and wanted no trouble. We were met with silence. At no time did I hear any instructions to move, and if we did hear instructions I would have moved and I'm sure the crowd would have moved because we were very peaceful during the entire time before we were attacked.

Right after 6:30 p.m. I observed a line of police in riot Robocop gear coming in from my left. Now at this point the soldiers were communicating, but it was yelling "MOVE! MOVE!" They were not walking. They were pushing and running toward us with their shields, and people started to panic and a world of confusion ensued. I could not really understand what was going on or why they were responding in that manner seeing it was way before curfew—30 minutes before.

I observed a Black male fall to the ground and protesters circled around him and demanded police stop so a medic could come assist him. The officers stopped briefly on the south side of St John's Church. We grabbed the male and started to retreat. Then the police started throwing tear gas and flash bang grenades at us for no reason. We were retreating. We didn't need any help retreating.

Using weapons on us was ridiculous and just made the situation dangerous, even though before the officers charged us or fired their weapons it had been peaceful. This is the most important block in the world, and we are in front of the most powerful governing house in the world. It's citizens who are being attacked by our own government just for asking and protesting for change. I was scared, confused and angry.

I continued recording and tried to ask officers, "Would you do this to your children?" and "Would you attack your children over protesting for change?" I was met with tear gas and a flash bangs which exploded with shrapnel. I felt a searing hot pain on my legs and thighs. In news footage I have seen, you can observe me jumping up and down; I'm the one with the neon shorts on when the force of police pushed us up 16th Street and protesters were trampled.

I did CS gas training in boot camp. This group of demonstrators were not soldiers. This wasn't a battle stations test. But this was similar to a boot camp drill. It's unacceptable to treat protesters like that in our own city and nation.

Once I got home I reviewed all my footage and pictures. It was then that I noticed U.S. Park Police officers among the force who attacked us from the left as we stood along the fence in Lafayette Park.

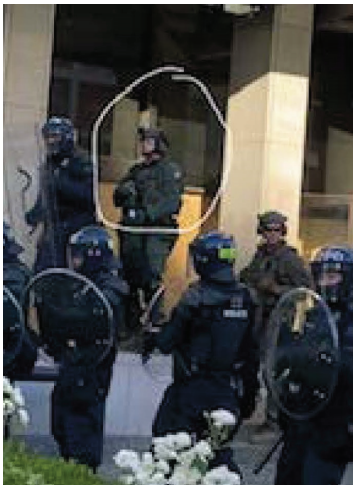
I joined a lawsuit challenging the attack on me and the other demonstrators so someone will be held accountable and this moment in history isn't forgotten. I've seen footage of this kind of attack on African American protesters in the 1960s when we wanted change. The dogs and water cannons from the 60s have turned into tear gas and flash bangs today. It hurts as a Black man to see that it's 2020 and we still have a government who would do this to us again over something that seems so right to protest about. The damage was done the minute the President decided to violate our First Amendment rights. How is it the KKK can hold a rally in DC and be protected, but when a Black man is killed, we protest in honor of him and are attacked? How can you not perceive this as an attack on the Black Lives Matter movement?

I served this country so everyone could enjoy the freedoms granted to us under the Constitution. If anyone had the right to be there it was me. I should not have been forced to move and attacked with tear gas and flash bangs as I was peacefully protesting for change.

QUESTIONS SUBMITTED FOR THE RECORD BY CHAIR GRIJALVA TO MR. KISHON MCDONALD, CIVIL RIGHTS DEMONSTRATOR

Question 1. Did you see the U.S. Park Police, military, or other law enforcement entity at Lafayette Square on the evening of June 1, 2020 wearing any cameras, either when you were on the scene, or in footage afterwards? Did you see any other video recording equipment associated with any of the police or military forces? If so, please provide details.

Answer. In response to the query you posed, Mr. McDonald answers that although he did not observe any cameras on the Park Police, a photograph he took that day showed one federal officer with a GoPro on his helmet. The picture he took is attached below, with the camera circled.



The CHAIRMAN. Thank you very much.

Let me now recognize Amelia Brace, Correspondent, Seven News Australia.

The time is yours, please.

STATEMENT OF AMELIA BRACE, U.S. CORRESPONDENT, SEVEN NEWS AUSTRALIA

Ms. BRACE. Thank you, Chairman Grijalva, Ranking Member Bishop, and members of the Committee for the opportunity to speak today.

For more than 3 years, I have been the U.S. correspondent for Seven News, one of Australia's largest commercial broadcasters. I have been called to testify about my experience covering protests near Lafayette Square Park, particularly the incident in which my cameraman, Tim Myers, and I were physically assaulted by Park Police on June 1, while we were broadcasting live to Australia with hundreds of thousands of people watching, including our families.

This video, which formed part of the coverage in Australia, shows the incident from multiple angles.

[Video shown.]

Ms. BRACE. We began our coverage at Lafayette at 5:45 p.m. The atmosphere was passionate, but peaceful. In fact, it was far less tense than it had been the night before. As we prepared for our 6:30 p.m. live broadcast we noticed riot police lines begin to form.

We were not alarmed by this sight, as it initially resembled the enforcement of curfew the night before, and we still had more than half an hour before this curfew was due to take effect. Regardless, members of the media were exempt from curfew restrictions. We did not hear any warning from law enforcement that the area was to be cleared, or that the curfew would be enforced early.

Suddenly, the police line surged forward. We moved back, along with many protesters. Police lining the park used automatic weapons to fire non-lethal rounds. Tim was hit with a projectile in the back of the neck, and our equipment was damaged.

After this first surge, we took cover behind a tree as Tim tried to get the now-damaged live transmitter working. We saw the line of police start to walk toward us at a walking pace. To ensure we were completely out of the way of both police and protesters, we moved to the fence line, where we were sheltered by a concrete wall and also a sidewalk.

We were clearly a news crew. Most notably, Tim was holding a large television camera. We were also surrounded by other members of the media, and given no directive by police to move on. As I began reporting live, the line of police suddenly and without warning began charging forward at a sprinting pace, knocking protesters to the ground.

A Park Police officer who was passing us stopped, turned toward Tim, and rammed him in the chest and stomach with the edge of his riot shield, causing Tim to keel over and drop down. The officer then took a step back, paused, then punched his hand directly into the front of Tim's camera, grabbing the lens. As this happened, Tim and I were both repeatedly shouting the word, "Media."

A second officer appeared to intervene, giving us the opportunity to move. As I was running away, a third officer pushed through the group, going out of his way to strike me with a truncheon. As we tried once again to clear the advancing line of police, loud flash bangs boomed around us, and some sort of chemical irritant and plumes of smoke filled the air. I could be heard screaming as I was struck by non-lethal projectiles directly to my legs and backside.

The incident prompted Australia's Prime Minister to direct our Ambassador to the United States to seek a full investigation.

As a reporter, I have no interest in becoming the story. But over recent weeks, many of us have been left with no choice. I have been shocked to see how many journalists have been attacked, beaten, and detained just for doing their jobs. Covering protests does carry unavoidable risks, but the media's role is essential. We don't just have a right to be there, we have an obligation.

As Australian journalists, we are the eyes and the ears of our people—in this case, witnessing civil unrest in the capital of our most powerful and closest ally. It is crucial to democracy that journalists be allowed to do their job freely and safely. And that is certainly something we should expect in the world's greatest democracy.

[The prepared statement of Ms. Brace follows:]

PREPARED STATEMENT OF AMELIA BRACE, A U.S. CORRESPONDENT FOR THE SEVEN NETWORK

Thank you Chairman Grijalva, Ranking Member Bishop, and members of this Committee for the opportunity to testify today. My name is Amelia Brace. I am a U.S. Correspondent for the Seven Network, which is one of the largest broadcast television networks in Australia. I am here to testify about my experience covering the protests in Lafayette Square Park, and, in particular, the incident in which my cameraman, Tim Myers, and I were physically attacked by U.S. Park Police officers when they cleared out the park in the afternoon on Monday, June 1, 2020. Even though we were out of the way of the advancing officers and were clearly identifiable as a news crew, we were directly assaulted without provocation by two separate officers.

This is a situation where the video speaks louder than any words could. This link shows the Seven News broadcast about the incident from the next day, which captures the incident both from the perspective of our own camera feed, which was broadcast live to Australian audiences, and from another angle captured by a local news crew here: https://youtu.be/yzNMdWOoC7M?t=33.

The live broadcast, showing the incident and the in-studio anchors' reactions happening in real time, can be seen here: https://youtu.be/wkf-znzWKRc.

I would like to speak today about what exactly happened in the video we just saw, and why this event was so deeply troubling for me, even beyond the physical effects of the attack, which do still linger.

MY BACKGROUND AND ROLE AS U.S. CORRESPONDENT FOR SEVEN NEWS

I have been a television journalist for 10 years, nearly the whole time at the Seven Network. I have been living in the United States serving as the U.S. correspondent for Seven News since January 2017. Before that, I reported on politics in various bureaus within Australia, including in Canberra, the capital city. I have reported from all manner of locations and at all manner of events. My cameraman, Tim, works freelance for Seven News, as well as for the BBC and the United Nations. In those jobs, he has traveled around the world to cover news and shoot footage, including in Mexico, Jordan, Nigeria, Chad and Ghana. Neither Tim nor I have experienced anything like the treatment we received from the U.S. Park Police on June 1; never before have I been physically attacked by law enforcement simply for doing my job of reporting the news.

As a U.S. correspondent for Seven News, I provide on-camera dispatches on breaking news stories in this country for Seven's various television news programs. Oftentimes, I will be patched in live on video during these programs, doing what we refer to as a "live cross." Because of the time difference, events that take place in the evening on the East Coast of the U.S. may end up being seen first thing in the morning in Australia. Here, when Tim and I were attacked, we were in the process of delivering a live cross to Seven's daily morning news show, Sunrise (which is similar to The Today Show or Good Morning America in this country).

At any given time, Seven is likely to have three U.S. correspondents reporting from this country, focusing on the major news of the day and/or stories that would be of interest to Australians. But the fact is, the U.S. is widely considered

Australia's most important ally. Australians take a keen interest in the political, social and cultural developments in this country. When there is widespread civil unrest in the United States, Australians want to know and understand what's actually happening. I take my job seriously, and believe strongly in the importance of delivering news from within the U.S., to my fellow countrymen and -women.

REPORTING ON PROTESTS IN DC: DAY 1

When protests erupted throughout the U.S. after the police killing of George Floyd, Seven's U.S. correspondents traveled around the country to report from the scene. One of my colleagues reported from Minnesota; another reported from Los Angeles. Because I was already on the East Coast reporting on a story in Florida, I was selected to cover the protests taking place here in the capital city, Washington, DC.

My crew consists only of myself and my cameraman, Tim. Tim and I arrived in DC separately on Sunday, May 31, around mid-day. We began reporting almost immediately from Lafayette Square. Having seen the nature of the protests and police actions from the days before, we were aware that we would potentially encounter tear gas or other irritants, so Tim had purchased goggles for us to have on hand. And we each already had face masks to cover our mouth and nose because of the pandemic. I had my laminated press credentials issued by the State Department at hand and occasionally held it up to law enforcement when I needed to reiterate that we were there as part of the news media. Usually, this was not necessary since, as can be seen in the videos, Tim was carrying a large, full-sized television news camera over his shoulder.

We delivered "live crosses" throughout that Sunday evening and overnight. During that night, I saw and reported on a great deal of chaos, including destruction of property, fires, and even some looting of shops. I did not see the fire at St. John's Episcopal Church, but I did see other structures in and around the park on fire, as well as a large bonfire in the middle of the street by the park. We were aware that the DC government had imposed an 11 p.m. curfew. In the hours leading up to that time, we saw the police occasionally mobilize to push protesters away from the park, but it was not until after the curfew went into effect that they cleared the park area completely. As members of the press, we were exempt from the curfew and so we were able to move in among the protesters and behind the police line to capture footage of the scene. By the time I delivered my last few live crosses early in the morning of Monday, June 1, the police had cleared the park and protesters had long since dispersed.

Throughout the first night we were there, the tension between the protesters and police was palpable, and we did see the police use riot gear and so-called "less-lethal" munitions to clear protesters. But the process was relatively orderly and relaxed, to the extent one could ever describe a process like that as orderly or relaxed. The efforts to clear the streets around the park did not kick in until the curfew—in fact, not until several minutes after the curfew—and the process was fairly deliberate and methodical.

REPORTING ON PROTESTS IN DC: DAY 2—THE ATTACK

The next day, in the afternoon on Monday, June 1, Tim and I went back out to report on the protests. As we left our hotel on 15th Street, we encountered a large march coming down 14th Street and headed toward the Capitol Building. We followed the march, and delivered several live crosses from the demonstration outside the Capitol. The protests there were certainly passionate, but they were peaceful. Protesters occasionally chanted slogans directly at the line of police officers, but I saw no physical altercations. In the late afternoon, the crowd received an alert on their phones announcing that DC was imposing a curfew starting at 7 p.m. The crowd began to make their way to Lafayette Square, and we followed them. We arrived around 5:45 p.m., in time to set up for a relatively uneventful "live cross" at 6 p.m. The atmosphere in Lafayette Square was similar to the Capitol. The crowd was passionate, but peaceful. In fact, the atmosphere was much less tense than it was the night before, with none of the property destruction or fires we had seen that night.

We were scheduled to deliver a live cross at 6:30 p.m. for Sunrise. We were near the Northeast corner of the square, at H Street and Vermont Avenue, on the sidewalk outside the park. As we were getting ready for the cross, we saw the police lines suddenly start to form. These officers were in full riot gear. Some—which we identified by their uniforms and helmets as U.S. Park Police—carried round, clear shields on one arm, often using their other hand to swing their batons. Other

officers carried what looked like modified automatic weapons, which we knew fired "less-lethal" projectiles like rubber bullets.

We were aware that the curfew was not set to kick in for another half hour, so we were confused about what was happening. However, based on our experience the night before, we were not overly concerned by police lining up, as we expected the police forces to only begin clearing the area after curfew.

We did not hear any warning from law enforcement that the area was going to be cleared, or that the curfew was going to start early. Nevertheless, right around 6:30, the line of police suddenly surged forward. We ran a couple hundred feet West on H Street along with the protesters to position ourselves farther away from the line. The police began releasing some kind of smoke and irritant gas, and firing what I thought at the time were rubber bullets. I now understand they may have been shooting "pepper balls" or launching "stinger" grenades, which I understand launch rubber pellets into the surrounding area. Tim was hit with one of those projectile in the back of the neck during this surge. The "TVU"—the piece of electronic equipment that transmits our video and audio feed back to the studio in Sydney, which Tim carries in his backpack—was also hit with a projectile or piece of shrapnel and was knocked offline. (We later realized that the TVU was seriously damaged in that incident.)

After this first surge, we took cover behind a tree on the sidewalk, so that we could regroup and try to get our damaged equipment ready to begin our 6:30 live cross. To our right (looking East) there was a line of law enforcement, which I believe were National Guard or some form of military police, with tall, clear riot shields standing in a line behind a metal barrier along the border of the park. To our left, the street was filled with confused and angry protesters who understood that the curfew was not set to begin for another half hour.

We saw the line of police start to advance toward us at a walking pace. We wanted to stay completely out of the way of both police and protesters, so we backed up and moved further down the sidewalk. Eventually we were able to step up onto a raised curb in a small "alcove" created by a short concrete wall running perpendicular to the sidewalk. (I believe it is a wall around a storage shed for the park.) At that point, we had a good vantage point to capture the scene, without being in the way of the advancing police line, since we were sheltered by a concrete wall off of the sidewalk. The line of military police officers was directly behind us (behind the temporary metal barriers) and we identified ourselves to them as members of the press. There were also other members of the press immediately around us along the fence and on the sidewalk. This still from the local news footage of the incident shows how we were positioned (and confirms the presence of other media in that area, since they were able to capture this image directly).

That is me in the blue backpack, with my back to the camera on the right side. Tim is to my left in the baseball hat, sitting on the milk-crate, having just been knocked over by a U.S. Park Police officer, as I will explain below.

We then began our live cross. As I started explaining the situation to the in-studio hosts, the line of police suddenly—and again, without any verbal warning that I could hear—began charging forward at a sprinting pace. As Tim was capturing the footage of this stampede (which was knocking protesters onto the ground), a Park Police officer who was running by on the sidewalk stopped just as he was passing us, turned toward Tim and rammed him in the chest and stomach with the edge of his riot shield, causing Tim to keel over and drop down to a sitting position on a plastic crate behind him. The officer took a half step back and seemed to pause for a moment, looking at Tim. He then punched his hand directly into the front of Tim's camera and grabbed the lens, causing Tim's head to whiplash backward. Tim later told me that this caused him to "see stars" for a moment. As this happened, both Tim and I were repeatedly shouting "Media! Media!" at the top of our lungs, to make clear what I would have thought was already obvious.

In an instant, a group of four or five Park Police officers surrounded us, as we continued to shout "Media!" I recall instinctively raising my hands near my face and almost cowering behind Tim, afraid of what this even larger group of officers would now do to us. (This can be seen in the still photo just above.) An officer in the group stood behind the first officer, and placed his arm between the first officer and us, seemingly trying to restrain him. That second officer shouted at us to move further down the sidewalk. We immediately complied. Tim—despite having been knocked down a second earlier—crouched low and began running down the sidewalk. Even though Tim was following the officers' instructions, the first officer pushed the face of his shield against Tim's back to physically prod him forward. I grabbed hold of Tim's backpack, and followed, also crouching low.

As I was running away, I felt something strike me hard across the back and shoulders. I now know, from seeing the local news crew's footage, that a third U.S. Park Police officer reached around the second officer to smack me with his baton in a backhanded motion as I was running away. Disturbingly, in the moments before that, as the other officers surrounded us, this third officer appears to be trying to push his way into the scrum while waving his baton. Unable to get "into the mix" before we started running down the sidewalk, he seemed to go out of his way to make sure to get at least one hit on us.

Again, this all happened as we were broadcasting live to the news desk for the morning show in Sydney. The anchors of the show reacted with shock when they saw the first officer's fist suddenly fill the frame as he punched Tim's camera. Initially, the studio could not hear us, because the attack had knocked the receiver for my microphone off of Tim's camera. As they tried to make sure we were OK, one of the anchors, Samantha Armytage, observed that the police were not discriminating between protesters and the media.

After we ran several yards away from the police line, and Tim reconnected the microphone receiver to the camera, I told the anchors (and Australian audience, which included my own family) what was happening:

> Yes guys, you heard us yelling there that we were media, but they don't care. They are being indiscriminate at the moment. They chased us down that street as you see. They were firing these rubber bullets at everyone. There's tear gas. Now, we are really surrounded by the police and you really saw the way that they dealt with my cameraman Tim there, quite violent. And they do not care who they're targeting at the moment.

I also explained that the curfew was not set to come into effect for another 26 minutes, but that the police seemed to be trying to box the protesters in, which would mean that, after curfew, all of the protesters present could be subject to arrest.

The news anchors were curious to understand exactly where we were located, relative to the White House, where President Trump was scheduled to speak in the Rose Garden at any moment. Tim panned his camera to the left to show how we were directly across the park from the front door of the White House at that very moment.

As this was happening, the police lines began advancing again, all the while firing their weapons and releasing various forms of tear gas and smoke grenades. We tried to move further West along H Street, but were squeezed in place with the line of military police to our left, the U.S. Park Police line advancing behind us, and throngs of protesters all around us. In many ways, that was the most frightening part of the experience. We had already been attacked physically and wanted nothing more than to get clear of the continuing onslaught from the police. But we kept finding ourselves caught in the bottleneck created by the Park Police line moving forward so quickly. It felt like there was no escape.

As we turned to run away from this second wave, I felt a sharp pain as I was struck with a projectile directly to my legs and backside. In the video, which was again, still being broadcast live to Australian morning news audiences, I can be heard shrieking in pain and surprise. I had assumed at the time that I was hit with a rubber bullet, and said as much to the camera. Having now seen the wounds caused by actual rubber bullets on others, I believe I was actually struck by a "pepper ball" projectile. (I have compared the feeling to being hit with a paintball at very close range.) I received bruises where I was hit that lasted for several weeks.

Continuing to crouch low, Tim and I pushed our way West as loud flash grenades boomed around us, gas continued to fill the air (causing everyone around us to cough violently, which was particularly unnerving in light of the COVID pandemic), and the police forces kept firing their "less-lethal" guns at the crowd.

Tim and I then ran at a sprinting pace all the way down H Street to the other side of the park, and turned north on Connecticut Avenue to try to escape the bottleneck where we had been stuck. Running (and then speaking on camera) was made all the more difficult by the gas and smoke that was constantly filling the air.

Barely able to catch my breath, I gave an update to the camera, explaining that we had gotten out of the main area, after being hit by (what I thought were) rubber bullets and pepper spray. I told the audience how "we were trying to move on, as the police were asking us to. Obviously, the last thing we ever want is to get in the way. But there was just no opportunity. As you were moving this way, you're hitting more and more protesters. And the police were just pushing up so quickly—" I then cut myself off to say "we're gonna keep moving," as I saw that the police line was continuing to advance further, and explosions continued booming around us. We eventually ran all the way to Farragut Square, but could only pause for a moment before I saw the stampede people continue to run toward us, away from the constantly advancing police line. As I took cover around the corner of I Street at Farragut Square, I told the studio (now over the phone), how "we've done our best to get out of the way. We've now found ourselves in almost the exact same situation. It's almost impossible to escape." We pushed forward up the square and turned right on K Street, where we were finally able to catch our breath and assess the damage.

THE AFTERMATH

As a result of the attack, the lens assembly on Tim's camera—a professional grade news camera—was seriously damaged, and would no longer focus properly. His camera's viewfinder (which had been jammed into his face) was also damaged. Tim had an additional lens (with a different focal length) that I was carrying in my backpack. Unfortunately, that lens took part of the brunt of the baton strike to my back, and was also damaged. As I mentioned above, the TVU device that enables us to send our video and audio feed back to Australia remotely, was also malfunctioning from being jostled and hit with the projectiles fired by the police forces in the first rush. Repairing and replacing this equipment will likely cost thousands of dollars. Of perhaps less significance, but still frustrating, I lost one of my wireless "Airpods" and a pair of sunglasses as we were pushed by the police.

I have large bruises that lasted for weeks where I was hit with the "pepper ball" (or whatever "less-lethal" projectile hit me). Both Tim and I have also experienced persistent aches and soreness from where we were hit—Tim, from the riot shield hit and camera punch, and me, from the baton strike. Both Tim and I have consulted with doctors for treatment for the lingering effects from those attacks.

Despite these injuries and the damage to our equipment, we continued to report on the protests and police actions throughout the rest of that night, and over the next 8 days in Washington, DC.

I would be lying if I said I did not feel fear when we went back out to continue to report on the events in the streets. From the beginning, we knew we were entering a potentially chaotic situation, and tried to take precautions. For example, I knew that, if law enforcement used things like tear gas, we would be caught in the cloud just like everyone else. That was why we had protective eyewear. What we never would have expected was that we would be directly assaulted by multiple police officers when we were not in anyone's way, and were clearly identifiable as media, peacefully reporting on the events. I had no way of knowing whether the same thing would happen again as we continued to try to report on the scene. As I've told others since the incident, our instinct as journalists covering a dangerous situation would normally be to run *towards* the police for safety. But this was the opposite; here, the police were the ones we feared.

At the same time, I felt an even more solemn obligation to go out and do my job, to show the Australian people what was actually happening on the ground in the

capital city of its closest ally. In fact, this incident illustrates perfectly how important it is for reporters to be on the scene, witnessing and capturing what's happening directly. The moment when the police began rushing protesters away from the park was so chaotic and rushed that it would have been impossible to know what was actually happening if we had been filming from, say, a couple blocks away. This is something that should be important not only to protesters and civilians, but to the police as well. I would think that if the situation were reversed, and it was protesters who attacked police without provocation, the police would want that reality documented and reported on.

For that reason, I was shocked to have the U.S. Park Police attack us so directly, even after they knew we were media. I could possibly understand the first officer getting caught up in the heat of the moment, and striking Tim with his riot shield before he realized what was happening. (Though, I would also hope that police officers are sufficiently trained so that they know how to more effectively assess a situation before lashing out with physical force.) However, after he took a step back and realized that Tim was a cameraman, and we were shouting "Media! Media!," his reaction was to directly punch the camera lens. It felt as if he was trying to aggressively convey that we did not have a right to be there, filming what was happening—even though we absolutely did. The fact that the third officer struck me with a baton as I was running away, after it was abundantly clear that we were media, and were complying with all directives without hesitation, was all the more disturbing.

I was also, frankly, disturbed to see the police dealing so harshly with what had been, up to that point, a relatively peaceful protest. I was, of course, aware of the chaos and destructive behavior by some individuals the night before. But up until 6:30 on that Monday, we had not seen any violence or destruction by any of the protesters. At the time, we were baffled as to why the police were cracking down so violently on a peaceful protest when the curfew had not even kicked in yet. Of course, we later learned that the apparent reason for the police action was to clear the way for the President to walk over to St. John's church.

During my live cross to Sunrise the next day, one of the hosts, David Koch, asked if I was angry. Here is what I said at the time:

> I'm really disappointed . . .. It's not just about the media and the fact that we were attacked while we were doing our job. It's about the fact that that was before curfew. So every single person that was here had a legal right to be here. And to see these people tear gassed to make way for a photo opportunity for the president in front of the White House in the United States of America is outrageous. This is not the United States that I know at the moment. This is a police state. It's martial law. And to see civilians treated like that was really, really upsetting.

As a reporter, I don't like to make myself the story. I'm there to witness and report on what I see, without interfering. But I have been shocked over the past few weeks to see how many reporters in cities around the country have been attacked, beaten, and arrested, just for doing their jobs. In fact, my fiancée, who is here with me today, is a cameraman for Channel 9 News, one of Seven's biggest rivals. He was in Minneapolis to cover the unrest. On the Saturday night before I was attacked in Lafayette Square, he was driving in a car with the reporter he works with, as well as a security consultant. They were stopped by the police while they were driving after that city's curfew. Although they had media credentials that permitted them to be out at that time (since the press was exempt from the curfew), the police pulled their car over and placed all three under arrest. They sat handcuffed on the curb for a number of minutes before they were let go. Our experiences are just two of many that have been happening around the country, some much more serious than what happened to either of us. As terrifying as my experience was, I feel grateful that Tim and I were not more seriously injured, as some of my fellow journalists around the country have been.

The Australian government and people were horrified to see journalists treated this way in, of all places, the United States, which has such a long tradition of protecting the role of the press. As I've mentioned, the attack on myself and Tim was broadcast live to hundreds of thousands of Australians eating their breakfasts—including my family, who were understandably quite worried for my safety. People at the highest levels of our government expressed shock and outrage. The Prime Minister called the incident "troubling," and directed Australia's Ambassador to the United States to seek a full investigation of the incident. The leader of the opposition party labeled it a "completely unacceptable assault."

Covering protests does carry unavoidable risks, but the media's role is essential. We don't just have a right to be there, we have an obligation. As Australian

journalists, we are the eyes and the ears of the people, in this case witnessing civil unrest in the capital of our most powerful and closest ally. It is crucial to democracy that journalists be allowed to do their job freely and safely. And that is certainly something we should expect in the world's greatest democracy.

QUESTIONS SUBMITTED FOR THE RECORD BY CHAIR GRIJALVA TO MS. AMELIA BRACE, U.S. CORRESPONDENT, SEVEN NEWS AUSTRALIA

Question 1. Did you see the U.S. Park Police, military, or other law enforcement entity at Lafayette Square on the evening of June 1, 2020 wearing any cameras, either when you were on the scene, or in footage afterwards? Did you see any other video recording equipment associated with any of the police or military forces? If so, please provide details.

Answer. I have no specific memory of seeing law enforcement officers wearing cameras at the time, nor do I recall seeing any other video recording equipment associated with any of the police or military forces. In reviewing the footage of the assault against me and Tim Myers by U.S. Park Police officers (as captured by local news station WJLA), I observe that the officer who assaulted Mr. Myers with his riot shield was wearing what appears to be a body camera. Other U.S. Park Police officers in the line that moved forward at the same time also appear to be wearing similar devices on the left sides of their chests.

The CHAIRMAN. Thank you. I now recognize Jonathan Turley, Professor of Law at George Washington University.

Professor, the time is yours, sir.

STATEMENT OF JONATHAN TURLEY, LAW PROFESSOR, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Mr. TURLEY. Thank you, Mr. Chairman, Ranking Member, members of the Committee for the honor of appearing before you today to talk about the controversy of the clearing of Lafayette Park.

For roughly 14 years, I was one of the lead counsels in the World Bank protest litigation that produced the guidelines and case law currently applied in mass demonstration events like the one in Lafayette Park. Much of that litigation centered on the mass arrest of hundreds of individuals in Pershing Park, which is not far from Lafayette Park, in 2002. I appear today in the hopes of offering some legal perspective on the governing standards that apply in these cases, and also the facts that a court would likely look at in reviewing these allegations, which are quite serious.

In appearing, I should disclose that I have previously discussed this matter. I criticized the level of force used to remove the protesters from the area, and called for a congressional investigation into the operation.

I also stated that night that I thought the attack on the Australian journalist appeared entirely unjustified and unlawful. I continue to hold those opinions, as I discuss in my written testimony.

My written testimony looks at the motivation, the authority, and the means used in the operation.

Two points on nomenclature. I referred to the operation as the "clearing operation" to establish the perimeter to create a fence line. This process appeared to take about 22 to 26 minutes from the timelines that I have reviewed.

But, as this Committee has, in the title of the hearing—as the Chairman said in his opening statement, we are all referring to Lafayette Park or Lafayette Square Park. Obviously, we are not talking about just the park itself. Most of the activity occurred on H Street, and some of the protesters were pushed back to, I believe, I street. The Park Police have argued they were creating this perimeter so they could establish the fence line. But, obviously, when we talk about Lafayette Park, as with the title of this hearing, we are talking about a larger area.

And, by the way, that is an area that I think would warrant congressional review of how far those protesters were pushed back, and why.

As to the photo op allegation, that goes to the motivation behind this operation. I won't dwell on that much. As my testimony indicates, this may be a case where correlation does not mean causation. There has been a number of statements and timelines presented that indicate that the plan to clear the park, create the fence line was, in fact, proposed 2 days earlier. It was submitted on Sunday night, I believe. It was approved in some form on Monday morning. An order went out around 2.

The National Guard, apparently, was delayed in arriving. That pushed that operation past 5, and there was a delay in the fencing material.

So, whether all of that is true or not is exactly why we need a congressional inquiry, and that is an area that I would encourage the Committee to look at.

In terms of the order itself, just because there was damage and there was violence the day before does not mean that an order is, per se, lawful, or that it was done in a lawful way.

In the World Bank protest litigation and other cases, we have established guidelines that you must have three audible warnings that are spaced apart. You must also give ample opportunity for dispersal. In the World Bank case, we had the encirclement of everyone in Pershing Park Freedom Plaza. So, even if they had been given those warnings, which they weren't, they wouldn't have been able to remove themselves.

In this case, it does appear the three warnings were given, but that is based on the government's account. And, once again, that is an issue for you to look at.

It also does appear that protesters could remove themselves because they weren't encircled. However, if you look at these films, there was a very rapid approach of the line to the perimeter line, which is beyond the fence line. That line was brought back to the fence line later. That rapid pushing forward is something that is a legitimate question for this Committee to ask. Was there enough time that it was necessary to use the level of force that it did?

On the level of force, as my testimony goes through in detail, courts have largely deferred to an objective, reasonable officer in determining what force should be used. This comes out of the Graham case, it is called the Graham analysis.

I point out that a number of district courts have ruled recently against the use of tear gas and pepper spray. And as I say in my testimony, that distinction between tear gas and pepper spray is really not that essential, because courts tend to group them

together. The important question is, was there a reasonable use of those devices?

My summary, ultimately, concludes that the order to clear the park is probably going to be held as lawful, that the government does have the right to clear the park. Whether the means used to clear the park were lawful is something that this Committee and other committees may be able to shed some light on.

Many courts would express concern over the rapid escalation of force, particularly in a protest involving police abuse allegation. And, for that reason, I compliment Congress in looking into this.

I would be happy to answer any questions on the legal aspects, should Members have those.

Thank you.

[The prepared statement of Mr. Turley follows:]

PREPARED STATEMENT OF JONATHAN TURLEY, SHAPIRO PROFESSOR OF PUBLIC INTEREST LAW, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

I. INTRODUCTION

Chairman Grijalva, ranking member Bishop, members of the Committee on Natural Resources, my name is Jonathan Turley, and I am a law professor at George Washington University where I hold the J.B. and Maurice C. Shapiro Chair of Public Interest Law.[1] It is an honor to appear before you today to discuss the controversy over the clearing of Lafayette Park.

For roughly 14 years, I was one of the lead counsels in the World Bank protest litigation, which produced guidelines and case law currently applied in mass demonstration events like the one at Lafayette Park.[2] Much of this litigation centered on the mass arrest of hundreds of protesters in Pershing Park and Freedom Plaza, not far from Lafayette Park, in 2002. I appear today in the hope that I can offer a legal perspective on the governing standards that apply to such cases and the key facts that would determine how a court would likely review the current controversy. In so appearing, I should disclose that I have previously discussed this matter. As a long-time free speech advocate,[3] I criticized the level of force used to remove the protesters and called for a congressional investigation into the purpose, timing, and means of the operation. I also stated that an attack on Australian journalists appeared unjustified and unlawful. I continue to hold those opinions and will explain them in more detail below.

The standards derived from prior cases like *Chang* and *Barham* are important not only for establishing unlawful conduct but also for enabling litigants to overcome qualified immunity defenses. Qualified immunity shields Federal officials from damages absent a showing that (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct.[4] The Supreme Court has "repeatedly told courts . . . not to define clearly established law at a high level of generality.[5] Rather, the qualified immunity doctrine demands a "more particularized" inquiry.[6] This testimony is an effort at a more particularized analysis of confirmed facts.

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[1] I appear today on my own behalf and my views do not reflect those of my law school, my colleagues, CBS News, the BBC, or the newspapers for which I write as a columnist. My testimony was written exclusively by myself, though I received inspired editing assistance from Nicholas Contarino, Thomas Huff, and Seth Tate.

[2] There are multiple lawsuits involved in this litigation. *See, e.g., Chang v. United States*, 738 F. Supp. 2d 83 (D.C. Cir. 2010); *Barham v. Ramsey*, 434 F.3d 565 (D.C. Cir. 2006). Our *Chang* case was the first filed and the last to settle. The long and complex litigation was only possible due to the commitment of Bryan Cave Leighton Paisner LLP and my co-lead counsel Daniel Schwartz. In the over decade of intense litigation, over 30 lawyers joined our effort including Jake Kramer, Dan O'Conner, PJ Meitl, Heather Goldman, Jennifer Mammon, and many others. They represent the very best of the bar and its commitment to the public interest.

[3] I have litigated free speech issues and write regularly in support of free speech values. My blog, ResIspa (www.jonathanturley.org), is focused in large part on issues related to free speech and the free press.

[4] *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

[5] *Id.* at 742.

[6] *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

I have been called not as a witness or a litigant but as an expert on the underlying law. I will give you my best assessment of the various legal claims that have been raised in the aftermath of the Lafayette operation, including widely reported theories that now appear to be without sufficient legal or factual foundation. In so doing, we can hopefully focus on the real issues to come before Congress and the courts. After briefly discussing the Pershing Park case, I will focus on the two most important legal questions surrounding the authority to clear the park and the manner in which it was done. I believe this investigation and the other ongoing inquiries are important steps to guarantee both a full record and complete accountability for the actions on June 1, 2020.

II. THE PERSHING PARK LITIGATION

On September 27, 2002, during demonstrations in protest of the International Monetary Fund and the World Bank, the District of Columbia Metropolitan Police Department ("MPD"), the United States Park Police, and other law enforcement personnel carried out a mass arrest at Pershing Park in Washington, DC. Specifically, police officers from these agencies encircled Pershing Park and arrested roughly 400 individuals who were in the Park. Among those arrests were student journalists and observers who became the first to file against the MPD, the Park Police, and other agencies and individuals.[7] The central figure in this unconstitutional mass arrest was then Assistant Police Chief Peter Newsham (who is now serving as the Chief of Police)[8] and then Chief of Police Charles Ramsey. We specifically included the Park Police as a defendant in our action based on its critical role in the encirclement of the area to carry out the "trap and arrest" operation.[9]

Newsham ultimately acknowledged he gave the order to trap and then arrest hundreds of people, including tourists and journalists, without affording them any warning or opportunity to disperse. He explained his decision in the following way: "[I]t appeared to me that the demonstrators . . . were continuing to act as an organized group and would at some point leave the Park to continue their unlawful demonstrations in the streets. I determined that I should not and would not allow this to occur." He admitted that he declined to give warnings precisely because he did not want people to escape: "I was concerned that if orders were given to clear the Park, the demonstrators would leave the Park as an organized group, or groups, and unlawfully take to the streets as they had previously done, thus exacerbating the situation rather than resolving it."

Ramsey admitted that he was fully informed of the intent to arrest everyone in the park. However, despite being present and speaking with Newsham and others about the operation, he denied giving the order. Ramsey would only say that he "supported" Newsham's decision to arrest and, at most, gave his "tacit approval." Nonetheless, two officers came forward at great personal risk and contradicted Ramsey, insisting that he did give the order. These officers (who were standing separately and on either side of Ramsey as he spoke with Newsham) testified that Ramsey ordered Newsham to "lock those mother****ers up," to "teach them a lesson" and "get them off the street."

The Park Police, Secret Service, and other police agencies participated in the mass arrest. Like many, our plaintiffs were held for over 24 hours. They were hog-tied (wrist being cuffed to their ankle), despite there being no allegations that they had engaged in violence or were likely to be violent.

Numerous lawsuits were brought over the mass arrest, ultimately costing the city millions of dollars in settlements and litigation costs. A settlement reached with some of those other litigants included guidelines for future mass demonstration

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[7] Our clients included but were not limited to RayMing Chang, a first-year law student at George Washington University who attended the demonstration as a neutral legal observer affiliated with the National Lawyers Guild; Young Choi, Leanne Lee, and Christopher Zarconi who attended the demonstration as student journalists or photojournalists affiliated with *The Hatchet*, an independent newspaper at George Washington University.

[8] Many of us involved in the World Bank, and civil libertarians, opposed Newsham's appointment by Mayor Muriel Bowser due to his key role in one of the most costly and unconstitutional mass arrests in the history of the city. *See* Peter Hermann & Ann Marimow, *Mayor names Peter Newsham as District's police chief*, The Washington Post (Feb. 23, 2017), https://www.washingtonpost.com/local/public-safety/newsham-to-be-named-dc-police-according-to-officials-familiar-with-the-process/2017/02/23/a35f882c-d1b6-11e6-a783-cd3fa950f2fd_story.html. Newsham's involvement in the current protest controversies can only be described as tragically ironic. *See* Jonathan Turley, *What Mayor Bowser will not state about real history of police abuse*, The Hill (June 9, 2020, 9 AM), https://thehill.com/opinion/criminal-justice/501772-what-mayor-bowser-will-not-state-about-real-history-of-police-abuse.

[9] Jonathan Turley, *Un-American Arrests*, The Washington Post, Oct. 6, 2002, at B8 (describing the operation as a "trap and arrest" tactic).

operations based on litigation. The *Chang* plaintiffs did not agree to such a settlement at the time because we felt that there had not been sufficient accountability for the actions in Pershing Park and we were not satisfied that the guidelines were sufficiently stringent or enforceable. One unresolved issue was the loss of key pieces of evidence in the possession of the District. For example, the "running resume," which contained a record of orders from top officials, was never found. District employees also allegedly gave false declarations and statements to the Court on the existence of different records and their mysterious loss.

The litigation in all of the World Bank protest cases took roughly 14 years before the Honorable Emmet Sullivan of the United States District Court for the District of Columbia. In future mass demonstration events, the court reaffirmed in all of these cases that the Park Police, as well as the MPD, could not enclose or otherwise prevent demonstrators from leaving areas of unlawful gatherings. Warnings were to be repeated three times with sufficient amplification and separation to allow both officers and citizens to understand the order to disperse. Moreover, reasonable exits would be available after warnings are given. The court further emphasized the need for probable cause and the ability to identify the individuals who commit illegal acts before arrests are made.

III. THE LAFAYETTE PARK LITIGATION

Applying these standards and controlling case law to the Lafayette Park operation can hopefully clarify the legal and policy issues for Congress in addressing the two most important questions (the clearing of the Park and the level of force in the operation). There is however a lingering question about why the clearing of the Park was ordered in the first place. The motivation for such an operation is relevant but not necessarily determinative. If the government has the authority to clear the park, it can usually exercise that authority at its discretion. There would remain, however, the question of the abuse of that discretion.

This controversy has long been framed by one overarching narrative that the park was cleared for a photo op. Shortly after the Park was cleared, President Donald Trump held a photo op outside of St. John's Church. It was widely criticized and I joined in that criticism. Even so, the more salient legal question is whether the park was cleared for the purpose of holding the photo op, as alleged by many in the media. The timing of the operation fueled such speculation. The operation occurred shortly before the 7 p.m. curfew imposed by the city. At 6:29 p.m., Park police and supporting agencies started to move toward the protest line. At around 6:35 p.m., the first deployment of pepper bullets or non-lethal devices were reportedly used to push back the protesters. At 7:02 p.m., President Trump began his walk to the Park and ultimately to the church. By 7:06 p.m., he was holding a bible in his photo op and ultimately called over military and civilian leaders, including Attorney General Barr for pictures.

Given that timeline, it is hardly surprising that people would believe that there was a relationship between the plan for a photo op and the park operation shortly before. It appears, however, that the hundreds of stories claiming that the Park was cleared for the purpose of the photo op may be an example of how "correlation does not imply causation." In other words, the fact that two variables occur in close sequence or association does not mean that one is caused by the other. I do not, however, believe that the record is complete on this question. Assuming that the current record is accurate, the original order to clear the park was not related to the photo op. Yet, there remains an open question as to whether there was any last-minute consideration of a delay in the clearing of the park and whether the photo op was raised as part of such a decision. The D.C. National Guard's arrival appears to have delayed the operation past 5 p.m. and it is not known if anyone raised the possibility of waiting until the following morning for the fence installation given the size of the crowd in the park. The answer from Attorney General Barr is that he had no such discussion on the photo op and the Park Police appears to have also rejected that possibility. Rather, it appears that, once both the fencing material and the guardsmen were in place, the operation proceeded as planned. Yet, it is a fact that should be clearly established.

It should be obvious that the closing of the park for such a purpose would be as disgraceful as it would be abusive. Indeed, despite knowing Attorney General Barr for many years and testifying at his confirmation hearing in the Senate,[10] I would

[10] U.S. Senate, Committee on the Judiciary, *The Confirmation of William Pelham Barr As Attorney General of the U.S. Supreme Court*, Jan. 16, 2019 (testimony of Professor Jonathan Turley), available at https://www.judiciary.senate.gov/imo/media/doc/Turley%20Testimony.pdf.

immediately call for him to step down if this operation was ordered simply to give President Trump a photo op in front of the church.

As the record stands, Attorney General Barr and the Park Police have repeatedly denied that the plan to clear the park had anything to do with the photo op.[11] To the contrary, both assert that the plan came from the Park Police long before any photo op was contemplated and Barr has insisted that he was unaware of any such plan by the President. Acting Park Police Chief Gregory T. Monahan has given a detailed account supporting the two reasons for the delay: the arrival of the fencing and the arrival of the personnel needed to clear the park to install the fencing:

> "Following the violence that continued on May 30th where officers were hit with bricks and assaulted, the USSS and USPP had initial discussions regarding adjustments to the collective posture in Lafayette Park and potentially obtaining fencing. As violence and destruction continued in Washington, DC, putting both the public and law enforcement at risk, on Sunday, May 31, USSS confirmed with USPP that the anti-scale fencing would be procured and potentially delivered on Monday for installation along H Street.
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> On Monday, June 1, USPP received confirmation from the USSS that the fencing would be delivered during the day with the expectation of being installed in the evening. Both agencies concurred with a plan to clear H Street to prevent a repeat of the protestors' attacks and destruction that occurred on Friday, Saturday, and Sunday and to create a safe environment for the fence to be installed. Pedestrians were to be moved from the immediate area of the 1600 block of H Street to the following points: H Street & Connecticut Avenue on the west, 16th & I Streets to the north, H St. east of Vermont Avenue to the east.
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> The timing of implementing the plan was contingent upon having enough resources on scene. Given that the majority of law enforcement personnel did not report until later in the day, a late afternoon or early evening operation was inevitable."

That account can be easily investigated by reviewing the records documenting the delivery of the fencing and the arrival time of reinforcements.

The underlying violence cited as the reason for the plan can also be investigated. Aside from video evidence, media accounts, and police reports, an objective record is also available based on the injuries recorded on both sides in the Park during the critical period of Saturday through Monday. The government has claimed over 100 Federal officers were injured around this time. The Park Police alone has asserted that "51 members of the USPP were injured; of those, 11 were transported to the hospital and released and three were admitted."[12] The government has cited repeated and confirmed incidents of arson and property destruction in and around Lafayette Park. That would be a sufficient and lawful reason to close the park, which has been closed in prior years to protect the park or the White House complex.

The government has also offered a timeline that can be easily verified. Government officials have stated that the plan was discussed two days in advance based on ongoing violence in the park.[13] Barr said that he personally witnessed such violence in the park and approved the plan. Barr also said that an order was sent out to all agencies around 2 p.m. Again, he insists that the no one had discussed a visit to the church or the Park by the President with him. Various media organizations have reported sources confirming that the order was unrelated to the photo op outside of St. John's. Absent new evidence that all of these individuals and agencies are lying, the timeline of events would seem to support that the clearing of the Park

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[11] *See* Rob Hotakainen, *Bernhardt defends Park Police actions*, E&E News (June 8, 2020), https://www.eenews.net/greenwire/stories/1063352991/search?keyword=park+police.

[12] Statement From United States Park Police Acting Chief Gregory T. Monahan, June 4, 2020, available at https://www.nps.gov/subjects/uspp/6_2_20_statement_from_acting_chief_monahan.htm.

[13] Aaron C. Davis, Carol D. Leonnig, Josh Dawsey, & Devlin Barrett, Officials familiar with Lafayette Square confrontation challenge Trump administration claim of what drove aggressive expulsion of protestors, The Washington Post (June 14, 2020), https://www.washingtonpost.com/politics/officials-challenge-trump-administration-claim-of-what-drove-aggressiveexpulsion-of-lafayette-square-protesters/2020/06/14/f2177e1e-acd4-11ea-a9d9-a81c1a491c52_story.html.

was not ordered to make way for the Trump photo op.[14] Congress should certainly examine whether these representations are true. The need to confirm the motivation behind the operation is heightened by the abridgment of core free speech rights of protesters who assembled to denounce police abuse. Courts have previously recognized First Amendment claims in similar circumstances.[15]

Congress can play a critical role in resolving this question. However, even assuming that the order to clear the park was unrelated to the photo op (as it currently appears), it may still have been unlawful under the standards laid out in the World Bank litigation and other controlling case law. It is to those questions that I now turn.

A. The Clearing Of Lafayette Park

Any court reviewing the decision to clear Lafayette Park will start with several established framing elements. First, the demonstration took place on Federal land near an area (the White House) that is afforded particularly high levels of security. Second, this was a demonstration that was proceeding without a permit or permission from the Federal Government. Third, there was a high level of injuries to Federal officers and property destruction in the prior 24 hours. Those facts ordinarily give the government the discretion to order people from the Federal property at its discretion. The actual dispersal actions at issue appear to have lasted less than 30 minutes and did not result in arrests.[16] On the current record, the order approved Monday morning to clear the park to install fencing is likely to be viewed as lawful and within the discretion of the government.

These facts, however, does not give the government carte blanche to clear the park in any manner that it desires. As stated by the court in the Pershing Park litigation, Park Police are supposed to give protesters a minimum of three audible warnings that are both amplified and spaced apart. This is meant to give protesters notice that they are in violation of the law and facing arrest. The Park Police must also give reasonable avenues for the crowd to disperse in accordance with such instructions. In the World Bank litigation, it was confirmed that no warnings were given and thus no probable cause was established for the arrests.[17] The Court enforced "the binding authority in this Circuit," established by *Dellums v. Powell*, that there is a "'bright-line rule' that groups with nonviolent or obstruction individuals may not be arrested as a group 'without fair warning or notice and the opportunity to come into compliance and disperse.'"[18]

In this case, no arrests were made but there is still a requirement for warnings under the guidelines. The Park Police has stated that it complied with these guidelines. Here is the official response:

> "On Monday, June 1, the USPP worked with the United States Secret Service to have temporary fencing installed inside Lafayette Park. At approximately 6:33 p.m., violent protestors on H Street NW began throwing projectiles including bricks, frozen water bottles and caustic liquids. The protestors also climbed onto a historic building at the north end of Lafayette Park that was destroyed by arson days prior. Intelligence had revealed calls for violence against the police, and officers found caches of glass bottles, baseball bats and metal poles hidden along the street.
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> To curtail the violence that was underway, the USPP, following established policy, issued three warnings over a loudspeaker to alert demonstrators on H Street to evacuate the area. Horse mounted patrol, Civil Disturbance Units and additional personnel were used to clear the area. As many of the protestors became more combative, continued to throw projectiles, and attempted to grab officers' weapons, officers then employed the use of

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[14] Dalton Bennett, Sarah Cahlan, Aaron C. Davis & Joyce Lee, The crackdown before Trump's photo op, The Washington Post (June 14, 2020), https://www.washingtonpost.com/investigations/2020/06/08/timeline-trump-church-photo-op/?arc404=true.

[15] *See, e.g., Dellums v. Powell*, 566 F. 2d 167, 194 (D.C. Cir. 1977) (recognizing a cause of action under the Constitution for the violation of the First Amendment rights of both individuals demonstrating at the U.S. Capital and a Congressman addressing the demonstrators); *Gibson v. United States*, 781 F.2d 1334 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987) (finding that a claim against Federal Bureau of Investigation agents who impermissibly curbed plaintiff's protected speech was properly cognizable as a *Bivens*-type action under the First Amendment).

[16] Reviewing various government and media timelines, it seems to me that, if (as likely) the warnings were spaced apart by a couple minutes at a minimum, the time from the movement of the line to the securing of the park was likely around 25 minutes. However, it seems unlikely that it was much longer than 30 minutes.

[17] *Barham v. Ramsey*, 434 F.3d 565, 573 (D.C. Cir. 2006).

[18] *Barham v. Ramsey*, 338 F. Supp. 2d 48, 58 (D.D.C. 2004) (citing *Dellums v. Powell* 566 F.2d 167 (D.C. Cir. 1977)).

smoke canisters and pepper balls. USPP officers and other assisting law enforcement partners did not use tear gas or OC Skat Shells to close the area at Lafayette Park. Subsequently, the fence was installed."

Various media outlets have confirmed hearing one or more warnings[19] and some members of the crowd were reportedly moving back. Moreover, the line of officers did not appear to encircle the protesters so individuals could disperse. Congress should confirm that the Park Police used a sufficient amplification system, like the Long Range Acoustic Device (LRAD),[20] and that the warnings were sufficiently clear and spaced apart. If that did occur in Lafayette Park, a court would likely hold that the park could be cleared so long as at least three warnings were given and protestors were provided an opportunity to disperse.

B. The Use of Pepper Balls and Other Means in The Operation

If the government is found to have told the truth about providing warnings and a reasonable opportunity for dispersal, there remains the question of the means used for the clearing operation. On this point, there is a factual dispute over the use of what witnesses described as "tear gas." Attorney General Barr has said that he did not give the order to disperse the crowd but supported the decision made by Park Police to use dispersal tactics if necessary. He and the Park Police insisted that no tear gas or "OC Skat shells" were used in the operation as opposed to smoke canisters and pepper balls, though a spokesman later said that pepper spray has the same effect as tear gas.[21] The debate has turned into a debate over the colloquial versus technical uses of the term "tear gas," which may not be determinative to our analysis. Officials insist that they did not deploy CN and CS (or 2-chlorobenzalmalononitrile products), defined by the Centers for Disease Control and Prevention as the "most common" forms of tear gases. The government refers to "pepper spray" as a "riot control agent." One photo purportedly shows a clearly labeled "Skat Shell OC."[22] Oleoresin Capsicum refers to an irritant derived from pepper plants but it has the same effect of what people associate with tear gas. Congress should be able to confirm if the Park Police has misrepresented the devices used in the operation. However, the agencies have continued to maintain, including in communications with Congress, that no tear gas was used in the operation.

For the purposes of legal analysis, the technical distinction may prove less important to the conclusions. Courts often group the use of tear gas and pepper spray together in court orders. The question is whether it was lawful to use non-lethal devices ranging from possible smoke canisters to pepper balls to tear gas. That question is likely to turn on the far more significant conflict in the accounts of the violence level in the park. In reviewing video footage, there was clearly significant violence in the park in the preceding days. On the day of the operation, some protestors could be seen throwing projectiles at officers. However, the crowd appeared largely peaceful, an impression reaffirmed by journalists in the crowd.

Courts tend to defer to law enforcement in circumstances where they face immediate threats to their safety or the safety of others.[23] The Supreme Court has

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[19] *See, e.g.*, Karl Gelles, *How police pushed aside protesters ahead of Trump's controversial church photo*, USA Today (June 11, 2020, 1:15 PM), https://www.usatoday.com/in-depth/graphics/2020/06/05/george-floyd-protests-trump-church-photo-curfew-park/3127684001/.

[20] LRAD is used by the Park Police and is an extremely powerful system for such warnings. The LRAD 100X unit, for example, is 20–30 decibels louder than typical vehicle-based P.A. systems that were once commonly used for dispersal orders. See https://genasys.com/lrad_products/lrad-100x/. The LRAD system has a range that far exceeds the relatively small space of the Park. However, canceling noise of protests can defeat even the best system, which is why three warnings are required.

[21] Rebecca Beitsch, *U.S. Park Police Say It Was A Mistake To Say No Tear Gas Was Used In Lafayette Park*, The Hill (June 5, 2020, 3:11 PM), https://thehill.com/homenews/administration/501372-us-park-police-say-it-was-a-mistake-to-say-no-tear-gas-was-used-in (quoting Park Police spokesman Sgt. Eduardo Delgado as saying "I'm not going to say that pepper balls don't irritate you. I'm not saying it's not a tear gas, but I'm just saying we use a pepper ball that shoots a powder.").

[22] *Id.*

[23] *See, e.g., Bell v. Irwin*, 321 F.3d 637, 640 (7th Cir. 2003) ("It is easy in retrospect to say that officers should have waited, or should have used some other maneuver . . . but the fourth amendment does not require second guessing if a reasonable officer making decisions under uncertainty and the press of time would have perceived a need to act."); *Mitchell v. City of Indianapolis*, No. 1:18-cv-00232-SEB-TAB, 2020 U.S. Dist. LEXIS 55274, at *1 (S.D. Ind. Mar. 31, 2020) (Under the circumstances, a reasonable officer could have also reasonably concluded . . . that lesser uses of force, including physically removing [the suspect], would be both less effective at securing compliance and more dangerous for the Officers.").

stressed that officers are often "forced to make split-second judgments [] in circumstances that are tense, uncertain, and rapidly evolving."[24] Under a fourth amendment analysis, such use of force must be shown to be "objectively unreasonable."[25] Objective unreasonableness is in turn "judged from the perspective of a reasonable officer on the scene," in light of "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."[26]

The *Graham* analysis has been applied to the use of non-lethal devices by police. For example, in *Fogarty v. Gallegos*, the Tenth Circuit found such use to be unreasonable, noting:

> "With respect to the use of pepper balls and tear gas, we acknowledge that our precedential opinions have not directly addressed the Fourth Amendment implications of what defendants call 'less lethal' munitions. Nevertheless, a reasonable officer would have been on notice that the Graham inquiry applies to the use of these methods just as with any other type of pain-inflicting compliance technique. We find it persuasive that, in prior cases, we have assumed that the use of mace and pepper spray could constitute excessive force."[27]

An important distinction comes into play at this point in the analysis. In this case, the officers were using the force to disperse a crowd rather than deter or control an individual. Attorney General Barr has stated that the Park Police made this decision but that they had the authority to do so when faced with violent opposition. In videos, the crowd as a whole appears in flux with some responding to the dispersal order and others not responding, including a few seen resisting or obstructing the advancing line of officers.

There are comparatively few cases on the use of pepper spray to disperse crowds than there are individual cases of alleged excessive use of force. Some cases support the claim of the journalists in this case. In reviewing the attack on Amelia Brace and her colleagues at Seven Network, I cannot see any conceivable justification for the police conduct. This is not the first such attack on journalists. A similar case was litigated recently in *Quraishi v. St. Charles Cty.*, where police fired rubber bullets and tear gas at Al Jazeera America journalists reporting on the events in Ferguson on August 13, 2014. The court ruled that it would obviously be unreasonable for the police to deploy tear gas against non-violent individuals who are also not committing a crime.[28] Likewise, prior cases have distinguished between people who are agitating and those observing or recording scenes. In *Jones v. City of Minneapolis*, the district court granted summary judgment against plaintiffs' claims of excessive force when the officers used mace on a crowd because the crowd "[tried] to restrict their movement," someone throw a "glass of booze" in one officer's face, and the police believed they were responding to an officer in distress.[29] However, the court refused to dismiss the claims of a videographer who was individually assaulted by police.[30] Courts have also refused to dismiss cases as categorically barred under immunity arguments in such cases.[31]

However, the use of pepper spray is subject to a reasonableness standard based on the totality of the circumstances in a given case, such as the use of pepper balls fired into crowds.[32] Courts have upheld the use of forms of gas or pepper sprays to generally repel or disperse unruly crowds.[33]

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[24] *Graham v. Connor*, 490 U.S. 386, 397 (1989).

[25] *Id.* at 397.

[26] *Id.* at 396.

[27] *Fogarty v. Gallegos*, 523 F.3d 1147, 1161 (10th Cir. 2008).

[28] *Quraishi v. St. Charles Cty.*, No. 4:16-CV-1320 NAB, 2019 U.S. Dist. LEXIS 97254, at *1327–28 (E.D. Mo. June 10, 2019).

[29] *Jones v. City of Minneapolis*, No. 04–4856 (DWF/AJB), 2007 U.S. Dist. LEXIS 56280, at *10–11 (D. Minn. Aug. 1, 2007), aff'd 337 F. App'x 596 (8th Cir. 2009).

[30] *Id.* at *27–28.

[31] *See, e.g., Lamb v. City of Decatur*, 947 F. Supp. 1261 (C.D. Ill. 1996) (rejecting qualified immunity claims under 42 U.S.C.A. § 1983); *Nelson v. City of Davis*, 2012 WL 2821931 (9th Cir. 2012).

[32] *See, e.g., Buck v. City of Albuquerque*, 549 F.3d 1269 (10th Cir. 2008).

[33] *See, e.g., Dalrymple v. United States*, 460 F.3d 1318, 1327–28 (11th Cir. 2006) ("Based on these undisputed findings of fact, we agree with the district court that [the demonstrator surging toward the front of the barricade while throwing objects including rocks, bottles, a stool, and coolers at the agents] justified the use of either pepper spray or tear gas and was objectively reasonable under the circumstances."); *Young v. Akal*, 985 F. Supp. 2d 785, 803 (W.D. La. 2013) ("Given the crowd's refusal to adhere to the officers' warnings [over 4 hours], this Court

There are cases, including some recent holdings, where courts reject the use of such devices against an entire demonstration as opposed to individual violent demonstrators. Courts have held that the proper response to violent individuals is to arrest those individuals rather than to generally deploy tear gas or other irritants. This is particularly the case with regard to dispersing crowds engaged in free speech activities. In *Collins v. Jordan*, the Ninth Circuit held "the proper response to potential and actual violence is for the government to ensure an adequate police presence, and to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure."[34] Pepper ball devices have been specifically flagged as causing added risks in crowded conditions. In *Nelson v. City of Davis*, the Ninth Circuit observed:

> "The dual nature of the pepperball projectile creates additional risks not present with a strictly projectile object . . . [n]onetheless, even if considered as a purely projectile object, the officers in this case were aware that pepperballs fired from their guns could, as in this instance, cause substantial harm, and that there was a substantial risk of hitting individuals in vulnerable areas given the inability to accurately target their weapons at the distance at which they fired them . . . [A] reasonable officer would have known that firing projectiles, including pepperballs, in the direction of individuals suspected of, at most, minor crimes, who posed no threat to the officers or others, and who engaged in only passive resistance, was unreasonable."[35]

Recently, a Seattle court banned the use of tear gas, despite evidence from police of "significant arson events, assaults on civilians and officers, as well as wide-spread looting and property destruction."[36] The Court issued the temporary restraining order even though it acknowledged that "This, no doubt, poses a serious threat to officer life and safety." The Seattle case notably included both tear gas and pepper spray within its injunction. The court defined the scope of the injunction as:

> "(1) any chemical irritant such as and including CS Gas ("tear gas") and OC spray ("pepper spray") and (2) any projectile such as and including flash-bang grenades, "pepper balls," "blast balls," rubber bullets, and foam-tip projectiles. This Order does not preclude individual officers from taking necessary, reasonable, proportional, and targeted action to protect against a specific imminent threat of physical harm to themselves or identifiable others or to respond to specific acts of violence or destruction of property. Further, tear gas may be used only if (a) efforts to subdue a threat by using alternative crowd measures, including pepper spray, as permitted by this paragraph, have been exhausted and ineffective and (b) SPD's Chief of Police has determined that use of tear gas is the only reasonable alternative available."

Likewise, in another recent decision, a Federal district court rejected the use of tear gas even when police submitted evidence of "the breaking of the windows of the Justice Center and other buildings, setting off fireworks, property destruction, looting, setting fires in the Justice Center and other areas of downtown, throwing and launching deadly projectiles at the police, and attempting to dismantle a fence put up to protect the Justice Center."[37] The court order that "[Portland Police Bureau] be restricted from using tear gas or its equivalent except as provided by its own rules generally.[38] In addition, tear gas use was limited to situations in which the lives or safety of the public or the police are at risk, including the lives and safety of "those housed at the Justice Center."[39] It expressly barred the use of "[t]ear gas . . . to disperse crowds where there is no or little risk of injury."[40]

A similar order was imposed in Denver where the court enjoined the use of tear gas and pepper spray after seeing videotapes "in which officers used pepper-spray on individual demonstrators who appeared to be standing peacefully, some of whom were speaking to or yelling at officers, none of whom appeared to be engaging in

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concludes the deputies acted within their authority to disperse the crowd with tear gas in order to unblock the streets and remove the hazards to others.").

[34] *Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir. 1996).

[35] *Nelson v. City of Davis*, 685 F.3d 867, 885–86 (9th Cir. 2012).

[36] *Black Lives Matter v. City of Seattle*, 2:20-cv-00887-RAJ, 2020 U.S. Dist. LEXIS 103346, at *9 (W.D. Wash. June 12, 2020).

[37] *Don't Shoot Portland v. City of Portland*, No. 3:20-cv-00917-HZ, 2020 U.S. Dist. LEXIS 100801, at *11–12 (D. Or. June 9, 2020).

[38] *Id.* at *13.

[39] *Id.*

[40] *Id.*

violence or destructive behavior."[41] The Court however did allow the use of tear gas and pepper spray when a senior officer gives such an order "in response to specific acts of violence or destruction of property that the command officer has personally witnessed." The court specifically allows for such use "after an order to disperse is issued" and "[a]ny and all orders to disperse must be followed with adequate time for the intended audience to comply, and officers must leave room for safe egress." The Park Police has already argued that such criteria were fulfilled.

Attorney General Barr has stated that he approved the plan but did not give specific or "tactical" dispersal orders, including the use of the pepper balls.[42] The position of the Park Police is that officers on the scene made these decisions based on specific resistance and not a general use of non-lethal agents. The Park Police said that smoke canisters and pepper balls were used when officers reported protesters grabbing their weapons and throwing projectiles at them. In other words, the position of the government is likely to be that the use of the agents was defensive and not offensive in this circumstance. That is challenged by witnesses and journalists who allege virtually random use of pepper balls and canisters.

The reasonableness of that response is likely to turn on the record now being created in this and other forums. The government has produced reports of a high degree of injuries, including hospitalizations, of Federal officers in this area. It can also show that serious property damage, including arson, had already taken place just the day before in the Park. It can also show that property damage has continued with the defacing and attempted destruction of the iconic Andrew Jackson statue in Lafayette Park just a few days ago.[43] The St. John's Church itself was again vandalized and, reportedly with the support of the church, was also cordoned off with the same fencing erected around Lafayette Park to protect it against further damage.[44] Moreover, there are statements from the Attorney General and high-ranking Federal officials that on the day of the clearing, officers were injured and one may have been hospitalized before the decision to clear the park. The fact is that the record of law enforcement injuries, arson, and property damage contradict a claim of entirely peaceful protests on that weekend or Monday night, including media reports.[45]

A glimpse at the likely government record for trial was supplied by Department of the Interior Secretary David Bernhardt, who has described the prior two days leading to the clearing of the Park. That includes violence on the Saturday before the arson at St. John's and other damage on Sunday:

> "Beginning on Saturday, May 30, 2020, the USPP were under a state of siege, and routinely subject to attack by violent crowds. The incidents are numerous and include USPP officers having their police cars vandalized; being subject to bombardment by lighted flares, Molotov cocktails, rocks, bricks, bottles and other projectiles; and physical assault so violent that to date over 50 area law enforcement officers have been injured . . . [to] include[] one USPP officer so violently attacked that he required emergency surgery."[46]

The current record would make it unlikely that the court would treat these demonstrations as entirely peaceful. However, the real significance of this information

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[41] *Abay v. City of Denver*, No. 20-cv-01616-RBJ, 2020 U.S. Dist. LEXIS 99523, at *3 (D. Colo. June 5, 2020).

[42] Tal Axelrod, *Barr says he didn't give 'tactical command' to clear Lafayette protesters*, The Hill (June 5, 2020, 10:33 PM), https://thehill.com/homenews/administration/501448-barr-says-he-didnt-give-tactical-command-to-clear-lafayette-protester.

[43] Fredrick Kiunkle, Susan, Svrluga, & Justin Jouvenal, *Police thwart attempt by protestors to topple statue of Andrew Jackson near White House*, The Washington Post (June 23, 2020), https://www.washingtonpost.com/local/public-safety/dc-police-and-protesters-square-off-near-whitehouse/2020/06/22/cec8c88c-b4c7-11ea-a510-55bf26485c93_story.html. Of course, the Jackson incident cuts both ways. It shows that these are not purely peaceful demonstrations, but it also shows that the Federal officers were able to regain control of the area without the use of the prior level of force. The Park Police is likely to argue that it did not encounter the same level of resistance around the Jackson statue.

[44] Egan Millard, *St. John's church in Washington Vandalized Again*, Episcopal News Service (June 23, 2020), https://www.episcopalnewsservice.org/2020/06/23/st-johns-church-in-washington-vandalized-again/.

[45] Marissa J. Lang, Michael E. Miller, Hannah Natanson & Peter Jamison, *Tensions between police and protesters flares in front of the White House before vandalism and sporadic fires*, The Washington Post (May 31, 2020, 2:32 AM), https://www.washingtonpost.com/local/public-safety/trump-accuses-dc-mayor-of-refusing-to-help-secret-service-at-white-house-demonstration-over-killing-of-george-floyd/2020/05/30/9bb59212-a276-11ea-9590-1858a893bd59_story.html.

[46] Letter from David Bernhardt, Secretary, U.S. Dep't of the Interior, to Rep. Raúl Grijalva, Chair, H. Comm. on Nat. Res. (June 5, 2020).

will only be established when we look at the specific pattern of injuries over the course of the three days and particularly those occurring on Monday before the decision to order the operation to move forward with the clearing of the Park.

C. Summary

There are significant and troubling issues to be addressed over the operation at Lafayette Park. If we are to effectively address those issues, we need to speak frankly about the record as it stands today, particularly in terms of how a court might view these facts. First, the widespread claim that the Park was cleared for the Trump photo op is currently unsupported and contradicted by the available evidence. Second, it does not appear that tear gas was employed on protesters, though it has been confirmed that pepper balls with similar effects were used. Third, it is not true that the protests in the Lafayette Park were entirely peaceful. There was extensive property damage, serious arson crimes, and continuing attacks on Federal law enforcement on Saturday, Sunday, and Monday. Finally, it is also true that most of the protestors in the Park on Monday evening were peaceful. Our understanding of these facts may of course change as a result of this and other investigations. Yet, it is important to focus on what we know and do not know in addressing legal and policy questions going forward.

A court is likely to find that a plan to close off the park submitted on Sunday night and approved Monday morning was within the legal discretion of the government. It is also likely to recognize that there was some exigency in the operation to install the fencing due to the proximity to the White House. Given that mixed record, a constitutional challenge to the decision to clear the park is unlikely to succeed absent new countervailing evidence. A challenge to the use of pepper balls as a general means for crowd dispersal could be a closer issue, but might still favor the Park Police absent additional information on the issues discussed above. From what I can deduce from video footage and timelines, the actual clearing maneuver (from the line movement to the establishment of a perimeter line) in the park lasted less than 30 minutes with no arrests. A court could (as I do) have objections to the use of the pepper balls and aggressive tactics but still find that this was within the realm of reasonable discretion of the officers on the scene.

As this and other committees go forward, I would strongly encourage an effort to secure some of the information highlighted in this testimony. This includes, but is not limited to: (1) all emails, memoranda, and other records of the planning to clear the park, including any discussion on Monday for delaying the operation to the following morning; (2) the "running resume" or other record of radio calls and orders given around the Park from Saturday through Monday; (3) the specific PA system or technology used to convey the three warnings and any video or audio tapes of the warnings showing their range and spacing; (4) the equipment record of the exact number of canisters, pepper ball, and other material used to clear the Park; (5) the record of all injuries reported and treated in the park for both law enforcement and non-law enforcement; (6) all property damage and criminal reports filed on those three days in and around the Park; (7) all pictures, videotapes, body camera recordings, and other photographic records on the points of contact between the advancing line of officers and protests during the clearing operation, including aerial footages and rooftop surveillance; (8) all reports from officers and other personnel on the incidents of attacks on or near officers and executive officials; (9) any memoranda of understanding (MOUs) with cooperating non-USPP units on the operation and instructions on the operation, including a full list of all non-USPP forces present in the park during those three days; and (10) any of the above information or material held by other cooperating non-USPP units or forces, including whether the deployment of pepper balls or smoke canisters were the actions of non-USPP personnel.

Many of us were upset by what happened on June 1, 2020, so it can be difficult to even acknowledge such likely judicial findings on the existing record. This is simply what we know now. Yet, what we know should be enough to focus people of good faith on both the need for further inquiry and possible reforms. There remains the question of how the park was cleared and specifically the aggressive response of the Park Police. We also know that many peaceful protesters and journalists were placed in an extremely dangerous situation by the use of smoke canisters and pepper balls to disperse a crowd that already appeared to be moving back. At a minimum, the rapid advancement of the police line raises concerns over execution of the order when further delay might have allowed more people to move out of the area. Few courts would look kindly on such rapid escalation of force by law enforcement in the middle of a protest over police abuse.

IV. CONCLUSION

The foregoing legal analysis may help answer whether the government acted unconstitutionally in either the clearing of Lafayette Park or the means used to carry out that objective. I will end by again stressing that such analysis does not answer the equally important question of whether that decision was the right one. I do not believe the decision to disperse the crowd that night was right under these circumstances, notwithstanding the authority to clear to the Park. In addition to a rapid advancement of the police line, the move before the curfew only magnified the confusion for the crowd. The police should have waited until after 7 p.m. to give people a chance to move out of the park. The fact that the Park does not appear to have been cleared for a photo op does not validate the decision to move forward that evening in such a relatively encapsulated period. The government's claim that they cleared the park when necessary due to the late arrival of fencing and additional law enforcement officers has not been contradicted. Yet, it has also not been adequately explained why that delay did not prompt a decision to delay clearing the park until curfew or even until the morning so as to avoid direct confrontation with such a large crowd. The government could have intervened if violence increased or further property damage occurred that evening. The record seems to suggest that the operation was simply delayed and immediately moved forward once resources were in place, without considering the timing and conditions. Even then, the line might have been able to move forward without the use of the deployment of the smoke canisters and pepper balls. As a result, civilians and law enforcement officers have suffered harm. Having the authority to clear the park does not mean that such authority was used wisely or correctly.

Various investigations are now occurring in both the legislative and executive branches into this controversy. Federal cases have been filed that will also pursue discovery on the underlying decisions made in Lafayette Park. All of those efforts to get a full record are essential to guarantee full accountability, which all parties should favor.

Once again, thank you for the honor of appearing before you to discuss these important issues. I am happy to answer any questions that you might have on the underlying legal standards that apply to this controversy.

QUESTIONS SUBMITTED FOR THE RECORD BY CHAIR GRIJALVA TO JONATHAN TURLEY, SHAPIRO PROFESSOR OF PUBLIC INTEREST LAW, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Question 1. Your written and oral testimony relied heavily on the presumed veracity of government assertions regarding the June 1, 2020, Lafayette Square incident, such as statements describing the reasoning and timing of the perimeter expansion, the number of officers injured in the surrounding days (and the nature and cause of those injuries), and the audibility of the government's alleged warnings to the protesters. Even the press reports you cite to support some of your factual assumptions rely on uncorroborated government/law enforcement claims.

1a. Do you have any objective supporting evidence of any of these government assertions, and if not, will you amend your assessment of their veracity, consistent with your calls for investigation of the actual facts?

Answer. Chairman Grijalva, thank you for your question on my June 29, 2020 testimony.

I do indeed cite factual representations made by both sides in the controversy over the clearing of the area around Lafayette Park on June 1, 2020. The purpose of those media statements and reports is not to assume the veracity of either side. Rather, my testimony states that facts that have been stated in the media as established (like the decision to clear the area to allow for the Trump photo op in front of the church) are in fact contested and not established. Rather than assume that these representations are true, I repeatedly encouraged the Committee to investigate the allegations and supplied detailed suggestions on how to obtain information in such a mass demonstration case. I specifically called for confirming that the plan and order to clear the area was unrelated to the photo op. Yet, I also stated that "even assuming that the order to clear the park was unrelated to the photo op (as it currently appears), it may still have been unlawful under the standards laid out in the World Bank litigation and other controlling case law."

The thrust of the testimony is that Congress (and the media) should not act on assumed facts, particularly when the government has publicly stated that those assumptions are incorrect. The truth is not especially difficult to determine if the

Committee wants to do so. The records that I cite in my testimony will conclusively establish which side is telling the truth on allegations like the clearing of the area to allow the photo op. I would be happy to comment on any such evidence that you acquire in your inquiry but I, again, strongly encourage you to pursue the documents and evidence referenced in my testimony.

What we know is still limited by the absence of discovery or new documents. The government has supplied details on when the plan was created and when it was approved. Those statements can now be fully confirmed or refuted by this inquiry. Thus, I will repeat what I stated in my testimony to the Committee:

> "Yet, what we know should be enough to focus people of good faith on both the need for further inquiry and possible reforms. There remains the question of how the park was cleared and specifically the aggressive response of the Park Police. We also know that many peaceful protesters and journalists were placed in an extremely dangerous situation by the use of smoke canisters and pepper balls to disperse a crowd that already appeared to be moving back. At a minimum, the rapid advancement of the police line raises concerns over execution of the order when further delay might have allowed more people to move out of the area. Few courts would look kindly on such rapid escalation of force by law enforcement in the middle of a protest over police abuse."

Thank you for the opportunity to respond to your additional question and I wish to thank the Committee for allowing me to participate in his important inquiry into the events at Lafayette Park.

The CHAIRMAN. Thank you very much.

And let me now recognize our last witness, the Right Reverend Mariann Budde, Bishop of the Episcopal Diocese of Washington.

Reverend Bishop, the time is yours. Thank you.

STATEMENT OF MARIANN BUDDE, BISHOP, EPISCOPAL DIOCESE OF WASHINGTON

Rev. BUDDE. Thank you, Chairman Grijalva, Ranking Member Bishop, and members of the Committee. Thank you for the opportunity to testify today. As you said, my name is Mariann Budde. I serve as Bishop of the Episcopal Diocese of Washington, which counts among its parishes St. John's, Lafayette Square.

I appear today to express my deep concern about the events of June 1, when our government resorted to acts of violence against peaceful protesters, and prevented clergy and lay members of the church from exercising their ministry on the grounds of St. John's.

We, in the Episcopal Church, believe that the issues of racial and social justice are core tenants of the Christian faith. The Bible teaches that all human beings are created in the likeness and image of God. As children of God, all are to be treated with equal dignity and respect.

Embedded in our Nation's history and institutions is the shameful abuse of Black Americans and other persons of color justified by the sinful notion of white supremacy, that whiteness is the human standard from which all other human beings deviate and are somehow less human, less worthy of equal treatment. And as Christians, we are called by God to rectify that injustice. Our faith compels us to join those around the country and the globe who have engaged in non-violent protest to call for an end to racist policies and practices, and to say clearly with one voice that Black Lives Matter.

Now, for Episcopalians, the issue of racial justice is a shameful part of our history, for we were once the church of slave holders. And like the White House, St. John's Lafayette Square was built with enslaved labor. Yet, throughout our history, our noblest members have fought for the liberation of the enslaved, full human and civil rights for all people, and to be a church that welcomes all. We have and continue to struggle to come to terms with our racist past and legacy and that of American society as a whole. We strive to be a voice for peace and the fundamental dignity of all human beings, knowing that at our most faithful we stand on the side of justice.

We stand today at this critical moment. When non-violent protesters began to gather at Lafayette Square, as a church, we decided to be present, to add our voice to the call for justice, to stand with and minister to all other peaceful protesters gathered there. This was, and is, for us an act of faith.

Our ministry was suddenly and forcefully interrupted by government officials: first on June 1, when the government violently cleared protesters and clergy alike from the area surrounding St. John's; and then, in coming days, when the government denied us access to the church to conduct a vigil.

These actions and, in particular, the use of violence against peaceful protesters, were antithetical to the teachings of the Bible and what we stand for as a church. When our government announced its intention to use military force against American citizens in the Rose Garden that day, it struck me as an escalation of violence that could cause unnecessary suffering. Then, to see the government carry out that threat moments later, I was horrified. It was dehumanizing and in violation of the protesters' rights to be in that space.

Then, when the President held up a Bible outside our church, as if to claim the mantle of spiritual authority over what had just transpired, I knew that I had to speak. Nowhere does the Bible condone the use of violence against the innocent, especially those who are standing up for justice. It was a misappropriation of scripture, and a usurpation of our sacred space.

I raise these issues to call attention to an abuse of power on the part of our government, which is also at the heart of the larger struggle for racial justice. While it is true there have been instances of vandalism at St. John's in recent weeks, we cannot let those events and others overshadow the fundamental cause of justice.

People across our Nation are united as never before in recognizing that the way we police our communities needs to change. The way we treat people of color in this country needs to change. Yes, we care deeply about our churches as buildings. But in the end, buildings can be rebuilt, windows can be replaced, pillars can be repainted. We can never bring back the lives that have been lost due to horrific police violence.

These deaths are the true outrage. George Floyd, Breonna Taylor, Elijah McClain, and so many more. I don't want anything that has happened at St. John's, either before the protests or in the weeks since, to distract us from that fact. Black lives matter, and our faith compels us to seek equal justice for all people.

Thank you, and I look forward to answering any questions you might have.

[The prepared statement of Reverend Budde follows:]

PREPARED STATEMENT OF RIGHT REVEREND MARIANN BUDDE, BISHOP OF THE EPISCOPAL DIOCESE OF WASHINGTON

Chairman Grijalva, Ranking Member Bishop, and members of the Committee, thank you for the opportunity to testify today. My name is Mariann Budde. I serve as Bishop of the Episcopal Diocese of Washington and as the spiritual leader of the Episcopal Church in Washington DC, which counts among its parishes St. John's Episcopal Church in Lafayette Square. I appear today to express my deep concern about the events of June 1, 2020, when our government resorted to acts of violence against peaceful protesters and prevented clergy and lay members of the Church from exercising their ministry on the St. John's grounds and in surrounding areas.

We, in the Episcopal Church, believe that the issues of racial and social justice are core tenets of the Christian faith. The Bible teaches that all human beings are created in the likeness and image of God. As children of God, all must be treated with equal dignity and respect. Embedded in our Nation's history and institutions is the shameful abuse of Black Americans and other persons of color justified by the sinful notion of white supremacy—that whiteness is the human standard from which all other human beings deviate or are deemed less than human, less worthy of equal treatment as the beloved children of God that they are. As Christians, we are called by God to rectify that injustice. Our faith compels us to join the hundreds of thousands of people across the country and around the globe who have engaged in non-violent protests to call for an end to racist policies and practices, and to say clearly, with one voice, that Black Lives Matter.

For Episcopalians, the issue of racial justice is a shameful part of our history, for we were once the church of slave holders. St. John's Lafayette Square was built with enslaved labor. Yet, throughout our history, our noblest members have fought for the liberation and full inclusion of all people. We have and continue to struggle to come to terms with our racist past and legacy, and that of American society as a whole. As we grapple in these times with this complicated history, we strive to be a voice for peace and the fundamental dignity of all humans, knowing that, at our most faithful moments, we have stood on the side of justice.

And so we stand today, at this critical moment. When non-violent protestors began to gather at Lafayette Square, as a Church, we decided to establish a presence at St. John's Lafayette Square to add our voice to the call for justice and to stand with and minister to all other peaceful protestors gathered there. This was, and is, for us an act of faith. But our ministry was suddenly and forcefully interrupted by government officials—first on June 1, when the government violently cleared protestors and clergy alike from the area surrounding St. John's Lafayette Square, and then in the coming days, when the government denied us access to the church to conduct a vigil.

These actions, and in particular the use of violence against peaceful protesters, were antithetical to the teachings of the Bible and what we stand for as a Church. When our government announced its intention to use military force against American citizens in the Rose Garden that day, it struck me as an escalation of violence that could cause unnecessary human suffering. Then to see the government carry out that threat moments later—tear gassing Americans engaged in peaceful protests—I was horrified. It was dehumanizing, and in violation of the protestors' right to be in that space. Then, when the President held up a Bible outside of our church, as if to claim the mantle of spiritual authority over what just transpired, I knew that I had to speak out. Nowhere does the Bible condone the use of violence against the innocent, especially those who are standing up for justice. This was a misappropriation of scripture, and a usurpation of our sacred space.

I raise these issues to call attention to an abuse of power on the part of our government. While it is true that there have been instances of vandalism at St. John's in recent weeks, we will not let these events and others overshadow the fundamental cause of justice. Never before in the history of this country have we been so united in recognizing that the way we police our communities needs to change. The way we treat people of color in this country needs to change. It would be unforgivable to allow this moment to slip away because our building was damaged. We care deeply about our churches—many of which are older than our Nation itself. But in the end, buildings can be re-built. Windows can be replaced. Pillars can be re-painted. We can never bring back the lives that have been lost due to senseless police violence. George Floyd. Breonna Taylor. Elijah McClain. And so many others.

Their deaths are the true outrage, and I don't want anything that has happened at St. John's—either before the protests or in the weeks since—to distract us from that fact. Black Lives Matter, and our faith compels us to seek equal justice for all people.

I look forward to answering your questions.

The CHAIRMAN. Thank you all for the testimony. Let me now turn to the questions and recognize Mr. Huffman for any questions he might have.

Mr. HUFFMAN. Thank you very much, Mr. Chairman, and thanks so much to the witnesses for a great testimony. I want to begin by taking issue, respectfully, with the Ranking Member's mocking of the title of this hearing. The hearing is titled, "The U.S. Park Police Attack on Peaceful Protesters at Lafayette Square." That is not dramatization; that is fact. That is exactly what happened.

And if there was a shred of evidence to support the gaslighting counter-narrative that we have heard from this Administration, I would think that the gentleman across the aisle would have called a fact witness to offer that narrative. We have a very thoughtful explanation of the legal framework from Professor Turley.

Thank you, Professor, for that. We didn't get any fact witnesses to support this gaslighting. And I think that speaks volumes.

Before we get into further questions, I want to express my disappointment that, at least so far, our friends across the aisle apparently no longer have the same concern about heavy-handed police tactics, militarization, and other police abuse by Department of the Interior agencies, concerns they used to speak passionately about when Barack Obama was President. Apparently those concerns disappeared when Donald Trump became President.

But some of us are old enough to remember the hearings that the Republican Majority held in 2013 and 2014 entitled—and now we are talking about those incendiary titles we used to see—entitled, "Threats, Intimidation, and Bullying by Federal Land Managing Agencies."

And at the time, one of our Republican colleagues described, and I quote, "These type of very heavy-handed, SWAT-like teams with non-DoJ agencies being used as the tip of the spear for Federal law enforcement," he called it "heavy handed, intimidating to the American people," and said it threatened the trust that is so important between American citizens and their government. That was 2014, after an all-White armed militia gathered to stop Federal land agency law enforcement from confiscating Cliven Bundy's cattle, which he had been illegally grazing for 20 years.

Law enforcement backed down because of that heavily armed militia protesting. But at the time, and then again in 2016, during the armed occupation of the Malheur National Wildlife Refuge in Oregon by a similar group, an angry White, heavily armed group of protesters, we heard a very different tune about Federal policing tactics from congressional Republicans.

Some of them introduced legislation to eliminate law enforcement authorities from the BLM and the Forest Service on the grounds that these agencies were, "armed to the teeth." They described armed police at Department of the Interior agencies as, "dangerous, unnecessary, and sending the wrong message."

Some of our Republican colleagues on this Committee were cosponsors of that bill. Talk about defund the police. Republicans in Congress were eager to do exactly that to make sure that folks like Cliven Bundy could continue breaking the law with impunity.

Fast forward to the peaceful protests for racial justice at Lafayette Square. Peaceful, unarmed protesters were met with a DOI police response far more aggressive, far more militarized, and far less necessary than anything used against those White militias in 2014 and 2016.

As our witnesses confirm, as any objective person viewing the video knows, heavily armed U.S. Park Police carried out orders to use chemical agents and other forceful means to clear protesters so that Donald Trump could have a weird photo op with someone's Bible. Most people would consider this heavy handed, intimidating, dangerous, unnecessary, sending the wrong message, all those exact terms that our Republican colleagues used to describe police tactics against White militias when they were defending lawbreaking ranchers in 2014 and 2016.

I am disappointed that we don't have the same level of concern from our colleagues across the aisle. But we haven't heard from many of them, so maybe we will hear it. It is important that they not be silent or openly supportive of this heavy-handed, militarized police abuse directed at Black people, and those supporting them, who were peacefully protesting for racial justice.

What is so different about the situation today? The President, the people protesting, and their cause. For our witnesses today, please know there are many Members of Congress and people across this country who stand with you and support your rights to protest injustice. This should not have happened to you. And we are committed to exercising our oversight authority, even if some of our colleagues are now sanguine, content with their double standard, standing with President Trump to the bitter end.

I yield back.

The CHAIRMAN. The gentleman yields. The Chair recognizes Mr. McClintock.

Sir, the time is yours.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. I think we need to make a distinction between the right to peaceable assembly, which is sacred and protected under our First Amendment, and violence, arson, and vandalism, which is not so protected. I think we have a video of damage done in Washington, DC in the days leading up to this. I wonder if we could play that.

[Video shown.]

Mr. MCCLINTOCK. These were the events leading up to the incident on June 1. The Secretary of the Interior described the situation they were facing thusly: Beginning on Saturday, May 30, 2020, the U.S. Park Police were under a state of siege, and routinely subject to attack by violent crowds.

The incidents are numerous, and include U.S. Park Police officers having their police cars vandalized, being subject to bombardment by lighted flares, Molotov cocktails, rocks, bricks, bottles, and other projectiles, and physical assault so violent that, to date, over 50 area law enforcement officers have been injured, including

one U.S. Park Police officer so violently attacked that he required emergency surgery.

To describe what happened in Washington, DC as "mostly peaceful protests," I think, is a lot like describing Scott Peterson as a "mostly faithful husband," or Al Capone is a "mostly law abiding businessman."

Professor Turley, what are the responsibilities of peaceful protesters when a protest turns violent?

Mr. TURLEY. Thank you, Congressman. The way that the courts have addressed this is that they recognize that these protests are, in fact, the display of a First Amendment right: free speech. However, the courts have said that areas can be cleared for unpermitted demonstrations if warnings are given, and they are not heeded, as long as the demonstrators have an avenue by which to exit, which actually didn't occur——

Mr. MCCLINTOCK. Well, let me ask you this. What are the responsibilities of truly peaceful protesters when an assembly has been declared unlawful?

Mr. TURLEY. At that point, when they are asked to leave an area, they are required by law to leave. And that doesn't go to the means by which you can move them, but it certainly means that the order itself to disperse is likely to be held as lawful. And courts also do allow for that perimeter to be pushed back if you are assembling something like a fence. How far that parameter should be established the courts look at. They often look at—for example, the Park Police often establish the parameters——

Mr. MCCLINTOCK. And that would be a legal question to be examined by the courts. What course of action would you recommend to Congress?

Mr. TURLEY. I am sorry, sir?

Mr. MCCLINTOCK. What recommendation would you make to Congress?

Mr. TURLEY. I think that Congress needs to ask a number of questions. I have listed 10 that are standard questions that are used in protest cases, including the essential evidence that we often look at—things like running resumes to determine what orders were given and when. I encourage Congress to do that.

They also should take a look—and the court will—at the level of damage and violence on the other side. The government has argued that 100 officers in the area had been injured, and the Park Police say that 50 of their own officers had been injured. That is a very high level of injury rate for law enforcement.

Mr. MCCLINTOCK. Thank you.

The CHAIRMAN. Thank you. Let me ask the Chairman of the Energy and Mineral Resources Subcommittee, Mr. Lowenthal.

Dr. LOWENTHAL. Thank you, Mr. Chair. And I want to thank all the witnesses for attending, taking their time to share their experiences while they were there.

You know, before I came to Congress and was an elected official, I worked as a community organizer and also as an activist in my community. And I know that there is a certain amount of risk that is always involved when you stand up for what you believe is right, for protesting, for speaking out.

My question is to each of the panelists. First to Mr. McDonald.

Why did you feel that it was worth that risk to be at Lafayette Square that day? And why was it important for you to be there?

Mr. MCDONALD. Well, George Floyd was just 46, 47 years old. I am 39. I will be 40 this year. So, I believe him dying—it affected my life. So, I just wanted to make sure I was down there, being a part of a peaceful protest to voice inequity, injustice in the Department against Black people. I felt it was my duty to be down there, and I had a chance to be down there. I never had a chance to be at another protest, ever. So, I took it upon my duty to go down there and make sure I was protesting for George Floyd.

Dr. LOWENTHAL. Thank you.

Ms. Brace, as a reporter, why did you feel that it was important for you to be there that day?

Ms. BRACE. As I mentioned in my opening statement, it is imperative to democracy that journalists be on the ground. Journalists can't work remotely. We can't see what is happening on the front line of an incident if we are standing a block away. So, in order to fulfill our role in democracy, we have to be standing right in the middle.

So, I think where we were was incredibly important in terms of telling the story of what happened that day.

Dr. LOWENTHAL. Thank you.

And, Bishop, while you were not physically present, you were supportive of people in your diocese who were there, and you have spoken out here, today, and publicly about it.

Why was it important for them to be there?

And why was it so important for you to speak out?

Rev. BUDDE. The issues of racial equity and justice are fundamental to the Christian faith, and they are of primary importance now in our country, when the inequities, particularly in policing, have become so blatant.

To be honest, I couldn't have stopped my members from coming, because they were so determined to add their voice and their presence to the gathering of non-violent protest.

What we wanted to do, as well, was to acknowledge our presence, to stand with people, and also to offer whatever we could to ensure greater safety, providing hand sanitizers, water, and masks, even, to make sure that whatever we did contributed to the public good, while we were making our statement in support of a change in racist practices and policies.

Dr. LOWENTHAL. Well, I want to thank all of you for sharing your stories, why you were there, and your motivations for being there, all of this, which is protected under the Constitution. I also have very important questions about the events for the Administration, and I am very concerned that no one in the Administration has shown up today to answer the questions.

But Mr. McDonald, Ms. Brace, Bishop Budde, I want to thank you for standing up for what is your constitutional right to stand up for, and for standing up for just what is right and just today. And I am glad that you spoke out on June 1, and that you are speaking out today. I really appreciate your testimony.

With that, I yield back.

The CHAIRMAN. The gentleman yields back, and let me turn to the Ranking Member, Mr. Bishop.

Mr. BISHOP. Thank you. And I was grateful to see Mr. Lowenthal by video there. In comments that I was doing, unless you are trying out for the role of Grizzly Adams, I expect you to be without a beard when you come back here. Deal?

Dr. LOWENTHAL. Almost a deal. I will take that——

Mr. BISHOP. Whatever, whatever, all right.

Dr. LOWENTHAL [continuing]. And ask you to grow a beard.

[Laughter.]

Mr. BISHOP. You would be enthralled with it.

So, look, in light of the statements that were made by Mr. Lowenthal and Mr. Huffman, as well, even though the Administration was willing to come and testify, but was not necessarily allowed in the timeline that the Democrats decided to do, let me ask at least to put into the record—to give some element of balance to this.

First, a statement by the Park Police. This is by Chief Monahan, detailing what he was doing, which includes the fact that 50 police were injured, and it verifies that there were three warnings that were issued at that time.

Also, a statement by the National Park Service that goes into the memorials and statues that have been vandalized in recent weeks—as of last week, anyway—for the NPS, especially here in the District of Columbia.

And if I could, I ask unanimous consent to have those placed in the record.

The CHAIRMAN. Without objection, so ordered.

Mr. BISHOP. Thank you. And I also would have appreciated the questions of Mr. Huffman, but they weren't actually questions. The two issues that he mentioned that took place back in the West were dismissed legally because of excesses by the prosecution of the Park Service at that time—I admit that—which is the question that we have at hand here, which, unfortunately, this hearing will not go to, because we do not have any of the Administration witnesses allowed to be here, which could answer those.

We do have you, Mr. Turley, and I appreciate your willingness at short notice to come in here and try to be an impartial voice, or at least a voice that is set aside from personal involvement within this particular situation. Actually, you are the only one that is doing that.

So, let me just go about the concepts of protests. We know that the First Amendment guarantees every citizen the right to peaceful assembly. Can you define what that peaceful assembly would look like, very briefly?

Mr. TURLEY. Well, peaceful assembly means that you cannot be stopped from appearing at a demonstration, a protest, a gathering, and particularly speaking against the government, as long as you comply with the Federal and State laws. It does not give you a license to violate laws. It, obviously, doesn't give you a license to commit arson or any other crime.

It also does not give you license to be in an un-permitted space if you are given warnings and opportunity to leave. That is the position of cases like Barham and Chang that I go through in my testimony.

Mr. BISHOP. And what you did is you simply elaborated where there is a constitutional limit that can be placed on those particular rights.

Mr. TURLEY. Well, there are limits on—there are no absolute rights in the Constitution. And the courts actually have handed down some really, I think, quite profound opinions on this. The Supreme Court has talked about how important it is to give breathing room to free speech and protest, but has also said that this not an absolute right. This is a right that is enjoyed within the confines of Federal and State law.

Mr. BISHOP. So, I think you did this in your opening statement, and also in your written testimony. But in, like, 15 seconds or so, can you just re-identify the facts, the conditions that would legally permit law enforcement to disperse an assembly like happened on H Street?

Mr. TURLEY. Right. The park, actually, had been—the day before, the Park Police had already cleared the immediate park area. When we talk about Lafayette Park, we are talking about a larger area now. And the question was can they push forward that perimeter in order to establish a fence line?

In my view, a court is likely to find that order to be lawful, because of the degree of property damage, the injuries to the officers. That order is likely to be upheld. The question is the means used—was this done properly?

Mr. BISHOP. Right, and let me go into that, specifically.

Mr. TURLEY. Right.

Mr. BISHOP. Because there is the allegation floating out there that this was done for a photo op. I think you mentioned something in there. Can you make a firm connection between the actions and the photo op opportunity, or were they things that just happened to be in a similar time frame?

Mr. TURLEY. Well, on the current record, this appears to be a case of correlation without causation. The Attorney General, the head of the Park Police, and others have said that this plan was actually approved 48 hours in advance. They presented evidence that the operation itself was delayed because of the fencing and reinforcements that were brought forward. And they have denied knowledge of the photo op when these orders were given.

Mr. BISHOP. You had 3 seconds, and you did that very well. Thank you, sir. There may be other questions we have for the record, but my time is up.

Mr. TURLEY. Thank you.

The CHAIRMAN. Let me recognize Mr. Gallego, Chairman of the Subcommittee for Indigenous Peoples of the United States. Mr. Gallego.

Mr. GALLEGO. Thank you, Mr. Chairman. And for the record, I actually have been pepper-sprayed. I have done gas—all for training in the military, by the way—pepper spray, gas training, gas mask training numerous times, probably, like, eight times in my life, as well as I have had rifle control training with the United States Marine Corps. So, I do have some experience, both in the uses of batons, formations, as well as—the most important thing that they also taught us is de-escalation.

Mr. McDonald, what was your rank when you were in the Navy?

Mr. MCDONALD. I was a yeoman.

Mr. GALLEGO. OK. What type of training did you receive, if any, in terms of dealing with civilian situations?

Mr. MCDONALD. We didn't really deal with de-escalation.

Mr. GALLEGO. OK.

Mr. MCDONALD. This was 1999. We didn't have a——

Mr. GALLEGO. OK. Well, thank you, sir, for your service, and thank you for participating in the Black Lives Matter protests, because it does matter.

Mr. Turley, you talked about a legality of the Park Police being able to clear the area. Do you have background in the necessity or the requirement of de-escalation?

Mr. TURLEY. Well, there is training on de-escalation. My only background, as I note, is counsel in protest cases.

Mr. GALLEGO. Yes——

Mr. TURLEY. I don't have your experience of dealing directly with things like these chemicals.

But all the departments that I know of, certainly ones I have encountered, are supposed to be trained in de-escalation.

Mr. GALLEGO. OK.

Mr. TURLEY. And that goes to—the area that I think it would be useful for the Committee to make an inquiry on really was captured in the video when you see the line move rapidly forward.

Mr. GALLEGO. Right.

Mr. TURLEY. If I was counsel, I would look at that, as to why the line moved. And also at what point was the last warning given before the line moved forward at that rapid pace.

Mr. GALLEGO. I will come back to that.

Ms. Brace, did you hear any warnings?

Ms. BRACE. No.

Mr. GALLEGO. When you were attacked by this police officer, were you resisting?

Ms. BRACE. No.

Mr. GALLEGO. Was your cameraman resisting?

Ms. BRACE. No.

Mr. GALLEGO. You had your back to them, if I remember, and you were fleeing.

Ms. BRACE. That is correct.

Mr. GALLEGO. Mr. Turley, as a lawyer, what was that Park Police officer doing when he was attacking a fleeing protester?

Ms. BRACE. As I have said, I think that that attack was unlawful. From the video, it seems clear to me that any officer could have seen that the Australian journalists were, in fact, journalists. They identified themselves correctly as journalists. I thought I saw media credentials on them. But also, they knew that there were journalists in the area.

So, this one doesn't strike me as a very close call. This was——

Mr. GALLEGO. And I am not trying to be rude, I just want to make sure I get my questions in.

Mr. TURLEY. Sure, of course.

Mr. GALLEGO. Mr. McDonald, did you hear any warning sounds?

Mr. MCDONALD. No.

Mr. GALLEGO. Ms. Brace, in the days before that, had you heard warnings before, while you were in the protest zone?

Ms. BRACE. Not that I can recall.

Mr. GALLEGO. Not—OK. What was the reaction in Australia to this?

Ms. BRACE. There was certainly alarm about what was seen. As I mentioned, the Australian Government immediately became involved, contacting the Ambassador here, and calling for an investigation.

Mr. GALLEGO. What was the public, though—you know, Australia is one of the Five Eyes, one of the nations that we always share our intelligence with, because we trust them so much, because we have fought and bled with them for almost every war since World War I. What was the Australian public thinking when they saw this attack happening?

Ms. BRACE. Well, as I said, it played out live to our audience. There was certainly alarm and concern, which I think then morphed into outrage, obviously, given that Australia also puts the freedom of the press at a level of significant importance.

Mr. GALLEGO. Thank you. One of the things that, Mr. Chairman, I would like to get hold of is the training manual for these Park Police officers, because when I was in the Marine Corps and we did riot control training—I never would have ever been told to rush forward with your batons swinging.

No. 1, it escalates the situation to the point where you could create a stampede of people, it is very dangerous.

No. 2, it actually is tactically stupid to do that, because your lines are exposed. Right? So, the only reason you would actually move in that manner is for pure intimidation, which is not the purpose of a deterrent front, which is what you are trying to do. You are trying to keep people away.

As a matter of fact, the way to have done it is to go down the line and move slowly and slowly and slowly. That would have actually allowed the protesters time to understand what is going on. They would have actually had the opportunity to escape, like Mr. Turley said, and probably not have made this all illegal. But there was a purpose to this all, and the purpose to this all was to show, "law and order" for the President before he came out to hold his photo op with a Bible.

With that, I yield back my time.

The CHAIRMAN. The gentleman yields.

Mr. Fulcher, you are recognized, sir.

Mr. FULCHER. Thank you, Mr. Chairman. In listening to the testimony and seeing the video thus far, it appears like there is no monopoly on blame here. But I would like to just make absolutely certain that we get the entire story.

I think we have a video that shows some assaults on law enforcement. If we have that, can we play that, please?

[Video shown.]

Mr. FULCHER. In my remaining time, first of all, I had the opportunity to travel, work, and be in a lot of nations around this world, a lot of them where rule of law is not enjoyed. And, generally speaking, their lack of prosperity reflects that. That is why this entire situation is so incredibly troubling to me.

I would like to ask Mr. Turley. As unfortunate as it is, from a legal perspective can you define what peaceful assembly looks like?

What are the parameters of that? And where does it cross the line from not being legal?

Mr. TURLEY. Right. This touches on the earlier question. Where courts tend to define what constitutes peaceful is often as a result of determining qualified immunity decisions. That is, was the officer correct in the use of the level of force in the case?

And the courts have said that they defer to officers because of what they—the court—refer to as making split-second judgments, they are tense, uncertain, and rapidly evolving. That is how the Supreme Court referred to it, I believe, in Graham.

So, what the courts look at is whether protesters ignored orders to disperse, and whether they were obstructive or violent. And this gets to that critical period, which I think this Committee is going to have to look at, of that period after the warnings were given, before the line moved forward, what were those officers facing. And that is what a court will do. And a court is going to demand very clear evidence on both sides to determine whether that could be defined as a peaceful situation, where this is not warranted, and the police escalated it, or whether they were responding to a threat to their safety or the safety of others.

Mr. FULCHER. Thank you for that. And then, just quickly, there is one other thing I would like you to address with us, if you could.

Assuming we can get some good dialogue, some peaceful dialogue here, step us through, very quickly, the legal process for how should we be doing this? If we want to change some of these monuments, how should we be doing that?

Mr. TURLEY. Well, first of all, there have been great suggestions in both houses about police reforms, including having a national database of the issues that many of us have raised in the past.

But in terms of this incident, I gave 10 questions that would be a useful start for this Committee. It would get you the base information you need, including actual calls made by officers, the so-called running resume evidence. In a protest case that is the first thing we ask for, is the running resume.

Also, you have objective sources in the claims of injuries to law enforcement officers, injuries to protesters. Those things can be acquired.

The other thing that I encourage you to get at very quickly is non-U.S. Park Police agencies and their roles. I can tell you, in terms of evidence, that is the stuff I am most concerned with. It is the stuff that is most difficult to get. And you may be able to get a lead on that by asking for what are called MOUs. And MOUs, these memorandums of understanding, are often cut with non-Federal agencies or non-Park Police personnel. Those may give you an indication of who was involved at that scene.

I can tell you in the Pershing Park case, we started out with the Park Police, the DC police, the Secret Service, and ended up with a long list of units that we had no idea were present.

Mr. FULCHER. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman yields.

Mr. Cox, the Chairman of the Oversight and Investigations Subcommittee, you are recognized, sir.

Mr. COX. Thank you, Chairman. And thank you, all the witnesses, for being here today.

I want to say, Reverend Budde, thank you so much for your statement and your testimony. I think you may have turned a Catholic into an Episcopalian today, because, I tell you what, I am certainly here, as we are all, as Members of Congress, because of my faith, as you said so eloquently, to seek justice, equal justice, for all people. So, thank you so much for that.

And I want to apologize on behalf of the Committee if you were called a vandal, an arsonist, or other pejorative. Likewise, Mr. McDonald and Ms. Brace, as well, because you were there at Lafayette Square on June 1.

And Mr. McDonald, I want to thank you for your service in the United States Navy. And I am sure when you enlisted, you took a very similar oath of office that we did when we took the oath of office to be a Member of Congress to protect and defend the Constitution of the United States.

And in that first article, where the Congress will make no law to abridge the freedom of speech, or of the press, or the right of people to peacefully assemble.

And, if you could, say why you were there that day, peacefully assembled.

Mr. COX. I am a Black man. I share the same views of the Black Lives Matter movement and everyone who was down there.

On June 1, it was a peaceful protest from the minute I got down there until the minute we were attacked. We were chanting for injustice. We didn't hear any warnings to move. And I was there strictly to peacefully protest, for my voice to be heard.

Mr. COX. You were exercising your rights, your constitutional rights——

Mr. MCDONALD. Yes, exactly.

Mr. COX [continuing]. As a citizen that you had sworn previously to uphold. You were exercising those. And do you feel that those were abridged that day?

Mr. MCDONALD. Can you say that again?

Mr. COX. Do you feel that those rights were infringed upon that day?

Mr. MCDONALD. Yes, most definitely. Absolutely.

Mr. COX. And, as an objective citizen from another country, Ms. Brace, is that what you saw, as well?

Ms. BRACE. Yes, it is.

Mr. COX. Professor Turley, I also sit on the Ag. Committee, and I have been taught that if something looks like a duck and sounds like a duck and walks like a duck, it is probably a duck.

And the idea that the White House had no idea that day that the park had to be cleared is beyond the pale. Just all of a sudden that the President is making his speeches, to do something right away, and lo and behold, the park gets cleared—would he have gone out there to have his photo op if the park hadn't been cleared?

Mr. TURLEY. What I suggest in my testimony is, first of all, I do think you need to establish that, and you can establish that. The account from the Attorney General and others is that the plan was approved in the morning on Monday. The order was issued at 2. There was a delay on fencing and National Guardsmen. All that can be confirmed by this Committee.

But that doesn't necessarily answer the question as I raised in my testimony. What I would be more interested in, unless all those are lies, would be was there any last-minute discussion as to whether this should be delayed.

In my view, it should have been delayed. It should have been delayed to the following morning. But it is at that juncture, that twilight moment, if I was counsel, that is what I would be looking at.

And also, I would be looking at whether the perimeter size pushed to I Street was impacted by anyone suggesting the need for the photo op. All of that should be attainable by the Committee.

Mr. COX. And we will look at that. Thank you so much.

And we have seen video from Los Angeles and New York and Chicago, and video on May 31 and June 26. Is that at all relevant to the peaceful protest that was going on on June 1?

Mr. TURLEY. No, I don't think a court would take that into consideration. A court would consider what happened in Lafayette Park in the area the day before.

Mr. COX. How about the day of?

Mr. TURLEY. No, the day of is the most important criteria. There is no question the court will be looking at the conditions——

Mr. COX. There were painters in the park.

Mr. TURLEY. Right.

Mr. COX. There were clergy offering medical support and——

Mr. TURLEY. Right. The court would be looking at——

Mr. COX. A kumbaya moment. I think that is a textbook definition of a peaceful assembly.

Mr. TURLEY. Yes, I think that the way the court would look at it is that what happened the day before justified the order to clear the park and establish the fencing, including the wider parameter. But then the court, I think, would focus on what was actually happening at that moment as to whether the level of force deployed was lawful and reasonable.

And that is where your point, I think, is a salient one, and that is where I think this Committee could make some real progress in defining.

Mr. COX. Thank you so much. And I do have a couple of other questions about the secret police, but we will have to get those on another day. I yield.

The CHAIRMAN. The gentleman yields. Mr. Gohmert, you are recognized, sir.

Mr. GOHMERT. Thank you, Mr. Chairman. I appreciate all the witnesses being here. Nobody could see the video of George Floyd being killed and not be very moved. No question about that.

And I greatly appreciate the Floyd family urging peaceful protests and not violence. That is not what they wanted for George's legacy. So, there are important issues that need to be addressed here.

But Mr. McDonald, thank you for your service in the Navy to our country. And I see from your statement the ship you were stationed on. How long were you in the Navy?

Mr. MCDONALD. Nine months.

Mr. GOHMERT. Nine months? Did you run into prejudice in the Navy, racial prejudice?

Mr. MCDONALD. No, I did not.

Mr. GOHMERT. In your statement, you had mentioned that the police stopped pushing forward at the urging of protesters when a man had fallen and was being given aid, and they began using less lethal force. What was the difference in force before and after the individual fell?

Mr. MCDONALD. Are you talking about the Black man that fell in my statement?

Mr. GOHMERT. Yes.

Mr. MCDONALD. Yes, he fell, and we asked the police to stop. At that moment they established a perimeter.

Mr. GOHMERT. Right.

Mr. MCDONALD. Maybe enough for, like, 6 seconds for us to get him up and move him. But the minute we moved him, they started running at us. They didn't stop to help us.

Mr. GOHMERT. But what force were they using at that time?

Mr. MCDONALD. Their batons and their shields.

Mr. GOHMERT. Baton and shield?

Mr. MCDONALD. Yes.

Mr. GOHMERT. OK. And Ms. Brace, obviously, that had to have been rather traumatic. Obviously, you and your cameraman came prepared with the goggles. With your experience you have been in a lot of protests, apparently around the world. I appreciate your coverage.

And having looked back just through June 8, apparently just through June 8, there have been 17 people who have died in incidents stemming from the unrest from George Floyd's death, including David Dorn, David McAtee, Chris Beaty, Dorian Murrell, and Italia Kelly. And, of course, I don't know how anybody cannot be moved seeing her sister saying she wasn't shot by the police, it was one of you, it was one of the protesters.

When protests get out of hand, people get hurt. You are far more experienced in these type of protests. Is there a point at which you can tell this is about to turn violent at protests?

Ms. BRACE. You can never be certain, obviously. You can certainly feel, I guess, tension rising in protests.

In saying that, I certainly have never had any reason to expect violence from the police as working press.

Mr. GOHMERT. But when things get crazy at a protest, you can't be sure. Like seeing those bricks being thrown at the police recently. If you are a civilian in the way, just like Italia Kelly, you may be hit by a protester's brick. It has to be hard to tell.

Ms. BRACE. I saw nothing on June 1 that made me feel in any way alarmed before that line of police surged forward.

Mr. GOHMERT. Yes. Were you out at the protest the night that St. John's had a fire started?

Ms. BRACE. Yes, the night of May 31.

Mr. GOHMERT. Did you see how anybody got into the church to start the fires?

Ms. BRACE. No, I didn't.

Mr. GOHMERT. Could you understand why law enforcement might be concerned about others getting into the church, either legally or illegally, to cause more damage?

Ms. BRACE. I, obviously, can't speak to the motivation of the police.

But as your colleague, Mr. McClintock, pointed out, there is an important distinction. I have said in my statement that the night before I did see much more widespread chaos. But on the day of June 1, in question at the moment, I did not see anything that warranted the movement of police that we witnessed.

Mr. GOHMERT. Thank you.

And Bishop Budde, I appreciate your effort at social justice. What do you think is the hope for those in Washington, DC protesting?

Rev. BUDDE. I can't speak for all protesters, but I think the moniker, Black Lives Matter, is the way we are expressing a collective cry that we have equity in our policing, that Black and Brown persons can expect the same level of treatment and safety when they are encountering police, and that we have a reckoning in this country for all manner of policies and practices that would cause Black and Brown people in this country to fear for their lives when encountering the very people who are meant to keep them safe.

Mr. GOHMERT. Thank you, Bishop.

And thank you, Mr. Chairman. There were African-American ministers that said our hope is in Jesus Christ.

I yield back.

The CHAIRMAN. The gentleman yields. Let me recognize the gentlelady from New Mexico, the Chair of the Public Lands Subcommittee, Ms. Haaland.

You are recognized.

Ms. HAALAND. Thank you, Mr. Chair. Thank you for convening today's panel. Thank you to all the witnesses for being here today.

Our colleagues have said it already, but the events of June 1 will no doubt go down as one of the darkest days of this presidency. And that is saying something for a president who has put children in cages, protected his friends from prosecution, and opened our elections to foreign interference.

Attacks on the Constitution aren't new for this President, but clearing a peaceful demonstration for a photo op with his cabinet is an unbelievably new low. While we will rightly focus on those actions of June 1, we cannot lose sight of the larger moment that we are all in.

Today's hearing is also about a larger trend of systemic racism, in which militarized police intimidate and kill in communities of color, while defended from prosecution. The President's recent actions brought that excessive force to the fore in a new and unconstitutional way, but this is by no means an isolated incident.

And while I respect the work Federal civil servants do every single day, there are times they do things our Nation is not proud of. In November 2017, the U.S. Park Police murdered Bijan Ghaisar just over the river in Arlington, while he drove his car. Still, his family has not had justice.

Earlier this year, in my state of New Mexico, Charles Gage Lorentz was driving back to his home in Colorado when he was murdered by a U.S. Park Ranger in one of our national parks. I spoke to his mother's attorney recently, but I couldn't explain why

that killer still patrolled one of our national parks, and why he hadn't been brought to justice.

Today, we are here to talk about the President and his illegal and unconstitutional actions. But we also need to discuss power, to discuss fear, to discuss unequal treatment under the law, because we did not choose to live in a society where the President wields the power of our government to break up peaceful protests, any more than communities of color across this Nation choose to live in fear of unequal policing.

Let's try to understand what breakdown of norms led to this horrible injustice of the clearing of Lafayette Square on June 1. But let's also make sure we keep in mind the culture of systemic oppression that allows the same fear and power to control and kill in communities across our country. Because, as I have stated, this was not an isolated incident.

Mr. McDonald and Ms. Brace—and Mr. McDonald, you can go first, and then Ms. Brace—at any time did you see any Park Police or law enforcement officers stop or double back to provide medical assistance or facilitate medical assistance when somebody was clearly injured?

Mr. MCDONALD. No. ma'am.

Ms. BRACE. No, I did not.

Ms. HAALAND. And again, Mr. McDonald and Ms. Brace, do you expect law enforcement to provide basic care and/or call medical assistance when someone is hurt?

Mr. MCDONALD. Yes, I do.

Ms. BRACE. Yes, I do.

Ms. HAALAND. And Mr. McDonald and Ms. Brace, why do you have that expectation?

[Pause.]

Ms. HAALAND. I am sorry?

Mr. MCDONALD. [Inaudible] public.

Ms. BRACE. Again, I would expect the police to protect civilians and also working media.

Ms. HAALAND. Thank you so much. In fact, part of the mission of the United States National Park Police is to protect lives. It is to protect lives. That is part of their mission, is to protect lives.

I appreciate all of you being here today.

The Right Reverend Mariann, thank you so much for your calmness, for your heart, and for your leadership in this troubled time. I appreciate it very much.

And Chairman, I yield.

The CHAIRMAN. I recognize Mr. Westerman for your questions, sir.

Mr. Lamborn, you are recognized.

Mr. LAMBORN. Thank you, Mr. Chairman. Let's see. A couple of my friends and colleagues on the other side of the aisle have talked about how the Park Police wasn't here to present any statement or facts. And yet I have been led to believe that they were constrained from being here because, like Assistant Chief Monahan said in a letter to you, Mr. Chairman, that to be on the same panel with a person who is suing them in a case of active litigation would make him legally constrained and not able to testify at the same time.

So, I wish you could have structured this hearing today where that was not an impediment to hearing from the Park Police. I think that would have been very helpful. And that is what I ascribe their absence to, is the legal constraints.

And Mr. McDonald, you have filed suit against the Department of the Interior and other parties, haven't you, seeking money damages?

Mr. MCDONALD. One against Trump, a violation of my First Amendment rights.

Mr. LAMBORN. OK, and that includes the Department of the Interior.

Mr. MCDONALD. ACLU has a lawsuit I am part of for a violation of my First Amendment rights.

Mr. LAMBORN. OK. So, Mr. Chairman, I wish you could have structured things so that we could have heard from all of the interested parties here today.

Second, I would like to ask unanimous consent to have inserted into the record a letter from the Fraternal Order of Police, United States Park Police Labor Committee, dated June 19. This letter was sent to the editor of *The Washington Post*, but they have not seen fit to print this letter. But it explains some things from the perspective of the police on the Park Police force.

Mr. Chairman, I would like to insert this in the record.

The CHAIRMAN. Without objection, so ordered.

[The information follows:]

Submission for the Record by Rep. Lamborn

FRATERNAL ORDER OF POLICE
U.S. PARK POLICE LABOR COMMITTEE
WASHINGTON, DC

June 19, 2020

LETTER TO THE EDITOR:

The nearly 375 officers of the United States Park Police Labor Committee welcome any serious investigation into the events at Lafayette Square on June 1st because we know that every one of our officers acted with honor and integrity in the face of a very challenging and dangerous environment.

The Post editorial on June 17th entitled "The U.S. Park Police's Reputation is in Tatters" is unfortunately riddled with unfair accusations and assumptions. Here are the fundamental facts that we look forward to sharing with legislators and investigators in the weeks and months ahead:

One, George Floyd was brutally murdered in Minneapolis. Not a single officer of the United States Park Police believes otherwise.

Two, protecting the safety and rights of peaceful protesters is at the very core of our mission. Park Police officers take great pride in our unique role as front line defenders of First Amendment expression.

Three, while a great majority of the protesters in the area have been peaceful, during the weekend of May 30–31 the area surrounding Lafayette Square was infiltrated by dozens of violent anarchists who took advantage of the protests to destroy property and violently attack law enforcement. They threw bricks, frozen water bottles, rocks, road flares, explosives and caustic liquids thereby creating a very dangerous environment not only for the officers and surrounding property, but for the protestors themselves.

Four, over that weekend 51 USPP officers required medical treatment for injuries sustained on duty, including 11 transported to the hospital and 3 admitted. Incidentally, our officers would like to publicly thank the many protestors who tried to assist the injured officers by intervening with those who were launching the

projectiles. In any event, violence was rapidly escalating and, by the night of May 31st, the need to erect fencing around Lafayette Square was painfully obvious. The tension was intensifying and we were increasingly concerned about our ability to safeguard against an all-out riot. Our decades of experience in crowd management led us to conclude that the installation of fencing would enhance safety for everyone in the area.

Five, USPP officers followed standard crowd control procedures to enable contractors to safely erect the fence on June 1st. Our mission was based solely on securing the Square for the anticipated ongoing protests and, at the same time, limiting violent behavior that had begun to occur. Our officers were not aware of President Trump's planned walk through the park until it was already underway.

Six, the installation of the fence worked and erecting it was the right decision. Protestors have continued to express their views and the violence has since deescalated. Importantly, since the fence has been installed there has been a dramatic reduction in injuries sustained by officers.

Seven, no USPP officer fired CS gas on protestors (peaceful or otherwise) during the Lafayette Square incident. There may be video evidence of other agencies doing so, but the allegations that USPP officers deployed CS gas is patently false.

Finally, USPP officers understand that policies and procedures can always improve. We will certainly support common sense law enforcement reform, beginning with enhanced training opportunities for officers. Our labor committee is committed to working with our agency and Members of Congress to identify new ways to cultivate the special bond our officers feel with those who peacefully come to Washington DC for the purpose of contributing to democracy.

Sincerely,

KENNETH SPENCER,
Chairman
U.S. Park Police

Mr. LAMBORN. And then, third, I would like to talk about attacks on journalists. I went to journalism school, myself, so I am not happy to hear about attacks on journalists, whether it is from police or whether it is from protesters. Journalists should be able to do their job. I would like to play a video called "Assaults on Journalists."

[Video shown.]

Mr. LAMBORN. [Inaudible] protesters is something that should not be part of a peaceful protest. Ms. Brace?

Ms. BRACE. Yes, of course.

Mr. LAMBORN. Mr. Turley?

Mr. TURLEY. Yes.

Mr. LAMBORN. And Mr. McDonald?

Mr. MCDONALD. Yes.

Mr. LAMBORN. OK. And Mr. Turley, how would incidents like we saw in the video, where journalists are being attacked by protesters turned into rioters, affect the legality of a decision to disperse the protesters?

Mr. TURLEY. Well, any violence in the area of Lafayette Square is going to be considered by a court as a part of the justification for expanding the perimeter, for setting up the fence, for clearing the area.

There was a high level of violence that was being reported by the Park Police: 50 officers is a lot of officers to be injured, I have to tell you, in a protest case. And if it is as high as 100, that is pretty high. And there was, obviously, some arson. There was damage to property. I think a court would conclude that the protests through

that 3-day period were not entirely peaceful, and that law enforcement was facing threats.

Now, as the Member earlier alluded to, the court, in looking at the means used to push back the line will look specifically at the level of violence at that time. So, I think the court is going to consider both, the whole context, in other words, of the——

Mr. LAMBORN. Thank you, my time is up.

Mr. Chairman, could I also insert into the record with unanimous consent the letter dated June 24 to you from the Department of the Interior explaining Mr. Monahan's ability to testify or not.

The CHAIRMAN. Without objection.

[The information follows:]

Submission for the Record by Rep. Lamborn

DEPARTMENT OF THE INTERIOR
WASHINGTON, DC

June 24, 2020

Hon. RAÚL GRIJALVA, *Chairman*,
Committee on Natural Resources,
1324 Longworth House Office Building,
Washington, DC 20515.

Dear Chairman Grijalva:

Thank you for the invitation to testify before your Committee at an oversight hearing regarding the June 1, 2020, interactions between protesters and law enforcement at Lafayette Square Park. Your invitation has been extended to the Assistant Chief of the United States Park Police, Gregory T. Monahan.

Assistant Chief Monahan would like to accept your request to appear before the Committee to present the facts that occurred on the ground that evening. However, because of the ongoing protests and accompanying violence and destruction of memorials and monuments by some individuals, the United States Park Police must currently continue in its highest operational status. As you are aware, just two nights ago another "peaceful protest" led to more violence and destruction in the park.

For this reason, Assistant Chief Monahan offers to appear before your Committee after these activities and actions have subsided. At this point, we suggest mid- to late July.

We expect, for this potential hearing, as we would for any hearing involving Departmental personnel, that the Committee adhere to the long-recognized principle of seating executive branch witnesses on their own panel, both as a matter of respect for a co-equal branch of government and recognizing the sensitive nature of law enforcement matters being discussed.

In addition, as Assistant Chief Monahan has been named as a party in certain lawsuits pertaining to the lawful performance of his official duties on June 1, 2020, there are legal interests which will necessarily frame the discussion of the events of that day. This discussion would be further constrained, if not completely circumvented in its entirety, were an adverse party to such a lawsuit also asked to testify at that same hearing.

We look forward to working with the Committee on this issue.

Sincerely,

COLE ROJEWSKI, DIRECTOR,
Office of Congressional and Legislative Affairs

The CHAIRMAN. Let me now recognize Mrs. Napolitano for her questions.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I have a question for Ms. Brace. Ms. Brace, did you have a lanyard with media in big words, identifying you as media?

The CHAIRMAN. We couldn't hear the question.

Ms. BRACE. I'm sorry, could you please repeat that question?

Mrs. NAPOLITANO. Did you have an identification in the front, with a lanyard identifying you as media?

Ms. BRACE. No, we don't like to wear press passes around our necks for safety reasons.

Mrs. NAPOLITANO. OK. Did you hear them use a bullhorn to disperse people at all?

Ms. BRACE. No, I did not.

Mrs. NAPOLITANO. Reverend Budde, the square is very adjacent to your church. Am I correct?

Rev. BUDDE. That is correct.

Mrs. NAPOLITANO. Have you ever seen that entire area forcibly cleared like it was on June 1?

Rev. BUDDE. No, I have not.

Mrs. NAPOLITANO. Do you have any idea why your church was chosen to focus on racial injustice in particular?

Rev. BUDDE. My sense is that St. John's Lafayette Square has been a place of protest, historically, in the Nation's Capital for many years, due to its proximity to the White House, and that public space of the actual park where people have been allowed to peaceably protest.

Mrs. NAPOLITANO. Your church has decided to champion racial injustice. Why do you feel this is important to the people? Is it because of the proximity to the White House?

Rev. BUDDE. Well, we took advantage of the proximity of the White House to add our voice to the protest that was gathered there. All of our congregations across the city and, indeed, the entire diocese are committed to racial justice in their own——

Mrs. NAPOLITANO. Well, I commend you for that, because it is very important. All lives matter. It is just important that we recognize that the injustices to all people of color have been going on for many generations, and nothing is going to stop it until the word and the change come from the top. And, apparently, we don't have the will at the top to do that.

And then, as President Trump stood for his photo op in front of your church holding his Bible, and was about to open and read from it, what went through your mind when you saw that?

Rev. BUDDE. As I have said before, I was outraged. And I felt that it was a misuse of both the space and the Bible for him to claim in that moment—having just said what was said in the Rose Garden and witnessed what we witnessed in the park, I felt as if he was putting on a mantle of spiritual authority to justify those actions.

Mrs. NAPOLITANO. Has he issued any memo or any letter, any phone call to you, apologizing?

Rev. BUDDE. No.

Mrs. NAPOLITANO. It is important for us to recognize that this isn't the first time, and probably not the last time, we will have

injustices toward people of color. What do you think the government must do to anybody to start the motion to rectify those officers at the top level for a change in attempting to deal with racial issues?

Rev. BUDDE. Thank you for asking. It is not my expertise to weigh in on how the policy should be changed. But at the very minimum, there should be equity and responsibility for illegal actions, no matter who is at fault, and that our Black and Brown fellow citizens should be able to feel the same degree of security and safety that White Americans feel when encountering police.

Mrs. NAPOLITANO. Ms. Brace?

Ms. BRACE. Again, I don't presume to come here to tell the American people how to run their police force or the government, but I would expect for peaceful protesters to be allowed to peacefully protest, and for the media to be able to safely cover such events.

Mrs. NAPOLITANO. Mr. McDonald?

Mr. MCDONALD. I think the bottom line is just respect the Constitution and how it was drafted up. I think we wouldn't have a problem with overall policing. I am here to talk about what happened June 1. If they had just honored our rights to peacefully protest and freedom of assembly, we wouldn't have any issue at all.

Mrs. NAPOLITANO. Thank you all for testifying, and I yield back.

The CHAIRMAN. The gentlelady yields. Let me recognize Mr. Westerman. Sir, you are recognized.

Mr. WESTERMAN. Thank you, Mr. Chairman, and thank you to the witnesses for being here today. I can say that I heard your personal testimony. It angers me to think what happened to you, and your firsthand account of the things that went on. And part of the function of oversight is to make sure that the law is being carried out, that justice is administered, and, if it is not, that we rectify that. So, it is important to have oversight hearings like this.

Also, I realize that your firsthand accounts were bits and pieces of a bigger story. And I think that there is more for us to learn that we can't learn from the meeting here today. And I think there are voices that aren't being heard, and we need to hear all voices and find out where the real problems are.

I have a letter here from the Federal Law Enforcement Officers Association. It says, "While otherwise peaceful protests were co-opted by radical groups focused on destruction versus dialogue, Federal law enforcement officers were thrust into roles of protecting and preserving the safety of not only city streets, but also our Nation's monuments, and our history that we all hold dear."

They went on to further say, "No clearer was that role than here in Washington, DC, where Lafayette Park was besieged by radical and violent groups of individuals. These are the same individuals that set fire to and vandalized St. John's Church, attacked and vandalized monuments in and around our Nation's Capital, including the World War II memorial, a tribute to an entire generation of Americans that kept our world free, and then attacked the very law enforcement officers that were originally sent there to monitor and ensure the safety of the individuals peacefully assembled."

Much of this work fell to the officers of the U.S. Park Police. These brave men and women came under daily, almost hourly

attacks from unpeaceful and violent rioters, and were constantly pelted with frozen bottles of urine, fireworks, bricks, stones, street pavers, and all manner of other unknown substances. Other Federal law enforcement officers, including the uniformed division of the Secret Service, various DoJ entities, and officers from the Metropolitan Police Department joined the U.S. Park Police at times to try to quell the violence, stop the destruction, and allow the voices of the peaceful protesters to be heard.

Mr. Chairman, I would like to submit this to the record.

Mr. Lamborn referred to a letter, or an Op Ed from the Fraternal Order of Police that was denied publishing in *The Washington Post* to counter an article that the *Post* put out. And they said here that over the weekend 51 U.S. Park Police officers required medical treatment for injuries sustained on duty. And it goes on and on.

What I am saying is there is another side of this story, and we need to hear all of that. And there is an investigation being taken on by internal affairs at the Park Police, and also by the Inspector General at the Department of the Interior. I wish we could have waited until we had that evidence, and we could get more witnesses here to be heard.

That being said, I have no reason to doubt what you are saying. And I think we have to take an open look at these things, going forward.

Mr. Turley, if indeed those members of the Park Police were injured, transported to hospital, all these things going on, in your opinion was it legal for the Park Police to clear Lafayette Park?

Mr. TURLEY. I think a court would likely say that it was a lawful order to clear the park. As I say in my testimony, they had all the elements, particularly if they gave the three warnings and an opportunity to disperse. That doesn't answer the secondary question of the level or means used.

I also have to say that when I saw the figures of the 50 injured Park Police officers, the claim of 100 injured Federal officers, I was quite surprised. That is a very high number of injuries. So, I think a court would probably approach this question—without saying that this was an entirely peaceful protest—to the contrary, I think the court would recognize that there were security issues that were valid for the Administration. I think the court would likely say that the original order was lawful, and then would focus in, as I talked about, on that critical period. And what concerns me the most is that critical——

Mr. WESTERMAN. I am going to have to move on here.

So, finally, we talk about the Christian thing to do, certainly to work for justice and equality. I believe that and try to practice what the Bible teaches. But it also talks about being in subjection to governing authorities. Paul said that. Peter said to commit yourself, for the Lord's sake, to every human institution. Even Jesus, when he was prodded to rebel against the government, said, "Render unto Caesar what is Caesar's."

And I would just like to ask the Bishop, do you believe that it is a Christian's duty, when working for justice and equality, to follow the law, and submit to those in authority, and condemn violence and unlawful acts, such as rioting and arson?

Rev. BUDDE. I absolutely believe that it is necessary to condemn violence and arson. But I also would take issue at an interpretation of scripture that does not include the long legacy of the struggle for liberation and freedom, and the opportunity, when given time and time again, the scripture tells us that we must obey the laws of God and not the laws of men, especially when they are unjust.

So, particularly in a democracy, we have a fundamental responsibility to ensure that the laws are just, and that they are justly enforced by those who are entrusted with the sacred responsibility of overseeing the governance of our people.

Mr. WESTERMAN. Are you saying laws against violence and arson are unjust?

Rev. BUDDE. I am not.

Mr. WESTERMAN. I yield back.

The CHAIRMAN. The gentleman yields. Let me recognize Mr. Levin for his comments, questions.

Mr. LEVIN. Thank you, Chair Grijalva, and thank you to today's witnesses.

In particular, I want to thank you, Bishop Budde, for your testimony. My family attends St. Margaret's Episcopal Church in San Juan Capistrano, California. So, it is very meaningful to have you here today.

Chair Grijalva, I would like to ask for unanimous consent to enter into the record a *Washington Post* article contributed by Reverend Gini Gerbasi, Director at St. John's Episcopal Church in Georgetown.

Bishop Budde, as you know, Reverend Gerbasi was at St. John's Church in Lafayette Square the evening of June 1. Her description of the scene is powerful. As she wrote, she got to the church around 4 p.m. that day to, as she puts it, offer peaceful and prayerful support to the protesters. She describes the scene as upbeat and peaceful. She wrote, "My colleagues and I passed out water and snacks. People exchanged prayers and elbow bumps. Things were so calm that, by 6 p.m., most of my colleagues had left."

Bishop Budde, do you have any reason to believe that Reverend Gerbasi was not being truthful in her description?

Rev. BUDDE. Absolutely none.

Mr. LEVIN. Mr. McDonald and Ms. Brace, does this description generally align with the scene you saw, as well?

Ms. BRACE. Yes, it does.

Mr. LEVIN. Mr. McDonald and Ms. Brace, did any of the videos my Republican colleagues played look like the scene at Lafayette Square on June 1 before police attacked?

Mr. MCDONALD. No, it did not.

Ms. BRACE. No, they did not.

Mr. LEVIN. In fact, as Reverend Gerbasi writes on, "We see that the scene of peace and camaraderie dramatically changes around 6:15 p.m., as the officers move from Lafayette Park into the street." After hearing the first loud bang of a flash grenade, she describes, and I quote—"yelling and panic." And then she says, and I quote—"I couldn't believe my eyes. A wall of police, full riot gear, was physically pushing people off the St. John's patio, maybe 15 feet away from me."

So, we have a firsthand account of U.S. Park Police answering peaceful protests with brutality, which was the subject of the protests to begin with.

Bishop Budde, when you heard that Reverend Gerbasi and her colleagues were being physically pushed off St. John's patio, what went through your mind?

Rev. BUDDE. I was stunned and horrified and concerned for their safety and the safety of all of those who were gathered. And like others who have expressed their civic response, I was outraged that the Park Police and others were acting in that manner——

Mr. LEVIN. Reverend Gerbasi went on and described President Trump's photo op with the Bible. She called it, and I quote, "sacrilege." Would you agree with that statement?

Rev. BUDDE. I have thought about that. And yes, I would, because it was taking something sacred and misapplying its message to justify something that was violent and that was abusive, an abuse of power. And there is nothing in the scriptures that will condone that behavior.

Mr. LEVIN. Thank you, Bishop.

Ms. Brace, I would like to turn to you. Thank you for your testimony. And, as you note, the video of you and your cameraman being violently attacked speaks louder than words.

Since being sworn into office and taking his oath to protect the Constitution of the United States, this President has repeatedly attacked the free press, calling the media, "The enemy of the people," limiting access to his press conferences, filing libel lawsuits, and sending cease and desist letters about news stories he doesn't like. The list goes on and on.

On June 1, Park Police violently attacked you and your cameraman, as we saw, despite you clearly identifying yourselves as members of the press and having news-gathering equipment. Do you believe that the President's rhetoric and actions toward the free press has impacted the way the media has been treated by law enforcement?

Ms. BRACE. I can't speak to the motivation of members of law enforcement here in the United States. I can certainly say that there has been a noticeable trend in the treatment of the media by members of the police force, both the example of myself and Tim—my fiance was working in Minneapolis as a member of the credentialed press, and he was arrested while working legally. And we have seen a number of other instances across the country where the press has been targeted, even during these protests, by members of the police.

So, while I can't say why that is happening, it is certainly what I see as a trend. And that is very worrying for a free press.

Mr. LEVIN. And do you believe this will have lasting impacts on journalism in the United States and abroad?

Ms. BRACE. I think anything that deters journalists from being able to do their job safely could deter people from becoming journalists, or doing their jobs without fear or favor, which is exactly what we are meant to be doing.

Mr. LEVIN. Thank you, Ms. Brace. In the words of my friend, the late Elijah Cummings, we are better than this.

Thank you, Mr. Chairman. I will yield back.

The CHAIRMAN. Let me recognize the gentlelady from Puerto Rico, Miss González-Colón.

The time is yours.

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman. I would like to yield my time.

The CHAIRMAN. To whom?

Mr. BISHOP. Who did she yield to, me? OK. Thank you, I appreciate that.

I appreciate this. And Mr. Lacy, you notice what I am doing. This is specifically for you. Oh, good. But it is specifically for you. If you can find a Cardinal one, you can do that.

I just have two quick questions to ask. As I was sitting here listening to the testimony, I started reading, Ms. Brace, some of your testimony here in which you simply said, having seen the nature of the protests on May 31, you and your cameraman purchased protective equipment—eyewear, specifically. Is that accurate? Was that for one specific instance, or was it for a series of events, or was it simply a trend that you saw?

Ms. BRACE. We purchased our eyewear on May 31, so before we were covering the protests that day.

Mr. BISHOP. Was it for a specific incident or a trend?

Ms. BRACE. I would say it is because of what we had seen in Minneapolis earlier in the week.

Mr. BISHOP. I will accept that as trend, then.

Can I then ask one other question? Because I found it interesting when Ms. Napolitano asked you—and she is no longer here, but—if you were wearing a lanyard, and you said no. Did you indeed say that you don't want to identify yourself as media, for fear of protection?

Ms. BRACE. No, I did not say that.

Mr. BISHOP. What did you actually say to her? Why did you not emphasize yourself or identify yourself as media with a lanyard or something? What did you actually tell her?

Ms. BRACE. I did have my State Department press identification. I don't like to wear it around my neck for safety reasons.

Mr. BISHOP. For safety.

Ms. BRACE. It is something that can be pulled in a protest.

Mr. BISHOP. All right. That is—I am sorry, that was just interesting and fascinating to me.

Mr. Turley, I have one last thing to ask you at the same time. I was looking more at the stuff that we put into the record from the Interior Department.

According to the Department, the LRAD that was used by the Park Service is a 100X model. Hopefully it means something to you, it doesn't mean anything to me. But it means it is 20 to 30 decibels louder than a typical bullhorn or vehicle-based PA system. So, the model that was used has a maximum range of about 2,000 feet, with a peak output of 140 decibels. Compare that with a jet engine that produces 140 decibels at 100 feet, produces 140 decibels. So, that is the size of it.

The Department informed the Committee staff that the script read as follows. "This is Major Mark Adamchik with the United States Park Police. For safety and security reasons, Lafayette Park and H Street are closed to pedestrians. You are ordered to depart

the area immediately. This your first warning." And they said that there were two more warnings like this one given. The last one said this was a final warning.

According to the legal standards that you have been talking about, is that warning sufficient to satisfy the warning requirements of law before dispersing demonstrators like they did on June 1?

Mr. TURLEY. It is sufficient. And, in fact, in my testimony I suggested that the LRAD may have been used. I noted in the testimony that the Park Police has the LRED system. It is a huge improvement over prior years, where they would use the PA systems off of patrol cars. This has a much broader range by magnitude of dozens, in terms of the penetration of that system.

It doesn't mean that you can't have canceling noise in a protest. Basically, if you have objects around you. But that is the gold standard for amplification in these types of situations.

Mr. BISHOP. So, it is much easier to hear than simply a bullhorn would have been. And then one of the questions you need to ask——

Mr. TURLEY. Yes, that is the recommended system for many civil libertarians. It is a system that has a very significant penetration range.

Now, that doesn't mean, once again, you don't have circumstances where—I entirely understand—where people might not have heard it. You could have people around you, they could be screaming in your ear. Those are canceling noises. But this really is the gold standard, in terms of the use of application.

Mr. BISHOP. All right, and I have 30 seconds for this one. If someone heard a statement from a policeman saying, "Move, move," is that the kind of legal qualification that would be used?

Mr. TURLEY. When an officer tells you to move back, particularly after these warnings, you are expected to comply.

Mr. BISHOP. All right. So, if somebody in their written testimony were to say they heard the officers say, "Move, move," that would be the legal justification and the expectation, the lawful citizen, they would then move.

Mr. TURLEY. Yes, you are expected to follow the orders of the officers, particularly after the issuance of those warnings.

Mr. BISHOP. Thank you. I thank the gentlelady from Puerto Rico for yielding. I hope things are going well for you down there.

Mr. Grijalva, I yield back.

The CHAIRMAN. Thank you. The gentlelady yields back.

Mr. Neguse, you are recognized, sir.

Mr. NEGUSE. Thank you, Mr. Chairman. And for this Committee and this Congress to effectively fulfill our oversight duties, we absolutely must have a detailed understanding of the events that unfolded earlier this month. So, I thank each of the witnesses for appearing today and for your testimony.

I want to ask a question of Ms. Brace. I wonder if you could share what your reaction was when you heard that the U.S. Park Police Acting Chief stated that the, "U.S. PP officers and other assisting law enforcement partners did not use tear gas or OC Skat Shells to close the area at Lafayette Park," despite your experience being the opposite?

Ms. BRACE. Well, I am not an expert in ballistics, or the use of gas, particularly what was used. But I am certain that there was a chemical irritant used, and I was certainly hit by some sort of non-lethal projectile. So, that is completely opposite of my experience.

Mr. NEGUSE. Do you have any concerns that if journalists and others who were there had not, rather, shared photos of empty OC and CS canisters and videos of what had occurred, that we may not have known the truth?

Ms. BRACE. In that instance I guess we would be relying on first-hand accounts. Also in our recording, our video, you can hear the use of automatic weapons, which again goes to what I was saying.

Mr. NEGUSE. Well, it certainly underscores why a hearing like this is so important, and why it is important to hear from folks who have firsthand accounts as to what happened late last month.

I also want to register my displeasure with the lack of a witness from the executive branch testifying before our Committee today.

With much respect to my friend, my good friend from Colorado, I did read the letter that was sent to Chairman Grijalva from the Department of the Interior dated June 24, 2020, and I think it is important to clarify for the record. While this letter does intimate an expectation that the executive branch witness would be provided a separate panel, that is not the reason for the declination of appearing to testify before this Committee.

Ostensibly, what they purport as a justification for declining to appear before this Committee is timing, that they are too busy, and that they will, therefore, consider appearing later in the month, in mid or late July.

So, I guess I wonder whether the panelists have any thoughts. Professor Turley, do you think it is reasonable for this Committee to expect to be able to hear from the Assistant Chief, or another relevant witness from the executive branch?

Mr. TURLEY. Absolutely. I think this Committee should ascertain a number of the facts that I pointed out, which will be the first facts that the courts isolate. There are a number of these facts which will be determinative in any review of this conduct, and that includes what was used at the scene.

You know, this became a sort of colloquial versus technical debate as to what constitutes tear gas. If the Park Police's later statement was correct, the impact on an individual is going to be much the same. It is an irritant. And courts have often grouped them together as to when you can use this.

I personally believe that, as this Committee drills down, it is going to find itself more and more focused on that twilight period when you see that charge. That is a charge. That is a line charging. And the question is was that warranted in that circumstance.

Mr. NEGUSE. I agree with you, Professor Turley, with respect to the need for this Committee to engage in that inquiry. And I must confess, I am less than optimistic that we will have as much success as perhaps the judicial system will, in terms of potentially deposing some of these Administration witnesses, because the track record of the 116th Congress, in terms of its ability to get executive branch witnesses to appear before the Congress, is less than stellar, with a Secretary of Defense who is refusing to appear before

the Armed Services Committee to talk about this particular set of issues, with a Secretary of State who declines to appear before the Foreign Affairs Committee.

Of course, you may remember we have had an exchange previously, 8, 9, some-odd months ago before the Judiciary Committee during the impeachment process about obstruction of Congress, and the lack of any ability to, again, get these witnesses before the legislative branch.

So, I fear—I must say, because, as I read this letter, it is part and parcel to this pattern that this Administration has pursued relentlessly since the days that I was sworn into Congress. And I would hope that my colleagues on the other side of the aisle would join us in our efforts to, again, get to the bottom of it, and have folks from the Administration testify.

Because invariably—and I think, as you have referenced in the past—administrations change, right? We have elections. And at the end of the day there may very well be another administration and a Congress that is hoping to seek witnesses from that particular administration. And I would hope that we could treat these issues with the respect that they deserve.

With that, I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman yields.

Next, Ms. DeGette, you are recognized for 5 minutes.

Ms. DEGETTE. Thank you so much, Mr. Chairman. I have been here at the hearing since the very beginning, and it is very important. And it is important to hear from our witnesses.

Like all of us, I have been shocked by the unrestrained use of force by the Federal law enforcement agencies. And we are here today because one of those agencies, the Park Police, violated its own use of force policies in following President Trump's directive to clear Lafayette Square.

Mr. Chairman, your staff has a copy of the U.S. Park Police's Use of Force Policy, General Order 3615, updated November 1, 2019. And I would like to ask for unanimous consent to enter that into the record right now.

The CHAIRMAN. Without objection, so ordered.

Ms. DEGETTE. Thank you, Mr. Chairman. This policy governs the conditions under which the Park Police's use of force is appropriate.

Ms. Brace and Mr. McDonald, I want to ask you about some of the parts of this policy, and whether they are consistent with what you saw on June 1. And I would appreciate yes-or-no answers, if you are able.

The policy, which was updated last fall says, "An officer is expected to employ only the minimum level of responsible force necessary to control a situation."

Now, Ms. Brace, I believe you testified that you have covered a number of demonstrations. Is that correct?

Ms. BRACE. Yes, that is correct.

Ms. DEGETTE. So, in your experience being at that protest, did you view the U.S. Park Police and other law enforcement officers employing only the minimum level of reasonable force necessary to control the situation?

Ms. BRACE. No, I don't.

Ms. DEGETTE. The policy also says—oh, Mr. McDonald, I want to ask you the same question. You testified that you served in the military, and so I assume you have seen people using force. I want to ask you, did you view the U.S. Park Police and other law enforcement employing only the minimal level of reasonable force necessary to control the situation?

Mr. MCDONALD. I believe they used excessive force.

Ms. DEGETTE. Thank you. Now, Ms. Brace and Mr. McDonald, did either of you see a situation where the Park Police use of force seemed to be required, and then did they stop it once it didn't seem to be required?

Ms. Brace, we will start with you.

Ms. BRACE. No, not that I saw.

Ms. DEGETTE. Mr. McDonald?

Mr. MCDONALD. Can you repeat the question?

Ms. DEGETTE. Yes. My question is did either of you see a situation where they seemed to need to use the force, and then they stopped it once it wasn't required any more?

Mr. MCDONALD. No, I did not.

Ms. DEGETTE. OK. The policy also says an officer shall, if possible, first attempt to diffuse the situation through advice, warning, verbal persuasion, tactical communication, and other de-escalation and conflict negotiation techniques.

Ms. Brace, did you see the police doing anything like that?

Ms. BRACE. No, I did not.

Ms. DEGETTE. Mr. McDonald?

Mr. MCDONALD. No, I did not.

Ms. DEGETTE. Finally, the policy says the goal of de-escalation tactics is to gain the voluntary compliance of a subject, when appropriate and consistent with personal safety, to reduce or eliminate the necessity to use force.

Ms. BRACE. Ms. Brace, did you see the police doing that?

Ms. BRACE. No, I did not.

Ms. DEGETTE. How about you, Mr. McDonald?

Mr. MCDONALD. No, I did not.

Ms. DEGETTE. Now, did you see anybody at that particular protest who was not complying voluntarily?

Mr. MCDONALD. No, ma'am.

Ms. BRACE. Not from what I saw.

Ms. DEGETTE. Were each of you complying voluntarily?

Mr. MCDONALD. Yes, I was.

Ms. BRACE. Yes.

Ms. DEGETTE. OK. So, Mr. Chairman, just looking at the U.S. Park Police's Use of Force Policy, it seems to me that they were violating their very own policy, which is what the purpose of this hearing is. And I find it very telling that the Administration didn't even show up to explain any of this today.

I just want to take one more minute of personal privilege and, Bishop, tell you how proud I am of you, as a woman of God, to stand up for the right of peaceful protesters. I am a Presbyterian in Denver, and my church is very involved with the Black Lives Matter movement. And we are involved in these protests. And we think that is part of the very fabric of Christianity, and the very fabric of America. Thank you.

Mr. Chairman, I yield back.

The CHAIRMAN. Thank you. Let me recognize Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman. Thanks for conducting this hearing. Thank you to the witnesses for your testimony in observance of what you saw that day.

My wife and I happened to be in our living room, watching incredulously, especially after Attorney General Barr went out to the square to survey, and then ordered the clearing of that square—how outrageous, how un-American—just so somebody could take a photo op.

Let me ask you, Mr. McDonald. Let me first thank you for your service to this country and for your activism. Given your testimony from what you saw on that day, did you see any protesters act violent, or did you see any of the demonstrators throw projectiles at law enforcement?

Mr. MCDONALD. No, I didn't see anyone throwing anything. I didn't see anyone acting violent.

Mr. CLAY. Thank you for that. And for me, for a Black man who served his country, when you hear this Administration and President say time after time that he does a lot for the Black community, then to be treated like a hostile, what goes through your mind?

Mr. MCDONALD. I mean, it fits the rhetoric of where a Black man is always persecuted. I am out there for just reason. I have an Administration—not just an administration but a government—that is trying to clear me for exercising my First Amendment rights.

Mr. CLAY. Thank you for that. And let's put politics aside. Does the President's narrative seem consistent if peaceful demonstrators cannot peacefully protest the racial injustices we see and face on a daily basis?

Mr. MCDONALD. I think probably the last 10 protests have been very peaceful. The whole world has seen us peacefully protest. I think those rioters and all that stuff was an isolated incident. Ninety percent of the protests I have been to—well, 100 percent I have been to have been positive, and about 90 percent I have seen on TV have been very positive.

Mr. CLAY. Having a military background, do you consider the training of those law enforcement personnel that you came up against on June 1 to be in a posture of warrior or guardian?

Mr. MCDONALD. Warrior.

Mr. CLAY. Thank you. Thank you for that.

Ms. Brace, have you covered other protests where you have experienced law enforcement treating media in a similar manner to your experience in Black Lives Matter Square?

Ms. BRACE. No, I have not.

Mr. CLAY. You have not. And as has already been mentioned, this Administration's story around what happened that day and why it happened keeps changing. When you hear the Administration's changing explanations, what goes through your mind, as a journalist?

Ms. BRACE. Well, obviously, I am here to observe what is happening, not to speculate on why it is happening. But all I can tell you is that on that day, on June 1, the plan seemed to change,

because we were expecting the curfew to be enforced at 7 p.m., and it was enforced at 6:30 p.m.

Mr. CLAY. And during your broadcast, you mentioned that the police were being indiscriminate, and didn't seem to change their actions after you stated you were members of the media. Do you think at all that the treatment of you was intentionally directed at you, due to your status as a journalist?

Ms. BRACE. I can't say whether we were targeted because we were working press. I can say it was clear we were working press, and even after my cameraman, Tim Myers, was assaulted and it was acknowledged very clearly that we were press, I was then hit across the back with a truncheon as I was trying to move away, as directed.

Mr. CLAY. Did you say that you got hit with a projectile?

Ms. BRACE. Yes.

Mr. CLAY. A rubber bullet?

Ms. BRACE. I am not sure whether it was a rubber bullet. It was a projectile. A non-lethal bullet.

Mr. CLAY. I see.

And Mr. McDonald, did you get hit with an object?

Mr. MCDONALD. Yes, I got a plume of tear gas exploded right below my feet, and they threw a flash grenade right at my ankles, to the point it exploded. When I felt all the pellets, I asked the officer on film, I said, "What did you throw at me?"

And I saw something like smoke from the ground. I correlated both together. I said, "Did that—whatever you threw, did it blow up on the ground, and the asphalt hit me?" And I thought it may have hit because the loud sound—I was oblivious to what it was. When it hit the ground I just felt something hit me, and I thought it was the asphalt—it was that powerful, where it blew the asphalt up. And I asked, "What was that?"

Mr. CLAY. All right, my time is up. But this is not how civilians in this Nation should be treated who are trying to exercise their constitutional rights. And I defy anyone on this panel to refute that.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. Thank you.

Let me now recognize Mrs. Dingell for your 5 minutes. Thank you.

Mrs. DINGELL. Thank you, Mr. Chairman, and the Ranking Member, who it is always good to see. I want to thank you both for having these hearings. And I think it is really important to say, as we start this, that I don't think any person on either side of this aisle thinks that violence is ever OK at a protest. And I don't think you see people here saying that.

And I want to say that to some of my Republican colleagues. I have actually been—the woman who you couldn't force out of her house 3 weeks ago—have been at 17 vigil marches and protests in the last 2 weeks, because the people of my communities have organized them. And some are areas that do them all the time, and some are ones that do them none of the time. And the first ones that I went down river—most of them were organized by young people.

One of my police chiefs immediately said to me, "What are you doing here?" And not because he was upset that I was there, but he had thought I was just going to the city hall. And people had just arrived that they were trying to not let the young people see with bricks, and arrived to cause trouble. And I know which organization they are with. But throughout these, my police chiefs have walked with the young people. They have been alert. They have worked together.

And I have had 2 bad incidences out of the 17, one where a woman ran a car through us, and the second where young people heard the word—a word that they should never hear once. And I was called a White—several not pleasant words.

But our police chief handled them. And I think that that is what we want to talk about today, because I think Americans have the right to peacefully assemble and protest. It is a fundamental right of our democracy. And how these get handled is really important. So, we have to ask these questions because we don't have a witness today, as has been said. We have to make sure that that freedom of speech and that freedom—I am proud of some of the young people that I have seen out there, but we don't want to see windows—and some of these areas have deliberately been broken. And my law enforcement knew that I was being targeted by some people, and I wasn't going to let that stop me, either.

But I want to ask some questions of both Mr. McDonald and Ms. Brace.

Mr. McDonald, some of my colleagues across the aisle have attempted to use the actions of a few protesters at a separate protest against police brutality to depict the peaceful protests that you were part of as violent, or call it a riot. I want to be clear, Mr. McDonald. Did you personally witness violence or rioting prior to the police attacking the protesters on June 1?

Mr. MCDONALD. No, ma'am.

Mrs. DINGELL. Ms. Brace, would you agree with Mr. McDonald? Did you witness violent activity or any sort of similar events prior to the police moving against the protesters on June 1?

Ms. BRACE. No, I did not.

Mrs. DINGELL. Furthermore, during these attacks you identified yourself repeatedly as a member of the media. Correct?

When you did that, when you announced yourself, did they refrain from violence?

And they went after your cameraman, so even if they didn't see your media credential, which—people have raised a question—it was pretty obvious that your cameraman was a member of the media, correct?

Ms. BRACE. Yes, absolutely.

Mrs. DINGELL. And can you talk about the injuries you and your cameraman sustained, and the damage your equipment took?

Ms. BRACE. Tim suffered what I would describe as a harder hit than what I did, as you saw in that video, with the shield to his stomach. And then the camera was punched, which pushed it back into his face.

He also was hit with a non-lethal projectile in the back of the neck. As you saw, I was struck across the back with a truncheon. And I was hit a few times in the legs by non-lethal bullets. I was

hit quite directly in the back side, so that would be my most significant injury.

In terms of our gear, the camera, obviously, that Tim was holding up to his face was damaged when it was punched. A separate lens that I was carrying in my backpack was damaged when I was hit. And also, our live transmission device—we call it a TDU—was significantly damaged when it was hit by——

Mrs. DINGELL. So, several thousand dollars' worth of damage. I want to ask you one more quick question, Mr. McDonald. You mentioned in your testimony that you took pictures and videos during the attack. Why did you feel like it was important to document everything that was happening?

Ms. BRACE. I believed it was a pivotal point in history, just to be out there amongst those diverse protesters. And second, it was for my safety, because Trump had made the threat of using weapons and dogs on us, and I really took it literally. So, that was the second main reason why I recorded.

Mrs. DINGELL. Thank you. My time is up, but thank you, all of you, for being here. And the Bishop, too.

The CHAIRMAN. Thank you.

Mr. García.

Mr. GARCÍA. Thank you, Mr. Chairman. And let me express my gratitude to all of our witnesses this morning, to the Ranking Member, as well.

During this difficult moment in our history, we are grieving more than a senseless murder of George Floyd. This is not new. The outrage is not new. We are grieving the 400-year legacy of the intergenerational trauma from slavery, lynchings, the Jim Crow era, and police brutality. The racial injustice in our country's history is still costing us innocent lives.

What we are seeing today is the result of historic injustices that have kept people living in poverty, in communities where schools have fewer resources, and where people live less long, due to lack of health care, coupled with aggressive policing.

Earlier this month, organizers and protest participants were attacked while demonstrating against police brutality in DC, and this hearing brings that out. Facing protests over the use of force, the U.S. Park Police responded with more force.

Mr. McDonald, thank you for being here. In your testimony, you shared that you received training in CS gas, also known as tear gas, during your time in boot camp. Can you describe the conditions under which you were instructed to use tear gas during your training, and how that compares to what you witnessed at Lafayette Square?

Mr. MCDONALD. Well, first of all, in boot camp it was controlled. It was around medics, and they had personnel there, because it was done in a safe environment. What I witnessed at Lafayette Square was excessive force. They did it without any kind of medical people around. They knew people would get injured behind this. The Navy did it in a much better, safer way, and it was done because we were in boot camp, a controlled environment. Although we were protesting, they threw that. I just think that we weren't prepared for that. They shouldn't have used that on protesters. They are not soldiers.

Mr. GARCÍA. Based on your training, the U.S. Park Police didn't follow the proper protocols, in your opinion?

Mr. MCDONALD. Yes, that can't be a necessary way to remove people.

Mr. GARCÍA. Thank you.

Black and Brown communities are already being ravaged by the deadly virus and an unprecedented economic crisis. Now they are being terrorized by militarized police. Militarization of law enforcement and the unjustified use of force against organizers and community members must end. Tear gas is a chemical weapon banned in war, and it should never again be used against demonstrators, but especially not during a pandemic.

We have heard countless stories of organizers and protest participants suffering traumatic injuries at the hands of law enforcement, or, like Mr. McDonald, who was, "met with tear gas and flash bangs, which exploded with shrapnel."

That is why my colleagues and I introduced a bill to stop the escalation of such police tactics against peaceful demonstrators, and ban the use of chemical weapons in our streets. The bottom line is the rightful demonstrations that we are witnessing in the wake of the killings of George Floyd, Breonna Taylor, and other Black lives taken by the police should never have been met with the deadly force from law enforcement.

The U.S. Park Police and other police and military forces forcibly removed peaceful protesters with chemical irritants. And for what? For the President's photo op?

I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman yields. Let me recognize Mr. Soto for his questions and his time.

Mr. SOTO. Thank you, Mr. Chairman. The whole Nation witnessed videos showing President Trump, White House Justice and Defense officials authorize use of force to remove peaceful protesters. Lafayette Square Park and the adjacent Pennsylvania Avenue, an area right in front of the White House, is our Nation's public square. This a traditional area for Americans to express our First Amendment rights, the infringement of which deserves heightened scrutiny.

It was particularly disgraceful that these tactics were used so the President could engage in a photo op. Many have testified that the incident occurred 1 hour before curfew. I do agree with other members of this Committee that city officials should be wary about creating curfews of otherwise peaceful protests. These dictated curfews often create unnecessary conflict between police and peaceful protesters. We know, based on the testimony, this was not the case in this incident.

I want to welcome Professor Turley to the Committee. I would be remiss if I didn't say this hearkens me back to 14 years ago in your Supreme Court class at GW Law. And I want to thank you for being such a great teacher.

Professor Turley, some evidence suggests that the crowd was cleared for purposes of a photo op. Other evidence suggests the President wanted to display a show of strength after damaging coverage of him retreating to a bunker a few days earlier. I am concerned that the President may have specifically intended to

intimidate or silence political speech, or simply that he didn't care about the injuries that would occur as a result of his actions in those last minutes that you really focus on before they begin clearing the area.

If President Trump or other responsible officials harbored either specific intent to intimidate or silence political speech or, at the very least, had a reckless disregard for the safety and First Amendment rights of protesters, would either of those states of mind be relevant in determining a violation of their First Amendment rights?

Mr. TURLEY. Thank you very much for that question. This is, in fact, my ideal, to have a former student asking me a question, looking at two counsels on either side of the Chair that are both GW grads, and a photographer who is a GW student. So, I could not be in a happier spot.

But to answer your question, most certainly the intent does matter. My testimony first starts out with the motivational question. That motivational question, I think, we will get more salient information with the inquiry of Congress.

And one of the things that, personally, I would look at, is it seems to me that there is evidence that the plan was put into place 48 hours before, in terms of development. It was approved in the morning. An order went out at 2. That does not mean, however, that it answers, even if those facts are true, whether the President's photo op played a role in the size of the perimeter, the decision to move people all the way to I Street, for example. Those are things that are legitimate questions.

And as I said, if Attorney General Barr cleared that area for the purpose of the photo op, despite knowing him for many years, being a graduate of our law school, I would immediately call for him to step down, because that would be an outrageous use of power.

So, the answer is yes. If this was done to intimidate people, this would be a serious problem. The Supreme Court said in Bose that protests are classically political speech. And that is why the courts have been so protective.

So, I think that your question is a relevant one. And more importantly, we can get those answers as we get more of these facts confirmed from Congress.

Mr. SOTO. Thank you, Professor Turley.

Mr. McDonald, thank you for your service to our country. On behalf of the U.S. Government, I would like to apologize for your brutal treatment you received by your own government.

We recently passed the Justice in Policing Act of 2020. It stops the militarization of police by stopping a Federal program that gives local police surplus military equipment. As a veteran familiar with the differences between the objectives of military and police, how important is it to stop the de-militarization of our police force?

Mr. MCDONALD. It is very important. I mean, you lose control once you militarize too much. The military is there for a certain reason, and city cops are there for a certain reason. We have distinguished who does what, and I just think, giving the city police and Park Police reasons to act like a military unit isn't good for any kind of protest, going forward.

Mr. SOTO. Thank you. Ms. Brace, on behalf of the U.S. Government, I would like to apologize for your brutal treatment by this government. I am appalled about how you and Mr. McDonald were treated.

We have seen an increasing level of violence against members of the press in the United States as of late. What do you suggest needs to happen to better protect members of the press in the United States?

Ms. BRACE. Again, I wouldn't presume to tell the American people how to run their government or their police force.

I think, basically, the First Amendment needs to be enforced, in that the media needs to be able to work freely and without fear, especially from law enforcement.

Mr. SOTO. And finally, Bishop Budde, you were installed on November 12, 2011, so you have had a lot of experience with Lafayette Square. How often do you see people protest in Lafayette Square?

Rev. BUDDE. I don't know that I could count, but it is, as I said before, it is the park where people gather, and it is a common sight for protests. I think there are protests there every day, actually.

Mr. SOTO. Thanks, and I yield back.

The CHAIRMAN. Thank you. Let me recognize Mr. Horsford.

You are recognized, sir.

Mr. HORSFORD. Thank you very much, Mr. Chairman. I know all too well the pain and loss that the Black community has faced because of law enforcement's abuse of force. What took place at Lafayette Park stands against our Nation's ideals. Peaceful protestors were exercising their First Amendment constitutional rights.

Unfortunately, the President, in an effort to have an ill-advised and unnecessary photo op, decided to upend the First Amendment rights of peaceful protesters at Lafayette Park by using tear gas and firing rubber pellets on them.

It is important that lawmakers can look outside their windows and see and hear protesters. They are letting their government know that change must occur. Instead, this President acted like an authoritarian dictator, and used excessive force so he could stage a 3-minute photo op at the historic St. John's Episcopal Church. This is simply wrong.

As a Black man, as a father of three children, two young boys, I know we must find more common ground and enact real reforms across this Nation and for my home state in Nevada. We need to continue to have honest dialogue about race and other injustices and, more importantly, act boldly for the change that we need throughout our society.

Unfortunately, those actions taken by the President at Lafayette Square do not bring us closer to solving these problems. In fact, they make it worse.

Mr. McDonald, can you tell us what brought you to the protest, and what were your general feelings about your fellow protesters? Were they peaceful? Did you see anybody doing anything different than exercising their First Amendment rights?

Mr. MCDONALD. Well, my reason for being there was for my First Amendment rights, protesting the inequity in the Justice

Department. Everyone I saw, from the minute I started recording at 6, until the minute they attacked us, was peaceful.

Mr. HORSFORD. Thank you.

Mr. MCDONALD. I didn't see anything being thrown, other than verbal things they were saying. No one attacked those officers.

Mr. HORSFORD. Thank you. And what was your first reaction when police in riot gear used tear gas on you and your fellow peaceful protesters?

Mr. MCDONALD. It was confusion first, because you know it is 30 minutes before curfew. Then you wonder why are they doing this. Like, what happened? You would have thought something drastically happened for that to change from a peaceful protest to, like, literally 3 seconds they switch and turn into a military unit.

Mr. HORSFORD. Thank you.

Mr. MCDONALD. It was confusion.

Mr. HORSFORD. Ms. Brace, seeing the way you were treated in that video was shocking, to say the least. You were clearly identified as a member of the press. You were in an area designated for members of the press. And yet those officers were completely indiscriminate in their attack.

In your years of experience as a reporter, have you or your cameraman ever been treated this way before?

Ms. BRACE. No.

Mr. HORSFORD. When you set up to work that day, did you assume you would be safe from violence at the hands of law enforcement?

Ms. BRACE. Yes, absolutely.

Mr. HORSFORD. Why?

Ms. BRACE. Because of the First Amendment and the respect for the media in a democracy.

Mr. HORSFORD. Can you tell us more about the conduct of law enforcement that you have observed as a reporter, and what was it that happened at Lafayette Square the first time that you have experienced this?

Ms. BRACE. Well, as you saw in the video, we were there to report on what was happening, expecting the curfew to come into effect at 7 p.m.

Then that line of police came through very early, very suddenly, and very quickly. We moved right to the side, where we were very much out of their way. There is nothing that would have prevented them walking past us easily. And that is when they turned on us, and we were both physically assaulted.

In terms of the protest itself, I would say that it was largely peaceful. It was very different to the night before, where we did see those fires and looting. That was nothing of the sort on the afternoon of June 1.

Mr. HORSFORD. Thank you.

Right Reverend Budde, can you please talk about the teachings of the Episcopalian faith, and whether those are in line with the current President's actions of using tear gas by police in riot gear against peaceful protesters?

What was your reaction when the current President used a Bible for the sole purpose of a photo op?

Rev. BUDDE. As I have stated before, there is nothing in scripture or in the teachings of our church that would condone violent actions of State officials against innocent protesters. So, I would say that it is completely antithetical to the teachings of our church.

When I saw the President hold the Bible in front of the church, as I said, I felt he had usurped a spiritual—he was taking a spiritual message, or claiming a spiritual authority that he did not have to justify or to bolster a message that was counter to our teachings and our attempt to follow Jesus and his way of love.

Mr. HORSFORD. Thank you, Mr. Chairman, and I yield back.

The CHAIRMAN. Thank you.

Mr. Tonko, you are recognized, sir.

Mr. TONKO. OK, great. Thank you so much, Mr. Chair, and to our witnesses also. Thank you.

I am devastated that this hearing is needed, but it is absolutely needed. I see massive pain in this country, our country, right now. For many, this pain comes from the nervous uncertainty of living in a world dominated by a deadly, highly contagious virus. The last 4 months have shown many of us what it is like to live in a society where you don't get to write the rules.

Black Americans have known that feeling for 400 years. They are the descendants of the people kidnapped into slavery. They are the product of pervasive and systematic racist policies, not just Southern Jim Crow laws, but racist Federal policy, as well. Black Americans were forbidden from claiming land in the Homestead Act, excluding them from the largest and most permanent wealth giveaway in our American history. They were effectively excluded from the New Deal and the GI Bill, which can be argued as the foundation for our American middle class. They were, and in many cases still are, legally allowed to be profiled against by a police officer, who could use that power to investigate, intimidate, and, far too often, end a life. And now, thanks to the compendium of institutional racism, they are getting sick and dying from COVID at a much higher rate than White Americans.

But Black Americans are, sadly, used to living in a society where, for the longest time, they didn't get to write the rules. I am a 71-year-old White man, and I will never know what that feels like. But I am brokenhearted that, as a member of our society, I share some responsibility for the pain Black Americans feel.

Let me begin by first addressing my questions to Her Excellency, Bishop Budde. And Bishop, did I pronounce your last name correctly?

Rev. BUDDE. You did.

Mr. TONKO. OK. What does Christianity teach us to do if we have harmed others?

Rev. BUDDE. To seek restitution, forgiveness, and at all times mercy, because we all fall short in the sight of God.

Mr. TONKO. Thank you. In Lafayette Square on June 1, and repeatedly since then across the country, it is asking, begging for an end to this pain.

Rev. BUDDE. Yes.

Mr. TONKO. And as a fellow believer, it seems this is the moment, if any, where we should be asking for such forgiveness, and then doing what we can to eliminate pain into the future.

Mr. McDonald, can you remind me again how the peaceful protesters were treated?

Mr. MCDONALD. We were treated with weapons of war. We were treated like criminals. We were treated like we were breaking the law. We were only exercising our First Amendment rights.

Mr. TONKO. Well, I think that, as we have learned today, nothing in this response sounds compassionate to me. Nothing in this response sounds like a teaching we would find in any book of faith that would guide any one of us. Nothing in that response sounds forgiving to me. And as one who has practiced my faith, I think that it is part of some of the fundamentals that we all share in making certain that we are a just and loving society.

So, I deeply implore our Nation's President and any of her leaders to refer to some of the scripture, and certainly scripture found in that book that he held outside of St. John's Church that day. And I would encourage him to revisit the verse from Micah 6:8, which reads, "What does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?" I think that is instruction for all of us.

Mr. Chair, we have to do better. Let us heed the words of Micah. As a Nation, let us resolve to go forward, to build a fairer Nation. Let us now do the hard work of laboring for justice, denouncing violence, loving kindness, and, most certainly, walking humbly but hurriedly on the path to what we all respect, a more perfect union.

With that, I yield back and, again, thank our witnesses for being here today, for adding what they did to today's discussion, and providing that sort of clarity that we are all looking for.

And, Mr. Chair, again, I do yield back, and thank you for the opportunity.

The CHAIRMAN. And thank you, sir, for, I may say, very profound and important comments that you made. Thank you.

Mr. TONKO. Thank you.

The CHAIRMAN. I want to thank the witnesses. I appreciate it very much, all four being here today.

My colleagues, through the 2½ hours that you have been here, have asked a lot of the questions that were important to me.

I think that we heard a lot of important information today about the attack on the protesters at Lafayette Square on June 1.

But we didn't hear a peep from the Administration. We invited Acting Park Police Chief Monahan. We jumped through hoops, as different requirements were presented to us in terms of his coming forward. The latest one was that he was too busy, and there could be a conflict because of potential litigation down the road.

And it would have been very helpful to have him here, or a representative of the Department, so we could understand which version of the truth they have offered—and they have offered several since June 1—is actually the correct one, and so that there is no mistake, and nothing is being hidden from the American people, that it is out there, and it is transparent. And it is our responsibility to provide that oversight.

And one thing as well today, is that we looked at what my colleagues said today, and the analysis from my respected Republican colleagues, the main witness—the analysis, as I got it, depends on the Administration telling the truth. Now, that would, I think,

create some skepticism and doubt among many, many, many Americans at this point.

We also heard from our colleagues about a lot of things that didn't happen that date. The assumption is that the protesters in Lafayette Square were dangerous by association, and that is not the way it should have been approached. Pre-judging a group of people based on unrelated actions, actions separate from them, of others might be at the very heart of the problem here.

Maybe the protesters—and to deal with this in a bipartisan way, I remember the calls for de-escalation, restraint, extended patience when we were dealing with the takeover of a park facility by armed individuals. And the struggle over the Bundy family and their refusal to pay fees for grazing on public lands, and action by the Federal Government to try to redeem that. I hope that that same bipartisan attitude of restraint and—not create a double standard in which—because perhaps the message in this one is not what you wanted to hear in Lafayette Square. But just like the message that the Bundys were having when they refused and armed themselves—I didn't want to hear, but that is what the Park Police chose, that is what the U.S. Marshal chose, that is what the FBI chose: restraint, patience—prolonged patience, I might add.

I also want to talk a little bit about leading up to this hearing, a lot of the discussion about issues having to do with what led up to this. And that is why I made my point about people shouldn't be associated with anything that is going on, that the protesters are the enemies, that they are not American citizens exercising their right under the First Amendment, that it is about the statues, that it is about the isolated series of violence.

Let me guarantee you, I have been around long enough, have been to enough protests, and been arrested for civil disobedience myself to know and to be able to say that the tail is not wagging the dog on this movement that is going on in America right now. The dog is in charge. And that is the American people. And those outlier issues of opportunism, whether in appropriating the Black Lives Matter movement for either a narrow ideological point or a criminal point, should not be reflected onto what people are trying to say out in America, period.

And I also have felt that this has opened up many things. And, the irony of ironies, you have Mr. Pendley, who Trump is recommending to run the other BLM, the Bureau of Land Management. And he is one that did an Op Ed piece that said that the Black Lives Matter movement is built on terrible lies. And it goes again to make those associations. And he will be in charge of the biggest land mass agency that we have in this country if the Senate approves.

I think these contradictions, the fact that we are asked to believe and that the Administration won't come forward and allow a full questioning and a full disclosure and transparency of all the information related to what happened June 1, I think leads us to continue to press for the issue, not only of accountability, but of reform with our Park Service police that has to change. And hopefully, this hearing and you as witnesses—thank you so much.

Members might ask you questions. You have a period of time as well to return your responses. I appreciate your time and I appreciate all the patience you have shown today.

Mr. BISHOP. Mr. Chairman, I have one other—I ask unanimous consent to add one more letter into the record, which was sent by the Secretary to you, inviting you also to visit.

And I look forward to working with you in a bipartisan manner, because the Administration did have an option of willingness to come here and talk about their point of view. We need to make sure that that is there, and that is accommodated in the future. Thank you.

And just one last thing. Be careful about when you are talking about the experience in the West, which was supposedly done in a non-violent way, because it did leave one of the citizens of my state dead in the snow.

The CHAIRMAN. On that uplifting note, let me adjourn the meeting, and thank you very much, all of you. I appreciate it. We all do.

[Whereupon, at 2:42 p.m., the Committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF THE HON. DEBRA A. HAALAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. Chair, thank you for convening today's panel. This is a necessary conversation that is long overdue.

Our colleagues have said it already, but the events of June 1 will no doubt go down as one of the darkest days of this presidency. And that is saying something for a President that has put children in cages, has protected his cronies from prosecution, and has opened our elections to foreign interference.

Attacks on the Constitution aren't new for this President but clearing a peaceful demonstration for a photo-op with his cabinet is an unbelievable new low. While we will rightly focus on those actions of June 1, we cannot lose sight of the larger moment we are in.

Today's hearing is also about a larger trend of systemic racism in which militarized police intimidate and kill in communities of color while defended from prosecution.

The President's recent actions brought that excessive force to the fore in a new and unconstitutional way, but this is by no means an isolated incident. And while I respect the work Federal civil servants do every day to improve our country, there are times they do things our Nation is not proud of.

In November 2017, the U.S. Park Police murdered Bijan Ghaisar just over the river in Arlington. Killed him while he drove his car. Still, his family has not had justice.

Earlier this year, in my state of New Mexico, Charles Gage Lorentz was driving back to his home in Colorado when he was murdered by a U.S. Park Ranger. I spoke to his mother's attorney recently, but I couldn't explain why that killer still patrolled one of our national parks, why he hadn't been brought to justice.

Today, we are here to talk about the President and his illegal and unconstitutional actions. But we also need to discuss power, to discuss fear, to discuss unequal treatment under the law. Because we did not choose to live in a society where the President wields the power of our government to break up peaceful protests any more than communities of color across this Nation choose to live in fear of unequal policing.

Let's try to understand what breakdown in norms led to the horrible injustice of the clearing of Lafayette Square. But let's also make sure we keep in mind the culture of systemic oppression that allows this same fear and power to control and kill in communities across our country. Because this wasn't an isolated incident.

We've seen this excessive use of force by Park Police and park law enforcement. We've seen this excessive use of force in the District, and we've seen it in our communities. It is time for us all to stand up and say, enough.

Submission for the Record by Rep. Bishop

DEPARTMENT OF THE INTERIOR
WASHINGTON, DC

June 5, 2020

Hon. RAÚL GRIJALVA, *Chairman*,
Committee on Natural Resources,
1324 Longworth House Office Building,
Washington, DC 20515.

Dear Chairman Grijalva:

Thirty years ago, on May 14, 1990, I was fortunate to witness an oral argument at the Supreme Court of the United States. The matter before the Court that day concerned whether the First Amendment permitted prosecution for flag burning in violation of the Flag Protection Act of 1989. When the Court handed down its verdict a few weeks later, I stood and watched a peaceful demonstration on the steps of the Court. The Court's determination was that the prosecutions under the Flag Protection Act were not supportable under the First Amendment.

Since that moment, I have profoundly appreciated the Constitutional protections that we, as Americans, enjoy and the seriousness with which any effort by the government to limit those rights is, and should be, viewed. The ability to freely express our views is fundamental to our society, even when some might find the words or ideas being expressed offensive or disagreeable. Just as our Constitution protects such forms of speech, it guards our right to peaceably assemble.

After the Nation witnessed the horrific killing of George Floyd, seeing with their own eyes a loss of life that should never have occurred, many reacted. In doing so, many have sought to exercise their rights peacefully; some have not, turning instead to unlawful activity. The scope of the violence and destruction is significant. Neither the American people nor the peaceful demonstrators are defined by those who seek to terrorize our cities, vandalize our national memorials, ignite our sacred sites, or attack our law enforcement officers and fellow citizens. But the presence of these criminals and their acts of violence last weekend and into this week is indisputable.

The men and women in law enforcement, particularly the U.S. Park Police (USPP) in this instance, are charged with safeguarding lives, protecting our national treasures and symbols of democracy, and preserving the natural and cultural resources entrusted to the Department of the Interior. They do this with great honor. Since last Friday, however, our colleagues at the USPP have been subjected to violence; several sustained injuries, and some were hospitalized.

Beginning on Saturday, May 30, 2020, the USPP were under a state of siege, and routinely subject to attack by violent crowds. The incidents are numerous and include USPP officers having their police cars vandalized; being subject to bombardment by lighted flares, Molotov cocktails, rocks, bricks, bottles and other projectiles; and physical assault so violent that to date over 50 area law enforcement officers have been injured to some degree and even taken to local hospitals. This includes one USPP officer so violently attacked that he required emergency surgery.

These acts of violence were accompanied by vandalism and disorderly conduct, such as the setting of numerous fires, including the burning of an historic structure at Lafayette Park as well as at St. John's Church; profane graffiti scrawled upon numerous public structures, including the World War II Memorial and the Lincoln Memorial; and multiple attempts to break through fence lines, bike racks, and other barriers designed to restrain crowds from entering secure areas. These are just a small sampling of the incidents faced by law enforcement prior to the gathering on June 1, 2020.

In light of the activities on last Friday and Saturday—and at the request of USPP—I requested the assistance of the National Guard through the Secretary of Defense to ensure we could maintain the security of President's Park, the National Mall, and other public properties. Fortunately, my request for assistance was accepted.

On the evening of June 1, 2020, crowds gathered near the White House complex and once again began assaulting law enforcement with projectiles while threatening to storm the secured areas. Law enforcement personnel at the scene issued an order for the demonstration to fall back. When the crowd failed to comply with this lawful order, police at the scene, including the USPP, responded by pushing the crowd back. While standard equipment, including shields, batons, and pepper balls where

used to accomplish this, no tear gas was used by USPP or associated units at Lafayette Park, contrary to widely and erroneously reported assertions.

In working diligently to curtail the violence that was underway, acting USPP Chief Gregory T. Monahan has publicly stated that the USPP is following its established policy. The motto of the USPP is *Integrity, Honor, Service*. These special men and women display an unwavering commitment to serve and protect this great Nation, our national treasures and symbols of democracy, and the natural and cultural resources entrusted to us. I have personally visited Lafayette Park multiple times over the last week. I have seen firsthand the damage and destruction. I have talked to our men and women in blue. They exemplify continued bravery, serving with distinction. Politicizing their solemnity is unconscionable.

President Trump and I support justice and peace for every American. The President has committed his Administration to the expansion of economic opportunity and prosperity for all Americans. Under his leadership, criminal justice reform has been enacted, investments in underserved communities have been encouraged through opportunity zones, and, before the novel coronavirus outbreak, the unemployment rate among African Americans was recorded at its lowest in our Nation's history.

This Administration also remains absolutely and fundamentally committed to the peaceful expression of First Amendment rights. However, violence to our citizens, attacks upon our officers, and destruction of our Nation's resources is unacceptable. Unfortunately, your letter repeats and amplifies a narrative that is harmful to the credibility of our law enforcement personnel and to the rule of law. That is also unacceptable.

The men and women of the U.S. Park Police are public servants charged to protect and serve. They take this charge seriously. I invite you to join me in visiting with our injured officers so you can see and hear, firsthand, their accounts. A similar letter is being sent to Representative Debra Haaland.

Sincerely,

DAVID L. BERNHARDT,
Secretary of the Interior.

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

Submission for the Record by Rep. DeGette

— General Order for Use of Force No. 3615 approved by Gregory T. Monahan, Acting Chief of Police, dated November 1, 2019.

Submissions for the Record by Rep. Bishop

— Letter from the Reporters Committee for Freedom of the Press dated June 29, 2020.

— NPS Document on Memorials and Statues Vandalized in Recent Protests from June 19–23.

# # #

UNANSWERED QUESTIONS ABOUT THE U.S. PARK POLICE'S JUNE 1 ATTACK ON PEACEFUL PROTESTERS AT LAFAYETTE SQUARE—PART 2

Tuesday, July 28, 2020
U.S. House of Representatives
Committee on Natural Resources
Washington, DC

The Committee met, pursuant to notice, at 10:04 a.m., in 1324 Longworth House Office Building, Hon. Raúl M. Grijalva [Chairman of the Committee] presiding.

Present: Representatives Grijalva, Sablan, Huffman, Lowenthal, Gallego, Cox, Neguse, Levin, Haaland, Cunningham, Velázquez, DeGette, Dingell, Brown, Soto, Cartwright, García; Gohmert, Gosar, Westerman, Graves, Hice, and González-Colón.

Also present: Representative Beyer.

The CHAIRMAN. Thank you very much. The Committee on Natural Resources will come to order. The Committee is meeting today to hear testimony on the Unanswered Questions About the U.S. Park Police's June 1 Attack on the Peaceful Protesters in Lafayette Square.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chair and the Ranking Minority Member or his designee. This will allow us to hear from our witnesses sooner and help Members keep to their schedules. Therefore, I am asking for unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Clerk by 5 p.m. today.

Hearing no objections, so ordered.

Without objection, the Chair may also declare a recess subject to the call of the Chair.

As described in the notice, statements, documents or motions must be submitted to the electronic repository HNRCdocs@mail.house.gov.

Additionally, please note, as with our fully in-person meetings, Members are responsible for their own microphones. As with our fully in-person meetings, Members can be muted by staff only to avoid inadvertent background noise.

Anyone present in the hearing room today must wear a mask covering their mouth and nose. The Speaker of the House and the Sergeant at Arms, acting upon the recommendation of the Attending Physician, require face coverings for all indoor gatherings over 15 minutes in length, such as this Committee meeting. Accordingly, to maintain decorum and protect the safety of Members and the staff, the Chair will not recognize any Member in the hearing room to speak who is not wearing a mask. According to House Rule 17 and Committee Rule 3(d), the Chair retains the

right of recognition of any Member who wishes to speak or offer a motion. This right includes the responsibility to maintain decorum.

As should be noted, it is permitted by the Sergeant at Arms, through his guidance, that exceptions for Members briefly removing their mask to facilitate lip reading by viewers who are deaf or hard of hearing.

Finally, Members or witnesses who experience technical problems should inform Committee staff immediately.

With that, I will now recognize myself for the opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

The CHAIRMAN. Today, we continue examining the June 1 decision by the U.S. Park Police and its partners to violently remove peaceful protesters from the area around Lafayette Square.

At our hearing last month, witnesses told us that law enforcement officers assaulted peaceful protesters and journalists without warning, using tear gas and batons. We heard that the clergy at St. John's Church were forced off their own property for President Trump's photo op, which the diocese called a sacrilege.

Many questions remain unanswered. Who gave the street-clearing order and why? Who authorized the police to assault and gas non-violent protesters? Was this a premeditated plan to dominate the battle scene, as Administration officials described it? Was the non-violent crowd given a clear warning and a safe way to leave?

We had hoped the Administration could help us answer these questions at the June 29 meeting. They refused to testify, so I am very glad that Mr. Gregory T. Monahan, Acting Chief of the U.S. Park Police, is with us here today. We are also fortunate to welcome Major Adam DeMarco. As the D.C. National Guard's liaison to the Park Police on June 1, he relayed the orders from the Park Police to the D.C. National Guard as they unfolded. Your presence here is very important and shows much courage, and I thank you for your decorated service to the country, which includes your participation here today.

As the events have shown, Lafayette Square was a test run for what is an illegal and ongoing crackdown by the Trump administration that is being inflicted on cities across this country and attempts to escalate those confrontations. Rather than deal with and admit what did occur on June 1 was wrong, the Administration is doubling down on its response to unarmed civilians in cities like Portland, despite the mayor's demands in Portland that they leave. And what we saw with civilians being abducted off the streets without probable cause and taken away in unarmed vans without insignia or identification on the part of the law enforcement that took them away. And questions continue about Chicago and Albuquerque, New Mexico, where the President has threatened to use similar tactics. President Trump openly says he is sending paramilitary forces to these cities because they are run by Democratic mayors.

This raises a crucial question. Was this Park Police-led assault on June 1 motivated by partisan hostility directed from above to those demanding justice for George Floyd and so many other Black

men, women, and children and a very diverse group of people exercising their First Amendment rights from the Washington, DC region?

My friend and our friend, John Lewis, made one of his last public appearances at the scene of the Park Police attacks on protesters, only 6 days before the June 1 incident. He spent his life doing what most of us know is the right thing, fighting for fair and equal treatment of Black Americans and all Americans.

I believe it is our duty in Congress, as Americans, and as human beings, to ensure that others fighting for basic fairness do not suffer the same brutality that Mr. Lewis had to endure in his quest for fairness and equity for all people.

I think we can do better, and we can be better. And that is why we are here today.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, CHAIR, COMMITTEE ON NATURAL RESOURCES

Today, we continue examining the June 1st decision by U.S. Park Police and its partners to violently remove peaceful protesters from the area around Lafayette Square.

At our hearing last month, witnesses told us that law enforcement officers assaulted peaceful protesters and journalists without warning using tear gas and batons. We heard that clergy of St. John's Church were forced off their own property for President Trump's photo op, which the diocese called "sacrilege."

Many questions remain unanswered. Who gave the street-clearing order and why? Who authorized Park Police to beat and gas nonviolent protesters? Was this a premeditated plan to "dominate the battle space" as Administration officials described it? Was the nonviolent crowd given a clear warning, and a safe way to leave?

We had hoped the Administration could help answer these questions at our June 29th hearing. They refused to testify. So, I'm glad Mr. Gregory T. Monahan, Acting Chief of the U.S. Park Police, is here today.

We are fortunate to welcome Major Adam DeMarco. As the DC National Guard's liaison to the Park Police on June 1, he relayed the orders from the Park Police to the DC National Guard as they unfolded. Sir, your presence here is an act of profound courage. I thank you for your decorated service to our country, which includes your participation today.

As events have shown, Lafayette Square was a test run for the illegal, ongoing crackdown the Trump administration is inflicting on cities across the country. Rather than admit what they did on June 1st was wrong, the Administration is doubling down on its violent abuses of unarmed civilians in cities like: Portland, where paramilitary agents are abducting civilians off the streets without probable cause and taking them away in unmarked vans, in flagrant violation of the Constitution and the Portland mayor's demands that they leave; and Chicago, where the President has threatened to use similar tactics.

President Trump openly says he's sending paramilitary forces to these cities because they are run by Democratic mayors.

This raises a crucial question—was his Park Police-led assault on June 1 motivated by partisan hostility to those demanding justice for George Floyd and so many other Black men, women, and children?

My friend, Congressman John Lewis, made one of his last public appearances at the scene of Park Police attacks on protestors only 6 days before June 1. He spent his life doing what most of us know is the right thing: fighting for the fair and equal treatment of Black Americans.

It is our duty—as Members of Congress, as Americans, and as HUMAN BEINGS—to ensure that others fighting for basic fairness do not suffer the same brutality Mr. Lewis suffered.

We must do better and BE better. That is why we are here today.

The CHAIRMAN. Now, let me now turn to the designee for the Ranking Member.

Sir, the floor is yours.

STATEMENT OF THE HON. JODY B. HICE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Dr. HICE. Thank you, Mr. Chairman. We are here today really at what can only be considered Act 2 in the Democrats' political theater regarding the events in Lafayette Square. Even just the nature of today's title, that somehow the U.S. Park Police attacked peaceful protesters is ludicrous. The assertion that these were peaceful protests is completely ignoring the facts.

We know that there were acts of arson, there was vandalism, and there were assaults on police officers in the days leading up to June 1. This is even acknowledged by the Democrats' second panel witness in his written testimony, which states that the witness learned that Federal law enforcement officers from Park Police and U.S. Secret Service had sustained injuries.

However, today's hearing title does aptly note that there are some unanswered questions. I was confident these would remain, because the one witness who might be able to answer them was not at the previous hearing and the Majority knew that, and yet continued with the hearing for show.

Chief Monahan, I am glad to see you here today. We are honored to have you and we appreciate you testifying before the Committee. You might not have all the answers today, but will probably be able to provide some of the facts that were missing from the previous hearing on this topic. So, we are grateful for that.

My hope is that we will be able to see beyond the biased scope through which the Democrats are viewing these actions and establish a truthful history of what happened on that day. For example, we need more details about the warnings that were provided, and the opportunity protesters were given to disperse. In the last hearing, Democrat witnesses claimed that there were no warnings heard. But a CNN reporter, Kaitlan Collins, live tweeted, "Park Police is now warning protesters to leave. They have given three warnings over a loudspeaker." That tweet came at 6:32 p.m. on June 1, so who are we to believe?

But we cannot talk about the events of June 1 in a vacuum; they must be viewed in a larger context. What plans were made prior to June 1 about expanding the perimeter? How did the levels of violence and destruction factor into the decision?

We should also compare the scenarios of Lafayette Park to other protests that have occurred in the city. Americans frequently exercise their rights to assemble and protest in Washington. We have numerous, and from all ideological perspectives. We have a number of examples from the Women's March, the March for Life, March for Our Lives, just to name a few. The difference between those events and the events at Lafayette Square are the acts of violence and destruction.

While the predetermined narrative surrounding the events at Lafayette Park and other events occurring throughout our Nation outlines a story of law enforcement squashing rights, the reality of the situation is quite different. In this case and in others, law enforcement agents acted to secure an area and restore peace, taking reactive measures after acts of violence and destruction. The

provokers, the true culprits responsible for thwarting peaceful protests are the vandals and the rioters. Bad actors have hijacked an important national conversation to push their agenda of violence and disorder.

If we are looking to lay blame, those are the individuals you should cast as the villains in this plot, those who ignored the law and created an unsafe environment for peaceful protesters and law enforcement alike. These are the individuals who are responsible for limiting the ability of others to express their thoughts and opinions.

Although I do not believe this is the closing act of this political drama, perhaps this is the story line's plot twist where this Committee focuses on facts instead of political points. And maybe, just maybe, we will get to the truths about the realities facing the men and women who serve our communities as law enforcement officers and answer questions about the decisions that were made on June 1.

With that, Mr. Chairman, I yield back. Thank you.

The CHAIRMAN. Thank you, Mr. Hice. The gentleman yields back.

Now we will turn to our first panel. Mr. Gregory T. Monahan is the Acting Chief of the United States Park Police. He has been with the Park Police or the Department of the Interior Law Enforcement for over 23 years. Thank you very much, Chief, for being here today.

I will just remind the witness that, under our Committee Rules, you must limit your oral statement to 5 minutes, but your entire statement will appear in the hearing record.

When you begin, the timer will begin. The lights in front of you will turn yellow when there is 1 minute left, and red when time is expired.

I recommend that Members joining remotely use active speaker thumbnail view, so they may pin the timer on their screen and see Members in the room.

The Chair now, again, thanking Chief Monahan for being here with us today, recognizes Acting Chief Monahan for his testimony. Sir, the floor is yours.

STATEMENT OF MR. GREGORY T. MONAHAN, ACTING CHIEF, UNITED STATES PARK POLICE, U.S. DEPARTMENT OF THE INTERIOR

Mr. MONAHAN. Chairman Grijalva, Ranking Member Bishop and members of the Committee, my name is Gregory Monahan and I am the Acting Chief of Police for the United States Park Police.

The United States Park Police is the oldest uniformed Federal law enforcement agency in the United States and provides law enforcement services, including the protection of visitors and park resources to designated National Park Service areas, primarily in Washington, DC; New York City; and the San Francisco metropolitan areas. Here in Washington, that includes the National Mall and Lafayette Park on the north side of the White House at H Street, between 15th and 17th Streets, NW.

Each year, the United States Park Police facilitates hundreds of First Amendment demonstrations and special events in and around the District, some with permits and some with not, to ensure the

safety of the public and the protection of national cultural assets. In facilitating these demonstrations, the Park Police partners and coordinates with numerous public safety and protection agencies within the National Capital Area.

In the days following the death of George Floyd, videos from witnesses and CCTV became public and ultimately led to protests in cities throughout the United States and abroad. The District became the focal point for demonstrators and one of the most highly concentrated areas of protests was in and around Lafayette Park, which is recognized as a public forum for speech and assembly.

The Park Police is accustomed to managing large and occasionally unruly public demonstrations and spontaneous events at Lafayette Park, as well as throughout the National Capital Area. In these instances, we have an obligation to protect the safety of peaceful demonstrators, maintain law and order, and keep our law enforcement officers safe.

Beginning on Friday, May 29, public use of Lafayette Park became a danger to public safety, good order, and health, and was inconsistent with the preservation of National Park Service resources. Violent demonstrations occurred between May 29 and June 1, and included projectiles aimed at law enforcement officers, including bricks, rocks, caustic substances, frozen water bottles, lit flares, fireworks, and 2x4 sections of lumber. Protesters were physically combative with members of law enforcement. The violent protesters injured 50 officers from the United States Park Police alone. Eleven of my officers were transported to area hospitals and three of them were ultimately admitted.

The unprecedented and sustained nature of violence and destruction associated with some of the activities in Lafayette Park and the surrounding areas required de-escalation. And late Saturday evening, on May 30 into Sunday morning, May 31, the U.S. Park Police, in consultation with our partners from the Secret Service, decided to temporarily restrict access to the park and the adjacent streets and sidewalks by ordering and installing anti-scale fencing across the north side of Lafayette Park.

The installation of the fence met resource and protection de-escalation goals while enabling First Amendment activity to continue. Once we made that decision, installation of the fence was dependent on two factors. First, we were required to have sufficient resources on scene to safely clear Lafayette Park and H Street. And second, the fencing had to be present at the park. Both of these requirements were not met until later in the day on Monday, June 1. Once the fencing arrived, an on-the-ground assessment of the violence and danger presented by the crowd led to the clearing of the park and the installation of the fence.

The Park Police has faced a significant amount of criticism on the heels of the June 1 operation. However, the installation of the no-scale fence on the north side of Lafayette Park was a key tactic that served to greatly de-escalate the violent behavior of bad actors. Violence dropped dramatically on June 2 and afterward in that area, and First Amendment activities continued.

In this case, I believe the United States Park Police acted with tremendous restraint in the face of severe violence from a large

group of bad actors, who again caused 50 of my officers to seek medical attention. Our actions that day centered around public safety and the safety of my officers. And the decision to install the fencing was in furtherance of that commitment toward de-escalation.

Thank you, and I look forward to answering questions the Committee may have.

[The prepared statement of Mr. Monahan follows:]

PREPARED STATEMENT OF GREGORY T. MONAHAN, ACTING CHIEF, UNITED STATES PARK POLICE, U.S. DEPARTMENT OF THE INTERIOR

Good morning Chairman Grijalva, Ranking Member Bishop, and members of the Committee. My name is Gregory Monahan and I am the acting Chief of the United States Park Police.

The United States Park Police, established in 1791, is the oldest uniformed Federal law enforcement agency in the United States. An urban law enforcement unit, the United States Park Police provides law enforcement services to designated areas administered by the National Park Service (NPS), primarily in the Washington, DC, New York City, NY and San Francisco, CA metropolitan areas, protecting the safety of visitors and park resources.

In the District of Columbia, the Park Police has primary jurisdiction over Federal parkland, including the National Mall and Lafayette Park. Each year the Park Police facilitates hundreds of First Amendment demonstrations and special events in the Washington DC area, some with permits and some without, to ensure the safety of the public and the protection of national cultural assets. In facilitating these demonstrations, the Park Police partners and coordinates with numerous public safety and protection agencies within the National Capital Area of Region 1.

In the days following the death of George Floyd in Minneapolis, Minnesota, videos from witnesses and CCTV became public and ultimately led to protests in cities throughout the United States and abroad. The Nation's capital became a focal point for demonstrators. One of the most highly concentrated areas of protest occurred in and around Lafayette Park, which sits on the north side of the White House on H Street between 15th and 17th Streets, NW. Lafayette Park is recognized as a public forum for freedom of assembly and speech. The Park Police is accustomed to managing large, and on occasion unruly public demonstrations and spontaneous events at the Park, as well as throughout the National Capital Area of Region 1. In these instances, we have an obligation to protect the safety of peaceful demonstrators, maintain law and order, and keep our law enforcement officers safe.

Unfortunately, beginning on Friday, May 29, 2020, public use of Lafayette Park became a danger to public safety, good order, and health, and was inconsistent with the preservation of NPS resources. Violent demonstrations occurred between May 29 and June 1 and included projectiles aimed at law enforcement officers that included bricks, rocks, caustic liquids, water bottles, lit flares, fireworks, and 2x4 sections of wood. Protestors were also physically combative with members of law enforcement. These violent protestors caused injuries to over 50 officers of the United States Park Police. Of those, 11 officers were transported to the hospital and 3 were ultimately admitted.

The unprecedented and sustained nature of the violence and destruction associated with some of the activities in Lafayette Park and surrounding park areas immediate and adjacent to the White House required de-escalation. Late Saturday evening of May 30 into Sunday morning May 31, the United States Park Police, in consultation with the United States Secret Service, decided to temporarily restrict access to Lafayette Park and the adjacent streets and sidewalks by ordering and installing no-scale fencing across the north side of the Park. The installation of the fence would meet the resource protection and de-escalation goals while enabling First Amendment activity to continue.

Once we made the decision to order the no-scale fence, the installation of the fence was dependent on two factors: the first was that we were required to have sufficient resources on scene to safely clear Lafayette Park and H Street; and the second was that the fencing had to be present at the Park. Both of these requirements were not met until later in the day on Monday, June 1. Once the fencing arrived, an on-the-ground assessment of the violence and danger presented by the crowd led to the clearing of the Park and the installation of the fence.

The United States Park Police has faced a significant amount of criticism on the heels of the June 1 operation. However, the installation of the no-scale fence on the

north side of Lafayette Park was a key tactic that served to greatly reduce the violent behavior of bad actors. The Park Police takes seriously its commitment to protect the public and our Nation's parklands and cultural assets, and the decision to install the fencing was in furtherance of that commitment. Fortunately, that decision had the intended effect—violence dropped dramatically on June 2 and afterward in that area and First Amendment activities continued.

I believe the vast majority of law enforcement officers throughout this country are dedicated public servants who pursue this noble calling with courage in their hearts and decency in their actions. On the whole, the United States Park Police acted with tremendous restraint in the face of severe violence from a large group of bad actors who caused 50 of my officers to seek medical attention. Our actions as an agency on June 1 centered around public safety and the safety of my officers.

I look forward to answering any questions the Committee has and I thank you for the opportunity to testify today.

The CHAIRMAN. For the testimony, reminding the Members of the rule imposing a 5-minute limit on the questions. The Chair on our side of the dais will recognize the Chairs of the Subcommittees and then proceed on a first-come-first-served basis going forward.

With that, let me turn to Mr. Huffman for your 5 minutes, sir.

Mr. HUFFMAN. Thank you, Mr. Chairman.

Chief Monahan, welcome. You have spoken a lot in your testimony about the time frame from George Floyd's murder until June 1, and you have talked with respect to Lafayette Park about the period between—your words, between May 29 and June 1. This Committee in this hearing is focused entirely on June 1, and the chronology matters.

Are you suggesting that some of these violent incidents by protesters, the throwing of caustic liquids and bricks and projectiles and harming officers occurred on June 1?

Mr. MONAHAN. Yes, sir, I am. On June 1 and throughout that operational period, we saw sustained violence from a number of bad actors in Lafayette Park and on H Street.

Mr. HUFFMAN. Can you provide this Committee with documentation of that? Because that directly contradicts other firsthand evidence that we have, including video evidence.

Mr. MONAHAN. Yes, sir. Any request for any documents, I am happy to——

Mr. HUFFMAN. We want to see everything you have on that.

Now, did that happen before or after 6:35 p.m., when your officers and others began advancing on the protesters?

Mr. MONAHAN. Yes, so the level of violence that we were subjected to on June 1 was——

Mr. HUFFMAN. No, no, no. A very direct question. Did the violence that you are referring to happen before 6:35 p.m.?

Mr. MONAHAN. Yes, sir. I understand the question. And the violence that we were subjected to was throughout the entire operational period, before and after.

Mr. HUFFMAN. All right, thank you. And, again, we really do want to see that evidence, sir.

Mr. Monahan, you have been with the Park Police for a long time, so you are surely familiar with the settlement your agency entered into in 2015 after 13 years of litigation. You ended up paying millions of dollars to almost 400 peaceful protesters that you had advanced on with forceful means. And as part of that legal

settlement, the service police was required to make very specific policy changes. Are you familiar with that settlement?

Mr. MONAHAN. Yes, sir.

Mr. HUFFMAN. Mr. Chairman, I ask unanimous consent to enter into the record that 2015 settlement agreement.

At the top of page 8, that agreement requires the Park Police to update its procedure to provide audible warnings to protesters to disperse. And there are four significant parts of that legally enforceable commitment that your agency made. The first is officers must be positioned in the rear of the crowd, so that they can actually hear the warnings that are given before the police advance. The second is that they need to use sound amplification as needed. And, third, that they need to warn the protesters that they are in violation of a specific law. There is a substantive requirement as part of that warning. And fourth, maybe most significantly for June 1, the arresting officers positioned in the rear of the crowd are required to give a verbal and/or physical indication to the officers in the front who are giving that warning, so that your officers can confirm that it was audible and that it had been heard by the protesters.

Were all of these procedures followed on June 1?

Mr. MONAHAN. The directives on June 1 were followed.

Mr. HUFFMAN. All right. I just want to get your direct answer, and you say that every one of those procedures was followed.

I am going to ask to play a video that we believe suggests otherwise, Mr. Chief. I would like to ask staff to play the clip entitled Warning One.

[Video shown.]

Mr. HUFFMAN. Mr. Monahan, could you understand the warning that was recorded in this video? Could you hear it? Was it audible to you?

Mr. MONAHAN. Yes, I could hear the warning. Yes.

Mr. HUFFMAN. You must have superhuman hearing. Because I don't think any of us could hear it. And wouldn't you agree, just from own lying eyes, we could see protesters who were clearly confused, who did not appear to be told that they were about to be advanced on, who did not appear to be told that they were in violation of a specific law, as your settlement requires.

Do you feel that that was understood by those protesters as evidenced by that video footage?

Mr. MONAHAN. I think when you take into account video footage, there is context. And based on other video that I have viewed from June 1 and specifically around this time frame when the first warning was given, throughout the first warning through the third warning, you can see a number of demonstrators leave the area and heed the warning that was given from the incident commander that——

Mr. HUFFMAN. All right, well, Chief Monahan, we do look forward to getting the evidence that backs up your account of this.

But, Mr. Chair, from everything we have heard, from everything we have seen, it sure appears as if the Park Police ignored their own legal requirements in the settlement to follow these procedures, almost as if they wanted the crowd to be confused, so that

they could go in with maximum force and perhaps appease a president who just hours earlier had urged police to act that way.

I yield back.

The CHAIRMAN. Thank you, Mr. Huffman. Let me recognize Mr. Westerman for your 5 minutes, sir.

Mr. WESTERMAN. Thank you, Mr. Chairman.

Chief Monahan, thank you for your testimony. This hearing is about politics and I apologize to you and the rest of the officers in the United States Park Police for having to endure a political attack. This is not the first hearing we have had on this; it probably won't be the last hearing.

If my colleagues across the aisle were concerned about police reform, I don't think that their colleagues in the Senate would have described Senator Tim Scott's bill as a token bill. I don't think the Speaker would have dismissed it as attempted murder or whatever words she used about Senator Scott's bill.

We are here today to find out facts, not to play politics with a serious situation. My colleagues are supporting defunding the police. They seem to have no problem with defacing public property. And we all agree that Americans are allowed to protect peaceably, like the Constitution says. So, the question is, were these peaceful protests or were they violent protests?

You have testified that 50 of your officers were injured. Can you describe some of those injuries?

Mr. MONAHAN. Yes, sir. Like I said in my opening statement, 50 U.S. Park Police officers were injured between May 29 and June 1. On May 29, we had 13 officers that were injured during violent protests at Lafayette Park and 1600 Pennsylvania Avenue. Eleven of those injuries were blunt trauma related injuries to the head, upper body, and lower body. One of those injuries was sustained by a sergeant from the United States Park Police, who was wearing this helmet here on the table. He was struck in the helmet by a brick that was thrown at him by a violent protester. And you can see the damage that had occurred to the left side of this helmet that is sitting here on the table. That officer was later hospitalized. To this date, he has still not returned to work.

On May 30, there were 37 injuries up at the White House. Twenty of those were for the U.S. Park Police, and those injuries were blunt trauma related injuries to the head, upper body, and lower body, the most significant of which was an officer from the U.S. Park Police, who was on the line on the north end of Lafayette Park, and he was struck in the testicles by a protester who threw a brick and struck him in the groin. He suffered a significant injury. He just returned to work this past Sunday.

On May 31, we had 16 patient encounters of U.S. Park Police personnel, six of those were blunt trauma related injuries to the head, upper body, and lower body. And on June 1, we only had one injury. An officer was punched in the face by a protester when we were clearing H Street, and he suffered a facial laceration.

Mr. WESTERMAN. I find it hard to see how anybody could call that a peaceful protest. And was the protocol followed to give three warnings? And what kind of device was used to do that?

Mr. MONAHAN. Yes, sir. The protocol was followed to give three warnings, the first of which was given at 6:23 p.m. There were

three warnings given. And they were given utilizing a long-range acoustic device, it is called an LRAD, and that is what it stands for. That was the device used.

Mr. WESTERMAN. I just want to get some things straight for the record here. Did Attorney General Barr order the Park Police to clear the square?

Mr. MONAHAN. No, sir, he did not.

Mr. WESTERMAN. Did White House Chief of Staff Mark Meadows order the Park Police to clear the square?

Mr. MONAHAN. No.

Mr. WESTERMAN. Did anyone at the White House order the Park Police to clear the square?

Mr. MONAHAN. No, sir.

Mr. WESTERMAN. Did Secretary Bernhardt order the Park Police to clear the square?

Mr. MONAHAN. No, he did not.

Mr. WESTERMAN. It seems pretty cut and dry to me what happened. I wish that Congress could work on renewing hope in America, on restoring the America that we love, and work on overcoming this pandemic and rebuilding our future, rather than continuing to drag issues like this through the mud, when it is clear that my colleagues across the aisle do not want to work for solutions. A very thoughtful, bipartisan bill was put out on police reform by Senator Scott and it was essentially laughed at.

With that, I yield back.

The CHAIRMAN. The gentleman yields. Let me now turn to the Vice Chair of the Committee, Ms. Haaland, for any questions you might have.

Ms. HAALAND. Thank you, Mr. Chairman.

Thank you very much for being here, Mr. Monahan. I would like to talk about the missing Park Police radio recordings from June 1. Mr. Monahan, did the Park Police communicate over radio with other agencies regarding the orders and coordination of June 1 that we are talking about today?

Mr. MONAHAN. In terms of the radio transmissions made by the United States Park Police, they were to other members of the United States Park Police. We had face-to-face contact with partner agencies on June 1.

Ms. HAALAND. So, just to be clear, the radio interaction, communication, was just between the Park Police, and any other communications between other agencies were in person?

Mr. MONAHAN. Yes, ma'am.

Ms. HAALAND. OK. Is it standard procedure for Park Police to record radio transmissions between each other, like this?

Mr. MONAHAN. Yes, standard procedure for every incident is to have a record of any radio transmissions.

Ms. HAALAND. And can you explain to us why the radio transmissions should be recorded?

Mr. MONAHAN. Yes, ma'am. If you go back to September 2018, the United States Park Police were utilizing an analog radio system at the time. We were preparing to transition to a digital radio format.

In September 2018, we experienced a critical failure in our analogue radio system. We transitioned to the digital format. When

our radio technicians were conducting this transference, only our main radio channel was configured to record. Our administrative channel that we utilize for large special events, such as the one on June 1, was not configured to record at the time.

Ms. HAALAND. So, it was not configured to record at the time. Are there radio recordings of the Park Police for the time period between May 29 and June 2 at all?

Mr. MONAHAN. For our normal operations, yes, but not for the special event in the demonstration at the White House.

Ms. HAALAND. And I'm sorry. Why is that?

Mr. MONAHAN. So, again, when we transitioned to our digital radio system, the radio technicians that were setting up that system only set up our main dispatch channel to record. It was an error. They did not set up our administrative channel to record.

Ms. HAALAND. OK. So, that was an error you say?

Mr. MONAHAN. Yes, it was.

Ms. HAALAND. OK. Were there any notes or logs of those transmissions because there was an error in having those communications recorded?

Mr. MONAHAN. Yes. For any special event, a large special event or demonstration like the one on June 1, we establish a written record or a written log of transmissions that are utilized within the command bus to send out situational reports or updates via e-mail.

So, that was done in this case.

Ms. HAALAND. Can you provide any notes or logs of those transmissions to the Committee please?

Mr. MONAHAN. I will work with the Department's Office of Congressional and Legislative Affairs on any request that you have.

Ms. HAALAND. And is it regular practice to take such notes or logs or does it only happen when you know the radio recording is not working?

Mr. MONAHAN. That is a good question. As I mentioned earlier, for large special events or demonstrations like we had on June 1 and the days leading up to June 1, we established a redundant process of having a written log.

Ms. HAALAND. OK. So, is it standard procedure to record radio transmissions, but there is no recording of radio traffic from Park Police for June 1, which just happens to be the day the Administration did a test run of the brutal crackdown on protestors we continue to see now in cities across America?

And I would imagine having that recording would answer many of the questions that we and the public have at this moment.

Mr. MONAHAN. Yes, ma'am, and I agree. I think every incident should have a complete record, and in this instance, we have a written record.

Ms. HAALAND. OK. And you will provide that written record to the Committee at your earliest convenience or make sure of that?

Mr. MONAHAN. Yes. I will work with the Office of Congressional Legislative Affairs on fulfilling your request.

Ms. HAALAND. Thank you.

Regarding your radio recording technology—you are saying it was not actually broken, it was just an error in making sure that

the recordings actually recorded. So, it was not set up that way. It was not really broken. Is that correct?

Mr. MONAHAN. That is correct, and we did not recognize the error until we attempted to pull the radio run on June 10. We have since, as soon as we were alerted to the fact that it was not configured to record, we have corrected that error.

Ms. HAALAND. OK. And I am sorry. Whose fault was the error?

Mr. MONAHAN. If you go back to September 2018, the radio technicians, it was an oversight on their part and they did not configure the administrative channel to record.

Ms. HAALAND. OK.

Mr. MONAHAN. And as I said, every incident should have a complete record, and in this instance, we have a written log.

Ms. HAALAND. OK. And right now the radio recordings are working. Is that what you are telling me?

Mr. MONAHAN. Yes, ma'am, that is correct.

Ms. HAALAND. So, if we were to have a repeat of June 1, we would have the recordings that you could send over to us?

Mr. MONAHAN. Yes. Our administrative channel is configured to record, yes.

Ms. HAALAND. OK. Thank you, Chairman. I am sorry. I yield.

The CHAIRMAN. The gentlelady yields back.

Mr. Hice, you are recognized.

Dr. HICE. Thank you, Mr. Chairman.

You mentioned the long-range acoustic device that was used. What is the range of that device when it comes to warning the crowd?

Mr. MONAHAN. Sir, it has been some time since I read the actual specs of the long-range acoustic device, but I want to say it is 600 meters.

Dr. HICE. OK. Were the protesters within that range?

Mr. MONAHAN. Yes. I would estimate that they were where we had it set up, which was we were in the center of the park and on the northeast section of the center of the park, and I would say we were within 45 meters of the protesters.

Dr. HICE. So, they were in range of hearing.

I would also note that protesters must have the ability to leave an area. What courses of actions did the Park Police consider when discussing that issue?

Mr. MONAHAN. Yes, sir. When implementing our plan to clear the north side of Lafayette Park and H Street, we moved the crowd from east to west, and then their path of exit was either north on 16th Street toward I, India, Street or continued west to 17th and H or Connecticut and H.

Dr. HICE. So, that is the direction that the officers were pushing the protesters?

Mr. MONAHAN. That was the movement from east to west, correct.

Dr. HICE. OK. Were the protesters in any way prevented from leaving the Square by police?

Mr. MONAHAN. No, they were not.

Dr. HICE. OK. You mentioned earlier the various acts of violence, the projectiles that were being thrown, and the injuries that were

sustained. There was everything from frozen water bottles to bricks, caustic liquids.

In a weekend of violent protests, you mentioned 51 officers injured. Of course, we know about the arsons at the St. John's Church and so forth.

I would also note from intelligence reports that there were calls by police officers, again, regarding violence against them. There were also caches found of glass bottles, baseball bats, and metal poles, along the way.

I am curious from the time from then to now has there been any type of investigation to see whether or not there were any specific groups or a group that was involved in organizing all of this.

Mr. MONAHAN. Yes. The United States Park Police has coordinated with a number of our Federal partners in follow-up investigations on some of the violence that we saw, the assaults on officers. We have been successful in obtaining a number of arrest warrants for individuals that were either involved in assaults against police officers or damage to park resources.

In terms of a nexus to larger groups, that is an ongoing effort.

Dr. HICE. When do you think that may be determined?

Mr. MONAHAN. I don't know if I could say as I sit here today. Again, these are ongoing investigations, and as we gather more information and as additional arrests are made, all of the intel that is gathered from those arrests contributes to any nexus to a larger effort.

Dr. HICE. It just appears that in some other places throughout the country there are specific groups that are behind it. I was curious if that was the same here, but that investigation is still underway is what you are saying?

Mr. MONAHAN. Yes, sir, that is correct.

Dr. HICE. Recently there was a video that was circulated that shows Representative Jerry Nadler, of course, Chairman of the Judiciary, stating that many of these protests were, in essence, a myth as far as the violence within the protests. Would you agree with that?

Mr. MONAHAN. No, sir, I would not agree. I think based on the level of violence and sustained violence that we saw beginning on May 29 through June 1, this was one of the most violent protests that I have been a part of in my 23 years with the United States Park Police.

Dr. HICE. One of the most. What would be another one that would rank up there in your memory?

Mr. MONAHAN. The Occupy DC demonstrations from several years ago and then the World Bank demonstrations.

Dr. HICE. OK. It is just amazing to me, as Representative Westerman mentioned, that this is just nothing more than political theater to come here and somehow pretend as though these were peaceful protesters where the evidence is abundant, everything from arson to vandalism to 51 injured officers. This was anything but peaceful, and the reason it did not sustain that kind of momentum in Washington, DC, is because the Park Police and others got involved to put a stop to it.

So, I want to thank you for your service in that regard in maintaining the safety of Washington, DC, and beyond. We are appreciative of that.

And, Mr. Chairman, before I yield, I do have a letter from the Federal Law Enforcement Officers that I would ask unanimous consent to have submitted to the record.

The CHAIRMAN. Without objection.

Dr. HICE. Thank you, sir. I yield.

The CHAIRMAN. Mr. Lowenthal. You are recognized, sir.

Dr. LOWENTHAL. Thank you, Mr. Chairman.

And thank you, Acting Chief Monahan, for being here.

The questions that I have, Mr. Monahan, have to do with the reasons given for clearing the protesters from Lafayette Square. I think you mentioned that the reason was that the area was needing be cleared to put up fencing to seal off Lafayette Park and create a new perimeter.

When was that decision made?

And was there any specific time when this fencing was supposed to go up?

Mr. MONAHAN. Yes, sir. The decision to pursue other options based on the increased level of violence that we saw beginning on May 29 was initially discussed Saturday evening into Sunday morning.

Based on a number of factors, we knew that we were likely going to have on Monday a late report time for our personnel, but also a late arrival time for the fencing.

The fencing did arrive on Monday in the late afternoon. At 3 p.m. on Monday, the site manager arrived. At 3:30 p.m., the employees arrived. The fencing arrived at 5:15 p.m. and then was staged on 17th Street by the United States Secret Service.

As I spoke earlier, at 6:23 p.m., we gave the first of three warnings. The initial movement to clear the north side of Lafayette Park and H Street was commenced at 6:30 p.m., and it was concluded at 6:50 p.m.

At 6:55 p.m., the Secret Service escorted the trucks with the fencing inside the White House area and staged them on the west side of Lafayette Park at Jackson Place. They began to install the fence at 7:30 p.m., and the fencing build-out was completed at 12:50 a.m.

Dr. LOWENTHAL. Let me understand. You said this operation about the fencing, that its happening in the early evening was inevitable, given that you needed both the resources and the fencing to do this.

Was there ever any discussion that it would be better to start this process of fencing after the curfew or at night to start it instead of in the evening when the crowd was going to be at its peak?

What is the standard of timing for setting up security fencing and a new perimeter?

Mr. MONAHAN. In this particular instance, we were not necessarily operating on a timeline. We were operating on the need for logistical strength in the terms of having ample resources to safely implement our plan and then having the fencing in place.

In terms of the curfew, that was not something that factors into our decision making. And if you look at the level of violence that

we were subjected to over the three previous operational periods, it increased throughout the day and as nightfall came upon us, it increased even from that point on.

So, if the previous night was any indication, which was the first night where we had the curfew, waiting until curfew did not appear likely that the rioters in the crowd would peacefully disburse.

Dr. LOWENTHAL. So, let me just understand this. In his statement, Major DeMarco also mentioned that shortly after Attorney General Barr left Lafayette Square at 6:20 p.m., after conferring with the Park Police, the inaudible warnings began.

Shortly after the clearing finished in a fast paced and rushed manner, about 30 minutes later, the President was having his photo op at about 7:05 p.m.

Now, I need to understand. Either the clearing was for a photo op or that is an amazing coincidence, do you not think, Mr. Monahan?

Mr. MONAHAN. No, I do not think it is a coincidence. Our operation was solely centered around the clearing of H Street and the north end of Lafayette Park to de-escalate the sustained level of violence that we saw over the previous 3 days and then again on June 1.

In order to do that, in order to successfully de-escalate that, a common practice is to install physical barriers or boundaries between protesters and law enforcement. And in this case, the best avenue to do that was to install that anti-scale fencing. And to my point, if you fast-forward to June 2, we saw a dramatic decrease in violent behavior at Lafayette Park on June 2.

Dr. LOWENTHAL. Thank you, and I am going to yield back. But it just strikes me as an amazing coincidence. I yield back.

The CHAIRMAN. The gentleman yields. Ms. González-Colón, you are recognized.

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman. I yield my 5 minutes to Mr. Hice.

Dr. HICE. I thank the gentlelady for yielding. Let's talk about this—the Democrats' second witness submitted written testimony that the materials to erect the fence did not arrive on the scene until around 9 p.m. Can you confirm that testimony? If not, what time did the material arrive and the fence start being erected?

Mr. MONAHAN. Yes, sir. Mr. DeMarco was mistaken. The fencing—as I said earlier, the site manager arrived at 3 p.m. The employees arrived at 3:30 p.m. The first truck with the fencing arrived at 5:15 p.m. But they were staged on 17th Street south of Pennsylvania Avenue. They were escorted into the White House complex at 6:55 p.m. And that was after we cleared the north end of Lafayette Park and H Street. And at 7:30 p.m., they began to build the fence.

Dr. HICE. OK.

Mr. MONAHAN. 7:30 p.m.

Dr. HICE. All right. So, the testimony of the next witness is not accurate as it relates to the fence. Since the time that the fence was put up, how many officers have been injured?

Mr. MONAHAN. After the fencing was built out, we have zero injuries from U.S. Park Police officers.

Dr. HICE. All right. Why does Lafayette Park remain closed?

Mr. MONAHAN. The fencing was taken down shortly after. I think June 10, it was taken down. We saw sort of a second phase of violence in DC that was directed at statues and other Federal property. And Lafayette Park was closed down through the 31st of this month in an effort to restore and repair some of the damage that was done in Lafayette Park.

Dr. HICE. It seems clear to me that fencing is effective in deterring vandals. Would you agree with that?

Mr. MONAHAN. In this case, just based on the geography, it was a meaningful and deliberate move and a change in tactics on our part in furtherance of de-escalation. So, yes, it did work.

Dr. HICE. Yes, it did work. You had zero injuries since then. I think the evidence speaks for itself. Is there currently a fence around St. John's church?

Mr. MONAHAN. There is anti-scale fencing around a portion of St. John's church, yes.

Dr. HICE. Has there been any further damage or vandalism done to the church since the fence was erected around the church?

Mr. MONAHAN. Not to my knowledge.

Dr. HICE. Not to my knowledge either. Who requested this fence to be erected?

Mr. MONAHAN. The concept or the idea of utilizing anti-scale fencing was a conversation that we had between the U.S. Park Police and our counterparts with the United States Secret Service. And, again, that discussion began Saturday evening into Sunday morning.

Dr. HICE. According to your testimony, the fence was a key tactic that served to greatly reduce the violent behavior of bad actors. And from your testimony here this morning, it was effective in accomplishing that strategic mission. The Park Police has an obligation to protect the safety of peaceful demonstrators while, at the same time, maintaining law and order. We get that. And we have to protect our law enforcement officers. So, how does the erection of the fence in this case and in other cases help accomplish these obligations?

Mr. MONAHAN. Yes. It is a good question. It is a physical barrier. And what we saw on the days preceding it, so on the 29th, 30th and the 31st, the barriers that we had between protesters and law enforcement in the park were two rows of bike rack, which is maybe 4 feet high. And we had numerous attempts, successful attempts, of demonstrators jumping over the bike rack that was lined with police tape to not cross.

Erecting an anti-scale fence was a logical move and a change in tactic to prevent those types of behaviors. It did not prevent projectiles from continuing to be thrown in the days subsequent to that. But it provided a suitable barrier between law enforcement and those bad actors that were showing their violence toward law enforcement.

Dr. HICE. Well, let me ask you this in my final question here. Who specifically were the personnel involved in the actual installation of the fence? Were the national guardsmen who are part of the detail installing the fence? Who was it?

Mr. MONAHAN. No. The fencing company itself installed the fence.

Dr. HICE. OK. Thank you very much. I yield.

The CHAIRMAN. The gentleman yields. Let me now recognize Mr. Gallego for his questions.

Mr. GALLEGO. Thank you, Mr. Chair. Acting Chief, who ordered the clearing on June 1? Who told the men to advance?

Mr. MONAHAN. I am sorry. Your second question?

Mr. GALLEGO. Who told the men to advance on the crowd?

Mr. MONAHAN. The order was given by the Incident Commander from the United States Park Police.

Mr. GALLEGO. Great. Were you on site?

Mr. MONAHAN. Yes, I was.

Mr. GALLEGO. Did you have any conversations with Attorney General Barr on site?

Mr. MONAHAN. No, I did not.

Mr. GALLEGO. You did not interact with him at all when he came outside of the White House?

Mr. MONAHAN. I saw him in the park, but I did not have any interaction with him.

Mr. GALLEGO. OK. So, tell me again why you didn't wait until 7 p.m., because that actually sounds totally illogical to me. At 7 p.m., you could probably actually make a statement saying now this is an illegal operation. You need to disperse because there is a curfew. But you decided to do it, coincidentally, 40 minutes earlier, because somehow you think that de-escalates.

Mr. MONAHAN. Yes. Again, as I mentioned earlier, we were not operating on a timetable.

Mr. GALLEGO. But why didn't you? It actually makes more logical sense for you to wait until 7 p.m.

Mr. MONAHAN. I would respectfully disagree. And I say that based on our experience the night before—when the 7 p.m. curfew arrived the night before, no one left the area.

Mr. GALLEGO. But that day, you only had one injury. What time was that injury at? You testified June 1, one injury. What time was that injury at?

Mr. MONAHAN. The injury on June 1 was during the clearing operation of H Street.

Mr. GALLEGO. So, that whole day was peaceful protesting until the clearing. And, yet, you decided that somehow there was going to be violence. So, therefore, you initiated something before the 7 p.m. curfew.

Mr. MONAHAN. No, sir. That is inaccurate. What I stated earlier was that we saw violence throughout the operational period.

Mr. GALLEGO. I am not asking that. I am asking on June 1.

Mr. MONAHAN. Yes.

Mr. GALLEGO. Let me give you an example. When I was in the Marine Corps and I had to clear all these cities, I had to react to what was happening that day. I may have gotten shot at, thrown at, tried to be mortared, IED'd—actually, it happened every day. The next day, I went out and patrolled like a professional. On June 1, by your testimony, you had largely peaceful protesters up until the time you actually forcibly tried to remove them. Your decision-making process should have been based on the ground on what was happening on that day.

Mr. MONAHAN. All of our decisions on June 1 were based on an on-the-ground assessment of the level of violence that was directed at law enforcement.

Mr. GALLEGO. But not of that day.

Mr. MONAHAN. My testimony today——

Mr. GALLEGO. But not of that day.

Mr. MONAHAN. No, sir. That is inaccurate.

Mr. GALLEGO. That is very unprofessional if you were actually telling me that you made decisions of what to do June 1, and you decided that that date required a level of escalation because, later on, one person would get injured once you start moving through the crowd.

Mr. MONAHAN. My testimony to you today is our operation on June 1 was solely based on an effort to de-escalate the violence. And it was based on an effort to provide for the safety of those——

Mr. GALLEGO. No, no. You claimed that you want to de-escalate the violence by putting the fence up, which I actually agree with. That is actually a very good move. And I think that was important to actually de-escalating. But de-escalating the violence does not mean sending men swinging their batons and using pepper spray or CS gas, whatever you guys claimed it to be, 40 minutes prior to a curfew. It just doesn't make logical sense. Anybody who—and I actually have been trained in de-escalation. I have been trained in riot control also.

The one thing you try to do is you try to find the moments to actually de-escalate. So, 7 p.m. when the curfew is about to hit, when you are also probably going to have some backing at least maybe from the Washington Police Department, would have been the most logical sense. Instead, we have this weird scenario that you are telling me that there was so much violence that day that nobody was injured, by the way, until you guys advanced on them that you had to make that decision then. It makes no sense. If I had acted this way when I was in the Marine Corps, I probably would have been busted down a couple of reps. Also, there were two police officers that assaulted Australian TV news crew. Are they being held responsible?

Mr. MONAHAN. Yes. The incident on June 1 involving the Australian media is being investigated by the Office of Professional Responsibility for the United States Park Police. That investigation is underway at this time.

Mr. GALLEGO. Did you see the video yourself?

Mr. MONAHAN. I have seen the video, yes.

Mr. GALLEGO. Was the conduct professional that these police officers were engaging in?

Mr. MONAHAN. It is an ongoing investigation, and it would be inappropriate for me to comment on that officially.

Mr. GALLEGO. And just to be clear, your police officers that day, on June 1, they were all Park Police officers. People weren't brought in for ICE or DHS. That was all Park Police?

Mr. MONAHAN. On June 1, we were operating under unified command with the United States Secret Service.

Mr. GALLEGO. No, I get that. The National Guard was here. Who were the people that were assaulting and pushing forward on the protesters? Were they all Park Police?

Mr. MONAHAN. No. The other agencies that have assisted with the operation and the clearing of H Street and the north end of Lafayette Park——

Mr. GALLEGO. So, you cleared protesters with people that have different standards, different procedures for clearing, because you train your Park Police all along one standard—right?—in terms of riot control. Did you know what standards and procedures those other elements were used to?

Mr. MONAHAN. Yes. They receive the same training that we do.

Mr. GALLEGO. They do?

Mr. MONAHAN. Yes, sir.

Mr. GALLEGO. OK. Can you provide documentation for that?

Mr. MONAHAN. I am sorry?

Mr. GALLEGO. Can you provide documentation for that?

Mr. MONAHAN. Yes, any request you have, I will facilitate and work with the Office of Congressional Legislative Affairs from the Department on addressing.

Mr. GALLEGO. I yield back.

The CHAIRMAN. Mr. Cox, you are recognized.

Mr. COX. Thank you so much, Chairman. And thank you so much for being here today, Chief. The hearing today isn't so much about whether the fence went up, or people were painting in the park, or peaceful protests—well, in fact, it really was peaceful protests—it is whether or not that the Park Police and yourself really have a duty and obligation and a fealty to the Constitution. Chief, I am sure that you and your officers take note to protect and defend the Constitution.

Mr. MONAHAN. Yes, sir.

Mr. COX. And if you were given an order to forcefully bear Blacks or women from voting at polling places, would you abide by that order?

Mr. MONAHAN. I am sorry, sir. Can you repeat the question?

Mr. COX. If you were given an order to forcefully bear women or African-Americans from polling places, would you abide by that order?

Mr. MONAHAN. I am not sure I understand your question, sir.

Mr. COX. Let me ask you another question. If you were given an order to have your officers forcefully take firearms away from law-abiding citizens, would you abide by that order?

Mr. MONAHAN. Again, I don't know the context in which you are asking the question, I guess——

Mr. COX. It is going to get down to the point that—if you and your officers are asked to violate the very First Amendment of the Constitution which allows people to peacefully assemble, would you abide by that order?

Mr. MONAHAN. On June 1, there were peaceful demonstrators on H Street, and there were bad actors on H Street. When we gave the first of three warnings, those were warnings that we were clearing this area for safety reasons and it was a temporary closure. Once that third warning was given, everyone on the north end of Lafayette Park and H Street was required to vacate that area. When we did the operation from east to west to clear H Street, we gave them avenues of exit.

Mr. COX. Well, thanks very much. We have heard that explanation. Now, we are going to hear from the next witness—right?—that what they were asked to do was contravene their oath to the Constitution. All right? And what we are being asked today, and what you are basically testifying to, is that there was no correlation at all between your orders to clear the square and with the President's photo op. Now, would you agree or tell me otherwise? Did the park need to be cleared in order for the President to take his photo op?

Mr. MONAHAN. Our goal that day was to——

Mr. COX. No, no. Would you answer that question? Did that park need to be cleared? Did that area need to be vacated by any other citizens for the President to take his photo?

Mr. MONAHAN. We did not clear the park for a photo op.

Mr. COX. No, no, no.

Mr. MONAHAN. We cleared the park for public safety reasons.

Mr. COX. No, that is not the question, whether or not you did. Did it need to be cleared? In your professional opinion—and you are not with the Secret Service. But did that area need to be cleared in order for the President to march from the White House to Lafayette Square to take a photo in front of St. John's Square?

Mr. MONAHAN. I don't think I am the person to answer that question. Our focus was on public safety that day.

Mr. COX Well, you are a national citizen. You have been around. Would you think that the place needed to be cleared? And it was just a convenient coincidence.

Mr. MONAHAN. I am only here to speak to——

Mr. COX. You see, I mean, I hope you can appreciate how—I mean, it begs to reason that the place would have to be cleared. And all of a sudden, as my colleague, Mr. Lowenthal was saying, that just magically and very coincidentally that area was cleared. And you just happened to be doing that because fencing absolutely had to go up right at 6:30 p.m. because you have been waiting because contractors were making overtime.

Mr. MONAHAN. Our focus that day was to install that fencing. And as I spoke earlier, the timing of that was somewhat——

Mr. COX. So, what you are absolutely testifying—and I'd like you to make the statement that there was absolutely no correlation, no direction to clear the square for the President's photo op?

Mr. MONAHAN. There is 100 percent zero correlation between our operation and the President's visit to the church.

Mr. COX. OK. And what would the President have done if the square hadn't been cleared? Would he have gone out there?

Mr. MONAHAN. I don't know if I can answer that question, respectfully, sir.

Mr. COX. OK. And, as I said, we are going to hear from our next witness about why he has come forward to testify today because what he was asked to do is to contravene his oath to the Constitution. Do your officers ever get any training when they are put into these types of situations, when they are asked to contravene their oath and their duties to the Constitution when they are given an order that they can't abide by?

Mr. MONAHAN. I believe every action taken by the United States Park Police on June 1 is——

Mr. COX. No, no. Are they ever given any training with regard to that situation when they are put into an untenable situation like that?

Mr. MONAHAN. I wouldn't characterize the situation as untenable.

Mr. COX. OK. Thanks so much for your time.

The CHAIRMAN. The gentleman yields back. Mr. Gosar, you are recognized, sir.

Dr. GOSAR. Thank you. Well, this is like living in Groundhog's Day, an alternative universe. The other side is on a fishing expedition here, trying to get you to say something very different, Chief. Now, real quick question to you, a quick yes or no. As your officers worked to clear Lafayette Square, were they aware that a mob had attempted to burn down St. John's Church?

Mr. MONAHAN. Yes.

Dr. GOSAR. Is that an exercise of the First Amendment, burning down a church?

Mr. MONAHAN. No, sir. It is not.

Dr. GOSAR. Hmm, interesting. So, now, in Lafayette Square, your officers were facing off against violent anarchists who spent the better part of several days there, true?

Mr. MONAHAN. Yes, sir. That is accurate.

Dr. GOSAR. Defacing the World War II Memorial, a remembrance of a grateful nation to all who served actually during the fighting, fascism, damaging the Lincoln Memorial, a tribute to the Republican president who led a nation to end slavery and saving our union, tearing down monuments around the city and attempting to burn down and deface the historic St. John's Church. Meanwhile, as your officers on foot attempted to push these anarchists away from the White House, their real target to destroy and deface, they were pelted with water bottles, fireworks, and called some of the most vile, disgusting names directly to their faces.

Yet, at all times, your officers behaved, by all reports, responsibly and worked in a tremendous professional manner. Now that the area has been cleared, I have a few questions about the statues on Lafayette Square. Chief, counter to the narrative being pushed by the media, Lafayette Square was cleared in order to allow for a fence to be erected. The fence was put up as a means to enhance security at the square. In the time since the fence has been put up, how many officers have been injured?

Mr. MONAHAN. There have been no injuries sustained by the United States Park Police since the fence was put up on June 1.

Dr. GOSAR. Once again, I want to ask why does Lafayette Square remain closed.

Mr. MONAHAN. Currently, it is closed due to ongoing restoration efforts and damage assessments based on the damage to the statues and other areas within the park, to include the comfort station that was burned down in the days preceding June 1.

Dr. GOSAR. So, once again, the First Amendment, does it allow you to desecrate, destroy, and defame public property?

Mr. MONAHAN. No, sir. It does not.

Dr. GOSAR. Wow. But I keep hearing that it is a peaceful demonstration. Do you keep hearing that too?

Mr. MONAHAN. Yes, sir.

Dr. GOSAR. That is that alternative universe again. Is there currently a fence around St. John's Church, the church in which a fire was lit the night before the square was cleared?

Mr. MONAHAN. Yes. There is currently fencing around the front of the church.

Dr. GOSAR. Who requested that fence to be erected?

Mr. MONAHAN. Metropolitan Police from DC.

Dr. GOSAR. Since the fence has been put up, has there been any further destruction or vandalism of the church?

Mr. MONAHAN. Not to my knowledge, sir.

Dr. GOSAR. So, according to your written testimony, the fence was a key tactic that served to greatly reduce the violent behavior of the bad actors. And that violence dropped off dramatically. The Park Police has an obligation to protect the safety of peaceful demonstrators, maintain law and order, and keep our law enforcement officers safe. How does a fence help promote those obligations?

Mr. MONAHAN. I am sorry, the last part?

Dr. GOSAR. How does the fence help you keep those obligations?

Mr. MONAHAN. Yes, so, I mean, based on the previous day's violence, it was clear to us that the longer we waited to install the fence, the likelihood that the situation would get worse on June 1. We saw acts of violence on June 1 throughout the day. We saw projectiles being thrown at officers. We had angry protesters and rioters attempt to, and in some cases, jump over the double row of bike rack on the north side of the park.

Our assessment from those that were on the ground who witnessed the previous day's violence and were faced with the violence in front of them on that day was that the aggression from the crowd, the increased aggression that got even worse after 7 p.m. and the curfew even though we were not abiding by a curfew, was that to erect that fence was a logical next step for de-escalation.

Dr. GOSAR. No, I think everybody here at the dais would say that we want to make sure to protect a citizen's right to protest peacefully. Can you describe the typical role Park Police plays during these protests and marches?

Mr. MONAHAN. It is our goal—excuse me. Our goal for any demonstration is to provide for the safety of those that are there to peacefully assemble, to protect the resources, to maintain law and order, to ensure that any lawful demonstration can continue uninterrupted but also to ensure the safety of our personnel.

Dr. GOSAR. What we are seeing is anarchists. We are seeing desecration and hiding behind people claiming for peaceful assembly. I yield back.

The CHAIRMAN. Mr. Levin, you are recognized.

Mr. LEVIN. Thank you, Mr. Chairman. I ask unanimous consent to enter into the record a *New York Times* article from June 18, 2020, entitled, "Park Police Head Had Been Accused of Illegal Searches and Unreliable Testimony." This is an article about Mr. Monahan.

Mr. Monahan, I want to get your reaction to additional video from June 1. These clips show the moments immediately before and then during the law enforcement surge around 6:30 p.m., a half hour before the Washington, DC curfew went into effect. Please pay particular attention to whether the police were

responding to any actual physical threats from the crowd, the speed and aggression of the police surge, and the weapons officers used on the protesters. Can the Committee staff please play the clips?

[Video shown.]

Mr. LEVIN. I believe there is one more.

[Video shown.]

Mr. LEVIN. Mr. Monahan, our time is limited, so I ask that you please answer these questions with a simple yes or no. Were the officers that we saw surging against the crowd and assaulting a news crew? Yes or no? The officers you saw in those clips, were they surging against the crowd and assaulting a news crew? Yes or no?

Mr. MONAHAN. So, again, as to the——

Mr. LEVIN. That is not yes or no, Mr. Monahan. I am just asking you, yes or no.

Mr. MONAHAN. And respectfully, I don't think I can answer it with a yes or no.

Mr. LEVIN. So, it is your contention they weren't surging against the crowd? They weren't assaulting the news crew? A picture speaks a thousand words.

Mr. MONAHAN. Sure. And I think the video shows a moment in time. As to the second video, I will not comment on it. It is an ongoing investigation.

Mr. LEVIN. Yes. I heard you say that. Did the clip show any violence from the protesters before the officers surged on them? Simple yes or no.

Mr. MONAHAN. Again, I don't think there is a simple yes or no. If you look at the first video that you showed, it has some content——

Mr. LEVIN. I think we all saw the video and I think you would acknowledge that there was no such violence. And the Administration has contradicted itself on whether the alleged violence was actually the reason for the use of force. Other statements, including from Attorney General Barr, said the area was cleared to move the perimeter one block. I think we have seen statements that water bottles and such were thrown. But it is obviously not justification for such a response. Did you see the officers shove protesters with their shields in that video? Again, simple yes or no.

Mr. MONAHAN. I saw the video that you showed, and it shows officers clearing H Street.

Mr. LEVIN. So, that is a yes. We are getting somewhere. That is good. Did you see officers attack reporters, one of whom was an Australian correspondent, Amelia Brace, who testified at our last hearing, even as they tried to get away? Again, yes or no?

Mr. MONAHAN. Again, respectfully, I won't comment on an ongoing investigation.

Mr. LEVIN. Well, it was on the video that that happened, and we heard from Ms. Brace that it happened. Did you see officers throw or fire chemical munitions into the crowd?

Mr. MONAHAN. Yes, I did.

Mr. LEVIN. Thank you for acknowledging that. And did officers throw flashbang or Stinger Ball Grenades into the crowd?

Mr. MONAHAN. Yes. And our rules of engagement dictated on June 1 that we would only use force if we were met with violent resistance.

Mr. LEVIN. And did we see any of that violent resistance in those videos, Mr. Monahan?

Mr. MONAHAN. Again, looking at a video——

Mr. LEVIN. It is a simple yes or no question.

Mr. MONAHAN. Not in the context of the video that you showed.

Mr. LEVIN. So, that is a no. So, are you willing to tell this Committee and the American people that the force those officers used against the crowd was not excessive and unjustified?

Mr. MONAHAN. The use of force that the United States Park Police employed on June 1 was in line with our policies and procedures.

Mr. LEVIN. Well, I heard you in your introduction say that this was tremendous restraint used by your officers. And I just find that hard to believe. But do you stand by that statement based on the video we just saw that this was tremendous restraint?

Mr. MONAHAN. Yes, sir. I do.

Mr. LEVIN. Well, I will just remind my fellow colleagues of the title of that *New York Times* article from June 18 and ask you to read it. With that, I will yield back.

The CHAIRMAN. The gentleman yields. Let me recognize Mr. García.

Mr. GARCÍA. Thank you, Mr. Chairman, and thank you, Mr. Monahan, for being here today where we finally get to have a dialogue with you about the events of June 1. My first question relates to the first video clip that I think Mr. Huffman had played at the beginning of the hearing. Did you see any violence on the part of the protesters in that brief clip?

Mr. MONAHAN. The video that was shown——

Mr. GARCÍA. Yes or no, the first clip.

Mr. MONAHAN. It captures a moment in time, and in that clip—you would have to play it again for——

Mr. GARCÍA. It was a peaceful assembly that we saw per that clip. You mentioned that on June 1, there was actually only one officer who regretfully had to be treated because of some injury, not 50 as you had stated previously over a several-day period. Do you know the circumstances of that treatment, what led to those injuries or his treatment?

Mr. MONAHAN. Yes, sir. His injury was sustained during the clearing operation of H Street. During that clearing operation, he was engaged in a violent interaction with a protester, and he was punched in the face by the protester.

Mr. GARCÍA. Fair enough. One officer. Do you know the approximate size of the crowd that had assembled at Lafayette Square?

Mr. MONAHAN. It varied throughout the day. I would say——

Mr. GARCÍA. At about 6:30 p.m., sir.

Mr. MONAHAN. I would say several thousand people.

Mr. GARCÍA. One thousand, 50,000?

Mr. MONAHAN. It was less than 50,000. I would estimate 1,000 to 3,000.

Mr. GARCÍA. Good. Any guesstimate of what percent of those assembled were behaving in violent ways?

Mr. MONAHAN. No, I don't. But the only thing that the——

Mr. GARCÍA. Let the record show that you do not know.

With respect to the use of tear gas, are you aware that tear gas is a chemical weapon banned in war?

Mr. MONAHAN. No, I am not aware of that.

Mr. GARCÍA. I am glad we are having this conversation.

We have all seen the chilling images of peaceful demonstrators being attacked and gassed by Federal law enforcement officers, including those under your command, and it should never again be used against demonstrators, but especially not during a pandemic.

That is why Representatives Takano and Ocasio have joined me in a bill that seeks to ban the use of this chemical agent, especially during a pandemic against peaceful demonstrators.

Mr. Monahan, do you believe in the First Amendment and people's rights to organize peacefully?

Mr. MONAHAN. Yes, sir, of course I do.

Mr. GARCÍA. I am glad to hear that.

Do you believe that people are reasonably upset over the deaths of George Floyd, Breonna Taylor, and other Black lives taken by police officers?

Mr. MONAHAN. Yes, sir.

Mr. GARCÍA. And do you believe that demonstrators are in their right to take to the streets after persistent police brutality against communities of color?

Mr. MONAHAN. I believe that individuals have the right to peacefully assemble and demonstrate, yes.

Mr. GARCÍA. Then why were you on board with the eagerness to disburse the crowd when it was maybe 30 minutes before the curfew was to take effect, a curfew that people were quite well aware of by the time of this violent encounter in Lafayette Square?

What was so urgent about things when we saw a video that the protesters were, in fact, largely peaceful?

And one of the witnesses that appeared before this Committee, the head of the church that was referred to earlier, said that they were participating and the members of that church were participating in peaceful actions, and that it included many gatherings of family members, including children that were participating in their right to free speech.

Mr. MONAHAN. To your first question, the United States Park Police did not use tear gas on June 1.

To your second question, were there people there peacefully demonstrating? Yes, but there were a number of bad actors, and once the three warnings were given, everyone there needed to vacate that area.

Mr. GARCÍA. But were there other chemical agents that your forces used?

Mr. MONAHAN. Yes, our rules of engagement specifically prohibited the use of CS gas on June 1. We utilized pepper balls. We utilized smoke canisters, which do not have an irritant in them, and we also used Stinger balls.

Mr. GARCÍA. Thank you very much.

I think my time has run out, Mr. Chair. I yield back.

The CHAIRMAN. I recognize Ms. Velázquez for her time.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. Monahan, did you have any communications from President Trump, Vice President Pence, Attorney General Barr, or Secretary Esper encouraging you not to testify on June 29?

Mr. MONAHAN. No, ma'am.

Ms. VELÁZQUEZ. Have you ever had conversations with a subordinate encouraging them not to cooperate with this Committee's investigation?

Mr. MONAHAN. No.

Ms. VELÁZQUEZ. Mr. Monahan, the USPP has a history of engaging in abuse of powers during peaceful protests. A 2015 court ordered settlement required the USPP to provide three audible warnings at least 2 minutes apart to disburse crowds and identify avenues for protesters to scatter.

Did you comply with that, to identify audibly and avenues for protesters to scatter?

Mr. MONAHAN. Yes, ma'am. As we discussed earlier, there were three warnings given, and in terms of an avenue to leave the area, the way the crowd was moved, they could either go north on 16th Street to I, India, Street or continue west on H Street to either Connecticut Avenue or 17th Street.

Ms. VELÁZQUEZ. That does not match the testimony of previous witnesses nor the testimony that will be provided by Major Adam DeMarco regarding audible warnings.

And we just saw the video that was played, and to say otherwise is just really outrageous. I was watching it. I couldn't hear anything. The people that were there even said, "What were they saying? What do they mean?"

Mr. Monahan, you also watched the video of the female reporter, Ms. Brace. My question to you is—does any action by her, and she was standing there, warrant being attacked and shot at with rubber bullets?

Mr. MONAHAN. So, ma'am, I take seriously any allegation of misuse of force by any of our members, and we have policies and procedures that direct how those things are handled.

In this instance, there is a current internal affairs investigation that is underway. That is, as I said, it is currently under investigation. If at the end of that investigation there is a finding——

Ms. VELÁZQUEZ. OK. I am asking you, sir, reclaiming my time, I am asking you. The video that was played, you watched it. I watched it. Were there any actions committed by Ms. Brace that required the type of action and attack by the police?

Mr. MONAHAN. Again, as I stated earlier, I will not comment on an ongoing investigation. I will just commit to that we will hold our officers accountable for any actions that are deemed a violation of force policy, and that investigation is still underway.

Ms. VELÁZQUEZ. Mr. Monahan, are you aware that COVID-19 affects the respiratory system?

Mr. MONAHAN. Yes, ma'am.

Ms. VELÁZQUEZ. So, why would you use any type of chemical agent in the midst of a pandemic?

Mr. MONAHAN. And, again, as I stated earlier, our rules of engagement on June 1 were that we would not use any force unless we were met with violent resistance from the protesters.

Ms. VELÁZQUEZ. My question to you is—why, knowing that this country is dealing with a pandemic, and one of the areas known to be impacted by COVID-19 is the respiratory system—knowing that, why did you use such chemical agents against peaceful protesters?

Mr. MONAHAN. And, again, the use of force that we utilized was in response to the violent behavior exhibited by a number of bad actors that were in the midst of others that were there to peacefully assemble.

Ms. VELÁZQUEZ. Well, as I mentioned to you before, sir, witnesses who came before this Committee, and Major Adam DeMarco, they are all testifying that those were peaceful protesters. That was covered widely by the media, widely. The Nation was watching while they saw how the police attacked peaceful protesters.

Immediately following the incident, the Arlington County Board Chair said that she was appalled that their corporation agreement with the Trump administration has been abused to endanger their and others' safety for the photo op, and media reports indicate that the USPP directly misled the Arlington County Police about the nature of the operation.

How would you respond to the comments made by the Board Chair and the allegations that the USPP misled the Arlington County Police about the nature of the operation?

Mr. MONAHAN. Yes, ma'am. The United States Park Police enjoys a very long and storied history with the Arlington County Police Department in terms of mutual aid over the last numerous years.

In terms of their assistance and their vital assistance to our operation on June 1, that was a request that was made through mutual aid. In terms of——

Ms. VELÁZQUEZ. Sir, why do you think that the Chair of the Board is saying that you misled them? Is she implying that you lied to them?

VOICE. Mr. Chairman, has the time expired?

The CHAIRMAN. Yes. You may answer the last question.

Ms. VELÁZQUEZ. I yield back.

The CHAIRMAN. The gentlelady yields.

Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And thank you, Chief Monahan, for being here today.

I come from a more rural part of the world, northeastern Pennsylvania, where we haven't had these types of violent interactions. In fact, all of our George Floyd demonstrations and protests have been peaceful, have been joined in with by the local police forces.

So, this is something new for me to jump into the world of these things, but I want to see if we can agree on some things. I suspect we will.

You mentioned before that you said that you believe every incident should have a complete record, right?

Mr. MONAHAN. Yes, sir.

Mr. CARTWRIGHT. And the idea is not only to do the job, but to improve the way you do the job, to make sure regrettable incidents are not repeated, right?

Mr. MONAHAN. Yes. That is a fair statement, yes.

Mr. CARTWRIGHT. And to do that what we are looking for is accountability. I think you used the word yourself, Chief. We want accountability on the part of our police forces, including the Park Police, right?

Mr. MONAHAN. Yes, I would agree.

Mr. CARTWRIGHT. And to do that, it is fitting and proper for us to engage in these exercises where we flesh out the facts of incidences. Is that fair?

Mr. MONAHAN. Yes, sir.

Mr. CARTWRIGHT. OK. So, anybody who says that to flesh out the facts of a violent confrontation between police and protesters is some sort of political charade, some kind of a show, that is not necessarily true. What we are looking for is fleshing out the facts to find accountability, and that is a good thing, is it not, Chief?

Mr. MONAHAN. In terms of fleshing out for accountability, yes, I would agree.

Mr. CARTWRIGHT. Absolutely. Well, all right. What I want to do is I want to go over some of your testimony from this morning. Again, I thank you for being here and going through this.

One of the things I wanted to clear up was Congressman Lowenthal asked you a question about whether it was a coincidence between the timing of the clearing of Lafayette Square and the photo op that the White House engaged in, and you said it was not a coincidence, and I don't think that is what you meant, and I want to give you a chance to clear that up.

Mr. MONAHAN. Our decision and the timing of implementing our plan to clear the north side of Lafayette Park and H Street was irrespective of any decision from the White House or the President to visit the park, to visit the church. It was completely irrespective of that.

Mr. CARTWRIGHT. That is what I thought your position was. It was a complete coincidence, according to your testimony.

Mr. MONAHAN. Yes, sir.

Mr. CARTWRIGHT. OK. I also wanted to talk about the timing a little bit. What time was the curfew for, 7 p.m.?

Mr. MONAHAN. Yes, sir. It was a 7 p.m. curfew.

Mr. CARTWRIGHT. OK. And what did the curfew call for, Chief?

Mr. MONAHAN. No members of the public could be out after 7 p.m.

Mr. CARTWRIGHT. OK. And how was that communicated to the public?

Mr. MONAHAN. I believe it was an order from the Mayor's Office in DC.

Mr. CARTWRIGHT. And was that communicated clearly and cogently so that people and the public understood what that curfew was calling for?

Mr. MONAHAN. I was aware of the curfew in my role as the Acting Chief of the U.S. Park Police. I can't speak to what every member of the public understood or were aware of.

Mr. CARTWRIGHT. Well, did the Park Police help to reinforce that 7 p.m. curfew that people had to disburse by 7 p.m.?

Mr. MONAHAN. No, we did not play a role in enforcing the 7 p.m. curfew.

Mr. CARTWRIGHT. OK. You mentioned another injury on June 1, and obviously that was regrettable, a facial laceration when an officer was punched in the face. You said that was in the clearing of H Street. Is that right?

Mr. MONAHAN. Yes, sir.

Mr. CARTWRIGHT. Now, H Street, of course, forms the northern boundary of Lafayette Park. Am I correct in that?

Mr. MONAHAN. It does, yes.

Mr. CARTWRIGHT. OK. So, when did that happen? What time of day on June 1, if you recall?

Mr. MONAHAN. I do not know the exact time, but it was between 6:30 p.m. and 6:50 p.m., which was the time for the clearing of H Street.

Mr. CARTWRIGHT. OK. So, would it be fair to say that that injury occurred after the so-called surge to disburse the crowd in Lafayette Park?

Mr. MONAHAN. It was during the, as you describe it, the surge to clear H Street.

Mr. CARTWRIGHT. OK. So, that injury did not happen before the surge. It happened during the surge.

Mr. MONAHAN. It did. Throughout the operational period, our officers were subjected to a number of projectiles. They did not sustain any injuries. The only injury we sustained on June 1 was that instance.

Mr. CARTWRIGHT. Thank you, Chief, for answering my questions.

I yield back, Mr. Chairman.

The CHAIRMAN. Ms. DeGette is recognized for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman.

Mr. Monahan, you said in your written testimony that the police have dealt with and your agency had dealt with hundreds of First Amendment demonstrations at special events. Is that correct?

Mr. MONAHAN. Yes, ma'am. Every year we facilitate hundreds——

Ms. DEGETTE. Thank you, sir. I only have 5 minutes.

You also testified that there were violent protests between May 29 and June 1. Is that correct?

Mr. MONAHAN. Yes, ma'am.

Ms. DEGETTE. You just told Mr. Cartwright that on June 1 the one injury to the officer occurred during the clearing of H Street. Is that correct?

Mr. MONAHAN. Yes, ma'am.

Ms. DEGETTE. Mr. Chairman, I would like to ask for unanimous consent to enter into the record the U.S. Park Police's Use of Force Policy, General Order 3615, updated November 1, 2019.

The CHAIRMAN. Without objection, so ordered.

Ms. DEGETTE. Thank you.

I discussed this policy at the previous hearing, and Mr. Monahan, are you familiar with this policy?

Mr. MONAHAN. Yes, ma'am, I am.

Ms. DEGETTE. And the policy governs the conditions under which the Park Police's use of force is appropriate. I am going to ask about some of those parts of the policy.

One section of the policy says, "An officer is expected to employ only the minimum level of reasonable force necessary to control a situation."

We have heard testimony and seen video evidence of the use of chemical irritants and of officers chasing protesters to beat them with batons.

Mr. Monahan, do you believe that represented only the minimum level of reasonable force necessary to control the situation of Lafayette Square on June 1?

Mr. MONAHAN. Yes, in terms of the rules of engagement on June 1, again, I will reiterate that——

Ms. DEGETTE. You believe you complied with the rules that those tactics were the minimum level of reasonable force given to control that situation. Is that right?

Mr. MONAHAN. Yes. We stressed that we would only utilize force if we were met with violent resistance.

Ms. DEGETTE. OK, thank you. Another section says, "Once a level of force is no longer required, it must be decreased or discontinued."

Did you conclude at any point on the evening of June 1, after the push into the protesters began, that the level of force being used was no longer required to clear the square?

Mr. MONAHAN. Yes, I think if you watch it——

Ms. DEGETTE. What time was that? What time was that that you decided that the level of force was no longer required?

Mr. MONAHAN. I am not sure I understand your question, ma'am.

Ms. DEGETTE. OK. At some point after the push began, did you conclude that the level of force that was being used was no longer required to clear the square? That is what your rules require.

Mr. MONAHAN. Yes, I guess it requires a little bit of explanation. It is a very fluid situation when we are clearing H Street. So, throughout that operation, there was an instance where an officer was wrestled to the ground by an angry protester and a violent protester. He attempted to hold——

Ms. DEGETTE. Excuse me, sir. You are not answering my question. Did you at any time during the clearing of the Square determine that a de-escalation was appropriate? Yes or no?

Mr. MONAHAN. Yes, and I'm trying to give you a good example of how that——

Ms. DEGETTE. You are not. You are just—OK. I am going to move on. You are not going to answer my question.

Finally, the policy says "the goal of de-escalation tactics is to gain the voluntary compliance of a subject when appropriate and consistent with personal safety to reduce or eliminate the use of force."

Now, I want to ask you. Do you believe the Park Police's sudden surge into the entire protest crowd on June 1 was a genuine effort to get the protesters to voluntarily comply and, most importantly, to reduce or eliminate the necessity to use force?

Mr. MONAHAN. Yes, I do.

Ms. DEGETTE. OK. Now, I want to ask you one more question since you have shown familiarity with these policies. Is there a section in the policies that allows the police to use force based on events of previous days' demonstrations?

And I ask you this question because you have testified throughout this hearing today that in the previous days before June 1, there were a number of officers injured, and that there was a lot of violence used.

But on June 1, you are using that as your rationale for using violence from the beginning on June 1, based on what happened in days before. Can you point me to a section of the policy that allows pre-emptive use of force based on previous demonstrations?

Mr. MONAHAN. Ma'am, my testimony to you today is that the use of force that we utilized on June 1 was in direct correlation to the level of violence that we were subjected to on June 1.

Any reference to anything that occurred on May 29, 30, or 31 was for context.

Ms. DEGETTE. OK. So, you are saying that what we were seeing the Park Police do on June 1, the surge into the crowd, you are saying it is your position that that was directly related to the force that was being used by the protesters on that day immediately before the surge. Is that your testimony?

VOICE. Mr. Chairman, there is a pattern going on here.

The CHAIRMAN. I am trying to. Thank you.

Ms. DEGETTE. I am sorry?

The CHAIRMAN. Time is up.

Ms. DEGETTE. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I recognize Mr. Brown for 5 minutes, sir.

Mr. BROWN. Thank you, Mr. Chairman.

And, Chief Monahan, thank you for testifying today.

Let me just start by saying I do appreciate the responsibility that you and your officers have to maintain public safety, and I do understand the level of force and engagement that you need to take when you are dealing with unlawfulness, whether it is arson, looting, or other violence.

But I think many on this Committee are also concerned about how we engage peaceful protesters, and there seems to be a blurring of the lines between peaceful protesters and unlawfulness that perhaps you and your officers did not recognize.

Let me ask you this question. The *Washington Post* reported that 6:10 p.m. on June 1, Attorney General Barr could be seen in CNN's live shot of the area at Lafayette Park, and at one point, Barr was speaking to a man who looked like a Park Police official. The official could be seen dropping his head in what looked like exaggerated resignation. One of the men with Barr even patted him on the back, as though consoling him.

And I am going to ask the Committee to show that video, and as they do, as they pull up the video, I want you to focus on the man, Chief Monahan, who approaches Attorney General Barr and appears to be a law enforcement official.

Can we show that video please?

[Video shown.]

Mr. BROWN. Chief Monahan, can you identify that law enforcement official in the video?

Mr. MONAHAN. Captain Russell Fennelly.

Mr. BROWN. And was that captain the Incident Commander?

Mr. MONAHAN. No, he was not.

Mr. BROWN. No? Have you spoken with the captain who spoke with Attorney General Barr since June 1?

Mr. MONAHAN. Yes, I have.

Mr. BROWN. And was that part of a sort of after-action review or to sort of learn about events on that day?

Mr. MONAHAN. Yes, sir.

Mr. BROWN. Can you say the captain's name again, please?

Mr. MONAHAN. His first name is Russell. His last name is Fennelly.

Mr. BROWN. Fennelly. Did Captain Fennelly receive any instructions from Attorney General Barr?

Mr. MONAHAN. No, he did not. If you look at the video, he proactively walks over to the group. You can see him with his hands——

Mr. BROWN. What was the nature of the conversation that he had with Attorney General Barr? What did our Attorney General Barr ask him to do or what information did Attorney General Barr give him?

Mr. MONAHAN. Yes, sir, that is what I am trying to explain to you. You can see him gesture to the left, to his left and to his right. His point in addressing the group was that they were very close to the north end of Lafayette Park. They were very close to an area where we saw and had our officers subjected to projectiles being thrown at them earlier in the day on June 1.

And based on Captain Fennelly's assessment, they were way too close to the line and in a position of danger. He went over there——

Mr. BROWN. Do you have any idea why Captain Fennelly dropped his head and in response a member of Attorney General Barr's detail patted him on the back?

Mr. MONAHAN. Yes, I do. His purpose in addressing them was to ask them to move away from the area so they were in a safer location, and at the end of that exchange with the Attorney General's protective detail, they moved south in the park away from the demonstration area.

Mr. BROWN. And what information did Attorney General Barr convey to the captain?

Mr. MONAHAN. I think it was the opposite, sir, to be honest with you. It was Captain Fennelly conveying to the Attorney General.

Mr. BROWN. Chief Monahan, your officer responded to something that Attorney General Barr said. What did Attorney General Barr say to your officer on the ground?

Mr. MONAHAN. Again, sir, it was our captain addressing the Attorney General and the group and his detail and requesting that they move away from the area toward a position of safety as opposed to being up there on the line. It was not——

Mr. BROWN. And what was Barr's response? What was Attorney General Barr's response?

Mr. MONAHAN. I think you can see the response on the video. They all moved south through the park. They heeded his warning.

Mr. BROWN. Thank you.

Mr. Chairman, I yield back.

The CHAIRMAN. The gentleman yields.

We will turn to Mrs. Dingell. You are recognized.

Mrs. DINGELL. Thank you, Mr. Chairman and Ranking Member Bishop, for convening this hearing to answer some of the unanswered questions from last month's hearing on the June 1 Lafayette Square protest.

As my fellow Committee members have stated, this sort of action, unarmed protesters being forcibly attacked by armed police without provocation, both violates our fundamental principles and calls for us to closely examine how the events in question could have occurred.

And I am very grateful we have an Administration witness here so that we can try to get some answers to some of these questions.

Mr. Monahan, I think you would agree that managing large crowds like protests is a law enforcement challenge that requires specific knowledge and skills. If officers on duty are not properly trained, what are the potential consequences for protesters or the officers themselves?

Mr. MONAHAN. So, ma'am, the United States Park Police officers are properly trained, and our focus that day was centered around the protection of life, the protection of those that were there to peacefully assemble, to maintain law and order, and to ensure the safety of our officers. That is our focus for that demonstration on June 1 and any demonstration that we facilitate.

Mrs. DINGELL. And am I correct though? And you just said that all of your officers were trained. If you do not have trained officers, is it not the case that situations can quickly escalate and become violent?

Mr. MONAHAN. Based on the scenario that you just mentioned, ma'am, yes, I would agree.

Mrs. DINGELL. So, in cases where there are singular instances of violence, would the training advise attacking the entire crowd or would it advise them to isolate and remove the individuals perpetrating that violence. And I'll give you an example. I have done 20 peaceful marches, walks, protests at home. And in a number of them, people have shown up with bricks and other things, yet there has not been one episode of violence; because is it not true that you should try to isolate and remove those that are trying to perpetrate the problem?

Mr. MONAHAN. Yes. And our——

Mrs. DINGELL. I'm not asking you trick questions.

Mr. MONAHAN. Again, our rules of engagement that day were focused on—we would not use force unless we were met with violent resistance from the crowd. And those bad actors in the crowd subjected violent behavior against law enforcement throughout the operational period on June 1.

Mrs. DINGELL. Let me ask you about the other law enforcement units that were there on Lafayette Square that day. Do you know if there were any officers from any other agency present that were not trained in civil disturbance?

Mr. MONAHAN. The agencies that we partnered with that day that were involved in the clearing operation on H Street were all trained in civil disturbance.

Mrs. DINGELL. So, every officer to your knowledge that was present was trained that day.

Mr. MONAHAN. Yes, ma'am. To my knowledge, yes.

Mrs. DINGELL. So, you commanded the police force at the tip of the spear that day. The Arlington County Police Department and the D.C. National Guard were there specifically to help the Park Police, so your presence was central. And you do know that everybody there was trained to deal with high-pressure, high-visibility, high-consequence historic events?

Mr. MONAHAN. Yes, ma'am. The United States Park Police, Secret Service Uniformed Division who were operating under a unified command, and the partner agencies that assisted with that operation are all trained in civil disturbance. And our duty at an event like that where we have sustained violence being directed at law enforcement is to protect the safety of the officers and for those that are there to peacefully demonstrate.

Mrs. DINGELL. Let me ask you a question. How do you know that everybody there—I think it is very important, having been places where people have tried to cause trouble—how do you know it is true? How do you know that everybody you are working with has been trained in dealing with these kinds of situations?

Mr. MONAHAN. The agencies, again, that were part of the clearing operation on H Street, the partner agencies that we dealt with, participate in the same training that we do.

Mrs. DINGELL. And do you make sure of that ahead of time?

Mr. MONAHAN. Yes, ma'am. These are regional partners that we collaborate with on a yearly basis for hundreds of demonstrations. Larger demonstrations, such as the one that we saw on June 1, larger demonstrations such as the inauguration, things like that.

Mrs. DINGELL. Thank you, Mr. Monahan.

The CHAIRMAN. The gentlelady yields back.

Let me recognize Mr. Graves for 5 minutes.

Mr. GRAVES. Mr. Chairman, would you mind going to a Majority Member and then coming back, please?

The CHAIRMAN. Let me recognize Mr. Soto. Five minutes, sir.

Mr. SOTO. Thank you, Mr. Chairman.

Acting Chief Monahan, I am sure you understand we are not here because you all erected a fence. But no one here is disputing the need for an appropriate response to the protests when they got violent on May 29. And to the extent that your officers were injured, we are all very sorry about that.

You are here because it appears that the President of the United States cleared peaceful protestors to have a photo op: to create a false appearance that he had protests under control and to intimidate Americans from exercising their First Amendments rights. And as a result, there were numerous protestors who were there peacefully and were grievously injured as a result of the clearing.

Do you think it is appropriate to forcefully clear protestors to pave the way for a photo op for President Trump?

Mr. MONAHAN. No, sir, and that was not our objective on June 1, that was not what we accomplished on June 1. Our focus on June 1 was centered around the safety of the demonstrators to maintain law and order and to ensure the safety of our officers and we accomplished that goal.

Mr. SOTO. What are the usual reasons you are ordered to remove Americans from Lafayette Square in other instances in your career?

Mr. MONAHAN. In this particular instance——

Mr. SOTO. I am asking about in the past.

Mr. MONAHAN. From a historical basis, there are oftentimes throughout the course of a year, there are demonstrations on the south side of the White House sidewalk; and at times, based on what the group is and what they are there for, there are routes that are made, it is more of an organized affair if you will. But it is markedly different from what we saw on June 1.

What we saw on June 1 was a need to clear that area to create a safe space for the fencing company to install the fence. The whole concept of installing the fence was based on an effort to de-escalate the violence that was rising from May 29 through June 1, and throughout the operational period on June 1. That was our goal; those were the objectives on June 1.

Mr. SOTO. Acting Chief Monahan, if you are given an illegal order by a superior, you have a duty to refuse that order. Is that correct?

Mr. MONAHAN. Can you repeat the question? You said if I was given an illegal order?

Mr. SOTO. Yes. If you have been given an illegal order by a superior, you have a duty to refuse that order. Is that correct?

Mr. MONAHAN. That is accurate, yes.

Mr. SOTO. So, if you were given an order to clear Lafayette Square for campaign purposes for the President of the United States, would that be an illegal order?

Mr. MONAHAN. That is not my testimony today, sir. Our operation and our objective on June 1 was to clear that area to establish the anti-scale fencing in an effort to de-escalate the violence that was on the rise since May 29 with the condition to provide for the safety of the protestors, to maintain law and order, and to provide for the safety of our officers.

Mr. SOTO. I understand what your interpretation was, Acting Chief Monahan. I am asking more in theory since many of us have disagreements on what happened that day. Would it be illegal for you all to clear Lafayette Square for campaign purposes for a President of the United States?

Mr. MONAHAN. Sir, respectfully, I am not here to engage in theoretical conversations about what transpired on June 1. I am here to give you an accurate accounting of what happened. And on June 1, as I described, our focus was to clear Lafayette Park, install that anti-scale fencing for the safety of those that were there to peacefully assemble, to maintain law and order, and to provide for the safety of our officers.

Mr. SOTO. Thank you, Chief. I agree we need to maintain law and order, which is why it is important to refuse illegal orders, particularly when they are wholly of a political nature.

With that, I yield back.

Mr. HUFFMAN. Here we go. The Chair now recognizes Mr. Graves for 5 minutes.

Mr. GRAVES. Thank you, Mr. Chairman.

I want to start out by saying, No. 1, I believe that there are racial injustices and inequities that we absolutely need to address as the U.S. Congress, and I do believe in some cases those are systemic.

I also want to commend on the next panel, Major DeMarco, for him stepping up and expressing concern about what he viewed as something that was inappropriate.

And last in this regard, I want to say that some of the reports of folks being detained and questioned without any charges, not by you, but by some of the protestors out West and law enforcement out West, I do support the investigation of those, and I want to be clear that I do not believe that protests provide an opportunity to infringe on people's Constitutional rights.

That being said, Chief, I believe I heard you earlier—I have been hearing bits and pieces of this hearing—I believe I heard you earlier say that Park Police have participated in hundreds of demonstrations across the Washington area and other areas. Is that correct?

Mr. MONAHAN. Yes, sir. And on an annual basis——

Mr. GRAVES. OK. So, probably fair to say that you and your officers are more practiced in dealing with protestors than most police forces around the United States?

Mr. MONAHAN. Yes, sir, I would like to think so. Yes.

Mr. GRAVES. And probably get more training in that regard as well.

Mr. MONAHAN. I can only speak to the level of training that we get, but yes.

Mr. GRAVES. OK. So, the next question is, of the hundreds of protests that you and your officers have participated in, how many of those have included the violence that your officers saw in the preceding days to what we are discussing today? Meaning the injury of officers, the fires, the damage to public property, and things along those lines.

Mr. MONAHAN. They happen from time to time. In my experience, they are the exception, not the rule.

Mr. GRAVES. So, is it fair to say—and do not let me put words in your mouth—that this was really an extraordinary protest in regard to the damage, in regard to the intensity, in regard to the injury to your officers. I believe I read somewhere where 50 officers were injured?

Mr. MONAHAN. Yes, that is accurate.

Mr. GRAVES. OK. So, Mr. Chairman, I think that we first of all need to be very clear that there is nothing normal about this. This was an absolutely extraordinary effort and you had folks that were extraordinarily experienced and trained to deal with this.

Mr. Chairman, I believe it was last week, or the week before, we had the Great Outdoors Act, or whatever, under the jurisdiction of this Committee, though the Bill did not actually come through the Committee, where we appropriated mandatory spending billions of dollars to maintain fences, signs, toilets, and other things at our national parks and other Federal lands that comprise 28 percent of the United States of America. We did this as mandatory spending billions of dollars. It goes on in perpetuity, no end; 200 years from now, we are still spending it under the law that was passed.

This is the second hearing that we are having on an incident that happened at Lafayette Park, one square block across the street from the White House.

Mr. Chairman, there is a global pandemic right now. We have record unemployment, we have a record recession right now, we are seeing the virus take off everywhere, and we are wasting time on this.

And I will say it again, I absolutely believe that we need to protect the Constitutional rights of our citizens, but this is ridiculous, and the way the Chief is being treated is absolutely ridiculous. Think about it for just a minute. Your line of questioning is that the President was trying to advance a campaign initiative, yet what you are doing is you are trying to advance a campaign initiative using official resources right here. The hypocrisy is absolutely disgusting watching what is happening here.

Chief, everybody is showing clips that promote their narrative. There were fires, there were dozens of your officers that were being injured as a result of this protest. I think it is absolutely disgusting that folks are trying to spin this narrative.

Now I understand the next panel, Major DeMarco, is going to be talking about his perspective—as I understand, there was a meeting on Saturday that determined the need for a fence. Was the Major involved in those meetings that talked about the justification for erecting the fence in the meeting with the Park Police?

Mr. MONAHAN. No, sir, he was not.

Mr. GRAVES. OK. So, again, I commend him for sharing what he viewed as being inappropriate, but I also think it is important to note that perhaps he was not aware of all of the information that was out there.

Chief, I have a lot of other questions, but there are 20 seconds left. Very quickly, are there any other things that you would like to share with the Committee or the public? I know you were cut off repeatedly in your questions, so I will give you the last few seconds here.

Mr. MONAHAN. Yes, again, I would just go back to my original point that our objective on June 1 was to provide for public safety. Our objective on June 1 was to maintain law and order, to ensure that any lawful demonstration could continue uninterrupted, and to provide for the safety of our officers, and I think we accomplished that goal.

Mr. GRAVES. Thank you.

Thank you, Mr. Chairman. I want to ask just for the record if the Chief could please provide the Committee with information indicating whether those protestors that were closer to the LRAD system that were announcing the distribution of protesters, if they seemed to leave more so or disproportionally to those that were further away, meaning your folks who were actually responding to the announcements or not.

I yield back. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. And yes, there is a severe and cruel pandemic going on and your lecture notwithstanding, that lecture would be very appropriate with your President so he can understand there is a cruel and vast pandemic going on in this country.

With that, let me recognize Mr. Sablan.

Mr. SABLAN. Yes. Thank you, Chairman Grijalva, for holding this hearing to actually learn why Federal law enforcement may have

violated the First Amendment rights of the peaceful demonstrators at Lafayette Park, and for some even thinking that this was done so the President would get a chance to go and stand in front of the church and hold a Bible, and actually never went in to kneel and say a prayer.

But I yield my time at this time to Mr. Gallego.

Mr. GALLEGO. Thank you, Mr. Chairman. Thank you, Representative Sablan.

I have a couple of questions. Who were the other police officers and departments that were there besides the National Park Service?

Mr. MONAHAN. The agencies that assisted us in the clearing of H Street were Park Police, U.S. Secret Service, the Arlington County Police Department, and that is it. We had Federal Protective Service inside the park.

Mr. GALLEGO. I want to run something, a couple timelines through you, so I can get them straight. At 6:10 p.m., that meeting happened with whatever captain that was, and Barr. At what time does the Incident Commander give the order to start pushing on the protesters?

Mr. MONAHAN. The first warning that was given to the protesters?

Mr. GALLEGO. Yes.

Mr. MONAHAN. That the area was being closed so we can install the fence was given at 6:23 p.m.

Mr. GALLEGO. 6:23 p.m. And then they started moving on the protesters at what time?

Mr. MONAHAN. Our operation began right around 6:30 p.m.

Mr. GALLEGO. Yes, I have 6:35 p.m., but I will give you the 5 minutes.

At 6:43 p.m., as you guys are pushing, I want to read you exactly what the President is saying at 6:43 p.m.—"I am also taking swift and decisive action to protect our great capital, Washington, DC. What happened in the city last night was a total disgrace. As we speak"—he said as we speak—"I am dispatching thousands and thousands of heavily armed soldiers, military personnel, and law enforcement officers to stop the rioting, looting, vandalism, assaults, and wanton destruction of property."

In his remarks, the President is bragging about—bragging about—ordering law enforcement to take on protesters in DC. Yet, you are arguing that the police, the Park Police solely made its decision about when to push based on the best scenario and situation for putting up the fencing. Is that correct?

Mr. MONAHAN. No, sir, I am not arguing with you. I am telling you factually what happened. And that was our——

Mr. GALLEGO. Your story isn't factual.

So, at 6:43 p.m. this is happening. And then also, coincidentally, there is no radio recording of that day. So, there is this timeline that kind of all makes sense if you put it together. I mean, if I was prosecuting somebody, I probably would have them dead to rights right now: 6:10 p.m., first meeting; 6:23 p.m., first warning order; 6:35 p.m., push on the protesters; 6:43 p.m., the President gives his rah-rah speech. No radio comms, we can't find anything. And then you claim that you were meeting violent resistance. But yet there

is no violent resistance. You claim, and I think you are accurate about this, that the only violent resistance that was met that day was after the initial push. There was no officer that was injured prior to your order. Is that correct?

Mr. MONAHAN. Sir, I would not equate violent resistance with injured force members. We were subjected to projectiles throughout the day on June 1. We were met with violent resistance on the clearing operation of the north end of Lafayette Park——

Mr. GALLEGO. Of course, you are going to meet with violent resistance. You threw pepper balls and you were batoning people.

Mr. MONAHAN. And, again, our rules of engagement, sir, were to only use force if we were met with violent resistance.

Mr. GALLEGO. So, you claim there was violent resistance prior to the clearing that started at 6:35?

Mr. MONAHAN. Yes, and I believe I gave you numerous examples. There were individuals that jumped over the police line several times that day. There were projectiles being thrown at officers throughout the day.

Mr. GALLEGO. So, this is all one big coincidence that at that point, this is when the violent resistance had finally swelled, that you had to do it at the exact point which happens to be probably 7 minutes before the President starts his speech? It just happened, you could not wait until 7 p.m. to do it, when there are probably people actually starting to retreat because of the curfew. At that exact same moment, which we have no radio comms whatsoever, coincidentally, that one day, that all happens in that span of 30 minutes, and it all happened exactly how you are reporting it?

Mr. MONAHAN. And we have a written record of radio comms that day. But our decision to clear H Street at the time that we did was based on an on-the-ground assessment of the violence that was subjected at law enforcement that day. That is a fact, yes.

Mr. GALLEGO. Well, your assessment was totally off.

Last question. Did the U.S. Park Police coordinate with anybody in the White House or the Secret Service?

Mr. MONAHAN. As I stated earlier, we were operating under unified command with the United States Secret Service.

Mr. GALLEGO. And that day, did you have communication with the White House or Secret Service at that time?

Mr. MONAHAN. Communication with the Secret Service, I would not say it was with the White House. I think they are two separate things.

Mr. GALLEGO. OK, thank you, sir.

Dr. GOSAR. Mr. Chairman? Mr. Chairman, question of the Chair.

The CHAIRMAN. Mr. Gosar.

Dr. GOSAR. Yes, Mr. Chairman, was it the order of the Mayor of DC to have no public at 7 o'clock? Is that the order that I keep hearing about?

The CHAIRMAN. That was part of the testimony, that that was the order——

Dr. GOSAR. So, it would make sense that you would start clearing earlier, so that they could achieve that goal of the Mayor.

The CHAIRMAN. Convenient, but no cigar.

Dr. GOSAR. I think very much cigar.

The CHAIRMAN. Let me ask Mr. Cunningham, I will recognize Mr. Cunningham for his 5 minutes. Sir, you are recognized.

[No response.]

The CHAIRMAN. Mr. Clay, if he is still online?

[No response.]

The CHAIRMAN. If there is no objection, unanimous consent that Mr. Beyer be allowed to join the Committee and ask questions.

Hearing none, Mr. Beyer, you are recognized for 5 minutes.

Mr. BEYER. Mr. Chairman, thank you very much. And thank you for waving me on. And I certainly want to object to Mr. Graves' notion that we are sponsoring a narrative.

This is right across the river from my district, my goodness.

I hope this is coming in. It has been fine all day. Mr. Chairman, I hope this computer is working well but it does not seem to be.

The CHAIRMAN. Mr. Beyer?

Mr. BEYER. Mr. Chairman, apparently the video traffic in Alexandria has crushed this, so if I can go on with an audio, if that would be permissible?

The CHAIRMAN. If there are no objections? Mr. Beyer.

Mr. BEYER. OK, thank you.

So, Acting Chief Monahan, I had and continue to have three key behavioral worries over the incident that day. First and foremost, for my constituents, this is right across the river from my district, as you know. And many of my constituents were in the crowd and in physical danger, including my daughter and her fiancé. I talked to many, many people who were there who described a completely different picture than what you did, and I remain very worried about how police engagement has endangered many lawful and peaceful protesters.

The second big worry is what happened to the Arlington County Police, who are also my constituents and our local police force, who were weaponized under your authority that day. They were the front lines to push the protesters; that was wholly inappropriate and not the understanding that the county had for any sort of peaceful protest engagement that routinely happens in the Nation's capital. That's why the chairman of the board pulled them back as soon as she heard about that. Their actions under the Park Police cost them local trust that they are actively working to rebuild, and I know it was a cause of embarrassment and regret for them.

And third, and most importantly, the behavior of the Park Police officers, many of whom again I know are my constituents, but with the behavior that day, they lost our community's trust. And why is this important? Because in the National Capital Region, Park Police are an important law enforcement entity and we depend on them to do the right thing, and here they failed us.

This was not the first problematic incident, nor should I say that Bijan Ghaisar's death in November 2017, either. But Lafayette compounded my concerns. You talked about you couldn't talk about the interaction with the press because there was an ongoing investigation. We are in the same position with Bijan Ghaisar. I wrote you back in November 2019 to get an update on the Bijan Ghaisar investigation. I got a letter back this month, 8 months later, saying that you could not comment because there was an ongoing investigation over a murder that happened almost 3 years ago.

In the months after Bijan's murder, I met with then-Chief McClain, who committed to me that the Park Police would adopt body cameras and I thought that was smart and an excellent commitment to future accountability and transparency. In fact, the only reason we know about Bijan Ghaisar was because the Fairfax County Police had their dash cameras on.

And now it is 2020, we have this weird deal where the comms did not work for the Park Police that day, no record. And Lafayette was another flagrant red flag for Park Police behavior. And, again, because there were no body cameras, much of what we know happened was because of other law enforcement communications.

I have been following up with your department for years now and asking for body cameras to be adopted since they were committed to me. But the Park Police has not, nor have I been provided with any rationale for a lack of adoption. And, ironically, largely every other law enforcement in the Department of the Interior has adopted body cameras. There is language in the House Interior Appropriations Bill that we just passed last week that gets you the money and addresses any policy concerns you may have, thanks to Betty McCollum's leadership. So, there is literally no excuse for the Park Police not to adopt body cameras. In fact, you would be in a much better position today with your testimony if you had them.

So, Chief, can you commit to me, to the Natural Resources Committee today, that you will adopt body cameras?

Mr. MONAHAN. Yes, thank you for the question, sir. It is true, the United States Park Police does not currently have a body-worn camera program. We are supportive of such a program. We acknowledge its alignment with contemporary trends in law enforcement, as well as the expectations from the public. However, at this time, we are not in a position to successfully implement, manage, and sustain a body-worn camera program.

Mr. BEYER. Mr. Chairman, let me just ask, the money and the policy is in the Appropriations Bill, so I hope that will not be your ongoing answer.

With that, I yield back.

The CHAIRMAN. First of all, Mr. Monahan, thank you for appearing today. And we do have more questions to follow.

I think in all the discussion, we have heard many things. And why the June 1 incident in Lafayette is so important, because of everything else that is going around, the issue not only of questions of police reform, abuse, the calls by this Administration and the President specifically of sending more and more Federal presence into communities, whether they want them or not. I think the precursor to much of this discussion began June 1, with the President's presence there and the premature clearing of the park.

And just out of my own curiosity, when did you, Chief, know that the President was coming to St. John's and how did you learn about it?

Mr. MONAHAN. Yes, sir. We were notified earlier in the day that the President was going to visit Lafayette Park to conduct a—to view the damage that was done to the park over the course of the preceding days. But we were not given a time on when he was visiting.

The CHAIRMAN. And on the scene on that day, who had the tactical command on the scene? In particular, who ordered the officers to move forward on the first surge at 6:30 p.m.? Who said, now, go, or gave the command of the clearing? Did the order go through you to move forward at that time?

Mr. MONAHAN. Yes, sir, the order was given by the Incident Commander from the United States Park Police. And on June 1, the Incident Commander was Major Mark Adamchik.

The CHAIRMAN. And go over for me the chain of command. I'm following up on Mr. Gallego's and some other people's questions, the chain of command you were going through, all the way from the President down, in terms of your role in commanding the U.S. Park Police as you do, literally leading the charge, and the two other agencies, Arlington County that was supporting the police, and D.C. National Guard. What is the chain of command in that process?

Mr. MONAHAN. The chain of command for an incident such as the one on June 1, we are operating under an ICS model, our incident command system model. The Incident Commander for the United States Park Police, again, was Major Mark Adamchik. We were operating under unified command, so he had a counterpart on the Secret Service side.

The CHAIRMAN. And who was above the Incident Commander from the Park Police?

Mr. MONAHAN. He has full command and control of that operation and he has the authority to make any and all decisions for that operation.

The CHAIRMAN. And the order was given verbally, in person, over the—well, not over the radio. Or using some other means?

Mr. MONAHAN. Which order are you referring to, sir?

The CHAIRMAN. The order to remove the crowd at 6:30 p.m.

Mr. MONAHAN. Yes, in terms of the warnings that were given to the public, they were given via the use of a long-range acoustic device that we described earlier. He gave the first of three warnings beginning at 6:23 p.m. Prior to giving those warnings, he gave a briefing to all of the commanders that were going to be involved in the clearing of H Street, so that they understood what the operation was and what the rules of engagement were.

The CHAIRMAN. And who authorized the Park Police to use weapons, munitions and devices that were used, in particular the chemical irritants? Did any of the lawyers that were supposed to review the actions say that it was OK? Who would that be to authorize that?

Mr. MONAHAN. Yes, so the authorization on the rules of engagement lies with the Incident Commander. I concurred with the change in our rules of engagement for June 1, which expressly prohibited the use of CS gas.

The CHAIRMAN. Much has been said for the people under your command, the officers that were hurt. We are glad that they have made a recovery and they are doing well. But I think one of the issues here today, too, is like I said, it is a precursor to much of the discussion that is going on about law and order and how politicized it has become.

Part of the question we have is whether our government even understands the difference between an unruly, violent mob and people peacefully exercising their First Amendment rights. And even worse, Chief, is the fact that we are seeing the Administration continue to expand this authoritarian approach to law enforcement with the issues in Portland and in other major cities. And, like I said, June 1 stands out as a date and we will continue to pursue.

With that, I do not have any other questions. Chief, we appreciate your time and your cooperation.

Mr. MONAHAN. Thank you, sir. Thank you.

Dr. HICE. Mr. Chairman? Can I ask unanimous consent?

The CHAIRMAN. Absolutely.

Dr. HICE. OK. Unanimous consent to add to the record a fact sheet from DOI regarding June 1, the events?

The CHAIRMAN. Without objection.

Dr. HICE. Thank you.

The CHAIRMAN. So ordered.

There are no other questions. Thank you, Chief Monahan. And we will invite our next witness forward.

Now we will begin our second panel if Major DeMarco will join us. Thank you.

Adam DeMarco is the Strategy and Operations Consultant for a consulting firm here in DC. He is also a major in the District of Columbia Army National Guard, where he has served since completing his active duty with the U.S. Army in 2014. He is testifying pursuant to the Military Whistleblower Protection Act.

I want to take a brief moment to recognize his father, Mr. Frank DeMarco.

Thank you for joining us, sir.

He has traveled a long way to be here in the room with his son.

And as a reminder, under Committee Rules, Mr. DeMarco, your oral statement is 5 minutes. Your entire statement is part of the record.

Again, thank you very much, and you are recognized for 5 minutes.

STATEMENT OF ADAM D. DEMARCO, MAJOR, DISTRICT OF COLUMBIA NATIONAL GUARD

Major DEMARCO. Thank you for the opportunity to testify today. I come before the Committee to help ensure that there is a fair, factual record of what happened at Lafayette Square, based on what I saw and experienced firsthand. I especially want this Committee, the residents of Washington, DC, and the American people to know that the D.C. National Guard performed with the utmost professionalism and integrity, faithful to our Constitution under the most challenging circumstances.

On June 1, I served as a liaison between the District of Columbia National Guard and the Park Police at Lafayette Square.

The role of the National Guard was to support the Park Police operation to clear demonstrators from the vicinity of Lafayette Square. The immediate objective of this clearing operation, as the Park Police informed me, was to install a larger security barricade on H Street, along the northern edge of Lafayette Square.

The D.C. National Guard was not to be actively engaged in the clearing operation. Rather, we would follow behind Park Police units and help to secure an expanded security perimeter, once established by the Park Police.

National Guardsmen were outfitted with standard riot gear, such as face masks, shields, shin guards, and batons for defensive purposes. But no National Guardsmen were armed with lethal or non-lethal munitions that evening.

From what I observed, the demonstrators were behaving peacefully, exercising their First Amendment rights. At around 6:20 p.m., the Park Police issued the first of three warning announcements to the demonstrators, directing them to disperse. I did not expect the announcements so early, as the DC curfew was not to go into effect until 7 p.m. that evening, 40 minutes later. The warnings were conveyed using a megaphone near the statue of President Andrew Jackson, approximately 50 yards from the demonstrators. From where I was standing, approximately 20 yards from the demonstrators, the announcements were barely audible, and I saw no indication that the demonstrators were cognizant of the warnings to disperse.

At approximately 6:30 p.m. the Park Police began the clearing operation led by the civil disturbance units and horse-mounted officers. No National Guard personnel participated in the push or engaged in any other use of force against the demonstrators.

As the clearing operation began, I heard explosions and saw smoke used to disperse the protesters. The Park Police liaison officer told me that the explosions were stage smoke, and that no tear gas is being deployed against the demonstrators. But I could feel irritation in my eyes and nose. And based off my previous exposure to tear gas in training, I recognized that irritation as effects consistent with CS or tear gas. And later that evening, I found spent tear gas canisters on the street nearby.

As Park Police pushed the demonstrators further down H Street, I saw demonstrators scattering and fleeing as Park Police charged toward them. I observed people fall to the ground, and some Park Police used their shields offensively as weapons. As I walked behind Park Police pushing westward on H Street, I also observed unidentified law enforcement personnel behind our National Guardsmen using paintball-like weapons to discharge what I later learned to be pepper balls into the crowd as demonstrators continued to flee.

After H Street had been cleared, I took up a position on 16th Street near St. John's Church. At around 7:05 p.m., I saw the President walking onto H Street from Lafayette Square, near St. John's Church. The President's arrival was a complete surprise, as we had not been briefed that he would enter our sector.

As for the new security barrier, whose installation was the stated purpose for the clearing operation, the materials to erect it did not arrive on scene on H Street until around 9 p.m. that evening, and it was not completed until later on.

Members of the Committee, the events I witnessed at Lafayette Square on the evening of June 1 were deeply disturbing to me and fellow National Guardsmen. Based on my training and experience, at no time did I feel threatened by the protesters or assess them

to be violent. And based on established U.S. military protocols concerning proportionality of force in dealing with civil disturbances both within the United States and overseas, it was my observation that the use of force against demonstrators in the clearing operation was an unnecessary escalation of the use of force.

From my observation, those demonstrators, our fellow American citizens, were engaged in the peaceful expression of their First Amendment rights. Yet, they were subjected to an unprovoked escalation and excessive use of force. As the late Representative John Lewis said, "When you see something that is not right, not just, not fair, you have a moral obligation to say something, to do something." The oath I swore as a military officer to support and defend the United States Constitution is a bedrock guiding principle for me. It is the foundation of the trust safely placed in the armed forces by the American people. And it compels me to say something, to do something about what I witnessed on June 1 at Lafayette Square.

I thank you for your time and this opportunity and look forward to your questions.

[The prepared statement of Major DeMarco follows:]

PREPARED STATEMENT OF ADAM DEMARCO, MAJOR, DC NATIONAL GUARD

INTRODUCTION

Chairman Grijalva, Ranking Member Bishop, and members of the Committee, thank you for the opportunity to testify regarding the events at Lafayette Square in Washington, DC, on June 1, 2020.

I come before the Committee to help ensure that there is a fair factual record of what happened at Lafayette Square, based on what I saw and experienced firsthand. I especially want this Committee, the residents of Washington, DC, and the American people to know that the Soldiers and Airmen of the DC National Guard performed with the utmost professionalism and integrity, faithful to our Constitution, under the most challenging of circumstances.

I regard my testimony today as fulfilling my oath to support and defend the Constitution, and as an extension of my public service—service that began as a cadet at the United States Military Academy at West Point and has continued for over a decade as a commissioned officer both in the Army and the National Guard.

During my 5 years on active duty, I had the privilege of serving in the 1st Cavalry and 1st Armored Divisions, and the honor of leading America's sons and daughters in three overseas deployments, including a combat deployment to Iraq. In 2014, after completing my active duty obligation, I elected to continue to serve in uniform by joining the District of Columbia National Guard. Through my military service, I have continued a family tradition of public service dating back to my grandfathers, Charles Woodrow Wilson Lohrig and William Holmes.

My paternal grandfather, Grandpa "Woody," enlisted in the Navy in the 1930s and was assigned to the USS *Houston*, said to be President Franklin Roosevelt's favorite ship. On February 28, 1942, the *Houston* encountered an overwhelming Japanese force in what is known as the Battle of the Sunda Strait. Surviving the initial battle only to be captured by the Japanese, Grandpa Woody and his shipmates endured a brutal 42 months of forced labor, torture, and starvation in captivity until liberated by Allied forces in 1945.

My maternal grandfather enlisted in the United States Marine Corps after the end of World War II. He later fought in the Korean War and received the Purple Heart for wounds sustained in combat. He never talked about his time in Korea, but he was a proud Marine until his dying day and always christened his boats with the name, "Semper Fi."

In the 1980s, my father also engaged in public service—first as a law enforcement officer in Pinellas County, Florida, and subsequently as a Special Agent at the Department of Defense and the Department of Transportation. His example imparted to me essential core values that I strive to live up to each and every day.

EVENTS AT LAFAYETTE SQUARE ON JUNE 1

In March 2020, I was activated by the DC National Guard to assist in the District of Columbia's response to the coronavirus pandemic. In that capacity, I was selected to serve as a liaison between the DC National Guard and the DC Government's Department of Health and local hospitals to facilitate immediate needs requests, surge capacity planning, and emergency events associated with the pandemic.

On the evening of May 29, 2020, I received notification that the entire DC National Guard was to be activated to help respond to ongoing civil disturbances within the District of Columbia, specifically in the vicinity of Lafayette Square.

Over the next 2 days, the DC National Guard deployed forces to Lafayette Square in support of the U.S. Park Police. During that time, I received reports that six DC National Guard personnel had sustained injuries as a result of violent unrest outside of the White House. I also learned that Federal law enforcement officers from the Park Police and the U.S. Secret Service had sustained injuries.

On June 1, 2020, I was tasked to serve as a liaison between the DC National Guard's "Task Force Civil Disturbance" and the Park Police at Lafayette Square. As events unfolded that evening, I was one of the senior DC National Guard officers within the area of operations.

The Task Force consisted of approximately 250 personnel from the DC National Guard, and its mission was to provide support for the Park Police in the vicinity of the White House and national monuments. DC National Guard personnel were outfitted with standard riot gear, such as face masks, shields, shin guards, and batons for defensive purposes. But no National Guardsmen were armed with lethal or non-lethal munitions that evening.

Staging from the DC Armory, we arrived at the White House complex around 5:35 p.m. and formed up in front of the Department of the Treasury to minimize our footprint and avoid antagonizing demonstrators positioned along the fence line on H Street on the northern edge of Lafayette Square. Upon arrival, I received a briefing from my liaison with the Park Police and learned that the DC National Guard's task would be to support a Park Police operation to clear demonstrators from the vicinity of Lafayette Square. The Park Police plan was to clear H Street between Vermont Avenue to the east and Connecticut Avenue to the west, and move north on Vermont Avenue, 16th Street, and Connecticut Avenue to extend the security perimeter from H Street to I Street. The immediate objective of this clearing operation, I was told, was to install a larger security barricade on H Street along the northern edge of Lafayette Square.

From a briefing I received from the Park Police, I learned that the Park Police, along with the Secret Service, would conduct an operation to clear demonstrators on H Street between Vermont Avenue and Connecticut Avenue. The DC National Guard was not to be actively engaged in the clearing operation. Rather, our job was to move behind the Park Police as H Street was cleared and the new northern security perimeter was established on I Street, then reinforce and relieve the Park Police on the new perimeter and hold a static line there. I understood that a curfew imposed by the DC Mayor was not going into effect until 7 p.m., so I was not expecting any clearing operation to commence before then.

I did not know what orders or rules of engagement had been issued to the Park Police concerning the use of force against the demonstrators. I asked my Park Police liaison if tear gas would be used because I had observed tear gas canisters affixed to Park Police officers' vests, and I knew that tear gas had been used against demonstrators the previous evening. The Park Police liaison told me that tear gas would not be employed.

A few minutes before 6 p.m., I was standing near the statue of Andrew Jackson in the middle of Lafayette Square as DC National Guard personnel formed up behind Park Police units positioned in a line behind the perimeter fence on the H Street side of the square, facing demonstrators on the other side of the fence. From what I could observe, the demonstrators were behaving peacefully, exercising their First Amendment rights.

At approximately 6:05 p.m., after I had repositioned myself close to the line, I observed Attorney General William Barr and Chairman of the Joint Chiefs of Staff, General Mark Milley, walking across Lafayette Square from the direction of the White House toward the security perimeter on H Street. Attorney General Barr walked right up to the line of Park Police and DC National Guard, in front of the demonstrators, then walked down the line of Park Police officers and National Guardsmen. The Attorney General then headed toward the statue of President Jackson where he appeared to confer with Park Police officers.

General Milley walked toward the area where I was standing. As the senior National Guard officer on the scene at the time, I gave General Milley a quick

briefing on our mission and the current situation. General Milley asked for an estimate of the number of demonstrators, and I estimated 2,000. General Milley told me to ensure that National Guard personnel remained calm, adding that we were there to respect the demonstrators' First Amendment rights.

At around 6:20 p.m., after the Attorney General and General Milley departed Lafayette Square, the Park Police issued the first of three warning announcements to the demonstrators, directing them to disperse. I did not expect the announcements so early, as the curfew was not due to go into effect until 7 p.m., 40 minutes later.

The warnings were conveyed using a megaphone near the statue of President Jackson, approximately 50 yards from the demonstrators. From where I was standing, approximately 20 yards from the demonstrators, the announcements were barely audible and I saw no indication that the demonstrators were cognizant of the warnings to disperse.

At approximately 6:30 p.m., the Park Police began the clearing operation, led by Civil Disturbance Units and horse-mounted officers. The Secret Service, and other law enforcement agencies I was unable to identify, also participated in the push. No National Guard personnel participated in the push or engaged in any other use of force against the demonstrators.

By then I had moved to the northeast corner of Lafayette Square near the statue of General Kosciuszko. As the clearing operation began, I heard explosions and saw smoke being used to disperse the protestors. The Park Police liaison officer told me that the explosions were "stage smoke," and that no tear gas was being deployed against the demonstrators. But I could feel irritation in my eyes and nose, and based on my previous exposure to tear gas in my training at West Point and later in my Army training, I recognized that irritation as effects consistent with CS or "tear gas." And later that evening, I found spent tear gas canisters on the street nearby.

During the initial push, I had relocated to a position near the northeast corner of Lafayette Square, next to the Comfort Station that had been burned the previous evening, in order to closely observe the clearing operation. As the horses began to move from east to west along H Street, they stopped in the vicinity of St. John's Church and the Park Police's Civil Disturbance Unit then took the lead and pushed the demonstrators further down H Street. From my vantage point, I saw demonstrators scattering and fleeing as the Civil Disturbance Unit charged toward them. I observed people fall to the ground as some Civil Disturbance Unit members used their shields offensively as weapons. As I walked behind the Civil Disturbance Units pushing westward on H Street, I also observed unidentified law enforcement personnel behind our National Guardsmen using "paintball-like" weapons to discharge what I later learned to be "pepper balls" into the crowd, as demonstrators continued to retreat.

About 10 minutes after the clearing operation began, the Park Police ordered the DC National Guard to move up behind the Park Police clearing elements pushing north on Vermont Avenue, 16th Street, and Connecticut Avenue to reinforce and relieve the Park Police on the newly established northern perimeter.

I took up a position on 16th Street between St. John's Church and the AFL-CIO building. By then, H Street had been cleared of demonstrators. Soon thereafter, several black sport utility vehicles pulled up at the intersection of 16th Street and H Street, and uniformed Secret Service officers began to establish an inner security cordon between the SUVs and our perimeter on I Street. At around 7:05 p.m., I saw the President walking onto H Street from Lafayette Square, near St. John's Church, accompanied by his security detail. The President's arrival was a complete surprise, as we had not been briefed that he would enter our sector.

As for the new security barrier, whose installation was the stated purpose of the clearing operation, the materials to erect it did not arrive on the scene until around 9 p.m., and it was not completed until later that night.

CONCLUSION

Members of the Committee, the events I witnessed at Lafayette Square on the evening of June 1 were deeply disturbing to me, and to fellow National Guardsmen. Having served in a combat zone, and understanding how to assess threat environments, at no time did I feel threatened by the protestors or assess them to be violent. In addition, considering the principles of proportionality of force and the fundamental strategy of graduated responses specific to civil disturbance operations, it was my observation that the use of force against demonstrators in the clearing operation was an unnecessary escalation of the use of force. From my observation, those demonstrators—our fellow American citizens—were engaged in the peaceful

expression of their First Amendment rights. Yet they were subjected to an unprovoked escalation and excessive use of force.

As the late Representative John Lewis said, "When you see something that is not right, not just, not fair, you have a moral obligation to say something, to do something."

The oath I swore as a military officer, to support and defend the Constitution of the United States, is a bedrock guiding principle and, for me, constitutes an individual moral commitment and ethical instruction. It is the foundation of the trust safely placed in the Armed Forces by the American people. And it compels me to say something—and do something—about what I witnessed on June 1 at Lafayette Square.

QUESTIONS SUBMITTED FOR THE RECORD BY CHAIR GRIJALVA TO ADAM DEMARCO, MAJOR, DISTRICT OF COLUMBIA NATIONAL GUARD

WIGGIN AND DANA

August 28, 2020

Hon. Raúl M. Grijalva, Chair,
Committee on Natural Resources,
U.S. House of Representatives,
Washington, DC 20515

Re: Responses to Questions for the Record

Dear Chairman Grijalva:

On behalf of my client, Adam D. DeMarco, I am forwarding the enclosed written responses to Questions for the Record that he received concerning the July 28, 2020 hearing of the House Committee on Natural Resources ("Committee") titled "Unanswered Questions About the U.S. Park Police's June 1 Attack on Peaceful Protestors at Lafayette Square."

The responses that Mr. DeMarco is submitting concern events he participated in while activated as a reservist in the District of Columbia National Guard. Accordingly, as in the case of his July 28 testimony before the Committee, Mr. DeMarco is providing this information to the Committee pursuant to the Military Whistleblowers Protection Act, 10 U.S.C. § 1034.

Sincerely,

DAVID H. LAUFMAN

Question 1. You testified that the device law enforcement used on June 1, 2020, at Lafayette Square to provide the mandatory warnings to protestors to disburse was not a Long Distance Acoustic Device (LRAD), but a standard hand-held megaphone. Please provide any knowledge you may have about whether there was an LRAD on site that day, whether any LRAD was used at all, whether anyone attempted to use an LRAD, and whether there was any intended use of an LRAD. Please identify anyone else who would have knowledge of whether an LRAD was used, procured for use, or attempted to be procured for use at Lafayette Square on June 1, 2020.

Answer. At approximately 11:35 a.m. on June 1, while I was still at Ft. Belvoir, I was copied on an email from the Provost Marshal of Joint Force Headquarters National Capital Region (JFHQ-NCR), the lead military police officer in the Department of Defense for the National Capital Region, asking if the DC National Guard possessed "a Long Range Acoustic Device (LRAD) or the Active Denial Systems (ADS)." The email stated that "ADS can provide our troops a capability they currently do not have, the ability to reach out and engage potential adversaries at distances well beyond small arms range, and in a safe, effective, and non-lethal manner. The ADS can immediately compel an individual to cease threatening behavior or depart through application of a directed energy beam that provides a sensation of intense heat on the surface of the skin. The effect is overwhelming, causing an immediate repel response by the targeted individual."

At approximately 12:04 p.m., I responded that the DC National Guard was not in possession of either an LRAD or an ADS.

That evening, after the DC National Guard had deployed to Lafayette Square, I asked my U.S. Park Police (USPP) liaison, Sgt. Glick, if the USPP had an LRAD on-site. He responded that the USPP did not have an LRAD on-site, and that the USPP typically uses the DC Metropolitan Police Department's LRAD when such a device is needed.

Sgt. Glick then asked if the DC National Guard possessed an LRAD in its equipment inventory. I replied that I would inquire about the possibility of obtaining an LRAD.

According to a Situation Update Brief by JFHQ-DC on June 1 at 6 p.m., at that time there was a pending request for an LRAD by the DC National Guard to JFHQ-NCR. To my knowledge, however, there was no LRAD on-site at or near Lafayette Square on June 1.

On June 2, I began working with JFHQ-NCR to learn if they could procure an LRAD. I made an informal request to the Provost Marshal at JFHQ-NCR about the feasibility of procuring an LRAD. The Provost Marshal subsequently received a response from Marine Corps Base Quantico, advising that Marine Corps Base Quantico had several LRADs on-site. I subsequently advised logistics officials in the DC National Guard, but they informed me that they were no longer seeking to procure an LRAD from the JFHQ-NCR.

Question 2. Please provide any information regarding the audibility of the mandatory warnings that you may not have had a chance to present at the hearing or would like to clarify, or respond to.

Answer. The warnings to disperse issued by the USPP at Lafayette Square on June 1, 2020, did not come from an LRAD. Rather, I observed that the device used to give the warnings was a red-and-white megaphone laying on a bench near the statue of President Andrew Jackson in the middle of Lafayette Square. An individual I later learned was the USPP Incident Commander gave the warnings using a handheld microphone attached to the megaphone.

As I stated in my previous testimony, at the time of the warnings the individual giving the warnings (i.e., the USPP Incident Commander) was approximately 50 yards from the demonstrators. I was positioned approximately 30 yards from the Incident Commander, and approximately 20 yards from the front line of the demonstrators. From my position, the USPP warnings to disperse were barely audible and I was only able to discern several words.

Question 3. Please describe any knowledge you may have, or statements you may have heard from others, regarding whether any law enforcement used rubber bullets on protesters. Please include any observations or knowledge you may have about which law enforcement agency used rubber bullets.

Answer. I do not possess any first-hand knowledge that rubber bullets were used against protesters on June 1. But I observed Stingball grenades affixed to the ballistic vests of law enforcement officers deployed to Lafayette Square. (I was unable to determine the law enforcement agency with which these officers were associated.)

Several days later, a DC National Guardsman who was at Lafayette Square on June 1 told me that he saw protesters being shot with these non-lethal munitions. This DC National Guardsman told me how disturbed he was at seeing an innocent civilian being shot with rubber bullets and falling to the ground in front of him—seemingly indiscriminately.

Question 4. You mentioned the pre-positioning of M4 carbines by National Guardsmen by transferring them from Fort Belvoir to the DC Armory. When did this transfer occur and how did you become aware of it? Do you have any knowledge of whether any ammunition was also pre-positioned? If so, how did you become aware of it?

Answer. According to contemporaneous information I was receiving from another DC National Guardsman in my unit, this transfer of weapons occurred on June 1, 2020, at approximately 1:30 p.m. The order to transfer the weapons to the DC Armory had come from the Commander of the 260th Regiment, a unit of the DC National Guard.

On June 4, 2020, I received notice from the logistics component of the DC National Guard that ammunition (not further described) was arriving at the DC Armory from supporting states, including Missouri and Tennessee.

On or about June 5, 2020, I learned from officers in the Joint Operations Center at the DC Armory that 5.56 mm and 7.62 mm ammunition had been transferred to the DC Armory.

On or about June 12, 2020, I learned from the chief operations officer (J-3) for the DC National Guard that approximately 7,000 rounds of ammunition had been transferred to the DC Armory.

Question 5. Acting Chief Monahan testified that the U.S. Park Police used Stinger Balls. Please describe what a Stinger Ball is and how it works. Are there any Army rules or regulations that would be violated if Stinger Balls were used on a peaceful crowd?

Answer. According to the Department of Defense's *Non-Lethal Weapons (NLW) Reference Book*, non-lethal weapons are defined as "weapons, devices and munitions that are explicitly designed and primarily employed to incapacitate targeted personnel or materiel immediately, while minimizing fatalities, permanent injury to personnel, and undesired damage to property in the targeted area or environment." A "Stingball grenade" is among the types of munitions classified as a non-lethal weapon. It is "a hand-thrown or shotgun launched rubber grenade that releases rubber pellets and delivers blunt trauma effects against single and multiple targets to deny access, move, and/or suppress individuals. Stingball grenade uses include crowd control, detainee operations, and cordon and search operations."

It is my understanding that the U.S. Army's use of non-lethal weapons and riot control agents is governed by the Department of Defense's *Law of War Manual*, and by Executive Order No. 11850, issued on April 8, 1975 (40 Fed. Reg. 16187). I defer to legal experts on how these rules would apply, in a given scenario, to the U.S. Army's use of Stingball grenades "on a peaceful crowd." As I testified, however, DC National Guardsmen deployed to Lafayette Square on June 1, 2020, were not equipped with lethal or non-lethal munitions.

The CHAIRMAN. We will begin in the same way as the last time.

Mr. Huffman, you are recognized for 5 minutes, sir.

Mr. HUFFMAN. Thank you, Mr. Chairman.

And Major DeMarco, you were not part of the Park Police force, so you may not be as familiar with the night—the 2015 legal settlement that I discussed with the Acting Chief, but you did hear, I think, the elements of that settlement, the specific requirements of how, when confronting protesters, the Park Service Police are required to stage in a very specific way with officers in the back of the crowd who would visually and verbally confirm that warnings were loud enough to be heard and understood, that those warnings needed to include a very clear reference to specific legal violations and a warning that arrests would ensue.

So, you were on the ground. You have testified that you were just a few yards from the front line here. Tell me, if you can, if you believe that Chief Monahan's version of this, that every one of those elements was complied with to the letter, was that your experience, as a firsthand witness?

Major DEMARCO. Sir, on the ground I am not aware of a long-range acoustic device being in position or utilized for the proclamation to disperse.

Mr. HUFFMAN. You talked about a megaphone, a standard megaphone. Maybe that is what they mean when they say long-range acoustic device. But the only thing you heard was a standard megaphone, correct?

Major DEMARCO. That is correct, a megaphone placed on a bench, utilized through a handheld microphone.

Mr. HUFFMAN. All right. And do you believe that it was audible enough to be understood by the protesters throughout the crowd?

Major DEMARCO. Negative, sir. I could barely understand the message that was being delivered.

Mr. HUFFMAN. Did you see anything to suggest that there were officers in the back of the crowd that were somehow confirming that it was loud enough to be understood?

Major DEMARCO. I did not observe that, sir.

Mr. HUFFMAN. What about the behavior of the protesters? Did anything in their reaction or behavior suggest to you that they had either understood or not understood what had been said in the megaphone?

Major DEMARCO. I saw no change in their disposition or posture.

Mr. HUFFMAN. All right. And in the warning, did you hear any reference to a specific law that was being violated?

Major DEMARCO. I could just make out every other word in the statement that was being delivered.

Mr. HUFFMAN. All right. I want to ask about the fencing that has been offered as a justification for why this all had to happen. And the Acting Chief said that the fencing, contrary to your testimony, had arrived several hours earlier. But I think he had said it was staged a couple of blocks away.

Is there any reason why, if it was important to install that fencing as soon as it was on site, that it wouldn't have happened a couple of hours earlier, if that fencing had already arrived by that point?

Major DEMARCO. Sir, I can't get into hypotheticals as to why or why it was not installed at that time. Based off of the Army training publications and the various doctrine that we use in installing and maintaining defensive static positions, certainly, I would have looked at other time frames to install that fence.

Mr. HUFFMAN. Yes, but you found it odd that you had a 7 p.m. curfew coming up, just 25 minutes later, and the fencing could have been installed at that point in a manner that avoided a confrontation, potentially. Am I understanding your suggestion correctly?

Major DEMARCO. At the time, I didn't make that correlation. I was just there, focused on getting the mission and getting our soldiers safely off the LMTVs that they arrived on, and into position to support the Park Service——

Mr. HUFFMAN. So, about the mission, were you told that this was about fencing?

Major DEMARCO. Yes, sir.

Mr. HUFFMAN. OK, let me just ask, if I could, about the timing of the clearing of the crowd. There is some live tweeting from CNN, a CNN reporter, that suggests from that moment that the advance began—I believe it was 6:35 p.m.—within 10 minutes this crowd of several thousand people, by all accounts, was gone. That suggests to me that there was great urgency, that there was a very rapid clearing of the crowd. What was your observation?

Major DEMARCO. Based off of Army training publication 3–39.33, entitled "Civil Disturbance," that escalation to rapidly move and disperse people is not in accordance with what I understood as to be the suggested and guided practice to clear the sector.

Mr. HUFFMAN. So, the urgency, the speed of that clearing, was unusual in your experience. Is that correct?

Major DEMARCO. I was taken by surprise, correct.

Mr. HUFFMAN. Do you infer from that, that that was part of the objective by the Park Police, that clearing with speed was their intention?

Major DEMARCO. Yes.

Mr. HUFFMAN. All right. Thank you, Mr. Chair. I yield back.

The CHAIRMAN. Mr. Hice, sir, you are recognized.

Dr. HICE. Thank you, Mr. Chairman.

Thank you, Mr. DeMarco, for being here. In the previous panel, Chief Monahan testified that the decision to install the fencing was actually made 2 days before June 1. It was on Saturday, May 30. And that, of course, was in the aftermath of the most violent protests that took place over the weekend. The Park Service and the U.S. Secret Service rightfully wanted to take steps to prevent that from happening. Were you a part of those discussions 2 days prior?

Major DEMARCO. No, sir.

Dr. HICE. On June 1, what kind of role did you have? Were you in a senior position of command and control, or were you there primarily as a supportive role?

Major DEMARCO. I was not a commander, nor was I the officer in charge. I was simply the liaison between the Park Police and the D.C. National Guard. I would receive the missions and taskings, and then alert the senior OIC, Officer in Charge, on the ground of what the Park Police was requesting.

Dr. HICE. So, a supportive role.

Major DEMARCO. Yes, sir.

Dr. HICE. In that regard. OK, thank you.

You state that the fencing did not arrive until 9 p.m. on June 1. Is that correct?

Major DEMARCO. Yes, sir.

Dr. HICE. The folks on the ground with the Park Police and the Secret Service share a different timeline. Here is the timeline that they have. The fencing company site manager arrived at 3:30 p.m. on June 1. The company staff arrived shortly thereafter. The fencing material was delivered at 5 p.m. The order was given at 6:23 p.m. The square was cleared by 6:50 p.m., and trucks with material reportedly moved in the Square immediately, and construction began at 7:30 p.m.

So, I mean, there was not a match-up in your timeline and what actually took place. How do you reconcile this?

Major DEMARCO. Yes, sir. From my position, which was on H Street and 16th Street, the first sighting I had of the 18-wheeler carrying the non-scalable fence was at 9 p.m. that evening, on or around. And the completion of that fence did not occur until about 10:30 p.m. later that evening.

Dr. HICE. So, I guess from what you are saying, there is at least the possibility that, from the location where you were, you were not able to see all the activity and realize what was taking place elsewhere.

Major DEMARCO. That is correct, sir. However, the fence was only being installed along H Street from Connecticut to Vermont.

Dr. HICE. OK, but the timeline, it actually started at 7:30 p.m., so I am giving you the benefit of the doubt that your location—you didn't perhaps see all that was taking place.

Major DEMARCO. It is possible, sir.

Dr. HICE. You stated just a few moments ago about the three warnings. Your testimony here, I ran back and was looking at it. You said that, at 6:20 p.m., the Park Police issued—and these are your words—the Park Police issued the first of three warning announcements to the demonstrators, directing them to disperse.

And you just said you didn't hear that. But your testimony says they gave three warnings.

Major DEMARCO. They did, but I did not hear the full proclamation that was being given. But around that time, at 6:20 p.m., the warnings began.

Dr. HICE. OK. So, if you didn't hear them, how were you aware that they took place?

Major DEMARCO. Because I was approximately 30 yards away, and I saw the Park Police officer with the megaphone laying on a bench, holding——

Dr. HICE. You were 30 yards away from where? I am trying to picture this.

Major DEMARCO. From, essentially, the President Jackson statue.

Dr. HICE. OK, so you heard the announcement.

Major DEMARCO. But I couldn't make out exactly what they were saying, sir.

Dr. HICE. OK, but enough to where you knew it was the first of three warnings to disperse.

Major DEMARCO. Negative, sir.

Dr. HICE. That is your testimony. That is your written testimony.

Major DEMARCO. Correct. If I was standing up at the line, I would have no idea what they were actually saying. I was in a position of privilege, where I could hear, and I expected something to be coming from them.

Dr. HICE. OK. Again, your written testimony says at 6:20 p.m.—it is very precise—that they gave the first of three warnings.

Anyway, we will go on from there. Let me just ask in closing, Mr. DeMarco—I thank you for your service and a great deal of service that you have done, and even politically—have you ever run for Congress?

Major DEMARCO. Yes, sir.

Dr. HICE. And when did you do that?

Major DEMARCO. In 2018.

Dr. HICE. And what party were you?

Major DEMARCO. A Democrat.

Dr. HICE. OK. I think it is very interesting how a lot of these dots connect, as we continue defaming the police department and attacking them for their stated purpose of protecting public safety, and the rule of law, and the safety of our law enforcement.

And, Mr. Chairman, I will yield back for now.

The CHAIRMAN. The gentleman yields.

Ms. Haaland, you are recognized.

Ms. HAALAND. Thank you, Chairman.

Thank you, Major DeMarco. Major DeMarco, it seems that some law enforcement officers at Lafayette were not pleased about what they were asked to do on that day. Arlington County pulled their police officers from their role in assisting the U.S. Park Police because they were shocked about how their officers were used to

attack peaceful protesters. It seemingly just wasn't what they had signed up for.

We have heard about how members of the National Guard who were at Lafayette Square have struggled with the things they were asked to do on June 1, because it runs directly counter to the very reasons they decided to serve their country, and to their oath to support and defend the Constitution.

In your testimony today, you courageously expressed similar sentiments, that what you saw our government do was wrong, and that it was difficult to reconcile being put in that situation with your commitment to your country and your fellow Americans. Could you tell us a bit more about how this affected you personally, as an officer in the National Guard?

Major DEMARCO. Yes, ma'am. And thank you for that question.

In the days following June 1, I struggled to process exactly what had happened and taken place, to the point where I was sleeping very little, and I started trying to figure out what the next steps were. I had confided in several other officers in the District of Columbia National Guard, as well as other friends and advisers that I have served with, both on active duty and in support of active duty operations.

A couple of days later I decided that I needed to memorialize my record, or my memory, and I wrote my own sworn statement on my own volition. And I read it in front of another officer, and he signed off on it, because I knew something was wrong, but I didn't know what.

And then it was shortly thereafter that I started reaching out to seeing what could be done, because I truly felt compelled that I had to say something.

I started talking to other soldiers, soldiers that are in my unit, soldiers that I have a supervisory authority over, and they were expressing many of the same consternations and concerns. So, I knew that it wasn't just me who had witnessed this, and felt that there was something both morally and legally wrong.

And in trying to process that, I realized that I am in a position, as a major in the United States Army National Guard, where I can do something. And that is why I decided to come forward.

Ms. HAALAND. Thank you, Major. And I am sorry you were put in that position.

Are you aware of any other concerns from other people, your colleagues in the D.C. National Guard, that were there that day? And have they shared with you how this incident has affected them?

Major DEMARCO. Yes, ma'am. One of the soldiers in my unit, without giving out any personally identifiable information, is not a native-born American citizen from a developed country. And in talking to him, and helping him try to understand what he saw and his role in that, which he acted honorably, he said that the events of June 1 were those that he expected to see in his home country, not here in the United States.

And that was a very troubling statement that I heard from him, but I told him that we were doing the right thing. And it is another reason on a long litany of reasons why I am here today to testify.

Ms. HAALAND. And along these same lines, what does being put in this kind of situation do for the morale and the mental health of the people you serve with?

Major DEMARCO. The District of Columbia National Guard has been outstanding in ensuring that our soldiers and airmen have received the support from both chaplain and emotional support counselors to ensure that they understand and they have the resources available if they need any further counseling.

Ms. HAALAND. And Major DeMarco, as an officer, would you ever put your fellow guardsmen or women in a position where they were attacking citizens who were largely peacefully protesting?

Major DEMARCO. Absolutely not, ma'am.

Ms. HAALAND. And you mentioned in your statement that Mark Milley reminded you that the D.C. Guard was there to respect the rights of protesters. Were you and your Guard members confused why you had been told you were there to protect the rights of Americans, and then realized that you were asked to back up officers as they attacked these same protesters you were supposed to respect?

Major DEMARCO. Negative, ma'am. When we arrived in support of the United States Park Police, we arrived to help them, but also to maintain our—or to serve under our oath to support and defend the Constitution. Just because we were in a supporting role, did not change the way that we operate, or the laws that we abide by.

Ms. HAALAND. Thank you for answering my questions.

I yield, Chairman.

The CHAIRMAN. Thank you very much.

Mr. Gohmert. You are recognized, sir.

Mr. GOHMERT. Thank you.

Major DeMarco, since you brought up the First Amendment at least three times, maybe more, in your statement—you said, "We were there to respect the demonstrators' First Amendment rights." Was that the order that was given to you guys in the National Guard, "Get out there, and your job is to respect the demonstrators' First Amendment rights"?

Who gave that order?

Major DEMARCO. Negative, sir. That was a statement from the Chairman of the Joint Chiefs, General Mark Milley.

Mr. GOHMERT. Oh, yes. That is the same Chairman of the Joint Chiefs that went out and criticized the President of the United States.

This is a different military than the one I served in, because when I was in the Army at Fort Benning, commanders constantly reminded us that everybody knows that President Carter is doing terrible damage to the military. But if anyone criticizes their Commander in Chief anywhere but very privately, they will either get an Article 15 or they will be court martialed.

So, this is a new military, I am finding, where the Chair of the Joint Chiefs feels it is perfectly OK to demean his Commander in Chief, and then you felt the need to come out and testify differently from what we have heard from people within the Administration and others that were out there. I am trying to get used to this new military, where you don't really feel an obligation to answer to the civilian-elected Commander in Chief. This is really intriguing.

Now, the rules of evidence and relevance here are much more relaxed than they are in a jury trial, but even in a jury trial you would be compelled to ask, did the Democratic Party give you any financial assistance when you ran against John Sarbanes for Congress?

Major DEMARCO. No, sir, I was all self-financed.

Mr. GOHMERT. Yes. Do you have any idea how many publications have mentioned your name since you came out against the reports by people within the Administration at Lafayette Park? Any idea?

Major DEMARCO. Negative, sir. I put my phone on Do Not Disturb last night.

Mr. GOHMERT. Yes, OK. Well, apparently, it is a whole lot more than you ever got when you got that 8.5 percent or so running for Congress. So, it looks like this is going to serve you well with the Democratic Party.

But I am still quite concerned about our military. Your job was to observe the First Amendment rights of the demonstrators. Were you out there when St. John's was set on fire, there were two fires set in the church?

Major DEMARCO. Sir, I was there that evening. By the time the church fire was reported, I was over by the Lincoln Memorial.

Mr. GOHMERT. Do you happen to know, of your own personal knowledge, who the peaceful, loving demonstrator was, or demonstrators, that set the church on fire?

Major DEMARCO. I have no knowledge of who was demonstrating, sir.

Mr. GOHMERT. There apparently were some injuries out there. Are you familiar with how many law enforcement officers have been hurt by peaceful, law abiding, loving demonstrators?

Major DEMARCO. I am aware of the injuries that occurred between the periods of May 29 to May 31, which is abhorrent. I am also aware of the injuries of six National Guard personnel that were injured during that time frame.

Mr. GOHMERT. Were they injured by Park Police?

Major DEMARCO. Negative, sir. They were injured—one was concussed, I believe, from a projectile, and then others——

Mr. GOHMERT. But that was from one of the people that was just observing his First Amendment rights.

Do you know what Supreme Court cases included in the First Amendment rights the right to concuss law enforcement?

Major DEMARCO. Sir, I have no legal background, so I can't answer that.

Mr. GOHMERT. OK, all right. I am just curious.

Well, I really have no other questions for this witness. I yield back.

The CHAIRMAN. Mr. Lowenthal, you are recognized.

Dr. LOWENTHAL. Thank you.

Major DeMarco, let me just get the question. Major, first, thank you for testifying. And I am concerned about what I had read about, or learned a little bit about—do you know anything about army helicopters hovering low over Washington, DC, relating to the event on June 1?

Major DEMARCO. Yes, sir.

Dr. LOWENTHAL. Can you discuss these, and how you know these claims—what is said to be true? Can you discuss what you know?

Major DEMARCO. Yes, sir. After the clearing of H Street, I was informed by the United States Park Police that there will be low-flying military helicopters in our area of operations.

Shortly thereafter, I observed the first UH-60 Blackhawk helicopter flying north of my position, which was at that point 16th and I Street. I observed the helicopter had no distinctive markings on it. However, the doors were open. When I made that observation, I then assumed that it was a public affairs helicopter going around, taking photos of our response, in support of the United States Park Police.

Later that evening, as the wall, or fence, was being built along H Street, I then heard radio transmissions over the radio, the D.C. National Guard internal communications network, that there was a low-flying helicopter in the vicinity of 15th Street and F Street, which is near Chinatown. The transmissions that I was receiving were that there was a low-flying helicopter, and it was making the pepper spray of the D.C. Metro Police Department ineffective. I kept hearing this over the radio. I didn't know what was going on in that area of operations, as it was out of our sector.

I then called over to the D.C. Armory Joint Operations Center and spoke to an officer there, and asked him if he had any information as to what was happening. I told him the report that I had heard. He then communicated with someone within the operations center. And I hung up the phone, and that was the last that I heard of it.

Dr. LOWENTHAL. Were there any that had medical markings on them?

And you mentioned earlier that you believe that the Park Police knew it in advance, or at least that some of these helicopter operations were to occur. Can you explain that?

Major DEMARCO. Yes, sir. To your first question, later reporting indicates that one of the helicopters flying in the vicinity of 15th Street and F Street had a medical Red Cross designation on it.

To your second point, the first that I learned about Army aviation assets being used in this mission was from the United States Park Police.

Dr. LOWENTHAL. When helicopters fly this low, is that an intimidation maneuver?

The Metropolitan Police Department, I believe, complained that the rotor wash made it hard for them to use pepper spray or pepper balls.

Major DEMARCO. Sir, I am not a pilot, and my aviation experience is very limited, so I can't speak to the tactics, techniques, and procedures of our aviation assets and pilots.

Dr. LOWENTHAL. Does using helicopters in this way strike you as a sensible or safe way to do it, these operations?

Major DEMARCO. Sir, I am not in a position to talk about the safety or unsafe actions of pilots.

Dr. LOWENTHAL. But you are aware that the Park Police knew in advance, at least, that some of these helicopters were going to be there.

Major DEMARCO. Based off of the timeline and the notification, yes, sir.

Dr. LOWENTHAL. Again, can you just explain how were these helicopters to be used? Or did you know that they were used?

Major DEMARCO. I was not aware of their task and purpose within the area of operations.

Dr. LOWENTHAL. OK, thank you. And I am going to yield back.

The CHAIRMAN. The gentleman yields. I recognize the gentleman from Arizona. Mr. Gosar, sir.

Dr. GOSAR. Yes, Major DeMarco, you reached the conclusion that protesters were subject to an unprovoked escalation on June 1. However, this is a historically different characterization of events in comparison to what we just heard from the Chief.

You testified that the D.C. National Guard was outfitted with standard riot gear. I assume you were, too. Did you not?

Major DEMARCO. Negative, sir. We actually had a shortage of riot gear. So, when I was on the scene, I had a protective mask, I had a ballistic vest, but I did not have a baton, a riot shield, shin guards, or a face visor.

Dr. GOSAR. In your testimony, you claim to be the senior National Guard officer on the scene. Did you make the decision to fully outfit the D.C. National Guard in riot gear that day?

Major DEMARCO. Negative, sir. That came from the District of Columbia National Guard commander and commanding general.

Dr. GOSAR. So, somebody more senior than you must have anticipated some level of violence. And you told us six of your fellows were injured. Did you express any disagreement with your senior officer about the anticipation of violence prior to your deployment to the area?

Major DEMARCO. Negative, sir. The uniform and kit that they were outfitted with is a part of the standard operating procedures for a response to civil disturbance.

Dr. GOSAR. OK. So, you are a military officer. We had a Member from the other side of the aisle earlier ask the chief law enforcement officer for our Park Police about the following of illegal orders. If you thought the protesters were so peaceful—and again, you were the senior National Guard officer on the scene—why did you have your soldiers participate in this mission?

Major DEMARCO. Sir, we were there in a static defensive line. We did not engage in the act of clearing of H Street.

Dr. GOSAR. By the way, whose order was it for curfew at 7 o'clock?

Major DEMARCO. That was the District of Columbia mayor, Mayor Muriel Bowser, who instituted that curfew, sir.

Dr. GOSAR. Can you tell us just a little bit more about the six members that were injured? You said one was hit by a projectile, a concussion.

Major DEMARCO. That was the report I received. Yes, sir.

Dr. GOSAR. And would you consider that peaceful——

Major DEMARCO. Negative, sir.

Dr. GOSAR. Now, while you described the protesters as peaceful, Chief Monahan testified that many protesters were violent. Please answer the following questions, as we have very little time, yes or no.

Chief Monahan's written testimony describes bricks and rocks being thrown at law officers. Would you consider that peaceful or violent?

Major DEMARCO. Violent, sir.

Dr. GOSAR. Chief Monahan continued, stating caustic liquids and water bottles were also projectiles aimed at law enforcement officers. Would you consider these actions peaceful or violent?

Major DEMARCO. Violent.

Dr. GOSAR. Chief Monahan also shared that they lit flares, and fireworks were even thrown at law enforcement officers. Would you consider that peaceful or violent?

Major DEMARCO. Violent, sir.

Dr. GOSAR. Finally, 2x4 sections of wood were thrown at law enforcement officers. Does this seem peaceful or violent to you?

Major DEMARCO. Violent, sir.

Dr. GOSAR. So, let me ask you another question. The conversation was talking about helicopters. And you said that you were privy to exactly what was happening. Could it have been used to take photographs?

Major DEMARCO. Yes, sir.

Dr. GOSAR. Wouldn't that be a smart, intelligent application, to find out how things are moving from the skies? Because you are kind of blinded on the ground, are you not?

Major DEMARCO. Use of aviation asset for aerial observations would give you a different lens to look at the mission, as it unfolded——

Dr. GOSAR. Yes, and it would make it more effective, would it not?

Major DEMARCO. It would add a different lens to view the mission, sir.

Dr. GOSAR. But it would make it more effective.

Major DEMARCO. There is nothing more effective than the on-the-ground truth from the Incident Commander or commanders, sir.

Dr. GOSAR. Oh, no, no, no. You want to make sure that you are seeing all the things happening as they are working. And you can't see that from your perspective on the ground. You don't have a 365 viewpoint. You don't know what is being anticipated, what front is moving, what front is retreating. You don't know any of that. That is why air power or air traffic is very good.

I mean, we use it in everyday life in cities for traffic control, do we not?

Major DEMARCO. Sir, I would respectfully disagree from my time overseas in combat zones. There is nothing more important than the sensors on the ground, which are our young men and women in uniform.

Dr. GOSAR. Well, I totally disagree with you. Because, I mean, if we use it for city traffic, why wouldn't we look at pedestrian traffic, as well?

And the comments to Mr. Gohmert about the church—you weren't there, so you didn't know what was going on with the church. So, from my standpoint, coordinated effect, nothing erroneous about that application.

And once again, I find it disenfranchising to say this is a peaceful demonstration. Peaceful demonstrations have an obligation, when they see violence, to turn them in. Otherwise, you are as guilty by association.

I yield back.

The CHAIRMAN. The gentleman yields. I would like to place into the record information relative to Major DeMarco having to do with West Point, family issues, anticipating questions about his own character and background, and not only questions, but attacks in those regards. If there is no objection, so ordered.

And one of the pictures has him taking a picture with him and George Bush when he was a senior at West Point, George W. Bush, a known subversive to some people. But nevertheless, I thought that was important.

Let me recognize Mr. Gallego. Five minutes, sir.

Mr. GALLEGO. Thank you, Mr. Chair.

Major DeMarco, how long were you at Lafayette Square? When did you get there?

Major DEMARCO. Yes, sir. I arrived at approximately 5:30 p.m. that evening.

Mr. GALLEGO. Which evening, May 29?

Major DEMARCO. June 1.

Mr. GALLEGO. June 1?

Major DEMARCO. Yes, sir.

Mr. GALLEGO. OK. What time, again?

Major DEMARCO. About 5:30 p.m. that evening.

Mr. GALLEGO. Had you been on site before this?

Major DEMARCO. Yes, sir.

Mr. GALLEGO. OK. And would you describe the civilians, the protesters—how would you describe them on June 1, when you arrived?

Major DEMARCO. On June 1, it was drastically different than the night before. On June 1, I would describe them as peacefully assembled.

Mr. GALLEGO. And we can agree that May 29 there were violent protesters.

Major DEMARCO. Sir, I was only there on May 31.

Mr. GALLEGO. Oh, OK. What did you observe on May 31?

Major DEMARCO. On May 31, I observed a riot.

Mr. GALLEGO. OK.

Major DEMARCO. Based off of Army training publication 3–39.33, it was classified as a riot.

Mr. GALLEGO. I would say it was a riot, also. But June 1, from your estimation, that was not the case. There was peaceful protesting happening.

Major DEMARCO. Based off of that same Army training publication, correct.

Mr. GALLEGO. Great. You have extensive training in riot control and de-escalation training?

Major DEMARCO. No formalized training, except for what I am able to ascertain from our Army training publications and field manuals. I have never attended the military police course, or any other additional courses.

Mr. GALLEGO. Someone within your unit had, though, I am assuming.

Major DEMARCO. Yes, sir.

Mr. GALLEGO. OK, give me 1 second here.

So, at 5:30 p.m. you arrive on the scene. Did you get an assessment report from somebody? Obviously, you were taking over duty for that time period.

Major DEMARCO. Negative, sir. We were actually just arriving. The D.C. National Guard was just arriving.

Mr. GALLEGO. Just arriving, OK.

Major DEMARCO. Yes, sir.

Mr. GALLEGO. Who did you meet with there to give you an assessment of what was happening on the ground?

Major DEMARCO. When I first got there, I linked up with my Park Police liaison, who I had met the previous night.

Mr. GALLEGO. Yes.

Major DEMARCO. And then was introduced to another Park Police officer, who then gave me the task and purpose.

Mr. GALLEGO. The Park Police officers, how did they describe the day to you?

In their connecting with you, did they describe how the day was, what was the scenario, what was the climate?

Major DEMARCO. In the situation brief that I received, it was much different than the day before.

Mr. GALLEGO. OK, so what was that, specifically?

Major DEMARCO. I can't remember, sir.

Mr. GALLEGO. OK. Can you describe it? Did they at any point seem to indicate that the crowd was calmer and more peaceful?

Major DEMARCO. That was the general atmosphere, yes, sir.

Mr. GALLEGO. At what point were you told that you were going to stand in line and form, essentially, a wall, while the Park Police pushed on the protesters?

Major DEMARCO. That was about 5:40, 5:45 p.m.

Mr. GALLEGO. So, probably like 10 minutes after you arrived?

Major DEMARCO. Yes, sir.

Mr. GALLEGO. And the reasoning for that was?

Major DEMARCO. The stated objective was to, essentially, clear the area to facilitate this wall or fence to come into the AO.

Mr. GALLEGO. But there was never anything that indicated that this had to happen at X amount of time, or that there was a sense of urgency that they would have to rush these protesters for that.

Major DEMARCO. So, there was, sir.

Mr. GALLEGO. OK.

Major DEMARCO. When I asked——

Mr. GALLEGO. Describe that.

Major DEMARCO. When I received the mission briefing, I specifically asked for a timeline of events.

Mr. GALLEGO. Yes.

Major DEMARCO. And I said, "When is this going to commence?"

What I heard back was, "As soon as possible," and then I also heard that they were expecting us to be there much earlier in the evening.

Mr. GALLEGO. OK, got it. So, when the protesters actually started getting pushed back, your standing orders were to what?

Major DEMARCO. The D.C. National Guard's standing orders were to maintain a static perimeter along H Street. And then, once the sector was cleared, they would then reinforce and relieve the Park Police on the border.

Mr. GALLEGO. So, essentially, what you are saying, for my civilian colleagues, that you were basically owning territory as you moved.

Major DEMARCO. Yes.

Mr. GALLEGO. So, as the protest pushed out, you guys were put in lines, a phalanx, not a fence, but a wall, essentially, and occupying territory so that way no protesters can sneak through.

Major DEMARCO. Yes, sir.

Mr. GALLEGO. Have you or has anyone in your unit—when you saw how they were clearing the protesters, from your experience, did you find it odd that that was the manner in which they cleared protesters?

Because, from my experience, and the training I had, I never would have imagined that the way to clear—especially peaceful protesters—is by swinging your batons and throwing tear gas or chemicals into a crowd. Because that only induces chaos, which creates more resistance.

Did you feel that, or did anyone in your unit think that, this was a very odd way to clear people?

Major DEMARCO. Based off of the application of Army training publications, I saw that as an ineffective way to de-escalate the situation.

Mr. GALLEGO. Right. Did you see any attempts of de-escalation prior to them moving on the crowd and, not taking into consideration, obviously, the radio comms situation, which we heard was problematic?

Major DEMARCO. The only other attempt that would fit the parameters of the Army training publications would be the proclamation that was given.

Mr. GALLEGO. Great. Thank you.

I yield back.

The CHAIRMAN. Mr. Cox, sir, you are recognized.

Mr. COX. Thank you, Chairman.

Major DeMarco, in his answers to our questions, Acting Chief Monahan characterized the crowd at Lafayette Square on June 1 prior to 6:35 p.m. as violent. In fact, he said in his written testimony, "An on-the-ground assessment of the violence and danger presented by the crowd led to the clearing of the park and the installation of the fence."

I would like to play some video from Lafayette Square on the evening of June 1 and ask you a few questions about it. Unlike the videos my Republican colleagues played at the last meeting, this video is actually from Lafayette Square on June 1, not from some other cities or other days or other countries. Let's play the video.

[Videos shown.]

Mr. COX. Thanks so much. Those videos show the protest crowd before the Park Police and the other officers attacked.

Major DeMarco, did that video show a riot or other violent activity?

Major DEMARCO. No, sir.

Mr. COX. I would certainly agree with that. Did anything you see in either of those videos justify the way law enforcement cleared the protesters from the area?

Major DEMARCO. Not from those videos. No, sir.

Mr. COX. I would agree with you on that, again.

And from what you saw, do these videos represent the overall demeanor of the crowd attending the protests that day?

Major DEMARCO. I can't generally characterize the crowd, but from what I observed, that is correct.

Mr. COX. Thank you so much. The fact that Mr. Monahan can't even acknowledge that the protest day was peaceful tells us something very troubling about the Administration's conduct that day. And it should make us all wonder whether our government even understands the difference between an unruly, violent mob, and people peacefully exercising their First Amendment rights.

And even worse is the fact that we are seeing this Administration continue and expand this authoritarian approach with these crackdowns in Portland and other major cities. To me, this is an attack on our democracy. This is an attack on our Constitution.

Now, I remember when the other side used to call themselves constitutionalists. We pledge fealty to the Constitution. We are a constitutional conservative. Where has that gone?

In your testimony here today, I can imagine that this is putting you in grave, great, maybe professional personal jeopardy. Would that statement be true?

Major DEMARCO. Recent events certainly have me concerned, sir.

Mr. COX. And just getting back to the oath that we both swore to protect and defend the Constitution of the United States, is that not the bedrock guiding principle that defends our way of life?

Major DEMARCO. I would agree with you 100 percent, sir.

Mr. COX. And is that why you are here today?

Major DEMARCO. Absolutely, sir.

Mr. COX. Well, I think it is a great tribute to our late, great colleague, Representative John Lewis, that when you see something that is not right, not just, not fair, you have a moral obligation to say something, to do something. With your presence here today you are saying something and doing something. And on behalf of, certainly, a grateful Congressman here, I want to thank you for your service, and to your family express my sentiments. I think you are a hero.

With that, I will yield the balance of my time.

The CHAIRMAN. Thank you very much. Let me recognize Miss González-Colón for her 5 minutes.

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman. I want to yield my time to Mr. Gohmert.

Mr. GOHMERT. And I appreciate my colleague so much, personally and professionally. Thank you.

Major, there is a significant difference between Members of Congress taking the oath office and those of us who have taken a commissioned officer oath of office, because, obviously, we are in the military. We have superior officers, whereas in Congress my superiors are the 800,000 or so that I serve. And I can't be court martialed for disrespecting the people that I serve, not that I would do that.

But I am curious. You mentioned in your written statement—you said, "I was tasked to serve as a liaison between the DC National Guard's "Task Force Civil Disturbance" and the Park Police at Lafayette Square." Who else was a liaison? You say you were one of them. You were a liaison. Who else was a liaison in that capacity?

Major DEMARCO. Yes, sir. We had several officers that were liaisons to different agencies across the National Capital Region. I was just the Park Police liaison for that specific operation.

Mr. GOHMERT. And who tasked you? Who ordered you to take that position?

Major DEMARCO. That was the commander of the Task Force Civil Disturbance.

Mr. GOHMERT. Who?

Major DEMARCO. It was the commander, sir. I would rather not reference his name.

Mr. GOHMERT. Oh, so we can't verify that you were tasked with that position, we are just forced to take your word for it.

When you say commander, commander of what?

Major DEMARCO. The commander of the task force, sir.

Mr. GOHMERT. So, that is the D.C. National Guard's Task Force Civil Disobedience.

Major DEMARCO. Disturbance.

Mr. GOHMERT. Disturbance, OK.

In your testimony, you stated the materials to erect the security barrier did not arrive—and I am quoting—"did not arrive on the scene until around 9 p.m." Chief Monahan testified to a much different timeline, with materials arriving earlier in the afternoon.

Are you feeling strongly enough about them arriving at 9 p.m. that you would believe Chief Monahan was lying?

Major DEMARCO. Sir, I can only speak to my account. And as a fact witness, the times that I have presented are accurate.

Mr. GOHMERT. So, it is not possible, according to you, that the materials to build the security barrier did not arrive earlier that afternoon?

Major DEMARCO. Sir, I can't talk about hypotheticals. I could only give you——

Mr. GOHMERT. It is not a hypothetical. I am asking you specifically, is it possible, based on your knowledge and what you saw and observed, that those materials could have arrived much earlier?

Major DEMARCO. It is certainly a possibility. However, based off of my statement and timeline of events as a fact witness, the materials did not arrive on H Street until 9 p.m. that evening.

Mr. GOHMERT. Well, you keep saying you are a fact witness, but you are also apparently being put up as a legal expert, because you have indicated a number of times these people were there to observe their First Amendment rights. And I understand, with your MBA, that apparently qualifies you to make constitutional judgments like that.

But isn't it possible that those materials did arrive earlier, and were at another location at the staging area?

Major DEMARCO. It is certainly possible, sir.

Mr. GOHMERT. All right. I have nothing further. I yield back.

The CHAIRMAN. The gentleman yields.

Mr. García, you recognized.

Mr. GARCÍA. Thank you, Mr. Chairman.

Major DeMarco, thank you for being here today, and for providing your honest testimony. Your testimony has been extremely enlightening, and I think that it makes it even more clear that what this Administration did that day was not only inappropriate, but also reckless, and most likely unconstitutional.

One of the things that you said in your testimony was the Chairman of the Joint Chiefs of Staff, General Milley, approached you before the incident. After you briefed him, General Milley told you to ensure that the National Guardsmen remained calm, and that you all must respect the demonstrators' First Amendment rights.

Before the law enforcement surge, did you see protest activity that crossed the line from First Amendment-protected activity to violence, rioting, and other behavior that we don't generally consider protected under the Constitution?

Major DEMARCO. Sir, based off of Army training publication 3–39.33, specifically chapter 2–14, crowd management tactics, the situation there would be construed as lawfully assembled.

Mr. GARCÍA. Thank you. Aside from the general's comments to you about the First Amendment, did the general give you any indication or show any concern that the protesters' rights may be violated?

Major DEMARCO. Negative, sir.

Mr. GARCÍA. OK. What was your reaction to seeing what the Federal Government did to those protesters as they exercised their First Amendment rights?

Major DEMARCO. I was certainly surprised at the timeline of events, and certainly the escalation of events.

Mr. GARCÍA. Very well. Black and Brown communities are already being ravaged by the deadly virus and an unprecedented economic crisis. Now they are being terrorized by a threat of a militarized secret and Federal police force in Washington, DC—we have discussed it at length today—in Portland, possibly in Chicago. Trump's violent suppression of demonstrators in Lafayette Square was not only reckless, it is a direct threat to our democracy, and it is staring at us in the eye.

The actions leading up to Trump's photo op have drawn outrage from around the world. The kind of actions we would normally condemn in other countries are now happening here at home. Demonstrations like the ones we have witnessed in the wake of the killings of George Floyd, Breonna Taylor, and many others should never be met with deadly force by law enforcement.

I yield.

The CHAIRMAN. Mr. Levin, sir, you are recognized.

Mr. LEVIN. Thank you, Mr. Chairman.

Major DeMarco, you mentioned in your statement that you have served in combat zones, and understand how to assess threat environments. With regard to Lafayette Square, you said that at no time did you feel threatened by the protesters, or assess them to be violent. Is that correct?

Major DEMARCO. Yes, sir.

Mr. LEVIN. You also mentioned in your statement that it was your observation that the use of force against protesters in the clearing operation was an unnecessary escalation. Is that correct?

Major DEMARCO. Yes, sir.

Mr. LEVIN. And you also have had extensive training in dealing with protests and protestors known technically as "civil disturbances," as have all the D.C. National Guard that were there on June 1. Is that correct?

Major DEMARCO. Yes, sir.

Mr. LEVIN. Could you please explain the fundamental strategy of graduated responses specific to civil disturbance, and why that is important?

Major DEMARCO. Yes, sir. A graduated response process, as annotated in Army Training Publication 3–39.33, entitled "Civil Disturbances," is a measured approach to a response—or in response to a crowd gathering. By recognizing a use-of-force policy, soldiers must be taught and to understand that they use the minimum force necessary.

Mr. LEVIN. Thank you. Please continue.

Major DEMARCO. It continues, sir. Without the appearance of a graduated response, the gathering crowd may consider actions as excessive, causing a possible escalation of hostilities or violence.

Mr. LEVIN. So, what we are hearing is that the widespread violation of rights at Lafayette Square was acceptable, because there was violence happening before June 1 and in other places. In your training, should the events of prior days be used as a pretext to immediately escalate force?

Major DEMARCO. Absolutely not, sir.

Mr. LEVIN. Now, let's say hypothetically that there was truly widespread violence. In fact, let's say this was an actual war zone, where violence was persistent and ubiquitous. But on one particular day the protests were peaceful.

Major DeMarco, you have done tours of duty in different places across the globe, including Iraq. If the events on June 1 in Lafayette Square were happening in Iraq when you were serving, would you have been able to handle protests the way the Park Police and their partners handled them on June 1?

Major DEMARCO. Negative, sir. Based off of the Chemical Weapons Convention of 1993, ratified by the Senate in 1997, and FM 6–7, that is incorrect. We would not be able to handle or use riot control agents in dispersing the crowds.

Mr. LEVIN. And Major, could you describe in the broadest terms what the Geneva Convention is, who it is meant for, and what happens to someone that violates it?

Major DEMARCO. Sir, I am not a legal expert. I can't talk about what happens in violation of the Geneva Convention. But I can say that it specifically prohibits riot control agents from being used in a war zone.

Mr. LEVIN. Major DeMarco, earlier this morning we heard from Acting Chief Monahan, who said the officers used—and I quote—"tremendous restraint." Based on your training and your experience, what do you think of that statement from Acting Chief Monahan?

Major DEMARCO. Sir, my opinion, tremendous restraint does not involve the use of defensive equipment as weapons.

Mr. LEVIN. So, it wouldn't be tremendous restraint.

Major DEMARCO. Yes, sir.

Mr. LEVIN. Thank you. I will yield back.

The CHAIRMAN. The gentleman yields back. Mr. Soto, you are recognized, sir.

[No response.]

The CHAIRMAN. Ms. DeGette, you are recognized for 5 minutes.

[No response.]

The CHAIRMAN. Mr. Beyer?

Mr. BEYER. Yes, sir. I am here and thrilled to be included.

The CHAIRMAN. You are recognized for 5 minutes, sir.

Mr. BEYER. Thank you, Mr. Chairman.

Major DeMarco, the Administration has given the operation to install fencing as one excuse why the protesters were violently cleared from Lafayette Square on June 1, but we know that the clearing commenced around 6:30 p.m. And you have also said in your testimony that the crowd did not appear to hear the warnings, and it was cleared well before the curfew at 7 p.m. You also said in a written statement that the crowd was peaceful.

You testified that the fencing arrived around 9 p.m. How did you know that?

Major DEMARCO. Sir, I had made visual observations of the fencing as it arrived on H Street.

Mr. BEYER. And you were pushed back on that by some of my Republican friends earlier. You were at 16th and H Street, right? And the fence was supposed to go up along H?

Major DEMARCO. That is correct, sir.

Mr. BEYER. And the fence was going to go from Connecticut Avenue along H, all the way to Vermont along H?

Major DEMARCO. Yes, sir.

Mr. BEYER. And that is about two blocks. And isn't 16th Street right in the middle of those two blocks?

Major DEMARCO. Yes, sir.

Mr. BEYER. Wouldn't it have been almost impossible not to see big trucks pulling up with fences at either end of those blocks?

Major DEMARCO. Yes, sir.

Mr. BEYER. Well, I think your testimony on the 9 p.m. is very, very credible.

Major, based on your training in civil disturbances, when is the best time to set up a new perimeter or install a fence?

Major DEMARCO. Sir, to set up a new perimeter or a new defensive or security posture would certainly be in the early morning hours, before the general public would be awake.

Mr. BEYER. Why would it be unwise to set up a new perimeter, a new fence, in the middle of the day, when the number of protesters is at its peak?

Does it present any danger to law enforcement personnel, or to the protesters?

Major DEMARCO. Yes, sir. I can't speak for law enforcement personnel. I can tell you, as a commander, or if I were the officer in charge, I certainly would not look for the high time of foot traffic to set those up.

Mr. BEYER. Were you ever told, Major, why the fence operation was going to go forward during the peak time of the late afternoon or evening, while the protest was at its peak, rather than at night, or rather than the next morning?

Major DEMARCO. No, sir.

Mr. BEYER. So, I mean, it would certainly make sense that it should have been set up some time later, when the crowd was smaller, or after the curfew.

Major DEMARCO. Yes, sir.

Mr. BEYER. Major, you mentioned in your written testimony that Attorney General Barr was on the scene, talking with the Park Police shortly before the clearing happened. Is that correct?

Major DEMARCO. That is correct, sir.

Mr. BEYER. Do you think he had something to do with the order to clear protesters, or do you believe that this was simply a remarkable coincidence?

Major DEMARCO. Sir, I can't offer my opinion. I can just give you the facts as I saw them.

Mr. BEYER. Thank you. I appreciate that.

So, we have heard a few things: installing fencing in the middle of a protest is not a sound practice; the fencing didn't even arrive until hours after the protesters were cleared; the crowd was peaceful, not adequately warned, dispersed suddenly, shortly after Attorney General Barr left Lafayette Square; and President Trump just happened to have a photo op shortly after the clearing.

Major DeMarco, the crowd wasn't violent, the fencing didn't arrive until much later. What is the most logical reason you can think of for why the violent clearing of protesters happened, given your knowledge and expertise?

Major DEMARCO. Sir, I can't hypothesize or speculate onto the events and why they transpired along the timeline that they did.

Mr. BEYER. OK, I appreciate your sticking to the facts. Major, my No. 1 constituent complaint is helicopter noise, because I represent the district that includes the Pentagon and much else.

I am trying to think, in the 70 years I have lived in and around Washington, inaugurations, the Women's March, lots and lots and lots of marches and demonstrations, any other time unmarked, low-flying helicopters were used.

Can you remember any other time, with the many different demonstrations that we have had?

Major DEMARCO. No, sir.

Mr. BEYER. Nor can I, which I think was why it was so upsetting for so many people to have these things that once again suggested that we are in Afghanistan, rather than in downtown Washington, DC.

Major, thank you very much for coming forward.

And Mr. Chairman, I yield back.

The CHAIRMAN. Major DeMarco, let me thank you, and I appreciate the information, your testimony, and the fortitude to come forward. Given the reputation and the actions of this Administration, retaliation and retribution is not beyond them. And we have many cases to point in that direction. So, I appreciate it, and all of us do.

Let me ask you some quick questions. And there was one—yes, Major, does running for Congress disqualify you for being a truthful person?

Major DEMARCO. No, sir.

The CHAIRMAN. And I am glad you answered it that way. Otherwise, many of us would be in a considerable amount of trouble right now.

Attorney General Barr has said that the June 1 incident was a result of ordinary planning to extend the perimeter line—we have already talked about that—around Lafayette Square, having absolutely nothing to do with giving the President his photo opportunity at the church.

Based on what you witnessed, what you know about that day, your testimony, is this satisfactory? Is that explanation satisfactory?

Major DEMARCO. Sir, respectfully, I am not here to hypothesize. I am just a fact-based witness. I can't talk about the causation or correlation of events——

The CHAIRMAN. One other thing I was going to ask you, Major, is you testified that no National Guardsman had lethal or non-lethal munitions that evening at Lafayette Square. Are you aware of any munitions being readied for use by the National Guard?

Major DEMARCO. On the evening of June 1, the only munitions that I am aware of is the transfer of weapons from Fort Belvoir up to the D.C. Armory. And that was my unit.

The CHAIRMAN. OK, and what kind of——

Major DEMARCO. They were M4 carbines, sir.

The CHAIRMAN. And that is an assault rifle?

Major DEMARCO. It is an assault rifle variation.

The CHAIRMAN. And do you know what the reposition was in preparation for?

Major DEMARCO. I don't know what it was in preparation for, I just know that my soldiers executed that movement.

The CHAIRMAN. OK, thank you. The issue that we are confronting across this country right now is the question of the protests across this country. And I think Lafayette was a precursor and a pretext to a lot of the discussion that is going on.

And this hearing is not just simply about what happened in Lafayette Square, but also the pretext and the precedent there.

You might not want to speculate or state the opinion on that, Mr. DeMarco, but I firmly believe that what happened in Lafayette Square was a consequence to creating a photo opportunity, and a campaign theme for President Trump, and that Attorney General Barr was making the calls all the way along the line. And we will continue to seek information and pursue that.

But I also think that what is going on in the Nation right now, that there are peaceful, lawful First Amendment demonstrations going on. And the vast majority of people involved in them are people that respect that, non-violent and peaceful, just like John Lewis and that legacy.

The opportunists who attempt to hijack that, either for a political agenda that does not fit into the Black Lives Matter movement or to a social justice movement, they are political opportunists. And

the criminal opportunists, they see it as a chance to do other kinds of harms to property. They are going to take advantage of it.

But to use a broad brush, as this Administration used Lafayette Square, that everybody that was in that place and that Square were criminals, anarchists, and bent on destruction of Federal assets and attacking Federal police—in this instance, the Park Service—I believe that is absolutely false. And those false generalizations that are coming by this Administration and this law and order that they are on, are just that, generalizations and, in some cases, outright lies.

And I think we should be very concerned about the creeping authoritarianism that is going on that is making the question that we are asking here today more and more relevant, and more and more urgent.

With that, the meeting is adjourned. I yield back, and thank you very much, Mr. DeMarco.

[Whereupon, at 1:31 p.m., the Committee was adjourned.]

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

Submission for the Record by Rep. Huffman

— 2015 U.S. Park Police Settlement Agreement dated May 10, 2015.

Submission for the Record by Rep. Levin

— *The New York Times* article titled, "Park Police Head Had Been Accused of Illegal Searches and Unreliable Testimony," dated June 18, 2020.

Submission for the Record by Rep. DeGette

— USPP Use of Force General Order (No. 3615).

Submission for the Record by Rep. Bishop

— Letter from Reporters of the Free Press dated June 29, 2020.

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