

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Report on Possible Department of Justice Misconduct in
the June 1st Attack on Peaceful Protesters at Lafayette Square

Possible Violation of the Law

Did officials at the United States Department of Justice violate the law by initiating a sudden, violent attack on peaceful protesters in a public space? Was the purpose of this attack to facilitate a political photo opportunity?

Introduction

On June 1, 2020, President Donald Trump intended to walk 150 feet from the White House to St. John's Church in order to pose with a bible. However, peaceful protesters¹ affiliated with the Black Lives Matter movement² occupied the public space in Lafayette Square, between Trump and the Church. To accommodate Trump's wishes, Attorney General Bill Barr ordered federal law enforcement officers to clear the square.³ No one warned the crowd of the planned, imminent violence.⁴ Federal officers assaulted protesters, reporters, and St. Johns clergy with a combination of batons, riot shields, tear gas, pepper spray, rubber bullets and less-lethal grenades.⁵ The subsequent photo opportunity was ridiculed, and the attack by federal officers on protesters resulted in bipartisan condemnation.⁶ This report identifies possible legal consequences for actions ordered by the Department of Justice in Lafayette Square.

Facts

The George Floyd protests in Washington D.C. reached the White House on May 29, 2020.⁷ The demonstrations were largely peaceful, but some events involved acts of vandalism, arson, and violent confrontations with law enforcement.⁸ As a result, the Secret Service placed the White House on lockdown several times, and moved President Trump to his secure bunker at least once.⁹ In response, Trump emphasized the need for aggressive government response, including "vicious dogs" and "ominous weapons"¹⁰, while warning that "when the looting starts, the shooting starts."¹¹ By June 1st, violence was subsiding in the capital as peaceful protesters marched and occupied portions of the city.¹²

The President weighed a militarized response to the nationwide protests affiliated with the Black Lives Matter movement. He had publicly considered invoking the Insurrection Act (essentially a declaration of martial law to permit domestic military actions),¹³ and a war-like posture dominated White House planning. On the morning of the Lafayette Square Attack, Defense Secretary Mark Esper asked state Governors to "dominate the battlespace" of American cities.¹⁴ In this atmosphere Trump and his advisors planned to project strength by walking from the White House across the street to St. John's Church, which was damaged by arson and boarded up the previous day.¹⁵ Following the fire, the Church's leaders publicly reaffirmed support for ongoing peaceful protests¹⁶ and were not consulted in planning for the President's photo-op.¹⁷

Attorney General Bill Barr took personal responsibility for the security of federal buildings in Washington, D.C..¹⁸ On June 1st Barr responded to vandalism around the White House by assembling an array of federal agencies to engage in crowd control. Barr intended to create a larger secured perimeter around the White House and ordered his assembled forces to make it happen. On the afternoon of June 1, Barr toured the area near St. John's Church behind the existing law enforcement barricade. According to the White House Press Secretary, Barr instructed that "we needed to get going with that perimeter."¹⁹ Barr denies responsibility for the events at Lafayette Square, stating that he did not give the "tactical commands" to carry out the attack.²⁰

The protest in Lafayette Square on June 1st was peaceful, as demonstrated by long-form video evidence and firsthand accounts. Reverend Gini Gerabasi of St. John's Church was present for the entire day and stated that "There were a few tense moments . . . but it was peaceful." Reporters from NBC and CNN confirm her account.²¹ The US Park Police issued a statement alleging that protesters began throwing bricks and other dangerous objects around 6:33 PM, prompting a crackdown.²² However, video footage disproves this official account. Instead, isolated members of the crowd had thrown items like eggs, candy, and water bottles over the course of the day.²³ A timeline of events on the evening of June 1st reveals that the attack on protesters was planned, brutal, and unjustified.

At 6:03 PM, the President summoned the White House Press Corps to the Rose Garden for a speech. At 6:08 PM, videos show Attorney General Barr conferring with federal officers in Lafayette Park.²⁴ At 6:16, members of the federal forces under Barr's control donned gas masks.²⁵ At 6:22 PM, Barr left the park.²⁶ Simultaneously, the Park Police claimed it began to issue warnings for protesters to disperse.²⁷ However, no warnings are audible in videos taken before and during the attack. A whistle-blower later testified that protesters could not hear any warnings because the US Park Police used a single megaphone from over 50 yards away to demand that protesters disperse (the effective range of this megaphone was less than 30 yards).²⁸

At 6:28 PM, police charged into the crowd of protesters in Lafayette Square. Over the course of the next half hour, members of agencies including the US Park Police, Secret Service, Bureau of Prisons (BOP), Drug Enforcement Administration (DEA), and Bureau of Alcohol Tobacco and Firearms (ATF) engaged in aggressive crowd control tactics far beyond their typical responsibilities.²⁹ They attacked protesters with chemical grenades, "sting ball" grenades, and tear gas.³⁰ Officers fired pepper-balls and rubber bullets into crowds of fleeing protesters.³¹ Members of the Park Police were videotaped using batons and riot shields to beat journalists.³²

At 6:43 PM, President Trump began a speech in the Rose Garden at the White House. He briefly expressed sympathy for George Floyd and called himself an "ally of peaceful protesters."³³ He concluded his speech by stating "I am going to pay my respects to a very, very special place."³⁴ Trump then walked from the Rose Garden to St. Johns church. Seventeen senior members of the Trump Administration, including Attorney General Bill Barr and Defense Secretary Mark Esper, accompanied him on this walk.³⁵ Arriving at the Church, Trump held a Bible, and posed for photographs.³⁶ A campaign-style video was posted to the White House

Twitter feed the next day, showing portions of the 5-minute, 150-foot walk, accompanied by dramatic music.³⁷

Major Adam DeMarco, a National Guardsman, was present at Lafayette Square on June 1st and recently testified before the House of Representatives. DeMarco found the attack “deeply disturbing” in part because “at no time did I feel threatened by the protests or assess them to be violent” and that based on his military training “the use of force in the clearing operation was an unnecessar[y] escalation of the use of force.”³⁸ He added that earlier in the day, Federal Agents had requested a military-developed “Active Denial System” (commonly known as a *Heat Ray*) to use on protesters in Washington D.C.³⁹ DeMarco also outlined efforts by the federal government to stockpile lethal ammunition in D.C. during the George Floyd protests.⁴⁰ The Trump Administration assembled its ominous weapons, and Lafayette Square demonstrated a willingness to use them.

Possible Misconduct

The violence used to quickly clear Lafayette Square allowed for a political photo opportunity. In the wake of the attack, Federal Agencies attempted to obscure their aggressive actions, including by lying about actions by protesters and denying the use of tear gas. Given the currently available public information, it is likely that members of the Department of Justice broke the law by (A) infringing constitutional rights of peaceful protesters through the use of excessive force, (B) conspiring to obstruct investigations into the attack, and (C) violating the Hatch Act’s prohibition on political action by civil servants.

A. Police Brutality and Civil Rights Claims – 42 U.S.C. 1983

The American Civil Liberties Union filed suit on behalf of protesters in Lafayette Square, including the activist group Black Lives Matter D.C.⁴¹ The lawsuit seeks damages for violation of constitutional rights and resulting personal injuries. Based on the facts summarized above, the ACLU claims that the attack involved “reckless or callous indifference to federally protected rights” of the protesters. A lawsuit filed under 42 U.S.C. 1983 allowed the ACLU to bring a wide range of claims on behalf of protesters, including:

- Violation of 1st Amendment rights to speech, assembly and petition
- Violation of 4th Amendment rights to freedom from unreasonable seizure
- Conspiracy to deprive protesters of constitutional rights

In response to these allegations, the Chief of the DC Parks Police stated that the use of force was “in line with our policies and procedures.”⁴² The statement does not discuss the details of the attack, and does not cite any prior uses of similar tactics.

B. Conspiracy to Obstruct Justice – 18 U.S.C. 1503

Federal Agencies involved in the Lafayette attack made several demonstrably false claims in its aftermath, including:

- Denying the use of chemical agents on protesters⁴³
- Claiming protesters had suddenly turned violent around 6:33 PM⁴⁴
- Stating that the US Park Police issued effective warnings and commands to disperse prior to the attack⁴⁵

In fact, each of these claims proved to be false, and were later walked back. However, conspiracy to obstruct justice does not require that the obstruction be effective. Rather, if members of the Trump Administration issued official statements to thwart imminent investigations, those officials remain liable for conspiracy to obstruct justice.

C. Hatch Act Violation – 5 U.S.C. 7324

Enforcement of the Hatch Act, which prevents civil servants from engaging in political activity, is notoriously weak.⁴⁶ Still, some senior officials realized that they had crossed the line in the aftermath of Trump’s walk across Lafayette Square. Secretary of Defense Mark Esper claimed he did not know he was walking into a photo shoot.⁴⁷ Chairman of the Joint Chiefs of Staff Mark Milley publicly apologized for his involvement in the photo-op, stating that “my presence . . . created a perception of the military involved in domestic politics.”⁴⁸ These disavowals reflect poorly on the involvement of senior administration officials who were complicit in this explicitly political event. Note however that the Hatch Act prohibits only certain types of partisan political activity (not easy to prove in this context) and does not apply to the President or the Vice President.

Conclusion

The First Amendment protects the right to peaceful assembly, and to “petition the Government for a redress of grievances.” The people assembled in Lafayette Square Park on June 1st were exercising the core of their First Amendment rights. The US Government responded violently, and without warning, to a peaceful protest in the nation’s capital. Tolerating this abuse in the capital of the United States would set a dangerous precedent across the nation. The Trump Administration must be held accountable for the attack on Lafayette Square.

¹ Tom Gjelten, *Peaceful Protesters Tear-Gassed to Clear Way for Trump Church Photo Op*, NPR, June 1, 2020 (available at: <https://www.npr.org/2020/06/01/867532070/trumps-unannounced-church-visit-angers-church-officials>).

² Rachel Kurzius, *Black Lives Matter D.C. Sues Trump and Barr Over Tear Gas At Lafayette Square*, NPR, June 5, 2020 (available at: <https://www.npr.org/local/305/2020/06/05/870752740/black-lives-matter-d-c-sues-trump-and-barr-over-tear-gas-at-lafayette-square>).

³ Morgan Phillips et al., *Barr ordered officials to clear area around Lafayette Square before Trump’s protest remarks, officials say*, FOX NEWS, June 2, 2020 (available at: <https://www.foxnews.com/politics/barr-lafayette-square-trump-protest-remarks>) ; Phillip Bump, *Attorney General Barr’s Dishonest Defense of the Clearing of Lafayette Square*, WASHINGTON POST, June 8, 2020 (available at: <https://www.washingtonpost.com/politics/2020/06/08/attorney-general-barrs-dishonest-defense-clearing-lafayette-square/>).

⁴ Dina Temple-Raston, *Protesters Were Supposed to Hear Warnings Before Federal Police Moved In. They Didn’t*, NPR, September 11, 2020 (available at: <https://www.npr.org/2020/09/11/911912921/protesters-were-supposed-to-hear-warnings-before-federal-police-moved-in-they-di>).

⁵ Byron Tau, *National Guard Officer Says Excessive Force Used to Clear Lafayette Square in D.C.*, WALL STREET JOURNAL, July 28, 2020 (available at: <https://www.wsj.com/articles/national-guard-officer-says-excessive-force-used-to-clear-lafayette-square-in-d-c-11595964048>).

⁶ Michael Bender and Sadie Gurman, *Forceful Removal of Protesters From Outside White House Spurs Debate*, WALL STREET JOURNAL, June 2, 2020 (available at: <https://www.wsj.com/articles/forceful-removal-of-protesters-from-outside-white-house-spurs-debate-11591125435>).

⁷ Savannah Behrmann, *White House was locked down as protests over Floyd’s death reach nation’s capital*, USA TODAY, May 29, 2020 (available at: <https://www.usatoday.com/story/news/politics/2020/05/29/white-house-under-lockdown-protests-over-floyds-death-reach-nations-capital/5288076002/>).

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- ⁸ William Cummings, *DC police chief says weekend George Floyd protests were completely without violence*, USA TODAY, June 8, 2020 (available at: <https://www.usatoday.com/story/news/politics/2020/06/08/george-floyd-protests-peaceful-washington-police-chief/5320426002/>) (“But the demonstrations have been peaceful for the past week, even as the size of the demonstrating crowd reached new heights” referring to the week beginning June 1).
- ⁹ Peter Baker and Maggie Haberman, *As Protests and Violence Spill Over, Trump Shrinks Back*, NEW YORK TIMES, May 31, 2020 (available at: <https://www.nytimes.com/2020/05/31/us/politics/trump-protests-george-floyd.html>).
- ¹⁰ *Id.*
- ¹¹ Michael Rosenwald, *‘When the looting starts, the shooting starts’: Trump quotes Miami police chief’s notorious 1967 warning*, WASHINGTON POST, May 29, 2020 (available at: <https://www.washingtonpost.com/history/2020/05/29/when-the-looting-starts-the-shooting-starts-trump-walter-headley/>).
- ¹² *Id.*
- ¹³ Christine Hauser, *What Is the Insurrection Act of 1807, the Law Behind Trump’s Threat to States?*, NEW YORK TIMES, June 2, 2020 (available at: <https://www.nytimes.com/article/insurrection-act.html>).
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- ¹⁶ *Id.*
- ¹⁷ Peter Baker et al., *How Trump’s Idea for a Photo Op Led to Havoc in a Park*, NEW YORK TIMES, June 2, 2020 (available at: <https://www.nytimes.com/2020/06/02/us/politics/trump-walk-lafayette-square.html>).
- ¹⁸ *Id.*
- ¹⁹ Michael Balsamo, *Barr says he didn’t give tactical order to clear protesters*, AP NEWS, June 5, 2020 (available at: <https://apnews.com/1a993a6e99b4ecd1062a7552efed2d96>).
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- ²¹ Ted Johnson, *Park Police Claim That Protesters Threw Projectiles At Lafayette Square Park, But Reporters Say They Saw Peaceful Demonstration*, DEADLINE, June 2, 2020 (available at: <https://deadline.com/2020/06/donald-trump-george-floyd-demonstrators-lafayette-square-park-1202949717/>).
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- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ Tom Jackman and Carol Leonnig, *National Guard officer says police suddenly moved on Lafayette Square protesters, used ‘excessive force’ before Trump visit*, WASHINGTON POST, July 27, 2020 (available at: <https://wapo.st/3ckD61j>).
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- ³² *Video shows US police attack Australian journalists*, CNN, June 2, 2020 (available at: <https://www.youtube.com/watch?v=jBPJNohU7xE>).
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