



NEW YORK  
CITY BAR

June 9, 2020

*Sent via E-Mail*

Mr. Sean O'Donnell  
Acting Inspector General  
U.S. Department of Defense - Office of Inspector General  
4800 Mark Center Drive  
Alexandria, VA 22350-1500

**Re: Request for Prompt Investigation Into the Events of June 1, 2020 at Lafayette Square Park, Washington, DC**

Dear Mr. O'Donnell:

We write on behalf of the New York City Bar Association, a voluntary association of some 25,000 lawyers from all parts of our nation that is committed to improving the administration of justice and the rule of law. Over the past six months we have called attention to a series of actions by Attorney General William P. Barr, the Department of Justice (DOJ) and the President that have undermined public confidence in the integrity of DOJ and the ability of both our federal and military courts to carry out their functions without improper political influence.<sup>1</sup> We write now to express our deep concern about the events in Lafayette Square Park on June 1, 2020, and to call upon you as the Acting Inspector General of the Department of Defense to promptly investigate those events and report your findings to Congress and the public so that appropriate remedial action can be taken and those responsible for any violations of law can be held accountable.

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<sup>1</sup> See, e.g., New York City Bar Association, *Protecting the Independence of the Federal Inspector General Offices: Call for Congressional Oversight and Hearings*, Apr. 25, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/protect-independence-of-federal-inspector-general-offices>; New York City Bar Association, *Prosecution of Roger Stone and Related Actions by the Department of Justice*, Feb. 12, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/prosecution-of-roger-stone-and-related-actions-by-the-department-of-justice>; New York City Bar Association, *Request for Formal Congressional Inquiries into Conduct of Attorney General William P. Barr*, Jan. 9, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/request-for-formal-congressional-inquiries-into-conduct-of-attorney-general-william-p-barr>; New York City Bar Association, *Attorney General Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter*, Oct. 23, 2019, <https://www.nycbar.org/media-listing/media/detail/attorney-general-barr-should-recuse-himself-from-department-of-justice-review-of-ukraine-matter>; see also Brief of the New York City Bar Association as Amicus Curiae, *In re Michael Flynn*, No. 20-5143 (D.C. Cir.) (filed June 1, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/in-re-michael-t-flynn-amicus-brief> (opposing petition for writ of mandamus).

Between 6:00 and 7:00 p.m. on Monday, June 1, 2020, security personnel of the federal government – officers of the U.S. Park Police, and possibly also members of the National Guard, the U.S. Secret Service and officers of other federal agencies – forcibly and violently cleared a path through Lafayette Square to accommodate what appeared to be a photo opportunity for President Donald J. Trump, who was accompanied by Defense Secretary Michael Esper, Attorney General William P. Barr, National Security Advisor Robert O’Brien, White House Press Secretary Kayleigh McEnany and Chairman of the Joint Chiefs of Staff General Mark A. Milley, outside St. John’s Episcopal Church. The federal officers cleared the protesters by discharging tear gas (or other riot control chemical agents), pepper agents, rubber bullets and/or flash-bang grenades. Mounted troops also used horses to push back demonstrators. Two military helicopters, one apparently a U.S. Army Blackhawk unit designed solely for combat purposes, and the other, apparently a Lakota medical evacuation unit, bearing a large red cross, made low-level passes over peaceful protesters – a military tactic sometimes used to disperse enemy combatants – scattering debris and broken glass among the crowd.

These measures were taken against a crowd of people who were to all indications peacefully and lawfully assembled in a public park traditionally available to allow individuals to petition their grievances, in this case grievances with respect to racial injustice and police brutality following the killing of a Black man, George Floyd, by police in Minneapolis, Minnesota, several days earlier. It also appears that some acts of official violence were directed at members of the press, who play a critical role in assuring that government officials operate in accordance with law.

The deployment of such extreme and violent measures against innocent civilians exercising rights guaranteed in the Constitution, and particularly the ostentatious militarization of the display of force, raises profound questions about actions that do not appear to be consistent with law. Moreover, the President, the Attorney General, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff and others involved have created serious confusion about what occurred by refusing to answer questions from Congress and by making statements which are contradictory, particularly about who was in charge, and what facts led to the decision to clear the square using force.

We believe there is a strong public interest in an inquiry being conducted by your office to establish, without delay, the facts of this event as they relate to all personnel and activities of the Department of Defense and whether the actions taken were consistent with law. Without question, such an inquiry falls squarely within your mandate to “prevent and detect fraud and abuse” within the Defense Department.<sup>2</sup>

In particular, this inquiry should resolve the following questions, among others:

1. Who directed the deployment of forces into the park to clear out the people assembled there and on what authority did that person act?
2. Were clear orders ever given to disperse and, if so, were such orders given in a manner audible to the demonstrators?

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<sup>2</sup> See “About DOD Office of Inspector General,” [www.dodig.mil](http://www.dodig.mil) (last visited June 7, 2020).

3. Who authorized what appeared to be the use of tear gas (or other riot control chemical agents), pepper spray, rubber bullets and/or flash-bang grenades, and on what authority?
4. Which forces were deployed, and who (if anyone) exercised authority over those forces?
5. On what basis was a decision made, if any, to deploy personnel other than the Park Police?
6. The Park Police have claimed that bottles were being thrown at them. Existing tape footage reveals only isolated incidents of plastic water bottles being thrown. Does the Park Police claim more than that, and, if so, on what evidence does it base that claim?
7. Were any specific or special instructions provided to personnel with respect to the treatment of journalists?
8. What was the role played by General Milley at this event? We note that President Trump, speaking earlier in the day to governors by teleconference stated “I have put General Milley in charge.” We also note that 10 U.S.C. § 152(c) states that the Chairman of the Joint Chiefs of Staff “may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.”
9. Who was the incident commander, if any, at the park? Who appointed him/her? Did the incident commander exercise authority over the clearing of the demonstrators and, if not, did someone else take command, and if so, who?
10. Who directed at least some of the security forces to remove all insignia identifying the agencies and commands in which they serve, and what was the authority and purpose of that direction?
11. Who authorized the use of two Army helicopters in combat maneuvers against people exercising their constitutional rights peacefully? Who authorized the use of a Red Cross marked helicopter in this fashion, in clear violation of the requirements imposed by the Geneva Conventions and U.S. military rules concerning the use of a helicopter marked for medical evacuation purposes?
12. To what extent were the authorities of the District of Columbia, including the mayor and police, consulted or given notice of these extraordinary federal operations on their territory?

Especially in light of the broader pattern of actions undermining public confidence in various federal agencies over the past year, we urge that the necessary Inspector General investigation and report be conducted promptly and in a manner that will allow for informed public discussion about these serious threats to, and assaults on, the most basic of our nation’s Constitutional rights.

Respectfully,

Task Force on the Rule of Law  
Stephen L. Kass, Chair

Military & Veterans Affairs Committee  
Erik L. Wilson, Chair

Communications & Media Law Committee  
Katherine M. Bolger, Chair