

Sen. Jeff Merkley
Testimony for the Record: Committee on the Judiciary
Subcommittee on the Constitution

*“The Right of the People Peaceably to Assemble:
Protecting Speech by Stopping Anarchist Violence”
August 4, 2020*

Chairman Cruz and Ranking Member Hirono, thank you for convening this hearing concerning the critical need to protect free speech in America, one of the most fundamental rights in our democratic republic. I do, however, take issue with this hearing’s title and its insinuation that the federal forces who attacked peaceful protestors were doing so to stop violent anarchists.

Here is what the scene looked like night after night following the arrival of federal forces from the CBP, ICE, U.S. Marshall Service, and Federal Protective Service.

A crowd numbering over a thousand would gather outside the Federal Courthouse. They would dance, sing, and chant. Many carried flowers. A Wall of Moms would form to protect the peaceful protestors from the federal forces behind them. Some youth would bang on the plywood over the doors of the federal building. Some would spray paint slogans. But let’s be clear, chanting, dancing, banging and spray painting are not violent acts.

Then, at about 11 pm, the federal forces would storm out of the Federal Building and attack the peaceful demonstration. The forces were armed for war, wearing camouflage and armed to the teeth with weaponry: military-grade tear-gas grenades; flash-bang grenades; rubber-bullet and pepper-ball guns; pepper spray; and batons.

Picture this: three officers attack a 53-year old Navy veteran, Chris David. Two hit him with batons while a third pepper-sprays his face while he stands with his hands at his side. They break his hand. His offense was to decide, after hearing about Trump’s officers arresting protestors without probable cause, to go down and chat with the officers about why they were doing that:

“I put on my Naval Academy sweatshirt and my Navy wrestling hat. I was hoping some of them were veterans and that them seeing me as a veteran would allow us to talk.”

Picture this: a young man named Donovan La Bella stands facing the troops holding a radio over his head. An officer standing across the street shoots him in the center of the forehead right above his eyes. Either the officer deliberately shot him in the head, or he was incompetent,

shooting him from just a few yards away. La Bella went to the hospital in critical condition with a fractured skull. Trump's forces have shot at least two more individuals in the head, including a journalist.

Picture this: thousands of ordinary Portlanders, from every corner of the city and from every walk of life, getting assaulted and gassed by forces sent by President Trump. A disturbing number of them have ended up in the hospital with serious injuries and thousands are dealing with the aftereffects of the military-grade tear gas and the trauma of being violently attacked while peacefully protesting by heavily armed men decked out for battle.

And then, after attacking the crowd, Trump's forces swept through the streets, grabbed protestors and threw them into unmarked vans with no specific charge or probable cause. The forces have no agency marking; or if they do, it's hidden. They have no unique identifier, so there is no way to hold anyone accountable for outrageous acts against peaceful protestors.

These features -- no agency marking; no unique identifier; officers sweeping through the streets and throwing protestors into unmarked vans; coordinated attacks on peaceful protestors -- are the features of secret police tactics from around the world.

We have often heard President Trump express his admiration for the world's strongmen like President Duterte of the Philippines, President Erdogan of Turkey, and President Putin of Russia.

But I never thought that President Trump would bring their secret police tactics to the streets of America.

Now you, Mr. Chairman, might be holding this hearing to strengthen the story that Trump's federal forces arrived in Portland, and poured out of the federal building to arrest anarchists. But Chris David was a Navy Veteran, not an anarchist. Donovan La Bella was not an anarchist. The community leaders organizing the Black Lives Matter protests are not anarchists. The thousands of citizens -- from every corner of the city and from every walk of life -- who came out to protest for an end to systemic racism and equal justice are not anarchists.

No, these are citizens who love their constitution. Citizens who cherish freedom of speech and freedom of assembly. Citizens who believe that a protest is a fully-protected constitutional power to identify what is wrong and to demand change. Citizens who believe that in our "We the People" republic they have a responsibility to call for justice, and call they have, day after day, week after week. These Americans inspire me, and they should inspire you.

Have there been incidents of violence and destruction by a few? Yes. And I don't condone vandalism and I condemn anyone threatening harm to anyone. But Trump's forces did not arrest

the violent few. They attacked the peaceful many. The violence came overwhelmingly not from the street, but from the President's forces.

The intent, and the result, was to escalate the tension, not de-escalate.

I've read on the floor the stories of many protestors who were first-hand witnesses to the violent tactics of Trump's forces. Here is one.

Ellen Urbani, a former Peace Corps volunteer, says, "I don't break laws. I don't believe in breaking laws. I support police efforts. I think they valuably contribute to our communities." But she joined the Wall of Moms one night in spite of having to walk around on a cast because of a broken ankle because she supports the message of ending systemic racism and unequal justice.

She says that she has seen a handful of people rattling the fence around the court house and shooting off fireworks like you would see on the Fourth of July, but summarizes that "otherwise it's been a really lovely crowd. People are hurt and they're angry, but they're kind to each other. They're helpful. And they are standing united in an entirely non-violent manner together."

"So, I'm standing there the whole time and I'm just really trying to pay attention and thinking I haven't heard anything. They haven't told us we have to clear the street. They haven't declared it a riot. There was no, there was nothing... and then we were gassed. I mean the whole crowd. It wasn't that they came out and, you know, walked up to the boy with his hands on the fence and said stop that, this is your warning, that's government property, you will be arrested. No one came. No one was outside of the building, none of the feds were out of the building. No one attempted to arrest anyone. No one gave any warnings."

So first the gas came, and then, very shortly after, the shooting started. "And you could hear the rat-a-tat-a-tat, and as I understand it they were pepper bullets. They were hitting us in the head and you could feel them sting you. And honestly, my first thought was, 'What happened to my helmet? I thought I had a helmet on.' It just hurt so badly, even through the helmet, to get shot in the head."

After a little while, the gassing and the pepper bullets paused and the gas lifted enough for Ellen to be able to look around a little bit. And what she saw was terrifying: just her and four other moms in the middle of the street. All the others had temporarily retreated to get away from the gas. The next thing these women know, the agents start firing rubber bullets – impact munitions – directly at them.

"They shot and broke my left foot," Ellen says. "And all the women on either side of me, everybody's feet got shot out from under us. But I stayed up. I mean the pain was awful. My

toes... they split the bone in my big toe. The rubber bullet hit the front of my foot. But I stayed up and I pulled up the girl on my right.”

And then “immediately after shooting us they shot tear gas at us as well. And the girl on my left, the tear gas canister was shot directly into her head. She’s hurt, but she’s ok.” Fortunately, that woman who was hit on the head was also wearing a helmet.

All of us, sworn to defend the constitution, should condemn these secret police paramilitary-style attacks on citizens. It is unacceptable anywhere. It certainly doesn’t belong on the streets of our democratic republic.

President Trump first tried out this secret police strategy here in D.C., deploying unmarked forces in some locations while attacking peaceful protestors across from the White House.

Next he brought the strategy to Portland. And then he bragged about plans to take the same tactics to cities with Democratic mayors across the country: Baltimore, Philadelphia, New York City, Detroit, Chicago, and Oakland.

Simultaneously he launched a presidential election ad campaign about being a strong law and order president. President Trump is confused. Using secret police tactics doesn’t make him strong, it makes him an authoritarian who disrespects the constitutional rights of citizens to assemble. Attacking peaceful BLM protestors and a Wall of Moms doesn’t make him a defender of law and order, it makes him a violent oppressor.

After national coverage of Trump’s authoritarian tactics, the President has retreated, withdrawing his federal agents from Portland. In the days since, the protests have continued – and they have been peaceful. Nothing like the violent attacks against protestors that happened when federal agents were on the scene.

I went and saw it for myself this past weekend. I spoke at rally hosted by the local chapter of the NAACP, and walked around talking with folks who had been there day after day. These are not anarchists. They are men and women who want our nation to reckon with the systemic racism that remains at the heart of so many of our institutions, and which has shaped life in this country for more than four centuries.

The great Supreme Court Justice Thurgood Marshal once said “I wish I could say that racism and prejudice were only distant memories. We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred and the mistrust... we must dissent because America can do better.”

The overwhelming majority of those who have taken to the streets of our cities have done so because they know that America can do better. And they know that America must do better.