

Inside the Controversy at Lafayette Square

In this Q&A with Akin Gump partner Rafi Prober and counsel Thomas Moyer, and Reverend Gini Gerbasi, we unpack the aftermath of Lafayette Square.

BY **C. RYAN BARBER**

On the evening of June 1, Rafi Prober was at home with his children as the television news showed federal authorities violently clearing protesters in Lafayette Square, near the White House, to make way for President Donald Trump to have a photo op holding up a Bible outside St. John's Church.

Recalling the live footage, Prober, a partner at Akin Gump Strauss Hauer & Feld, said he was struck, his "jaw on the ground in horror," as protesters were beaten with batons and smothered in what appeared to be tear gas.

"I can picture myself sitting there with them, and I said, 'This is not how things are supposed to go in our country. Remember what you're seeing right now, because this is not what our country does,'" Prober recounted.

Weeks later, wearing a mask and at a distance, Prober was sitting with Bishop Mariann Budde inside the National Cathedral as she testified at a hearing the House Natural Resources Committee had convened on the removal of protesters. Just two miles down Wisconsin Avenue, Akin Gump counsel Thomas Moyer joined the Rev. Gini Gerbasi as she appeared, also virtually, from her church in Georgetown before a subcommittee of the House Oversight and Reform Committee and recalled how the "government brutalized peaceful protesters at Lafayette Square."



(l-r) Raphael Prober, Virginia Gerbasi, and Tom Moyer. Courtesy photos

The virtual hearings marked the culmination of a pro bono representation that Prober said was "almost serendipitous."

In a recent interview, Prober, Gerbasi and Moyer recounted how they prepared for House hearings that played out in a politically charged environment, with dueling accounts of the response by federal authorities, including whether tear gas was used. It was a process with intensive research—an associate proved himself "quite the Biblical scholar," Prober said—and a review of the Bible with an eye for how it might be quoted at either hearing.

"It was perhaps the source document of all source documents," Prober said.

The following conversation was edited for length and clarity.

These hearings addressed a hugely controversial event where there wasn't an agreement on how exactly it played out.

With that in mind, what was your approach to preparing Rev. Gerbasi and Bishop Budde?

Thomas Moyer: I think there was a recognition going in that different members may come at the issue from different perspectives. That said, what Gini witnessed was what Gini witnessed. We worked with her to figure out ways to pivot, regardless of what the question was, back to the fundamental truth of what she experienced.

Rafi Prober: This is one of those circumstances where there's so much politics around all of this, and it's so politically charged. But, at the end of the day, that was a complete distraction and completely irrelevant to anything that Gini was looking to accomplish, because it was about what she witnessed. It was about the Constitution, and it was about social justice.

There were differing accounts of how the federal response to the protesters unfolded. And that came up in the hearing. How did you prepare to handle lines of questioning dealing with this, Rev. Gerbasi?

Gini Gerbasi: I experienced it as someone who's not a



FILE – In this June 1, 2020 file photo police move demonstrators away from St. John's Church across Lafayette Park from the White House, as they gather to protest the death of George Floyd in Washington. Only a few legacy-defining moments have clung to President Donald Trump. But the forceful clearing of demonstrators from the park across from the White House has resonated like few others, sending Trump's poll numbers tumbling and prompting top military leaders and usually lockstep Republicans to distance themselves from the president. Photo: Alex Brandon/AP

chemist, I'm not a weapons analyst or anything. I experienced it as clouds of acrid smoke that burned the back of my throat and made me cough. And I saw people with their eyes swollen shut and tears running down their faces. I called it tear gas, and right away I was criticized in the press for having called it tear gas. One of the things the Akin Gump lawyers helped me with this was, rather than get distracted by the argument over whether it was tear gas, or me feeling defensive that I called it tear gas when I'm not a chemist, or me being snarky and saying, "Well, I'm not a chemist"—which was sort of my natural tendency—they

helped me create a strategy to point it back to, "Well, I don't know if it was tear gas. But here's what I saw, and here's what I experienced myself. I don't actually know what the gas was. But I can say that spraying pepper balls at innocent people also sounds like an inappropriate use of force against innocent people." That was the way that they helped me pivot away from a distractive point, which was whether it was tear gas or not tear gas, and focus back on what I actually observed. They helped me with that over and over again—to bring it back to what I saw and what was the meaning of that.

In normal times, law firms stage mock hearings at their offices to prepare corporate executives for questioning. How did the pandemic affect your prep? Were you able to be physically together at all?

Moyer: Certainly, from a logistical standpoint, it was not what we're used to. Our initial meetings with Gini and the diocese—all of those meetings happened over Zoom, in part due to the logistical realities of the pandemic but also in recognition that that's how the hearing would be proceeding. That has very much been the reality on Capitol Hill as they've transitioned back to their normal business in Congress. Not having that in-person aspect to the prep was certainly an adjustment, initially, but in many other respects, I would say it went very much along the lines of what we would typically do. That starts with a considerable amount of research, reviewing not only what Gini has said in the press in connection with these events and others, but understanding the history of the church. Understanding what has been said about the facts on the ground and

the different viewpoints that a member may come to with respect to the underlying factual realities of the event. Once you have all of that in mind, really one of the most important aspects of the preparation process is to understand Gini's voice, understand her story, how she naturally frames it, and work with her to convey that story in a way that's maximally effective in the context of testimony and Q&A and the hearing. So understanding first how she speaks, how she frames the issues, working with her to fine-tune her testimony, and then engaging in a considerable amount of mock Q&A. Perhaps not a full-blown mock hearing, as might happen under normal circumstances when we can all gather in the office together, but nonetheless going through a lot of Q&A.

These hearings, of course, were not standard. They were about an event rather than corporate conduct or a scandal, and your clients were members of the clergy rather than an executive. How did that change or factor into your approach?

Prober: There were many aspects of this that were

different from the traditional corporate investigation. This was telling a story: Gini was a witness to these atrocious events that unfolded. The church has taken and was taking a very public position on issues of racial justice, which Akin Gump completely associates itself with and was very happy to stand shoulder-to-shoulder on. Some of the more traditional corporate investigation components were not there, like document production, the focus on a particular individual or particular company. Here, the focus was on the story and the Constitution and racial justice. So all of that was different. The similar threads were helping a client determine how to most effectively communicate their story and what their goals are and to help them accomplish that. So, fundamentally, it was the same exercise. But I think when you're walking into a hearing with clergy, it's a bit of a different reception than a traditional corporate hearing.

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