

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

:

:

v. : Case No. 1:21-cr-00552(DLF)

:

KENNETH JOSEPH OWEN :

THOMAS, :

:

Defendant. :

**DEFENDANT KENNETH JOSEPH OWEN THOMAS’
RENEWED NOTICE OF EXPERT WITNESS ON EXCESSIVE
USE OF FORCE BY LAW ENFORCEMENT and DEFENDANT
THOMAS’ JUSTIFIED USE OF FORCE ON JAN. 6**

COMES NOW Defendant Kenneth Joseph Owen Thomas (“Defendant” or “Thomas”) by and through undersigned counsel, pursuant to the Federal Rules of Criminal Procedure Rule 16(b)(1)(C) and informs the United States Attorney’s Office and the Court that the defense hereby designates Steve Hill as the defense team’s expert to testify on his evaluation of in the fields of law enforcement use-of-force, self-defense, and crowd control. *See attached Curriculum Vitae.*

Relating to Rule 16(b)(1)(C) Defendant Thomas hereby discloses:

**1) EXPERT OPINIONS THAT THE DEFENDANT INTENDS
TO PROVE BY STEVE HILL’S TESTIMONY**

Defendant will call Mr. Steve Hill as an expert witness to testify that the Defendant interacted with law enforcement officers in his own self defense and in the

defense of others, to stop or minimize further harm to human life and safety.

Expert Hill in reviewing the video of the movement of the crowd is expected to testify to his conclusion that the crowd reacted to acts of unjustified violence by law enforcement officers in self-defense and/or the defense of others. First, in a long distance video filmed after 4 pm on Jan. 6 on the upper west terrace of the Capitol, officers can be seen advancing aggressively against demonstrators who were not acting violently, threateningly, or aggressively in any manner. Some of the officers can be seen swinging hard batons down upon the heads and/or faces of noncombatant demonstrators. These actions invoked defensive reactions on the part of Thomas and other demonstrators.

Mr. Hill is not expected to offer any view one way or the other about whether the demonstrators had any right to be in this location. Whether various members of the crowd had sufficient notice to know that should not knowingly enter this area or would be trespassing or for any other reason should not have been there is beyond the scope of what he is expected to address. Mr. Hill is expected to testify that the officers in this segment were the aggressors, according to well-settled principles of use of force.

However, to the extent that the video recordings shows that the crowd reacted when they were subject to the exercise of aggression against them, perhaps in the misguided belief by officers that the crowds would leave, is evidence that the jury and Court may find important to consider as to whether the crowd had any preconceived plan and as to whether individuals may have honestly believed that they were defending themselves or defending others.

Defendant expects that Mr. Hill will testify to the training and instruction given to law enforcement personnel such as the Washington, D.C.'s Metropolitan Police Department, participating regional police departments, the U.S. Capitol Police as an agency

of the U.S. Congress, much of which has been provided or is available, in particular with regard to the excessive use of force, forbidden and/or unusually dangerous practices involving the use of force by law enforcement, and violent acts by the MPD and USCP.

Specifically, Defendant expects that Mr. Hill will form expert conclusions and provide expert opinion testimony having reviewed with regard to the events of January 6, 2021, at and around the U.S. Capitol building and grounds all surveillance video recordings of the U.S. Capitol building security system, body-worn camera video recordings, civilian (smart phone) video recordings, news media television recordings, and radio communications among law enforcement officers.

This includes video recordings and audio (radio) recordings that have been publicly released and those that remain confidential from the public under the Court's Protective Order, reviewed by Mr. Hill as part of the Defendant's legal defense team.

Mr. Hill has prepared to be an expert witness for other Defendants related to events of January 6, 2021, and has been able to review many of the video and audio recordings over a period of many months while awaiting being called as an expert.

Specifically, Defendant expects that Mr. Hill will testify to his conclusions that a boisterous mob on the upper terrace was shocked as the line of officers broke through the crowd aggressively beating demonstrators.

Nevertheless, this large and growing crowd remained peaceful and fairly motionless at the edge of the Capitol building's exterior structures. Certainly, the crowd expressed its opinions loudly and displayed signs and expressed their messages. But the crowd had stopped moving forward. The only factor in the crowd's position or movement was that more people continued to arrive near the Capitol, such that at the rear of the crowd, the crowd was being pushed from "behind" (i.e., toward the Capitol building) and it was

becoming impossible for anyone near the “front” of the crowd (i.e., closest to the Capitol building) to retreat or escape.

Expert Hill is expected to testify that as that situation developed, law enforcement was required to consider that escalating violence could not be justified as a proper law enforcement technique given that the people at the “front” of the crowd (nearest to the law enforcement officers) could not be motivated to retreat given that it was impossible for them to retreat or escape through the crowd growing “behind” them (arriving from Second Street West and beyond from the West). At that point, any use of force by the law enforcement officers became a violation of the training and instruction given to the law enforcement officers, an unjustified and unjustifiable use of force, illegal, and outside the scope of permitted force. No amount of persuasion inflicted against the crowd could motivate anyone to retreat when it was impossible for them to retreat. All the use of force could do was to cause injury.

Expert Steven Hill uses the following diagram when he trains officers. The diagram has been certified for use by the Federal Law Enforcement Training Center, where most Capitol Police Officers were trained. (The same or similar graduated, responsive use of force diagram is used in every police academy as well as the FBI academy.) Officers must use only levels of force required to overcome threats and force offered against them. Hill is expected to testify that when Metro and other-agency officers first began pushing protestors away from the Capitol at around 4 pm on Jan. 6, the officers were the aggressors by definition. Hill is expected to testify while reviewing video that the officers used levels of force against the protestors (in the vicinity and view of Thomas) that were not justified by the actions of demonstrators. Hill is expected to testify that that the officers are seen on video striking unprotected demonstrators in the head and face with batons (which is

potentially lethal force) in circumstances where the demonstrators were not posing any threats of lethal force. Defendant Thomas was in this same vicinity and can be seen reacting to this excessive force.



Nevertheless, from his review of the video evidence and radio traffic, Expert Hill is expected to testify that the law enforcement officers responded with panicky behavior, which was dangerous and provocative, in violation of their training and the standards governing police use of force.

2) THE BASES AND REASONS FOR THEM

Expert Hill has or is reviewing the following videos:

- 1) A long distance video of officers aggressing in an organized line against noncombattant demonstrators on the upper west terrace after 4 pm on Jan. 6.
- 2) A more close-range video of Defendant Thomas holding a camera and

extending his back and elbow to protect another man who was on the ground.

Some of the MPD city officers acted with reckless disregard for human safety. Video recordings then also show dangerous and prohibited practices of police officers from elevated positions pushing demonstrators down amidst dangerous crowding, and pushing demonstrators over backward down steps.

Expert Hill is expected to testify that these are prohibited and illegal practices in violation of the officers' training and the standards and not justified uses of force because rubber bullets, pellets, and other alternatives to bullets are intended to be aimed at the torso and maybe the legs and arms of a targeted person to discourage them from approaching and cause them to leave.

But, again, the demonstrators had nowhere to go and could not retreat, as shown on the video recordings.

None of these offenses have, as far as we know, been disciplined. The Government has known about all of these matters for over two years. Defense counsel have known about them. But the public has been stopped from seeing these videos by the Courts.

3) THE WITNESS'S QUALIFICATIONS, INCLUDING A LIST OF ALL PUBLICATIONS AUTHORED IN THE PREVIOUS 10 YEARS

Mr. Hill is a retired private citizen and is a Master level certified instructor through the Department of Energy/National Training Center. Mr. Hill specializes in advanced tactical management, critical incident management, Special Weapons and Training (SPO-III), hazardous material tactical response, mobile field force, firearms instruction, criminal investigations, rappel master, first line supervision, electronic surveillance operations, and police civil liability.

Mr. Hill's areas of expertise are tactical operations, response force training,

nuclear/radiological security of fixed and transportation assets. He is an expert in the use of tabletop exercises for response training, data collection and physical security for fixed and mobile security high-risk assets.

Mr. Hill is a retired Systems Engineer with Transportation Systems Analysis at Sandia National Laboratories (SNL). At SNL, he was an engineer with the Security Training and Risk Analysis Team (STRAT) where he built response related training programs and conducted security analysis in the areas of nuclear, radiological, chemical and biological security and response. Mr. Hill also participated in the theory and development of future lethal and less lethal weapon systems as part of lab directed research and development teams, resulting in being named in two patent applications for an electronic control device (Taser technology) and disintegrating ballistic materials).

Mr. Hill is also retired from the Albuquerque Police Department, where he led and supervised hundreds of high-risk tactical events to include hostage resolutions, high risk search warrants, armed/violent offenders, demonstrator, and riot control. He served as the supervisor of the SWAT Team for over 8 years and was a detective in the Special Investigative Department/Repeat Offender Project. Steve has more than 30 years of experience in training state, local and federal standards-enforcement personnel in lethal and less lethal use-of-force and had worked part time for the DOE National Training Center and the U.S. Department of State.

Mr. Hill will be a rebuttal witness to prosecution witnesses who testify on the use-of-force by the defendant and to the use-of-force by police officers when confronted by citizens in possession of various weapons.

4) A LIST OF ALL OTHER CASES IN WHICH, DURING THE PREVIOUS 4 YEARS, THE WITNESS HAS TESTIFIED AS AN EXPERT AT TRIAL OR BY

DEPOSITION.

Mr. Hill is not one normally retained or specially employed to provide expert testimony in litigation and he is not regularly involved in giving expert testimony. Mr. Hill is specially retained for the purposes of this case.

Mr. Hill has not testified as an expert witness in the last 4 years. But for the past 18 years prior to his retirement from the APD, he was an expert in training police, military and first responders from around the world. Hill also was an expert in the evaluation of police and military force multipliers and response force tools and equipment.

Dated: May 10, 2023

RESPECTFULLY SUBMITTED

By Counsel



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CERTIFICATE OF SERVICE

I hereby certify that this document is being filed on this May 10, 2022, with the Clerk of the Court by using the U.S. District Court for the District of Columbia's CM/ECF system, which will send an electronic copy of to all CM/ECF participants in the case.

_____/s/ John Pierce_____

John M. Pierce, Esq.