

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

KENNETH JOSEPH OWEN THOMAS,

Defendant

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Criminal Case No.

1:21-cr-00552 (CRC)

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**DEFENDANT’S PROFFER AS TO ANTICIPATED WITNESSES**

**Jonathan Mosely**

Defendant KENNETH JOSEPH OWEN THOMAS (“Thomas”), through the undersigned counsel, John M. Pierce, Esq. and Roger Roots, Esq., who proffer the witness and testimony of Jonathan Mosely.

Mr. Mosely is a former lawyer, and current paralegal and investigator for John Pierce Law. Additionally, Mosely was a DC resident on January 6, 2021.

Mr. Moseley is both a fact witness and an overview witness (if need be). Importantly, Mosely would testify regarding the letter, announcements, and decrees of the DC Mayors Office in advance of January 6 imploring the DC business community to shut down, close doors, and deny commercial goods and services to DC visitors on January 6 which *were issued in the days preceding January 6*.

**Mosely is a witness to DC commerce, and pre-January 6 efforts by the government to tamp down commerce on January 6.**

Exhibits evidencing the Mayors pronouncements, tweets, posts and requests for DC residents to close their doors to Trump supporters prior to Jan. 6 are attached. Mosely personally read, saw, and listened to and was affected by these proclamations and pleas. These exhibits are still publicly available and are public records and a business records. These statements are also

expressions of future intent. (And Mosely read and experienced these official decrees at the time and can testify regarding their effect on him.)

Mosely was active in Christian circles and conservative circles and can testify regarding the effect that the City's efforts to tamp down commerce *in advance* of January 6 had on the community and those circles. Mosely can also testify about the aftermath as he personally witnessed it.

Mr. Mosely can testify about the effect on commerce of the January 6 disturbance. He will testify that the Jan. 6 demonstration had no, or almost no impact on commerce. (If anything, Mosely states, commerce was improved.) Restaurants, food trucks and hotels did quite well during the episode, and experienced no vandalism or property damage.

**Mosely has vast experience and knowledge of the Capitol, its culture, and its recent experience with protests.**

Mosely knows the locations and scenes depicted in order to satisfy the Rules of Evidence regarding foundation and authentication of images. After laying that foundation of his personal knowledge of the various scenes around the U.S. Capitol, the building from the outside (he also knows the inside but the Defendant is not accused of entering the building) and the 58.8 acres of the Capitol Grounds, Mr. Moseley would respond to the necessary authentication questions as to what location and/or scene each video produced by the Government is showing and that it is a fair representation of that location and/or scene.

As foundation, Mr. Moseley would testify that he moved to the Washington, D.C. area in the Summer of 1985 as an LBJ Intern (paid position) for then U.S. Congressman Connie Mack, and became intimately familiar with the House Office Buildings, the U.S. Capitol building, and the surrounding grounds. He had access to non-public areas of the Capitol buildings and as a

going away treat joined Legislative Director Mitch Bainwol with all the interns on a climb up the Capitol dome.

Over the decades, Moseley has worked in many jobs that involved meetings in the Capitol and/or Office Buildings, including distributing press releases or materials to all offices of all Members of Congress and Committees, before or while private companies rose up to fulfill this service and before the transition to the internet. This often meant cutting through the U.S. Capitol building through the underground tunnels from the House side to the Senate side or vice versa. He attended morning prayer breakfasts in the U.S. Capitol itself for most weeks for about a year. He attended Congressional hearings to take notes or support his then boss(es) or to report back to the government agency he worked at. He has joined political citizen grassroots lobbying events on Capitol Hill and met friends inside the U.S. Capitol and/or Office Buildings (one underground cafeteria straddles the two off an underground tunnel) purely for the fun of it. He arranged a meeting with a West coast Senator for a photo op with a family member who had won an academic prize in the Senator's district promoting women in science.

In September 2020, Moseley was a speaker and helped set up a rally on the U.S. Capitol Grounds under a permit from the U.S. Capitol Police from a private political organization, which created a lot of awareness about how the Capitol Grounds permitting process works. In the Spring of 2021, this knowledge led to the awareness and ultimately a court victory by BuzzFeed News that the U.S. Capitol Police was knowingly concealing from the American people and Government officials the six (6) permits that the USCP had issued in December 2020 for rallies on the U.S. Capitol Grounds to be held on the afternoon of January 6, 2021. (Of course all permits and event venue arrangements allow time to set up and break down so the permits were for all day, but the main focus was the afternoon, the very moment when the Joint Session of

Congress was in session.)

Having laid as much of that foundation as the Court and counsel feel is necessary, Mr. Moseley would then identify the scenes depicted in the videos produced by the Government, one by one, for the purpose of placing those videos in the records.

Beyond that, Mr. Moseley had not planned to testify other than as a poor substitute for Ms. Lambert.

As to January 6, 2021, itself, as Defendant's counsel volunteered, Moseley visited the gigantic rally at the area of the Washington Mall near the Washington Monument known as the Ellipse, waited for hours for Donald Trump to take the stage a couple hours late, but found that the audio system was malfunctioning and he could not hear what Trump was saying. See: <https://www.youtube.com/watch?v=MjBx58tQagU> He left a little early and wandered through a very dense crowd. It becomes important to note that Moseley did not follow the crowds along Constitution Avenue to the Peace monument and pedestrian gate, and thus missed much of the activity at issue. Moseley being a local ducked over to the WMATA Metro subway system, probably at Federal Center, and took the subway to Union Station. Coming out from there, he headed to the South, ran into the "Latinos for Trump" rally at the Russell Senate Office Building where Enrique Tarrio had been scheduled to speak, hung around there for about an hour, and then continued to the U.S. Supreme Court. This becomes significant because Moseley missed all of the events and chaos at the West side of the Capitol building and regretfully cannot testify to anything other than the admissibility of the video recordings.

Mr. Moseley approached the East side of the Capitol from the Supreme Court and could not find the permitted events advertised on the U.S. Capitol Grounds. However, he heard a man yelling and saw that demonstrators had climbed up on the Capitol steps in the center East. As a

columnist and volunteer reporter for the news analysis website National File, he called the editor to report what he was seeing and took video of what happening for National File. See:

<https://www.youtube.com/watch?v=I8TS8Yjrtzk>

As a result, Moseley can testify to not only the normal scenes around the Capitol, but generally the protests shown in the video as well.

On the other hand, Moseley did not see the events on the West side until he was leaving to take the video over to his editor's hotel suite, was shocked and amazed to see the chaos at the West side, but stayed too far away to be able to see anything that was happening to any meaningful extent in this case.

Moseley did see that there were no barriers or signs in evidence (except around the actual construction site for the inauguration platform) when he was passing by toward Independence Avenue sometime roughly around 3:30 PM.

As then a local resident, Mr. Moseley could testify, though likely over objection, to the public announcements by Mayor Muriel Bowser which Defendant would ask to be admitted as a government record, ordering or begging people not to come to the District that day.

Dated: May 16, 2023

RESPECTFULLY SUBMITTED  
**KENNETH JOSEPH OWEN THOMAS,**

*By Counsel*

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**CERTIFICATE OF SERVICE**

I hereby certify that this document is being filed on this May 16, 2023, 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 the following CM/ECF participants. From my review of the PACER account for this case the following attorneys are enrolled to receive notice and a copy through the ECF system.

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\_\_\_\_\_/s/\_\_\_\_\_  
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