

**UNITED STATES DISTRICT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

DEBORAH LEE

Defendant

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Case No. 21-cr-00303-ABJ

**DEFENDANT DEBORAH LEE'S MOTION *IN LIMINE*
INFLAMMATORY WORDS AND PHRASES**

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Attorney for Defendant

NOW COMES Defendant DEBORAH LEE, by and through her counsel of record, John M. Pierce, Esq., and respectfully request this Honorable Court issue an *in limine* Order precluding Government representatives – including prosecutors and witnesses -- from using terms and phrases which are unnecessarily inflammatory and likely to appeal to the emotions of the jurors, including words/phrases such a “terrorist/terrorism,” “insurrection,” “sedition,” “treason,” “attack on the Capitol,” “attack on democracy”, “attack on Congress”, etc.

Federal Rule of Evidence 403 allows for the limitation of otherwise relevant evidence when:

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation.

Maybe never before have the oft cited words of Justice Sutherland in *United States v. Berger* been as applicable as they are in the trials with regard to the events of January 6:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.

United States v. Berger, 295 U.S. 78, 88 (1935).

The defendants are charged with assault, robbery, and obstructing an official proceeding. They are not charged with attempting to overthrow the Government of the United States nor are they charged with attempting to interfere with the “lawful transfer of power” as the Government has alleged by the Government in other case(s).

They are charged with assaulting law enforcement officers, stealing some equipment from those officers, and obstruction. That's the case the government has brought and that is the case the government should try.

The defendants already face a tremendous "headwind" in public sentiment within the juror pool in the District of Columbia. This Court has the obligation to ensure that jurors can set aside any personal views or opinions they might have formed about the events of January 6 or persons alleged to have been involved in committing crimes on that day.

This effort is only made more difficult by the use of inflammatory language on the part of prosecutors or government witnesses of the kind set forth above. As Justice Sutherland went on to observe:

It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed. Consequently, improper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused, when they should properly carry none.

Id.

Such references have no relevance to the issue of guilt or innocence and would serve only to inflame and prejudice the jury. Since such references have no probative value, and are unduly prejudicial to the defendant and misleading, they should not be allowed. The media and the government in its own filings and arguments have used such terms; however, such terms are conclusory rather than fact—it is not for the government to make such determinates of the defendants and labeling them as such is for the sheer motive of is arouse the jury's emotions.

The decision for the court turns to the elements of each count the government much prove. With a continues use of such terms, the court need to be concerned with the jury interoperation of their use—again drawing inference of the government having already labeled them with such terms before a jury could ultimately determine such labels to be true—but also, the court should be

concerned with the jury and the likelihood the focus and weight of their determination is based on the government and its labels of the defendants and not on the government actual ability of proving each element of the crime.

As example—the use of the term terrorist—a natural reaction to the term would be someone associated with an extremist group and those that attacked the World Trade Center in New York, New York. “Attack on the capital”—that phrase is the end result—it is for the jury to make the determination if the events of January 6, 2021, were truly an “attack.” Further, insurrection, it is for the jury to determine if there was an insurrection not for the government tell the jury there was an insurrection. The jury, and the jury alone are to make the judgment if the evidence presented by the government shows an attack on the capital by insurrections and terrorists.

Date: June 13, 2022

Respectfully submitted,

/s/ John M. Pierce

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CERTIFICATE OF SERVICE

I, John M. Pierce, hereby certify that on this day, June 14, 2022, I caused a copy of the foregoing document to be served on all counsel through the Court's CM/ECF case filing system.

/s/ John M. Pierce
John M. Pierce