

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	CASE NO. 21-cr-381 (TSC)
v.	:	
	:	
STACY WADE HAGER,	:	
	:	
Defendant.	:	

GOVERNMENT'S MOTION *IN LIMINE* REGARDING
VIDEO MONTAGE EVIDENCE

The United States of America moves for an order *in limine* to admit a video montage, without subscribing witness, relating to the Congressional Record on January 6, 2021, pursuant to Fed. R. Evid. 401, 402, 901, 902, 803(8), and 1006.

INTRODUCTION

In count two, the defendant, Stacy Wade Hager, is charged with violation 18 U.S.C. § 1752(a)(2), by knowingly, and with intent to impede or disrupt the orderly conduct of Government business and official functions, engaging in disorderly or disruptive conduct in any restricted building or grounds. To satisfy this “orderly conduct of Government business or official function” element, the Government intends to show that there was *in fact* Government business occurring on January 6, 2021.

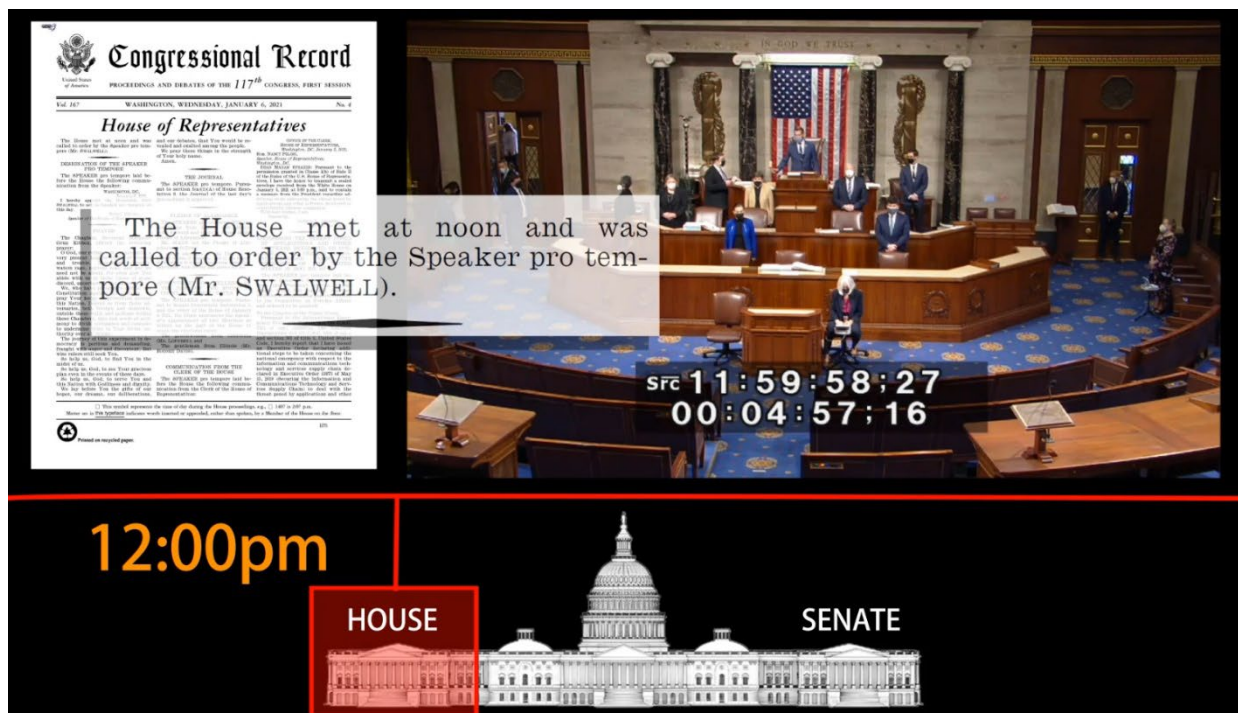
The Government seeks admission of an approximately nine-and-a-half-minute video montage that compiles portions of the official Congressional Record with portions of official Congressional Media and depicts the Congressional activities in a way that illustrates Government business was *in fact* occurring on January 6, 2021.

ARGUMENT

I. This Court has Discretion to Admit Evidence *In Limine*.

Trial courts have inherent authority to manage the course of trials. *See generally* Fed. R. Evid. 103(d), and Fed. R. Crim. Pro. 12. “Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the practice has developed pursuant to the district court’s inherent authority to manage the court of trials.” *Luce v United States*, 469 U.S. 38, 41 n. 4 (1984). More directly, rulings about the admissibility of evidence pre-trial “may generally be the better practice, for it permits counsel to make the necessary strategic determinations.” *United States v Jackson*, 627 F.2d 1198, 1209 (D.C. Cir 1980).

II. The Contents of the Summary is Compiled From Authentic and Self-Authenticating Elements.



The proposed montage consists of video depictions of both houses of Congress, appearing next to portions of the Congressional Record, and organized in a manner that provides a summary-timeline of the Governmental business that was occurring on January 6, 2021. *See above.*

a. The Congressional Record is self-authenticating.

Pursuant to 44 U.S.C. § 903, “[t]he public proceedings of each House of Congress as reported by the Official Reporters, shall be printed in the Congressional Record, which shall be issued in daily form during each session and *shall be revised, printed, and bound promptly*, as directed by the Joint Committee on Printing, in permanent form, for distribution during and after the close of each session of Congress.” (emphasis added) Under 44 U.S.C. § 906, copies of the bound version of the Congressional Record must then be supplied, “to each United States circuit and district judge . . .” A public electronic copy of each daily edition is available at <https://www.congress.gov>. The Congressional Record is an official publication.

Under Fed. R. Evid. 902, “[t]he following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted: . . . (5) **Official Publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.” (emphasis in original) As an official publication, the Congressional Record is self-authenticating.

b. The Congressional Gallery videos are authentic.

Each chamber of Congress establishes its own rules relating to broadcasting what occurs within the chamber. Rule V, of the Rules of the House of Representatives

for the One Hundred Seventeenth Congress, provided: “(a) The Speaker shall administer, direct, and control a system for complete and unedited audio and visual broadcasting and recording of the floor proceedings of the House. The Speaker shall provide for the distribution of such broadcasts and recordings to news media, for the storage of audio and video recordings of the proceedings, and for the closed-captioning of the proceedings for hearing-impaired persons.”

Under Senate Rule XXXIII, “The Committee [on Rules and Administration] shall make such regulations respecting the reporters’ galleries of the Senate, . . . and of news or press associations for daily news dissemination through radio, television, wires, and cables, and similar media of transmission.” Both chambers each limit the access of recordings of each respective gallery to these officially established broadcasts. This ‘one-and-only-stop shop’ of video depictions of the chambers, make identifying videos from those chambers relatively straight-forward.

One example of authentication is producing “evidence sufficient to support a finding that the item is what the proponent claims it to be,” by its “appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.” Fed. R. Evid. 901(a) and (b)(4).

Here, the video clips from each gallery are distinct. Both the House and the Senate are unique filming locations, and the individuals recorded within the clips are immediately identifiable as members of the House or Senate. Further, the content and substance along with the individuals within the video clips match what has been recorded in the Congressional Record. These video depictions, taken together with all

the circumstances, provide sufficient evidence to support a finding that the item is what the proponent claims it is. This Court should find these authentic.

III. The Congressional Record and Video Recordings Are Voluminous.

The Congressional Record is published in yearly volumes. The first session of the 117th Congress, 2021-2022, is published within Volume 167 of the Congressional Record. Number 4 of the volume, composing of 91 pages, encompasses the happenings of Congress on January 6, 2021. These 91 pages cannot be conveniently examined in court.

The House began its day on January 6, 2021, at 12:00 p.m. and the Senate at 12:30 p.m. The Joint Session of Congress was not dissolved until 3:44 a.m. on January 7, 2021. Reviewing more than 15 hours of footage, from both chambers, cannot be conveniently examined in court.

Instead, the Government proposes the nine-and-a-half minute long montage under Fed. R. Evid. 1006 that allows, “a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court.”

IV. The Purpose of Admitting The Montage is To Prove Government Business Occurring on January 6, 2021.

Count two requires the Government to prove there was “Government business” or an “official function” and the defendant knowingly engaged in disorderly or disruptive conduct, within proximity to a restricted building or grounds, and his conduct impeded or disrupted that orderly conduct of “Government business” or “official functions.”

To show that either was impeded, in this case the Government intends to first show that Government Business was in fact occurring on January 6, 2021. Importantly here, “[r]elevant evidence is admissible . . .” Fed. R. Evid. 402. “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401.

Here, it is more likely that the defendant, with intent to impede Government business, in fact impeded Government business by entering the Capitol Building on January 6, 2021, if Congress was in fact conducting Government business on January 6, 2021, than it is without such evidence. The montage is relevant, and admissible.

V. The Montage Is Not Barred By The Rule Against Hearsay.

Hearsay is, “a statement that: (1) the declarant does not make while testifying at a current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Fed. R. Evid. 801(c). And, “[h]earsay is not admissible unless any of the following provides otherwise: a federal statute; theses rules; or other rules prescribed by the Supreme Court.” Fed. R. Evid. 802.

Fed. R. Evid. 803 provides 23 separate exceptions to the rule against hearsay. One exception to the rule is: “A record or statement of a public office if: (A) it sets out: (i) the office’s activities; (ii) a matter observed while under a legal duty to report . . . and (B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.” Fed. R. Evid. 803(8).

There is a legal duty to report what occurs in Congress. Under 44 U.S.C. § 901, “[t]he Joint Committee on Printing shall control the arrangement and style of the Congressional Record, and *while providing that it shall be substantially a verbatim report of proceedings*, shall take all needed action for the reduction of unnecessary bulk.” (emphasis added) Further, the Congressional Record sets out Congress’s activities. The statements made, which are being offered to show the Government activities on January 6, 2021, are not barred from admission by the rule against hearsay.

CONCLUSION

For these reasons, the United States requests that this Court enter an order, as described above, allowing for the admission of the nine-and-a-half-minute montage of the Congressional Proceedings at the defendant’s trial.

Respectfully Submitted,

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