

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	No. 21 CR 536
v.	)	
	)	
KAROL J. CHWIESIUK &	)	Hon. Kollar-Kotelly
AGNIESZKA CHWIESIUK	)	

**DEFENDANTS’ REPLY TO GOVERNMENT’S RESPONSE TO THEIR  
MOTIONS *IN LIMINE***

The defendants, Karol J. Chwiesiuk and Agnieszka Chwiesiuk, through their counsel, respectfully reply to the government’s response (Dkt. 75) to their motions *in limine*. Dkt. 71. In support, the Chwiesiuks state:

**I. The Term “Insurrection”**

The government does not appear to object to the defendant’s motion to exclude the use of the term, “insurrectionist,” but does object to excluding the word “insurrection.” The government argues that the term insurrection should be permitted because it is an accurate descriptor that has been used by the Court in prior orders. ECF No. 75 at 8-9. However, the defendants’ concern is that the term “insurrection,” has a meaning which could imply for the jury the exact intent that the government is required to prove in this case. The government must prove that the defendants intended to disrupt the conduct of government and the term insurrection itself means to disrupt the conduct of government.<sup>1</sup> Thus, there is a risk that the jury will be prejudiced against the defendants by its usage. The defendants do not move to preclude the government’s usage of mob, riot, or any other terms and barring the use of “insurrection,” alone will not require the government to “step gingerly around the events of January 6, 2021.” *Id.* Thus, the motion should be granted.

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<sup>1</sup> Insurrection - “an act or instance of revolting against civil authority or an established government.” Merriam-Webster.Com, <https://www.merriam-webster.com/dictionary/insurrection> (last visited April 13, 2023).

## II. Opinion Witness Testimony on Legal Conclusions and Definitions

The government objects to the defendant's motion to preclude witnesses from testifying to conclusions on the legal issues on which the jury will deliberate. The government relies on *United States v. Perkins*, 470 F.3d 150 (4th Cir. 2006). There, the Court provided an example of when such testimony is inadmissible, stating, "conclusory testimony that a company engaged in "discrimination," that a landlord was "negligent," or that an investment house engaged in a "fraudulent and manipulative scheme" involves the use of terms with considerable legal baggage; such testimony nearly always invades the province of the jury." *Id.* at 158. Here, the defendant seeks to bar similarly conclusory testimony, such as the defendants "engaged in disorderly conduct," or the defendants were "parading in restricted areas." Such testimony would invade the province of the jury and would be unhelpful, considering the jury will receive instructions on the definitions of relevant terms of art. The witnesses may testify on their own observations without reaching such conclusions. For these reasons, the motion should be granted.

## III. Karol Chwiesiuk's Statements

The government objects to precluding the statements made on January 3, including "Im [sic] f\*\*\* up some commies," and "Busy planning how to f\*\*\* up commies." The government argues these statements demonstrate that Mr. Chwiesiuk traveled to Washington, D.C. with the intent to engage in disruptive behavior. However, this connection is not as clear as the government claims because it is not apparent to whom Mr. Chwiesiuk refers nor does the statement "f\*\*\* up commies," indicate that one intends to disrupt government business or a session of Congress. Indeed, even if Mr. Chwiesiuk had an altercation with a "commie" somewhere in the jurisdiction of Washington, D.C. other than restricted grounds, that would not make it any more likely that he entered restricted grounds with the intent to disrupt a session of Congress. Mr. Chwiesiuk's other statements, such as "I'm going to dc... to save the nation," can adequately demonstrate that "he was not simply

planning to travel to D.C. as a tourist,” (ECF No. 75 at 12) without posing a similar risk of prejudice.

The government also objects to the defendant’s motion to preclude the introduction of the term “N\*\*\*\*” from the message, “N\*\*\*\* don’t snitch.” The government argues that the statement is relevant as an expression of consciousness of guilt. However, the defendant seeks only to exclude the racial slur, not the entire message. Thus, the government’s purpose for admission is not disturbed. The government further argues that it “shows that he is speaking frankly and candidly” and “believed this to be a confidential communication.” First, there is nothing suggesting that the defendant believed these text messages were *not* private, such that the government must refute that through the introduction of this portion of the text. Further, the government’s witness can testify on the relationship between them and whether they trusted each other. The racial slur is not relevant and is easily removed from the text message without any impact on the government’s stated bases for admission. However, it creates a great risk of prejudice as an extremely offensive term that jurors are unlikely to find easy to disregard, even with a limiting instruction.

#### **IV. Conclusion**

For these reasons, the defendants, Karol J. Chwiesiuk and Agnieszka Chwiesiuk, respectfully request that this Court grant their motions *in limine*.

Respectfully submitted,

/s/ Nishay K. Sanan  
[nsanan@aol.com](mailto:nsanan@aol.com)

/s/ Cece White  
[cece@sananlaw.com](mailto:cece@sananlaw.com)

Nishay K. Sanan, Esq.  
53 W. Jackson Blvd., Suite 1424  
Chicago, Illinois 60604  
Tel: 312-692-0360