

1 much as you did at the outset of the case when there  
2 were opening statements.

3 And then the final phase is deliberations, where  
4 the case is then turned over to you for you to take into  
5 the juryroom and deliberate.

6 Given the time today, we're now at about 1:54  
7 or so, and it was brought to my attention last week that  
8 there were problems for at least two of you with regard  
9 to this afternoon's scheduling, what I am going to do is  
10 this.

11 With the understanding that we will begin  
12 promptly tomorrow at 9:45, I am going to release you now  
13 to, to go for the day.

14 So that the scheduling conflicts that certain  
15 of you had for this afternoon I believe will be, they  
16 will no longer exist. All right. So I'm going to  
17 excuse you for the day. Just a minute.

18 Why don't we begin with juror seven. Would you  
19 please come down? Counsel.

20 (Bench Conference)

21 THE COURT: That's okay, let everybody get here  
22 first. Now after having gone through all of that, it  
23 seemed to me that you might be indicating to me that  
24 your conflict had been resolved.

25 JUROR NO. 7: I have my oldest take off.

1 THE COURT: So -  
2 JUROR NO. 7: I just called before I came back  
3 in.  
4 THE COURT: Very well.  
5 JUROR NO. 7: She's going to take my wife today  
6 to the doctor.  
7 THE COURT: Thank you.  
8 JUROR NO. 7: So I can stay.  
9 THE COURT: Okay, I appreciate hearing that.  
10 All right. Juror 8.  
11 JUROR NO. 8: Your Honor, with all due  
12 respect to everybody, I thought your offer of a letter  
13 from you to the county school system was a very  
14 reasonable offer. I would be happy to go with that.  
15 And in fact, it would be better for my class of  
16 27 if I got back there tomorrow.  
17 THE COURT: Very well. Good, I'm glad to hear  
18 that. If you would step back up, step back.  
19 (Open Court)  
20 THE COURT: Well, the Court has received a  
21 pleasant surprise, in that the scheduling conflicts that  
22 I had previously heard about have been resolved.  
23 Therefore, I'm going to excuse you for about 15  
24 minutes, during which I'll have conversation with  
25 counsel.

1           When you come back I will give you instructions  
2 and then we will hear the closing statements and then  
3 I'll turn the case over to you. How's that? Very well,  
4 thank you.

5           (Thereupon the jury returned to the juryroom at  
6 1:55 p.m.)

7           THE COURT: All right, let's have some  
8 brief discussion on the proposed jury instructions.  
9 Clearly, Rule, I can't remember whether it is 30 or 31.  
10 Just a minute. Yes.

11           Clearly, Rule 30 allows that I may in my  
12 discretion charge the jury before or after closing  
13 arguments, and my preference frankly is to charge them  
14 before. And we will have closing arguments thereafter.  
15 Very well.

16           Ms. Sassower, the discussion of jury  
17 instructions can be a complicated, technical, legal  
18 process. I would ask that you defer to Mr. Goldstone to  
19 handle this part of the, this part of the case. That of  
20 course is your choice.

21           MS. SASSOWER: Your Honor, I spent the past  
22 hour locked up.

23           THE COURT: Right.

24           MS. SASSOWER: I have made notes on the issue  
25 of these jury instructions. I am hungry. I would

1 appreciate if perhaps I might have a little bit of time  
2 to collect my papers, to put something in my stomach so  
3 that I can address this.

4 THE COURT: Very well. The choice for you to  
5 spend lunch in the lockup came as a consequence of your  
6 direct violation of my orders. Therefore, the fact that  
7 you haven't eaten is not a problem that I caused.

8 Similarly, I have no understanding of whether  
9 you made notes or where they are. But I'm prepared to  
10 proceed right now with discussion of these jury  
11 instructions.

12 MS. SASSOWER: Just hold on please. Would you  
13 stand by me please?

14 MR. GOLDSTONE: Sure.

15 MS. SASSOWER: Did you wish me to go through  
16 some of my objections?

17 THE COURT: No, I don't. The, the fact remains  
18 that many of these instructions are our standard  
19 instructions. Do they have copies of this? All right.

20 The introduction, the function of the Court,  
21 furnishing the jury with a copy of the instructions, the  
22 election of a foreperson.

23 MS. SASSOWER: Excuse me, when you  
24 said --

25 THE COURT: I'm going through the jury

1 instructions right now.

2 MS. SASSOWER: I think it was a mistake  
3 providing the jury with -- did you mean informa, the  
4 information?

5 THE COURT: No, I said instructions and that's  
6 what I meant.

7 MS. SASSOWER: Okay.

8 THE COURT: Proceeding forward. Unanimity,  
9 exhibits, communications between the court and jury  
10 during jury deliberations, media reports, verdict form,  
11 court proceeding during deliberations, taking the  
12 verdict, alternate juror, function of the jury, all of  
13 those are standard instructions to which there could not  
14 possibly be an objection.

15 MS. SASSOWER: I have an objection, Your Honor.

16 THE COURT: Your objection is to which one of  
17 those?

18 MS. SASSOWER: Jury instruction number five  
19 about the information is not evidence.

20 THE COURT: We have not even gotten to that  
21 point yet.

22 MS. SASSOWER: All right.

23 THE COURT: Does she have a copy of this? Mr.  
24 Goldstone?

25 MR. GOLDSTONE: Yes, Your Honor.

1 THE COURT: Apparently she's looking at a  
2 document that I'm not discussing. These instructions  
3 have been drafted several times.

4 MS. SASSOWER: Is this the proceedings? Oh,  
5 I'm sorry.

6 THE COURT: Very well.

7 MS. SASSOWER: Oh, this was when I was locked  
8 up that was provided to Mr. Goldstone.

9 THE COURT: Well, you weren't here so he  
10 did what stand-in attorneys do, which was to protect  
11 your interests while you were locked up.

12 MS. SASSOWER: Are you saying that these  
13 things --

14 THE COURT: Very well.

15 MS. SASSOWER: -- took place in my absence?

16 THE COURT: Absolutely. Absolutely, there  
17 were discussions that took place in your absence.

18 MS. SASSOWER: It's improper, I object.

19 THE COURT: Very well. Your objection is  
20 made for the record. We're here to discuss jury  
21 instructions. All right. This courtroom will not cease  
22 because of your efforts to delay.

23 Now, the, 14 - jury's recollection controls, 15  
24 - notetaking, all of those are standard instructions to  
25 which there could not possibly be an objection.

1 Elements of the offense. This is exactly the  
2 same delineation of the elements as was stipulated at  
3 the outset of the trial. The difference being that the  
4 information, as I understand it, has been amended.

5 The elements of the offense reflect the change  
6 in the information and the definitions of willingly dis,  
7 and knowingly, disorderly and disruptive conduct and a  
8 final clarification as to speaking in a public place are  
9 laid out here.

10 Ms., Ms. Liu, I'll hear from you.

11 MS. LIU: Your Honor, the statement of the  
12 three elements of the offense are actually not the same  
13 as the elements we stipulated to and they're not quite  
14 the same as we set out in the amended information.

15 THE COURT: Make the changes right there so  
16 that my law clerk can modify the, can make the typed  
17 revisions before we call them back in.

18 MS. SASSOWER: I --

19 THE COURT: Go, go and confirm so that we don't  
20 have this confusion as to which information we're using.

21 MS. SASSOWER: Will the jury be instructed that  
22 this is a superseding revised information, not the  
23 original information?

24 THE COURT: The jury is going to be instructed  
25 based on these very instructions that you see here.

1 MS. SASSOWER: Are they going -- will the  
2 information bear this date? Or what date  
3 will --

4 THE COURT: The information itself is not  
5 evidence.

6 MS. SASSOWER: I --

7 THE COURT: The information itself is not  
8 evidence.

9 MS. SASSOWER: It rests on prosecution  
10 documents --

11 THE COURT: So ir, irres -

12 MS. SASSOWER: -- that were not admitted into  
13 evidence.

14 THE COURT: Ms., Ms. Sassower, if you don't  
15 intend to participate in the proceedings, then we can  
16 accommodate you. Now, very well.

17 Ms. Liu, with regard to the elements of the  
18 offense, that has been addressed with Ms. Pagani, my law  
19 clerk?

20 MS. LIU: Your Honor, it has. And I believe  
21 we're all in understanding as to how that should read.

22 THE COURT: Very well, all right. Now 17 -  
23 reasonable doubt, 18 - burden of proof, 19 - proof of  
24 state of mind, 20 - on or about proof of, 21 - the  
25 nature of the charge not to be considered, 22 -



1 information not evidence, 23 - evidence of acts not  
2 charged in the information?

3 MS. LIU: Your Honor?

4 THE COURT: Yes.

5 MS. LIU: I have something I'd like to address  
6 with respect to 23, if I may.

7 THE COURT: With respect to which one?

8 MS. LIU: Instruction number 23, Your Honor.

9 THE COURT: Yes.

10 MS. LIU: It says here that, that evidence was  
11 admitted by the defendant solely for the purpose of  
12 showing bias against her.

13 THE COURT: Yes, right.

14 MS. LIU: It appears to the government that in  
15 some of the defendant's testimony, that she was also  
16 suggesting that the 1996 offense and how it played out  
17 suggests that there was no intent on her part when she  
18 acted in 2003.

19 And we don't have a problem with the  
20 instruction the way it reads if she's not gonna argue  
21 that what happened in 1996 doesn't go at all to her  
22 intent in 19, in, in 2003.

23 But it seems to me that what she has suggested  
24 in her testimony --

25 THE COURT: Right.

1 MS. LIU: -- is that because she was not  
2 arrested for disruption of Congress, even though she  
3 said something in the hearing in 1996 that she somehow  
4 thought that in 2003, that if she said something in that  
5 hearing she would also not be arrested and that she was  
6 not being disruptive.

7 If she's trying to make that argument, Your  
8 Honor, then I think it should be reflected in the  
9 instructions.

10 THE COURT: Very well. I think that the  
11 government's position on that is well taken. And it is  
12 simply this, Ms. Sassower, and you can consult with Mr.  
13 Goldstone on this point.

14 The evidence of the 1996 arrest was initially  
15 introduced to the jury not by the government. I  
16 specifically instructed them not to do so. It was  
17 introduced by you.

18 It seemed to me, as I heard the evidence, that  
19 your reason for bringing up the 1996 event was because  
20 you believed that a bias existed. The Capitol police  
21 was out to get you, that they set you up, and that is  
22 the reason for your even mentioning 1996.

23 If my understanding is correct, and there is no  
24 argument by you that you did not intend to testify in  
25 2003, then this jury instruction will stand as it is.

1 MS. SASSOWER: I am clueless, quite frankly, as  
2 to what you are referring to. I, the May 21st, 39-page  
3 fax to U.S. Capitol police, Detective Zimmerman, could  
4 not to be clearer in saying that the 9, what took place  
5 in 1996 was the precedent.

6 That a respectful request to testify, a request  
7 to be permitted to testify --

8 THE COURT: Let me just ask you the question  
9 simply put.

10 MS. SASSOWER: -- could not be punished by  
11 arrest.

12 THE COURT: The question simply put is  
13 this. In your closing argument, do you intend to argue  
14 that you did not intend to disrupt, did you, did not  
15 intend to testify or disrupt the, the proceedings?

16 MS. SASSOWER: That's right, I did, the, as  
17 reflected by the 39-page fax, my intent was simply to  
18 respectfully request to be permitted to testify if the  
19 chairman did not independently inquire whether there was  
20 anyone present who wished to give testimony.

21 THE COURT: Ms. Liu.

22 MS. LIU: Your Honor, it still seems to me that  
23 the argument Ms. Sassower is making is that when she did  
24 something in 1996, she wasn't arrested.

25 When she did something similar to what she did

1 in 1996, in 2003, she therefore had no reason to think  
2 that she would be arrested because she would not be  
3 disrupting Congress.

4 THE COURT: And therefore, she would be arguing  
5 effectively an absence of intent in 2003.

6 MS. LIU: That's right, Your Honor. And so  
7 because of that, I have two suggestions, which is that  
8 perhaps we should say in this jury instruction that the  
9 evidence was admitted for the purpose not only of  
10 showing bias against Ms. Sassower but also because it  
11 goes to her intent, if that's what she intends to argue.

12 In addition, and this is looking forward to our  
13 rebuttal closing, if Ms. Sassower intends to argue that  
14 what happened in 1996 suggests that she had no intent in  
15 2003, then we would respectfully request to be able to  
16 argue exactly the opposite, that what happened in 1996  
17 shows that she did in fact have the intent required for  
18 this crime in 2003.

19 MS. SASSOWER: My, my contemporaneous May --

20 THE COURT: That's, that's really not --

21 MS. SASSOWER: 21st fax --

22 THE COURT: It, it's, it's not a point for  
23 discussion. The question is during your closing  
24 argument, are you going to make --

25 MS. SASSOWER: To which I was not permitted to

1 testify.

2 THE COURT: Are you going to make a statement  
3 to the effect that because of the manner in which the  
4 1996 event played out, that you had no intent in 2003 to  
5 disrupt the, the committee's proceedings.

6 MS. SASSOWER: I never intended to disrupt. I  
7 intended to request respectfully to be permitted to  
8 testify. And my position was that that could never be  
9 deemed disruption of Congress or, or disorderly. It's a  
10 public congressional hearing.

11 THE COURT: Ms. Sassower, --

12 MS. SASSOWER: A respectful request to testify  
13 by definition.

14 THE COURT: Ms. Sassower, the, all of that  
15 having been said, my concern is when you close the case,  
16 what is it that you intend to express to the jury as  
17 between the 1996 events and those that occurred in 2003?  
18 Why are they relevant, the events in 1996?

19 MS. SASSOWER: Because at the time I said  
20 that was precedent, that, that there was no basis for me  
21 to be arrested simply for requesting to testify.

22 What happened in 1996 was correct. The officer  
23 requested me to be quiet. I was not removed, I was not  
24 arrested. That was the proper procedure.

25 Officer Jennings testified that he did not ask

1 me to be removed. He told me to sit down. His was the  
2 correct response. It was Sergeant Bignotti whose  
3 response was not correct.

4 THE COURT: Very well. Ms. Liu, given that  
5 argument, given that argument, what's your position?

6 MS. LIU: Your Honor, given that argument, it  
7 seems to me that the evidence of 1996 is being admitted  
8 by the defendant for something else other than showing  
9 bias against her.

10 MS. SASSOWER: I --

11 MR. MENDELSON: Your Honor, perhaps I can make  
12 a suggestion that perhaps we can add to say that the  
13 evidence was admitted for various collateral purposes.

14 MS. SASSOWER: What collateral?

15 MR. MENDELSON: Collateral purposes such as to  
16 show motive, opportunity, intent, which are things that  
17 the government is seeking to introduce.

18 In addition, the evidence was admitted to, to  
19 illustrate bias that the defendant claims existed. So  
20 if we can perhaps accommodate both interests in this  
21 very complicated Drew/Toliver analysis.

22 THE COURT: Ms. Liu.

23 MS. LIU: We would be fine with that, Your  
24 Honor.

25 THE COURT: Very well. Then as I sit here on

1 the bench, why don't you come up with some restatement  
2 of that sentence. Make the change right there on your,  
3 on your copy.

4 It seems to me that given the representations by  
5 Ms. Sassower's attorney adviser, that there might be  
6 some accord reached with regard to the use of the  
7 evidence.

8 Clearly, this jury has heard numerous times  
9 about its instruction 23, Ms. Liu, has heard several  
10 times about the events of 1996.

11 MS. LIU: Your Honor, what I'll do, I'll make  
12 the changes. I'll pass them over to Mr. Goldstone and  
13 Ms. Sassower.

14 THE COURT: Very well.

15 MS. SASSOWER: I would remind the Court that I  
16 was not permitted to testify as to the content of that  
17 39-page May 21st fax reflecting my conversation with  
18 Detective Zimmerman and Officer Lippay with respect to  
19 the 1996 arrest.

20 THE COURT: So noted. Now jury instruction  
21 number 24, statements and questions by counsel, 25 -  
22 inadmissible and stricken evidence.

23 Number 26 - defendant's self representation, 27  
24 - direct and circumstantial evidence, 28 - credibility  
25 of witnesses, 29 - number of witnesses, 30 - defendant

1 as witness, 31 - law-enforcement officers' testimony and  
2 32 - punishment not relevant.

3 All of those are standard instructions and I  
4 cannot fathom a valid objection to any of those.

5 Now with regard to -- you're still working on  
6 number 19. So when you're done with your proposed  
7 change, let me see it and I will approve it or not. I'm  
8 sorry, it's not 19, it's 23.

9 MR. MENDELSON: Your Honor, --

10 THE COURT: Yes?

11 MR. MENDELSON: With respect to a couple of  
12 the instructions, we found some typos.

13 THE COURT: Yes.

14 MR. MENDELSON: Jury instruction number 13,  
15 the second line of the final paragraph.

16 THE COURT: Thirteen?

17 MR. MENDELSON: Yes, Your Honor. In  
18 determining the facts, the jury is reminded that before  
19 each member was accepted and, it should say sworn to act  
20 as a juror.

21 THE COURT: Well, do you have the right one,  
22 Mr. Mendelson? Because my 13 is the function of the  
23 jury. Am I incorrect here?

24 MR. MENDELSON: No, that's correct, Your  
25 Honor.



1 THE COURT: Where are you now?

2 MR. MENDELSON: Final paragraph.

3 THE COURT: All right.

4 MR. MENDELSON: In determining the  
5 facts, the jury is reminded that before each member was  
6 accepted and --

7 THE COURT: Sworn, got it. Okay, any others?

8 MR. MENDELSON: Yes, Your Honor. In the jury  
9 instruction number 26 - defendant's self representation,  
10 the defendant has the right to choose not to have  
11 counsel and, space, to represent herself.

12 THE COURT: Yes, space in the second line.  
13 Have it.

14 MR. MENDELSON: That's all from the  
15 government, Your Honor.

16 THE COURT: Very well, all right.

17 MS. LIU: Your Honor, I've now finished my  
18 proposed corrections to number 23. I've handed it over  
19 to Mr. Goldstone and Ms. Sassower.

20 MS. SASSOWER: I'd like it to reflect that, that  
21 my position was that there was no precedent for my  
22 arrest for simply requesting respectfully to be  
23 permitted to testify.

24 THE COURT: Nobody cares what your position is  
25 at this point. I am about to charge the jury and the

1 question then becomes how do I fairly do that.

2           The proposal made by your attorney adviser was  
3 accepted by the prosecution, noted by the Court. That  
4 is the only change to that instruction that I'm going to  
5 entertain.

6           Now with regard to the hand-out that I have now  
7 received from the defense, the defense has been placed  
8 on notice for some time now that we would be reviewing  
9 jury instructions.

10           And what I have here is a handwritten  
11 defendant's theory of the case. This certainly is not  
12 going back to the jury in this form. I have not read it  
13 so I'll comment on the merits in a minute. Mr.  
14 Goldstone.

15           MR. GOLDSTONE: Yes, Your Honor.

16           THE COURT: Would you do me the pleasure of  
17 reading the paragraph that begins with Ms. Sassower in  
18 the form that it would be presented to the jury? I  
19 cannot make out the various circlings and arrows and  
20 interlineations --

21           MR. GOLDSTONE: I understand.

22           THE COURT: -- and so forth.

23           MR. GOLDSTONE: Your Honor, the defendant's  
24 theory of the case, the relevant portion is what I'm  
25 gonna read.

1 THE COURT: Yes.

2 MR. GOLDSTONE: I'm gonna skip the -

3 THE COURT: Yes.

4 MR. GOLDSTONE: -- prefatory paragraphs. Ms.  
5 Sassower, a citizen with a strong, a citizen with a  
6 strong interest in judicial nominations and who is co-  
7 founder and coordinator of a non-profit named Center for  
8 Judicial Accountability, respectfully asks the presiding  
9 chairman, Senator Chambliss, following adjournment of  
10 the Senate Judiciary Committee hearing on May 22nd 2003,  
11 whether she would be allowed to testify at that public  
12 hearing.

13 THE COURT: And just for the record, read the  
14 final paragraph as well.

15 MR. GOLDSTONE: A citizen's respectful request  
16 to testify following adjournment of the public hearing  
17 is not disorderly and disruptive conduct as it does not  
18 hinder or interfere with the peaceful conduct of  
19 government business.

20 THE COURT: Very well. Thank you, Mr.  
21 Goldstone. Now, is there any objection to -- once the,  
22 the form is satisfied, is there any objection by the  
23 government to the content of this statement of the case,  
24 theory of the case?

25 MS. LIU: Your Honor, we do object to it. Your

1 Honor had asked for jury instructions to be submitted on  
2 Thursday evening so that we can talk about them with  
3 plenty of time left.

4 We sent everything that we intended to hand  
5 over to the jury. We gave that to the defense on Friday  
6 morning. This is the first time that we're seeing this.

7 We haven't had a chance to fully look it  
8 through. We haven't had a chance to come up, you know,  
9 including writing our own theory of the case.

10 And there's absolutely nothing in this document  
11 that Ms. Sassower or Mr. Goldstone cannot address in  
12 argument. What this is is a written version of Ms.  
13 Sassower's closing argument.

14 MR. GOLDSTONE: Your Honor, I need to  
15 address. The defense, the defense testimony, cross-  
16 examination just concluded.

17 We were adjusting the defense theory of the  
18 case dependent on the Court's complicated rulings with  
19 respect to complicated evidentiary matters and exhibits.

20 MS. SASSOWER: Excuse me. I, excuse me. I do  
21 not authorize --

22 THE COURT: I don't care what you authorize.

23 MS. SASSOWER: -- my legal adviser to speak --

24 THE COURT: I'm, I -

25 MS. SASSOWER: -- because that's not my

1 position.

2 THE COURT: Well. I'm giving --

3 MS. SASSOWER: There is nothing complicated  
4 about this case.

5 THE COURT: Ma'am?

6 MS. SASSOWER: This case should have been  
7 resolved without trial---

8 THE COURT: Ms. Sassower, --

9 MS. SASSOWER: -- because it needed to be thrown  
10 out on the papers.

11 THE COURT: Ms. Sassower, would you like to be  
12 stepped back or would you like to sit down?

13 MS. SASSOWER: You are not authorized to speak.

14 MR. GOLDSTONE: Understood.

15 THE COURT: Very well. Mr. Goldstone?

16 MR. GOLDSTONE: Yes, Your Honor.

17 THE COURT: Continue. If this theory of the  
18 case is going to be in any way entertained by this  
19 Court, I want you to explain it to me now and I'm  
20 ordering you to do so.

21 MR. GOLDSTONE: I'm happy to do so, Your Honor.  
22 Your Honor, we have a very simple theory of the case.  
23 There are three elements the government must prove in  
24 this criminal case.

25 The first element, we deny. We say that the

1 defendant did not willfully, knowingly engage in  
2 disorderly and disruptive conduct within the U.S.  
3 Capitol Building.

4           Secondly, the government has a second element  
5 which we dispute. And we state very, very plainly -  
6 defendant had no intent to impede or disrupt or disturb  
7 the orderly conduct of a session of Congress.

8           Thirdly, we argue, Your Honor, Ms. Sassower's  
9 conduct did not hinder or interfere with the peaceful  
10 conduct of governmental business.

11           We then go on to say her manner of expression  
12 was not incompatible with the normal activity of that  
13 particular place at that particular time.

14           And then, Your Honor, I've already read the  
15 fourth paragraph. I'm happy to read it again or I can  
16 skip --

17           THE COURT: You can skip that.

18           MR. GOLDSTONE: -- beyond that. And our final  
19 concluding paragraph on our proposed theory of the case  
20 -- actually I've already read that.

21           THE COURT: Yes.

22           MR. GOLDSTONE: If you want, Your Honor, wants  
23 me to read it again, I'm happy to read that again.

24           THE COURT: No, I don't need to hear that  
25 again.

1 MR. GOLDSTONE: Thank you, Your Honor..

2 THE COURT: Very well, Ms. Liu?

3 MS. LIU: Your Honor, in looking at this  
4 again, we wouldn't have a problem with sending this back  
5 to the jury with everything up to the point where the  
6 document says Ms. Sassower --

7 THE COURT: Yes.

8 MS. LIU: -- is a citizen with a strong  
9 interest.

10 THE COURT: Yes.

11 MS. LIU: The first part of this document  
12 simply addresses the elements of the offense.

13 But we do take issue with the paragraph that begins Ms.  
14 Sassower and particularly with the last paragraph, a  
15 citizen's respectful request to tel, testify following  
16 adjournment of a public hearing is not disorderly and  
17 disruptive conduct.

18 I think that's an argument of law. It's certainly not  
19 well established that that's the case.

20 THE COURT: Well, I will make the, the ruling  
21 as follows: That I believe that Ms. Liu's point is well  
22 taken. That the first four that looks like sentences,  
23 if you will, of this document, that is items number one  
24 and two, I will read to the jury as the defendant's  
25 theory of the case.

1           The paragraph beginning Ms. Sassower that Mr.  
2 Goldstone read into the record, and the following  
3 paragraph beginning, a citizen's respectful request to  
4 testify, those two paragraphs will not be read to the  
5 jury and will not, will not be given to the jury as an  
6 instruction in the defendant's theory of the case.

7 Excuse me. Very well.

8           MR. GOLDSTONE: We'd like to note our  
9 objection for the record, Your Honor.

10          THE COURT: You have and it is preserved.

11          MS. SASSOWER: And I'd like to just clarify  
12 that the proposition, as stated by me, was considerably  
13 stronger than that stated by Mr. Goldstone.

14          THE COURT: Well, that's because Mr.  
15 Goldstone is an officer of the court and understands ---

16          MS. SASSOWER: Ah --

17          THE COURT: -- what he's doing. Ms. Sassower,  
18 I don't care what your proposition is. I don't want to  
19 hear from you at this time. Please be seated. All  
20 right. Now with regard to changes. All right.

21          MS. LIU: Your Honor, can we inquire as to  
22 where you intend to read, where in the instructions you  
23 intend to place the defendant's theory of the case?

24          THE COURT: I'll entertain discussion on that.  
25 It seems to me that it would appropriately be placed,



1 and I'm open to suggestion on that.

2 But it should be, it shouldn't precede the  
3 elements of the case or reasonable doubt or the burden  
4 of proof. I think that it can follow those three  
5 instructions however.

6 So in addition to all of the preliminary  
7 information that the jury receives, elements, reasonable  
8 doubt, the burden of proof. And then my proposal would  
9 be to then state what the defendant's theory of the case  
10 is.

11 Then we would resume with proof of state of  
12 mind, on or about, nature of the charge not to be  
13 considered and so forth.

14 MS. LIU: Your Honor, since the defendant's  
15 theory of the case doesn't make mention of her intent,  
16 perhaps we should put it right after the instruction on  
17 proof of state of mind.

18 THE COURT: Very well, I think that's  
19 reasonable and I will do that.

20 MS. LIU: And finally -

21 THE COURT: All right.

22 MS. LIU: -- from the government, Your Honor,  
23 with respect to jury instruction number. 23.

24 THE COURT: Yes.

25 MS. LIU: We've made the changes that we think

1 are appropriate. I passed it to Mr. Goldstone and Ms.  
2 Sassower and it was passed back to me. I'm not quite  
3 clear as to whether they're in any sort of agreement.  
4 Would you like to see it?

5 THE COURT: Yes, I would.

6 MS. LIU: Your Honor, there is some  
7 disagreement about this but I can pass it up.

8 THE COURT: Very well, pass it up.

9 MS. SASSOWER: It is unprecedented,  
10 unprecedented.

11 THE COURT: Mr. Goldstone.

12 MR. GOLDSTONE: Yes, Your Honor.

13 THE COURT: Since I asked you to be involved in  
14 this technical legal presentation here, is the language  
15 that is handwritten here, is this language that you felt  
16 would address the recommendation that you had met, made  
17 to me?

18 MR. GOLDSTONE: I do, Your Honor.

19 THE COURT: Very well. Very well. The  
20 sentence will read as follows: That intro, in, evidence  
21 was introduced by the defendant for the purpose of  
22 showing the defendant's intent or any bias against her.  
23 All right.

24 MS. SASSOWER: That's not clear.

25 THE COURT: Yes. Okay. Well, Ms. Sassower,

1 please sit down.

2 MS. SASSOWER: Are we going to talk about the  
3 exhibits that are in evidence?

4 THE COURT: Very well, that's a point well  
5 taken. Just a minute. Do we have -- all right. I have  
6 the government's exhibit list, one, two, three and four.

7 All of these exhibits were admitted into  
8 evidence. Do we have the original versions of these  
9 photographs and the videotape? We have that available?

10 MR. MENDELSON: We do, Your Honor.

11 THE COURT: Would you mind turning it over to  
12 the courtroom clerk, Ms. Franklin? All right. These  
13 are Government's Exhibit 1, 2, 3 and 4 which have  
14 already been received into evidence. Very well. Now,  
15 with regard to the defense exhibits.

16 MS. SASSOWER: We have the subject profile.  
17 Oh, number two, the subject profile prepared by Special  
18 Agent Lippay. Number three, three, defendant's May 19th  
19 fax to Senators Schumer and Clinton. Four, defendant's  
20 May 19th fax to Chairman Hatch and ranking member Leahy.

21 Seven, right, Special Agent Lippay's May 21st  
22 fax to special agent or police officer. Nine,  
23 defendant's May 22nd memo to Chairman Hatch and ranking  
24 member Leahy.

25 THE COURT: I'm gonna go through this again.

1 Don't worry about it right now, we'll go back through it  
2 in a second. All right, number 9. What's the next one?

3 MS. SASSOWER: Fifteen, defendant's May 5th  
4 memo to Chairman Hatch and ranking member Leahy. Excuse  
5 me. Thirty-six, defendant's 39 -page May 21st letter to  
6 Capitol police Detective Zimmerman.

7 Thirty-nine, excuse me, right, right, I'm sorry,  
8 what? Yes, yes, yes. Oh, okay, 36 is defendant's 39-  
9 page May 21st letter to Capitol police Detective  
10 Zimmerman. Thirty-seven, defendant's April 23rd package  
11 to New York home state Senator Clinton?

12 THE COURT: Excuse me, excuse me. That  
13 package of materials that I had previously ruled that  
14 witnesses could not be questioned about, the big packet  
15 of materials that, --

16 MS. SASSOWER: Yes.

17 THE COURT: -- that was here?

18 MS. SASSOWER: Yes.

19 THE COURT: It was fine for you to proffer that  
20 but that packet is not coming into evidence.

21 MS. SASSOWER: Why is that, Your Honor?

22 THE COURT: Well, the content of those  
23 documents pertaining to the specifics of your reasons  
24 for having this specific judge disqualified.

25 MS. SASSOWER: It shows the serious and

1 substantial nature of my presentation.

2 THE COURT: Very well.

3 MS. SASSOWER: As to which there needed to be  
4 finding<sup>S</sup><sub>A</sub> of facts and conclusions of law by counsel at  
5 Senator Clinton's office, by the Senate Judiciary  
6 Committee, by Senator Schumer's office.

7 THE COURT: Your record's made. It's not  
8 coming in.

9 MS. SASSOWER: Okay. I would point  
10 out --

11 THE COURT: It's not -- next exhibit --

12 MS. SASSOWER: I would point --

13 THE COURT: -- for entry into evidence.

14 MS. SASSOWER: I would point out --

15 THE COURT: Ms. Sassower, this isn't a  
16 negotiation. I don't want to hear anything further  
17 about Exhibit -

18 MS. SASSOWER: Defendant's -

19 THE COURT: -- 37. Next.

20 MS. SASSOWER: I was not intending to speak  
21 about 37.

22 THE COURT: Then proceed.

23 MS. SASSOWER: 38, defendant's May 2nd letter  
24 to Josh Albert. 39, defendant's March 14th letter to  
25 the Senate Judiciary Committee, the nominations clerk.

1 Then we have the e-mail of Josh Albert, number. 41.

2 THE COURT: Do you have the --

3 MS. SASSOWER: Yes.

4 THE COURT: -- the original exhibits --

5 MS. SASSOWER: Yes.

6 THE COURT: -- ready?

7 MS. SASSOWER: Excuse me. Yes.

8 THE COURT: Then collect them so that they can  
9 be turned over to the, --

10 MS. SASSOWER: Now --

11 THE COURT: - to the clerk.

12 MS. SASSOWER: -- you have declined to admit  
13 the full package that was transmitted with the April  
14 23rd letter.

15 I would request that the letter, which is an  
16 attachment actually to the May 2nd letter, the April  
17 23rd letter was actually an attachment to the, to the  
18 May 2nd letter.

19 THE COURT: If I recall correctly, was  
20 the April 23rd letter a page and a half?

21 MS. SASSOWER: It was --

22 THE COURT: Was that the length of it?

23 MS. SASSOWER: It was I believe --

24 THE COURT: And it, and it covered the -

25 MS. SASSOWER: It covered two pages.

1 THE COURT: It covered the correspondence in  
2 Exhibit Number 37, is that correct?

3 MS. SASSOWER: Excuse me. The package --

4 MR. GOLDSTONE: Is Your Honor asking whether  
5 that was the two-page cover letter?

6 THE COURT: That is exactly --

7 MS. SASSOWER: There was a couple, yes, --

8 THE COURT: -- what I'm asking.

9 MS. SASSOWER: -- the cover letter. Will that  
10 be admitted?

11 THE COURT: Very well. It seems to me that  
12 there's some argument to be made for its admission. I  
13 believe that it, that letter was used during the  
14 examination of Ms. Leecia Eve. And if memory serves --  
15 of course the jurors' recollection will control.

16 But if my memory serves correctly, that was a  
17 document that she seemed to have a recollection of. I  
18 allowed inquiry based upon that recollection.

19 But it was only the cover letter in that  
20 packet. It was not the documents contained in the  
21 packet. I'll hear from the government on that. Let me  
22 see that cover letter, April 23rd.

23 MS. SASSOWER: That was also separately marked  
24 by me, I would point out.

25 THE COURT: It's thir -- no, I'm sorry. that's

1 Schumer.

2 MS. SASSOWER: Exhibit 12.

3 THE COURT: Twelve. Let me see it please.

4 Just pass it up. Thank you.

5 MS. SASSOWER: Mr. Albert also gave testimony  
6 on that subject.

7 THE COURT: Very well. My ruling is that this  
8 will not come in. I've reviewed it. And certainly it  
9 would be, if this were a true cover letter simply  
10 identifying the documents contained therein, I would  
11 have, I'd hear argument. But I would be more inclined  
12 to have the jury review this.

13 This document contains a page and a half  
14 of statement of opinion by Ms. Sassower as to matters  
15 such as the, and I'm quoting here, "documenting their  
16 grotesquely inadequate where not outrightly fraudulent  
17 judicial ratings". That type of reference --

18 MS. SASSOWER: It was sent to you by the  
19 government that's part of the packet that you have  
20 excluded.

21 THE COURT: Right. And the packet's not coming  
22 in and neither is this --

23 MS. SASSOWER: Well, --

24 THE COURT: -- Exhibit No. 12.

25 MS. SASSOWER: Well, that's a substantiation of



1 what the American Bar Association and the City Bar --

2 THE COURT: Very well.

3 MS. SASSOWER: -- had been doing --

4 THE COURT: Next.

5 MS. SASSOWER: -- with their judicial  
6 ratings.

7 THE COURT: Do you have any other exhibits  
8 that have been --

9 MS. SASSOWER: Yes, I would note for Your Honor  
10 that the May 2nd letter to Josh Albert enclosed the  
11 April 23rd letter as part of it.

12 THE COURT: Very well. The, Exhibit 38 will  
13 come in, Exhibit 12 will not. Next. I believe that  
14 that covers the exhibits that were previously admitted  
15 and those that in bench conference this morning we  
16 talked about as a proffer.

17 Exhibit 7, I want the government to look at  
18 that exhibit to -- it was represented that this has been  
19 admitted into evidence. I simply have no recollection  
20 of it. It is the fax, May 21st fax from Lippay to SA  
21 Ortiza.

22 Government, has there, has that been admitted?

23 MR. MENDELSON: I have to see the fax.

24 MS. SASSOWER: Sure.

25 MR. MENDELSON: Your Honor, just for -- the

1 government believes that only Defense Exhibit 2, Defense  
2 Exhibit 38, and Defense Exhibit 41 have been properly  
3 introduced into evidence without objection.

4 THE COURT: Yes.

5 MR. MENDELSON: As for the one page of Defense  
6 Exhibit 7, we believe that it is the second page which  
7 is identical to the third page of Defense Exhibit 2.  
8 Therefore, it's cumulative and we would object to its  
9 introduction.

10 THE COURT: Very well. Is it cumulative? Is  
11 it the -- I have no recollection of the document. Let  
12 me see it.

13 MR. MENDELSON: It's identical photograph and  
14 identifying information about the defendant,  
15 Exhibit 2 --

16 THE COURT: Right. These -

17 MR. MENDELSON: -- has that in color form.

18 THE COURT: Right. These are the attachments  
19 to the Exhibit 2 that we've previously seen. Very well.

20 There is, there is -- the only difference  
21 between what's offered in Exhibit 7 and what was offered  
22 in Exhibit 2 is the fax cover sheet, it seems to me.  
23 Very well, this is cumulative evidence.

24 Exhibit 7, very well. Our records reflect, Mr.  
25 Mendelson, that number 7 has been admitted so it will