

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

-----X  
:  
UNITED STATES OF AMERICA : Criminal Action  
: No.: M4113-03  
v. :  
:  
ELENA SASSOWER, :  
:  
Defendant. :  
:  
-----X

Washington, D.C.  
April 15, 2004

The above-entitled action came on for jury  
trial before The Honorable BRIAN HOLEMAN, Associate  
Judge, in Courtroom Number 218.

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DISTRICT OF COLUMBIA

APPEARANCES:

On behalf of the Government:

JESSIE LIU, Esquire  
AARON MENDELSON, Esquire  
Assistants United States Attorney

On behalf of the Defendant:

ELENA SASSOWER, Pro Se  
MARK GOLDSTONE, Esquire  
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P R O C E E D I N G S

1  
2 THE CLERK: United States vs. Elena Sassower,  
3 case number M4113-03.

4 THE COURT: Announce yourselves please.  
5 Announce yourselves for the record.

6 MS. LIU: Good morning, Your Honor, Jessie Liu  
7 for the United States.

8 MS. SASSOWER: Good morning, Your Honor, Elena  
9 Sassower, criminal defendant.

10 MR. GOLDSTONE: Mark Goldstone, attorney  
11 adviser.

12 THE COURT: Good morning, everyone. Please be  
13 seated. We initially must address this issue of juror  
14 number 10. Are you -- is Mr. Mendelsohn here today?

15 MS. LIU: Your Honor, he's on his way. He's  
16 stuck in the line outside.

17 THE COURT: Very well.

18 (Bench Conference)

19 THE COURT: Very well. I'm about to have juror  
20 number 10 brought in so that we can address the issue of  
21 his disqualification. All right.

22 THE CLERK: You want him to come up to the  
23 bench, Your Honor?

24 THE COURT: Yes. Juror 782. Good morning,  
25 sir. How are you today? Good. Did you have an

1 opportunity to think about the matter that we discussed  
2 at the bench yesterday?

3 JUROR NO. 10: I did, Your Honor.

4 THE COURT: Yes. And your conclusion?

5 JUROR NO. 10.: I think I should be dismissed  
6 for lack of my desire to have the recent process be  
7 punished would interfere with my judgment on the rest of  
8 the case.

9 THE COURT: Very well. After we all departed  
10 from this place yesterday, I was back in chambers and  
11 had a telephone conversation with coincidentally a  
12 colleague of mine who has a courtroom nearby.

13 And she identified the juror standing in the  
14 corridor using a cell phone expressing that, to whomever  
15 they were speaking, that they sought to have themselves  
16 disqualified from the trial they were in because the  
17 case was taking too long.

18 I asked her to describe the juror and she said  
19 that he was kind of tall with a white beard. And I was  
20 wondering if that could have been you?

21 JUROR NO. 10: No, Your Honor.

22 THE COURT: Very well. Well, you have  
23 expressed to me that you believe that you could not be  
24 fair and impartial in this case. And having had a night  
25 to reflect on that, I will say two things to you.

1 First of all, I believe that I am compelled to  
2 discharge you given those representations.

3 If you can no longer be fair and impartial,  
4 after having taken the oath to do so, I don't see how in  
5 good conscience and how under the law I can compel you  
6 to stay.

7 Ms. Sassower is entitled to a fair trial.  
8 You're representing to me now that she cannot have it if  
9 you remain. And therefore, I believe that I'm compelled  
10 to relieve you.

11 But let me say this to you, sir. It seems to me  
12 that as a member of the bar, you would be the very  
13 person whom I would expect to put aside all biases, to  
14 put aside any irritation that you might have with the  
15 presentation of the evidence, and simply make your  
16 decision based upon the evidence that is ultimately  
17 admitted in this case.

18 We expect everyone who's called for jury  
19 service and certainly those who take the oath as jurors,  
20 to complete their service.

21 And it seems to me that in this case, while on  
22 the one hand I appreciate your candor, on the other  
23 hand, you have in fact taken the easier course.

24 I believe it would have been more difficult, but  
25 nevertheless you could have stayed with this case and

1 made your decision based solely upon the evidence in  
2 this case.

3 As a lawyer, we deal with both sides of an issue  
4 all the time from our earliest days of law school until  
5 the last days we practice. We deal with both sides of a  
6 case.

7 You haven't yet heard the defense case, you  
8 don't know what evidence she would present. And it is  
9 troubling to me that having not heard that side, you  
10 have concluded that you couldn't be fair and impartial.

11 So if I seem a bit disappointed, it is because I  
12 am. I, I, I have sat for jury duty as a lawyer and I  
13 appreciated the opportunity to participate in that way.  
14 It's unfortunate that you will not put aside your biases  
15 and decide this case on the evidence presented.

16 Therefore, I believe I have no choice but to  
17 discharge you from further service. Collect your things  
18 and return to the jury office, not the lounge, but the  
19 actual office where you had to check in on the first  
20 day.

21 JUROR NO. 10: Thank you, Your Honor. I, I --

22 THE COURT: And please --

23 THE JUROR NO. 10: I certainly will not mention  
24 this to anyone else this to anyone else.

25 THE COURT: Yes, please do not mention this to

1 anyone else. Thank you.

2 JUROR NO. 10: Thank you, Your Honor.

3 MS. SASSOWER: May I --

4 JUROR NO. 10: Because of my oath, I felt  
5 like the oath is to remain --

6 THE COURT: Lower your voice.

7 JUROR NO. 10: The oath is to remain  
8 impartial and I just, I just can't.

9 THE COURT: Very well. We're done here. Thank  
10 you very much. I appreciate it.

11 (Thereupon, the juror was excused.)

12 MS. SASSOWER: May I?

13 THE COURT: Yes.

14 MS. SASSOWER: Yesterday, at the outset of the  
15 proceedings I believe, maybe it was the day before,  
16 there was an issue as to the Legal Times article that  
17 had appeared.

18 Perhaps Your Honor is aware that in today's  
19 Washington Post there is an article. I read it and  
20 realized something very prejudicial that must be  
21 addressed.

22 Quite aside from what took place at the opening  
23 and the effect that it must have had on the jurors,  
24 there is a marshal that has been both standing and  
25 sitting directly in back of me. I am directly facing

1 the jurors.

2 Your Honor admonished me before this case  
3 began, that the five boxes decorated in red, white and  
4 blue and the flag have to be shielded from the jurors.

5 They should not see it until there's a ruling  
6 and it is appropriate that they be presented as part of  
7 the case. I respected Your Honor and advised you at the  
8 time that those boxes went to the Senate Judiciary  
9 Committee ~~and~~ decorated as such.

10 But I realize in reading the article that the  
11 prejudice, among other things, of this marshal's  
12 presence gives the suggestion that I must be monitored.  
13 There must be surveillance of me.

14 This is a case involving disruption of Congress.  
15 What it does subliminally -- I mean I think it would be  
16 prejudicial in any case, But in this case, there is too  
17 strong a parallel to what took place at the Senate  
18 Judiciary Committee.

19 It gives the subliminal message that  
20 legitimizes the surveillance and monitoring of me by the  
21 Capitol police.

22 THE COURT: All right, very well. Let me  
23 address --

24 MS. LIU: Your Honor, --

25 THE COURT: You don't have to speak. I will do

1 whatever is required in this courtroom to maintain  
2 order. That is not an issue that is subject to debate.

3 And to the extent the marshals are required to  
4 maintain order in this case, a criminal case, I will so  
5 order. And in this case, as a criminal defendant, you  
6 are no different than any other defendant to appear in a  
7 case in which order must be maintained.

8 I gave you every opportunity during the  
9 pendency of this case, after it had been assigned to me,  
10 to comport yourself in such a manner that the need for a  
11 marshal would not exist. You failed to do so.

12 I brought marshals in here to demonstrate to  
13 you, and I'm telling you right now that if there is any  
14 further disruption, the warning that I gave to you  
15 yesterday remains in effect.

16 We will have no further discussion on this  
17 issue. Your record is made. Step down.

18 MS. SASSOWER: So I may not be heard in  
19 response?

20 THE COURT: You may not be heard in response .

21 MS. SASSOWER: The record will reflect it.

22 MS. LIU: Your Honor, may we make a brief  
23 record at this point?

24 THE COURT: Yes.

25 MS. LIU: I just want to inform you that Ms.



1 Sassower has been wearing a jail bracelet during the  
2 entire time that she has been in trial.

3 She is not incarcerated.

4 And to the extent, to me, Your Honor, that's --  
5 we haven't made an issue of it. But if there's any such  
6 prejudice, I suggest it arises Your Honor on her actions  
7 in wearing this bracelet as well as her actions in  
8 court.

9 THE COURT: Quite frankly, I had not even  
10 noticed her attire and certainly not her wrist. And I'm  
11 going to ask you now, Ms. Sassower, is that in fact a  
12 jail bracelet that you're wearing?

13 MS. SASSOWER: It is.

14 THE COURT: You are not currently incarcerated,  
15 I want that removed forthwith. Just do that.

16 (Open Court)

17 THE CLERK: The Court will take stand in brief  
18 recess until return of court.

19 (Recess)

20 THE CLERK: Recalling our trial case, United  
21 States vs. Elena Sassower, M2003 - I'm sorry, M4113-03.  
22 Your Honor, Ms. Sassower and her attorney, and Mr.  
23 Goldstone stepped out. Are you ready for the jury?

24 THE COURT: Yes, but let me -- what was the --

25 MR. MENDELSON: We would like to proffer to

1 defense and to the Court the Government's preliminary  
2 exhibit list and we will ask defense to do the same.

3 THE COURT: Very well.

4 MR. MENDELSON: And two, Ms. Liu has an issue  
5 with respect to one of our witnesses.

6 THE COURT: Yes.

7 MS. LIU: Your Honor, after Detective  
8 Zimmerman, we intend to call Officer Roderick Jennings.  
9 And we have one page of his notes which are Jencks  
10 material which we're turning over.

11 I want to state for the record well in advance  
12 what our obligations are, since he hasn't taken the  
13 stand on direct yet. And I'm handing that over to Ms.  
14 Sassower now.

15 THE COURT: Indeed, and the Court appreciates  
16 that. It will facilitate the questioning of Officer  
17 Jennings by the defense.

18 And certainly your obligation is to turn it  
19 over following his testimony, and I appreciate the fact  
20 that you've done so prior to.

21 MR. MENDELSON: Your Honor, we would  
22 inquire if the defendant has preliminary exhibit list  
23 for the Government and for the Court.

24 THE COURT: Yes.

25 MS. SASSOWER: It's not yet prepared. I would

1 be happy to provide it as soon as --

2 THE COURT: Very well.

3 MS. SASSOWER: The, the defendant's exhibits  
4 are consider, considerably more extensive and  
5 voluminous.

6 (Thereupon, the jury was brought to the  
7 courtroom at 10:15 a.m.)

8 THE COURT: Ladies and gentlemen, before we get  
9 started, first of all, good morning.

10 THE JURY: Good morning.

11 THE COURT: Before we get started today, you  
12 obviously know now that juror number 10 is no longer  
13 with us. You should draw absolutely no inference as to  
14 why juror number 10 is not here.

15 Suffice it to say that sufficient reason was  
16 given that his service was excused. To that end, if any  
17 of you have exchanged contact information and so forth  
18 with juror number 10, do not discuss this case with him  
19 or his reasons for leaving and not being present with us  
20 any further.

21 Very well. We are about to resume the, the  
22 testimony. Detective Zimme, Zimmerman please.

23 THE WITNESS: Good morning.

24 THE COURT: Good morning. Detective Zimmerman,  
25 you recall that yesterday you were placed under oath?

1 THE WITNESS: Yes.

2 THE COURT: You remain under oath and the  
3 conditions of your oath remain in effect.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you very much.

6 MS. SASSOWER: Good morning, Detective  
7 Zimmerman.

8 THE WITNESS: Good morning, Ms. Sassower.

9 MS. SASSOWER: May I approach the witness with  
10 Exhibit 17 for identification?

11 THE COURT: Yes.

12 MS. SASSOWER: Thank you.

13 CONTINUATION OF CROSS-EXAMINATION

14 BY MS. SASSOWER:

15 Q I had provided you with the subpoena with  
16 annexed discovery demand for documents, is that not  
17 correct?

18 A That is correct.

19 THE COURT: Excuse me just a minute. I must  
20 take this. Please converse among yourselves.

21 (Pause)

22 THE COURT: Very well. I apologize for that.  
23 Often what will happen, I shouldn't say often, but it's  
24 not infrequent, that a judge from another part of the  
25 building will call and they're in the middle of a matter

1 and will need to speak with me, and I'm obliged to take  
2 their call. So I apologize for that. We can now  
3 resume. Ms. Sassower.

4 BY MS. SASSOWER:

5 Q Please turn to the document demand. The first  
6 request --

7 MS. LIU: Objection, Your Honor, may we  
8 approach?

9 THE COURT: Yes.

10 (Bench conference)

11 MS. LIU: Your Honor, that discovery demand  
12 contained in that letter is not admissible and there  
13 should be no reference to it.

14 THE COURT: Why are we -- I thought we've  
15 addressed this issue of the discovery demand. You asked  
16 about records that were --

17 MS. SASSOWER: Documents, certain procedures on  
18 arrests by U.S. Capitol police on request to testify,  
19 especially to the Senate Judiciary Committee where the  
20 person is charged in particular with disruption of  
21 Congress. My contention is that this is unprecedented.

22 THE COURT: What is unprecedented?

23 MS. SASSOWER: My arrest.

24 THE COURT: What is it that, that you seek to  
25 elicit from this witness?

1 MS. SASSOWER: Whether he has any knowledge of  
2 an arrest by U. S. Capitol police of persons requesting  
3 to testify at the Senate Judiciary Committee hearing.

4 THE COURT: Well, it seems to me that the  
5 witness can be asked whether or not he has documents. I  
6 suppose I'm just simply not, not following at this  
7 point. Didn't we go through this yesterday with Special  
8 Agent --

9 MR. MENDELSON: Lippay.

10 THE COURT: -- Lippay? We went through this  
11 with Special Agent Lippay. And as I recall the  
12 response, anything that she might have had was turned  
13 over.

14 MS. SASSOWER: But I received nothing

15 THE COURT: So it seems to me that that's a  
16 potential answer to this question.

17 MS. LIU: Your Honor, I agree. Our position is  
18 that Ms. Sassower did ask for everything Zimmerman has.  
19 It was turned over. I don't think it's appropriate for  
20 her to make any, or refer to a document that's not in  
21 evidence.

22 THE COURT: I agree with that. Therefore, if  
23 that's the objection, she can ask questions concerning  
24 whether he has documents and so forth.

25 But to have him read from this discovery

1 document, I agree that it's improper and won't be  
2 allowed. So the objection is sustained. Mr.  
3 Mendelsohn.

4 MR. MENDELSON: Ms. Sassower would not be  
5 allowed because that's hearsay, that's not this witness'  
6 statement, hearsay.

7 THE COURT: Very well. The point is well  
8 taken. You can ask the questions that you need to ask  
9 to establish whether he has documents. And if he does,  
10 whether they were turned over and so forth.

11 I don't want you quoting from this document that  
12 he didn't prepare but you prepared.

13 MS. SASSOWER: All right.

14 THE COURT: Very well.

15 (Open Court).

16 THE COURT: Objection sustained.

17 BY MS. SASSOWER:

18 Q Have you brought with you today any records of  
19 arrests by Capitol police of members of the public for  
20 requesting to testify in opposition to confirmation of  
21 federal judicial nominees at the Senate Judiciary  
22 Committee?

23 Do you have any records covering arrests-

24 A No.

25 Q -- by Capitol police?

1 A I do not.

2 Q You do not have them here today?

3 A That's correct.

4 Q Are there any records of arrests by Capitol  
5 police of citizens requesting to testify at public  
6 congressional hearings, particularly at the Senate  
7 Judiciary Committee?

8 A I have no personal knowledge of that, ma'am.

9 Q And you have been with the force for 22 years?

10 A Twenty-two years in May, yes, ma'am.

11 Q Have you brought with you today any documents  
12 as to the guidelines, protocol, of Capitol police for  
13 responding to disruptive conduct by members of the  
14 public and for evaluating when arrest is appropriate?

15 A I have not.

16 Q Are there guidelines of Capitol police as to  
17 how to respond to dis, possible disorderly conduct?

18 A Guidelines for a possible disorderly conduct?

19 Q Yes, guidelines.

20 A There are guidelines for arrests, yes ma'am,  
21 for all arrests.

22 A For example, Capitol police officers carry  
23 revolvers, is that correct?

24 A They carry automatic weapons, yes, ma'am.

25 Q And they are instructed that, not to pull out



1 and shoot someone simply for what they, what the  
2 individual officer might deem as disorderly?

3 A There is a use of force policy, yes, ma'am.

4 Q But you don't start out with the force unless  
5 force is necessary?

6 A There's use of force guidelines, ma'am.

7 Q Right. But there are also guidelines where  
8 force is not necessary, am I correct?

9 A I don't understand your question, ma'am, I'm  
10 sorry.

11 THE COURT: Counsel, please approach.

12 (Bench Conference)

13 THE COURT: Unfortunately, it seems that we've  
14 regressed some since yesterday. Let me make this very  
15 clear. The last two questions that you asked were  
16 matters that were essentially disposed of in the  
17 discovery phase of this case.

18 To the extent that there would have been any  
19 disclosure of protocols concerning the Capitol police,  
20 that is a matter for pretrial discovery.

21 And for this witness, the inquiry will be  
22 limited to documents originated by this witness. And  
23 that would include any written, any forms that he filled  
24 out, any notes that he took, any incident documents that  
25 he would have generated.

1           There will be no further inquiry into protocols,  
2 procedures, guidelines, any such other document.

3           MS. SASSOWER: Thank you.

4           THE COURT: All right.

5           (Open court).

6           MS. SASSOWER: I, may I approach the witness  
7 with Defendant's Exhibit 2 for identification?

8           THE COURT: Very well.

9           BY MS. SASSOWER:

10          Q    You have in front of you the subject profile  
11 prepared by Special Agent Lippay, is that not correct?

12          A    That is correct.

13          Q    When did you read it for the first time?

14          A    The exact date, I have no idea.

15          Q    Did you have occasion to read any part of it  
16 that might have been prepared before speaking to me on  
17 the telephone on May 21st?

18          A    No, ma'am, not that I recall. I got a brief  
19 summary verbally by Agent Lippay before I spoke to you.

20          A    Before speaking to me, did you have an  
21 opportunity to look at the flyer or bulletin that  
22 Special Agent Lippay had prepared before speaking to me  
23 that is next to the subject profile?

24          A    The, the information sheet with your picture on  
25 it, this one here?

1 Q Exactly.

2 A Before speaking to you the very first time?

3 Q Yes?

4 A Not that I recall, ma'am, no. I believe this  
5 was done after I spoke to you.

6 Q But prior to speaking with me, you did have  
7 involvement with this matter?

8 A I'm sorry, ma'am, I don't understand what you  
9 mean.

10 Q Did you assist Special Agent Lippay in  
11 procuring the photograph that was used for this flyer  
12 bulletin?

13 A Two things, ma'am. Yes, I was, I did obtain  
14 the photograph for her. It's my recollection that was  
15 done after we spoke. And this is not a bulletin.

16 Q But what would you call it if not a bulletin?

17 A Information sheet.

18 THE COURT: It ,it being?

19 THE WITNESS: I'm sorry.

20 THE COURT: Page three of Exhibit 2?

21 MS. SASSOWER: Yes, Your Honor.

22 THE COURT: Very well.

23 BY MS. SASSOWER:

24 Q Special, Detective Zimmerman, I refer you to  
25 the second page of the subject profile. It reads,

1 Detective Zimmerman located Sassower's United States  
2 Capitol police arrests photo from 1996.

3 And then this is about in the middle of that  
4 second page. And then it goes on, Special Agent Lippay  
5 created a bulletin for Ms. Kelly's office containing the  
6 color photo and physical identifiers and a version for  
7 the U.S. Capitol police Senate Division and DPD. What's  
8 DPD?

9 A Dignitary Protection Division.

10 Q Is that the Secret Service?

11 A No, ma'am, it's the Dignitary Protection  
12 Division of the United States Capitol police.

13 Q So, and then the next line which is a new  
14 paragraph, Special Agent Lippay delivered the bulletins,  
15 now it's plural, bulletins to Sergeant Nicholas, Senate  
16 Division, and telephonically telephoned Special Agent  
17 Ortiza DPD, who was on the senator's protective detail.

18 A bulletin, again a bulletin, was faxed to DPD  
19 and Special Agent Ortiza will respond for the Threat  
20 Assessment Section for the color copy.

21 Now, it would appear that Special Agent Lippay  
22 believed this to be a bulletin.

23 THE COURT: Sustained.

24 MS. SASSOWER: Do you still maintain that this  
25 is not a bulletin?

1 MS. LIU: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MS. SASSOWER:

4 Q I draw your attention further down to the fact  
5 that it's only thereafter that the subject profile  
6 states Special Agent Lippay then called the subject.

7 THE COURT: Sustained.

8 MS. SASSOWER: What is the basis on which it is  
9 sustained?

10 THE COURT: Approach, please.

11 (Bench Conference)

12 THE COURT: First of all, I'm allowing you  
13 significant latitude in allowing you to read this  
14 document that was not prepared by this witness. Having  
15 said that, you cannot predicate questions as to his  
16 knowledge based upon what someone else did.

17 In other words, what, he can only speculate as  
18 to what Detective, Special Agent Lippay's thoughts were  
19 and her motivations for acting. So this entire line of  
20 questioning is improper.

21 MS. SASSOWER: Okay.

22 THE COURT: Very well.

23 MS. LIU: Your Honor, for the record, I'd like  
24 to lodge the same objection to impeach this witness with  
25 anything that is not prepared by him.

1 (Open Court)

2 BY MS. SASSOWER:

3 Q When was the first time you read any portion of  
4 this subject profile as you can recall?

5 A It would have to be sometime on the 21st, but  
6 exactly when it was, I don't know.

7 Q So it would be after you spoke with me?

8 A It's my recollection that the flyer wasn't put  
9 together until after I spoke with you. There's a very  
10 good possibility that it could have been done prior.  
11 The exact timeline I honestly don't recall.

12 Q Now, now the subject profile reflects that I  
13 asked to speak with Sergeant Lippay's supervisor and you  
14 came on the line, which is consistent with your  
15 testimony, is that not correct?

16 A That is correct.

17 Q And it is your testimony, is it not, that the  
18 reason I requested to speak to sergeant, Special Agent  
19 Lippay's supervisor is because she continued to insist  
20 that I was arrested in 1996 for requesting to testify,  
21 is that not so?

22 A Based on my recollection yesterday from your  
23 fax, you requested to speak to Agent Lippay's supervisor  
24 because she refused to supply you with some information.

25 Q Okay. Oh, I'm sorry, this is Defendant's

1 Exhibit 8 marked for identification, being the May 21st  
2 fax, 39 pages.

3 This is my 39-page fax addressed to you,  
4 Detective Zimmerman, is that not correct?

5 A That is correct.

6 Q Which you have testified that you received on  
7 the morning of May 22nd.

8 A That I reviewed on the morning of the 22nd.

9 Q Received and reviewed.

10 A According to the date stamp, ma'am, it was  
11 received on the 21st.

12 Q What time on the 21st?

13 A 2152 hours.

14 Q 9:52 in the evening?

15 A Yes, ma'am.

16 Q The next morning, May 22nd, when you came to  
17 work and you saw that fax, were you surprised to receive  
18 a fax from me?

19 A No, ma'am.

20 Q Why were you not surprised?

21 A I anticipated documentation from you.

22 Q I promised you documentation, is that not correct?

23 A Yes, ma'am.

24 Q Ah-huh. Now you have testified that we had two  
25 conversations, is that not correct?

1 A I believe at least two conversations.

2 Q And you have estimated that there was one  
3 conversation of roughly an hour and one conversation  
4 several hours after that, of about an hour and a  
5 quarter, an hour and a half?

6 A That's, yes, ma'am.

7 THE COURT: Please approach.

8 (Bench Conference)

9 THE COURT: Basically what we have here are  
10 restatements of testimony that are already into the  
11 record at the time of receipt of the fax.

12 The testimony with regard to how many hours he  
13 spent on this matter is already in the record from his  
14 testimony yesterday. What you must do is ask new  
15 questions. I don't need any reiteration of material  
16 that's already in the record.

17 MS. SASSOWER: Okay, thank you, Your Honor.

18 (Open court)

19 MS. SASSOWER: Special Agent Lippay's subject  
20 profile contains no information about the content of our  
21 conversation, is that not correct?

22 MS. LIU: Objection, Your Honor.

23 N THE COURT: Sustained.

24 BY MS. SASSOWER:

25 Q Did you prepare notes or any records



1 written, typed, reflecting our conversations today?

2 MS. LIU: Objection, Your Honor, asked and  
3 answered.

4 THE COURT: I'll allow this one, one more time.  
5 Detective.

6 THE WITNESS: I did not.

7 THE COURT: Very well.

8 MS. SASSOWER: I direct you to the first page  
9 of the fax to you that I sent. Is it not correct that  
10 it refers to no more than a sum total of one hour's  
11 conversation had with Special Agent Lippay and yourself,  
12 cumulative?

13 MS. LIU: Objection, Your Honor.

14 THE COURT: Sustained. Next question, please.  
15 If you don't have anything further, we'll move on.

16 MS. SASSOWER: Okay.

17 BY MS. SASSOWER:

18 Q Well, is it not correct when you read the fax  
19 and you saw that I only identified an hour's  
20 conversation, did you believe that I was incorrectly  
21 stating the time we had spoken?

22 A It made no difference to me at all, ma'am.

23 Q All right, I'll move on. When you received the  
24 fax, did you also receive a message, a phone message  
25 that I had left with an officer the previous evening

1 shortly before faxing the fax?

2 A Not that I recall, ma'am.

3 Q Okay. Just so that we can clarify there's no  
4 doubt here. The, the fax, the 39-page fax consists of a  
5 1 1/2 page cover letter to you, is that not correct?

6 A That is correct, ma'am.

7 Q And under that, there is a one and a third  
8 page, quarter page --

9 MS. LIU: Objection, Your Honor, relevance.

10 MS. SASSOWER: I just --

11 THE COURT: It may be premature. Let me hear  
12 the question first.

13 MS. SASSOWER: Memo to Chairman Hatch and  
14 ranking member Leahy of the Senate Judiciary Committee,  
15 two pages.

16 THE COURT: Sustained.

17 MS. SASSOWER: Turning to the subject profile  
18 once again, which you read sometime after speaking with  
19 me, according to your testimony, the first page, subject  
20 information.

21 It asks whether I'm considered dangerous. Could  
22 you read what the response was?

23 MS. LIU: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MS. SASSOWER:

1 Q Did you consider me dangerous?

2 A I do not, ma'am.

3 Q Thank you. And that would be reflected by the  
4 fact that you didn't record our conversation. You  
5 didn't take notes of our conversation. You didn't take  
6 any steps after our conversation to upgrade the rating  
7 that Special Agent Lippay had signed that I was not  
8 dangerous.

9 A There was no information that we discussed that  
10 I felt was relevant to anything, ma'am.

11 Q Okay. You testified, you testified that  
12 following my arrest you received three calls from  
13 prisoner processing in four minutes that I wanted to  
14 speak with you. Is that not correct?

15 A That is correct, ma'am. That's an estimate.  
16 They were very close together.

17 Q I wanted to speak to you so badly. Is that,  
18 was that --

19 THE COURT: Sustained. Question, no editorials  
20 please.

21 BY MS. SASSOWER:

22 Q Is that not correct? Okay. You said that when  
23 you came down you brought documents to review with me,  
24 is that correct?

25 A No, ma'am.

1 Q No. Is it not correct that when you came down,  
2 and we spoke briefly, I asked you to bring down the 39-  
3 page fax?

4 A We didn't speak on the phone, ma'am.

5 Q When I was arrested and at Capitol Station,  
6 Capitol police station, is it not correct that when you  
7 came down I insisted that you bring the 39-page fax so  
8 that we might discuss it?

9 A Ms. Sassower, I didn't speak to you until I was  
10 already down there.

11 Q That's what I'm saying. When I was at Capitol  
12 station and I was requesting that you be brought down,  
13 that you come down, is it not a fact that when you came  
14 down, you came down empty-handed without any documents?

15 A Yes, ma'am.

16 Q And is it not correct that I asked you to go  
17 and bring the 39-page fax which you acknowledge having  
18 received?

19 A I remember telling you that I received your  
20 fax.

21 Q And did you subsequently come to me with the  
22 39-page fax?

23 A No, ma'am. I believe the information was  
24 supplied by you to me from your docu, your box of  
25 information.

1 Q Is it, are, are you saying that you never, at  
2 my insistence, came to me and brought me the 39-page  
3 fax, the original 39-page fax that you had received that  
4 morning, and according to your testimony, reviewed that  
5 morning?

6 A It's my recollection, Ms. Sassower, that the  
7 copy of that 39-page fax was supplied to you or supplied  
8 to me by you from your documentation that you brought.

9 MS. SASSOWER: Okay. May I approach the  
10 witness --

11 THE COURT: You may.

12 MS. SASSOWER: -- with exhibit marked 25 for  
13 identification.

14 BY MS. SASSOWER:

15 Q This is -- what is the exhibit I gave you?

16 A It's a prisoner property receipt.

17 Q Is it, is it not the practice when prisoners  
18 are brought in, they're handcuffed?

19 MS. LIU: Objection, Your Honor.

20 MS. SASSOWER: Is it not the practice --

21 THE COURT: Counsel, approach, approach please.

22 (Bench conference)

23 THE COURT: I of course have no understanding  
24 of what an exhibit is until it's actually identified for  
25 the record. So now we have personal property receipts.

1                   How are these receipts for the property that  
2 it covers relevant to the elements of the events or your  
3 defense?

4                   MS. SASSOWER: He testified that I provided him  
5 with documents including that 39-page fax. He, he  
6 testified that those documents he then transmitted to  
7 some superior officer.

8                   In fact, once a prisoner is brought in, all of  
9 their possessions are taken from them. And when  
10 Detective Zimmerman came down, I requested that he  
11 examine the case from 1996 which he, which is identified  
12 in the 39-page fax, which 39-page fax identifies, I  
13 would bring down for his inspection should there be any  
14 question that a simple request to testify does not,  
15 should not result in an arrest.

16                   THE COURT: Right. Now that I've heard the  
17 exchange between you and Detective Zimmerman, what still  
18 is not clear to me is the relevance of this to the  
19 elements of the defense or your defense to it.

20                   MS. SASSOWER: My defense is that there was no  
21 precedent for this arrest. And in fact, Detective  
22 Zimmerman had threatened I would be arrested in the face  
23 of that precedent, which is exactly what happened.

24                   THE COURT: I don't find that these property  
25 receipts are relevant whatsoever to prove the elements

1 of the charge against you or any plausible defense that  
2 you might have to the charges. Therefore, I am now  
3 precluding you from asking this witness, --

4 MS. SASSOWER: Okay.

5 THE COURT: -- any further questions pertaining  
6 to Exhibit 25.

7 MS. LIU: May I make a further record about  
8 Exhibit 25? We also note that there's been no  
9 foundation laid to ask this witness about that having  
10 introduced into evidence.

11 THE COURT: Very well.

12 MS. SASSOWER: He testified that I provided him  
13 with the box that I brought with me.

14 THE COURT: Did he prepare the property  
15 receipts? That would be the foundation question. But  
16 since there's going to be a preclusion of any further  
17 testimony pertaining to it, it becomes a non-issue. I  
18 don't see how it could possibly be admitted into  
19 evidence --

20 MS. SASSOWER: Okay.

21 THE COURT: -- when there's gonna be no one  
22 here that I know that can lay a foundation for them.

23 MS. SASSOWER: Okay. Fine, Your Honor.

24 (Open court)

25 MS. SASSOWER: Okay, I just have a couple

1 more questions. I offer Defendant's Exhibit  
2 18 for identification, the September 22, 1996 police  
3 misconduct complaint that I filed --

4 MR. MENDELSON: Objection, Your Honor.

5 THE COURT: Sustained.

6 MS. SASSOWER: Exhibit --

7 MR. MENDELSON: Your Honor, we're gonna object  
8 before this is even proffered to the witness. If you'd  
9 like us to approach.

10 THE COURT: Why don't you?

11 (Bench conference)

12 THE COURT: All right. What's been  
13 handed up to me is what's been marked as Defendant's  
14 Exhibit 18. And it is identified letterhead of the  
15 Center for Judicial Accountability Inc., priority mail,  
16 September 22, 1996.

17 In regards a police misconduct complaint  
18 addressed to the Internal Affairs and Inspections  
19 Division of the United States Capitol police  
20 headquarters and Larry Soulsby S-o-u-l-s-b-y, Chief of  
21 Police, Metropolitan police, Washington, D.C.

22 MS. SASSOWER: Your, I'm sorry, Your Honor, --

23 MR. MENDELSON: Your Honor, it's my objection.

24 MS. SASSOWER: This is the fax, second page.

25 THE COURT: Very well. I've also now



1 been referred to page two of Ms. Sassower's --

2 MS. SASSOWER: Thirty-nine-page fax.

3 THE COURT: Page two of the fax cover sheet  
4 letter, dated May 21, 2003 to Detective Zimmerman. Very  
5 well. Now your objection?.

6 MR. MENDELSON: Preliminarily, it's  
7 inappropriate for the defendant to seek to introduce a  
8 document by stating what that document is.

9 Preliminarily, we object each time the defendant  
10 characterizes a document by reading from it. That's  
11 inappropriate and it's not evidence.

12 Second, with respect to this particular  
13 document, this witness has absolutely nothing whatsoever  
14 to do with this document.

15 It's, there is perhaps more prejudicial value  
16 than there is any probative value especially through  
17 this witness.

18 THE COURT: I cannot possibly see what a  
19 police misconduct complaint of 1996 would have to do --

20 MS. SASSOWER: Could we just --

21 THE COURT: Or what possible relevance  
22 it could have to an arrest in 2003.

23 MS. SASSOWER: Sergeant Bignotti was involved  
24 in the 1996 arrest and had a motive independently to  
25 arrest me in 2003 because I had filed against her --

1 THE COURT: Very well.

2 MS. SASSOWER: -- a police misconduct  
3 complaint.

4 THE COURT: Then I will address issues with  
5 regard to evidence that is to come through Sergeant  
6 Bignotti if and when she appears.

7 MS. SASSOWER: But I just --

8 THE COURT: This witness will not be testifying  
9 as to this police misconduct complaint --

10 MS. SASSOWER: Can I --

11 THE COURT: -- irrespective of its reference in  
12 page two of your May 21, 2003 letter.

13 MS. SASSOWER: I can ask whether he's aware of  
14 it because we discussed it on the telephone, am I not  
15 correct? I can --

16 THE COURT: Ask him about what? This, this --

17 MS. SASSOWER: This was the subject of  
18 extensive phone conversation.

19 THE COURT: I don't care if you spent days  
20 discussing it. This police misconduct complaint from  
21 1996, even if it were admissible under some, for some  
22 reason that I could not possibly articulate, it is more  
23 prejudicial than probative of anything in this case.

24 MS. SASSOWER: But we discussed it at the time.

25 THE COURT: It will not be admitted.

1 Your objection is noted for the record.

2 (Open Court)

3 BY MS. SASSOWER:

4 Q You testified that I brought a cardboard box.  
5 You testified that when I was brought to Capitol station  
6 there was with me a cardboard box full of papers and  
7 that you had to take it.

8 It was discovery information and you did take  
9 it, you testified, and you gave it to your sergeant.

10 MS. LIU: Objection, Your Honor, compound.

11 THE COURT: Sustained. What is the question,  
12 the immediate question?

13 BY MS. SASSOWER:

14 Q What were the papers that you were referring --  
15 what papers are you alleging that I gave you that you  
16 took and passed on to your sergeant?

17 A That 39-page fax.

18 Q Did I -- in my 39-page fax, on the second page,  
19 did I not state --

20 MS. LIU: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MS. SASSOWER:

23 Q Did I tell you that I had brought down with me  
24 the file of my 1996 arrest by Capitol police?

25 A You used terminology to the effect of you had a

1 lot of documentation that you wanted me to review.

2 Q Did I tell you at any time that I was planning  
3 to and did bring to me, bring with me to Washington the  
4 file of my 1996 arrest?

5 A I'm sure somewhere in the conversation that was  
6 referenced, yes.

7 Q Did I tell you that I would bring down with me  
8 and, and/or did bring down with me the police misconduct  
9 complaint that I filed in 1996?

10 MS. LIU: Objection, Your Honor.

11 MS. SASSOWER: Did I tell you?

12 THE COURT: The objection is sustained. The  
13 question is not relevant to the charges or any defense  
14 thereto. You will move it along.

15 BY MS. SASSOWER: Okay. The file jacket of  
16 this case, does it contain information regarding my 1996  
17 arrest?

18 MS. LIU: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MS. SASSOWER:

21 Q Just a moment, one last moment. One final  
22 question. A couple of related final questions.

23 The second page of my fax to you, did,  
24 following your receipt of my fax, did you go to the  
25 website of the Center for Judicial Accountability and

1 examine the documents related to this matter?

2 A You're talking about your arrest?

3 Q Related to the Center for Judicial  
4 Accountability's opposition to Judge Wesley and the  
5 basis therefor.

6 THE COURT: Sustained.

7 MS. SASSOWER: Did Sergeant Lippay -- is it not  
8 correct that we discussed together the basis of the  
9 Center for Judicial Accountability's opposition to Judge  
10 Wesley's confirmation to the Second Circuit Court of  
11 Appeals?

12 MS. LIU: Objection.

13 THE COURT: Sustained. And there will be no  
14 further questioning along that line. Do you have any  
15 further questions, Ms. Sassower?

16 BY MS. SASSOWER:

17 Q Just a moment. Is it not, is it not correct  
18 that I told you in our phone conversation that I had  
19 received no notification by anyone in a position of  
20 authority at the Senate Judiciary Committee that I would  
21 not be permitted to testify?

22 A I have no recollection of that, that part of  
23 the conversation.

24 Q Is it not correct that as part of this 39-page  
25 fax, I included a letter from July 3rd, 2001 that I had

1 sent to Senator Schumer?

2 MS. LIU: Objection, Your Honor.

3 THE COURT: Sustained.

4 MS. SASSOWER: Is it not correct that from the  
5 39-page fax, you saw that in 1996 I had received written  
6 notification from Chairman Hatch?

7 THE COURT: Sustained.

8 MS. SASSOWER: I, I believe that under these  
9 circumstances, I have completed my cross.

10 THE COURT: Very well. Any redirect?

11 MS. LIU: No redirect, Your Honor.

12 THE COURT: Very well. Detective Zimmerman,  
13 thank you very much for your participation in this case.  
14 Please don't discuss your testimony with anyone.

15 And if we need to call you back for any reason,  
16 we'll be in touch through the United States Attorney's  
17 Office.

18 THE WITNESS: Thank you, Judge.

19 (Thereupon, the witness was excused.)

20 THE COURT: Do we have another witness?

21 MS. LIU: We do, Your Honor.

22 THE COURT: Very well.

23 MS. LIU: This is the witness with  
24 the television and easel.

25 THE COURT: Very well. So, do we need to