

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 16, 2004

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

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
Attorney Adviser

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SUPERIOR COURT OF DISTRICT OF COLUMBIA

EVA B. RAMOS
OFFICIAL COURT REPORTER

Telephone: 879-1074

PROCEEDINGS

1
2 THE CLERK: United States versus Elena
3 Sassower, M4113-03.

4 THE COURT: Counsel.

5 MS. LIU: Your Honor, Jessie Liu for the United
6 States.

7 MR. MENDELSON: Aaron Mendelson for the
8 United States.

9 MS. SASSOWER: Elena Sassower, criminal
10 defendant.

11 MR. GOLDSTONE: Mark Goldstone, attorney
12 adviser. Good morning.

13 THE COURT: Good morning everyone. Please be
14 seated. I'd like to take up a practical matter of
15 housekeeping. The first matter that I will hear before
16 taking up the housekeeping matter is any motion that the
17 defense may have at this time.

18 MS. SASSOWER: I am advised that to preserve my
19 rights I should be moving for a judgment of acquittal.
20 And I am prepared to argue that motion.

21 THE COURT: Please proceed.

22 MS. SASSOWER: Although I look forward, can
23 hardly wait to putting on the defense case, it has been
24 my position from the outset of this prosecution that the
25 charge against me is not just bogus but malicious.

1 And that this is demonstrated prima facie by
2 the videotape which is conclusive evidence that there
3 was no act of disruption of Congress within the statute,
4 within the proof, burden of proof.

5 And moreover, that the relevant correspondence,
6 in particular the 39-page fax of May 21st, 2003 sent to
7 Detective Zimmerman and acknowledged by him on the
8 stand, establishes resoundingly that there was no
9 intent.

10 Without the act and without the intent, there is
11 no basis for this prosecution. Indeed, even were there
12 an act, there needs to be intent, and there is none, and
13 ^{it} was known at the outset by the prosecution that there
14 was no intent.

15 Now specifically, I have prepared long ago a
16 memorandum containing an analysis of the videotape. The
17 videotape does not speak for itself, unless it is
18 examined carefully with the ear up close so that the
19 words are distinctly heard, slowed down. And I have
20 done the appropriate interpretive analysis.

21 Before providing the Court with that
22 interpretive analysis of the videoape shown yesterday, I
23 wish the Court to be reminded of the fact that before
24 trial, repeatedly in my submissions, I asserted without
25 any denial or dispute by the government that the

1 videotape exposed the deceit of the underlying
2 prosecution documents on which this disruption of ~~cases~~,
3 Congress case rested.

4 It was undisputed in the record before the
5 court. However, now I will give the particulars as to
6 what the videotape shows.

7 THE COURT: You don't need to do that, just
8 make your next point. You've already established your
9 contention that the videotape does not speak for itself.

10 MS. SASSOWER: Yes.

11 THE COURT: Move on to your next point please.

12 MS. SASSOWER: Well, may I offer into, for the
13 Court's review, and I'm happy to give a copy to the
14 government so that there can be no doubt here. Because
15 I will go through this analysis on the stand. And
16 rather than --

17 THE COURT: Well, --

18 MS. SASSOWER: -- wasting additional court
19 time, I think it would be useful.

20 THE COURT: Well, what you may or may not state
21 on the stand is a matter for me to address at the time
22 that you make the, the proffer. What I want to hear now
23 is the remaining points for your motion for judgment of
24 acquittal.

25 MS. SASSOWER: All right. The videotape, as

1 analyzed carefully, evaluated, establishes there's no
2 act.

3 THE COURT: And the 39-page fax establishes --

4 MS. SASSOWER: And the 39-page fax --

5 THE COURT: -- no intent. What are your next
6 points? We, we don't need a reiteration --

7 MS. SASSOWER: The additional --

8 THE COURT: -- of that.

9 MS. SASSOWER: The additional --

10 THE COURT: When I speak --

11 MS. SASSOWER: I'm sorry.

12 THE COURT: -- don't you speak. We already
13 have a record made --

14 MS. SASSOWER: Uh-huh.

15 THE COURT: -- of the videotape as establishing
16 no act, of the 39-page fax establishing no intent.

17 MS. SASSOWER: I additionally would proffer to
18 the Court the, in addition to the videotape, --

19 THE COURT: Yes.

20 MS. SASSOWER: -- the transcript that was
21 handed over by the prosecution to me at the same time as
22 a copy of the videotape was handed over to me. And an
23 analysis of that transcript is also contained in my memo
24 analysis of the videotape.

25 Further, the analysis of the videotape and

1 transcript to which I referred also contains an analysis
2 of the prosecution document demonstrating by comparison
3 with the videotape and the transcript that they are
4 materially false and deceitful.

5 Because without that falsehood, without those
6 falsehoods and deceit, the government knew they could
7 not bring this charge.

8 Finally, I proffer to the Court, and again
9 this, the significance of this particular document was
10 also highlighted in my motion papers, in the record
11 before trial, my May 28th memorandum to Chairman Hatch
12 --

13 MR. MENDELSON: Objection, Your Honor.

14 MS. SASSOWER: -- and Ranking Member Leahy.

15 THE COURT: I'll allow it for purposes of this
16 motion. Proceed please.

17 MS. SASSOWER: Containing my most
18 contemporaneous recitation of what had taken place at
19 the hearing and immediately thereafter in the hallway
20 with respect in particular to Chairman, Presiding
21 Chairman Chambliss who is identified in the underlying
22 prosecution document as the complainant.

23 Finally, I would once again note to the Court
24 that the government was free to offer the complainant,
25 to appear in support of this charge. The government has

1 not done so. Senator Chambliss has, won't appear,
2 instructed Senate Legal Counsel to move to quash my
3 subpoena.

4 I have a confro, a right of confrontation under
5 the Sixth Amendment, recognized most recently by the
6 Supreme Court in, in the matter of Crawford.

7 Finally, finally, and once again recognizing
8 the evidence before the Court that there is no
9 precedent, there's no other instance where a citizen's
10 respectful request to testify at a congressional
11 committee's public hearing resulted in a criminal
12 charge of disruption of Congress, I submit, as a
13 matter of law, and as an elementary proposition,
14 that a citizen's respectful request to testify at a
15 congressional committee's public hearing is not
16 and must never be deemed to be disruption of
17 Congress.

18 THE COURT: Very well.

19 MS. SASSOWER: Thank you, Your Honor.

20 THE COURT: Thank you. Now, any response from
21 the government?

22 MR. MENDENSOHN: Your Honor, viewing the
23 evidence in the light most favorable to the government,
24 as the Court must do at this time, we believe that a
25 reasonable jury could find the defendant guilty beyond a

1 reasonable doubt based on the evidence presented by the
2 government, including the testimony of Special Agent
3 Lippay, Detective Zimmerman, Officer Jennings, the
4 videotape that was introduced into evidence as well as
5 the testimony of Sergeant Bignotti.

6 And we would ask the Court to deny the
7 defendant's motion for judgment of acquittal at this
8 time.

9 THE COURT: Very well. The standard that must
10 be applied in ruling upon a motion for judgment of
11 acquittal is set forth in Curley vs. United States, 81
12 U.S. App. D.C. 389, page 392, 160 F. Second 229, page
13 232. It's a 1947 case.

14 In Curley, the standard was set forth
15 succinctly as follows: if there is no evidence upon
16 which a reasonable mind might fairly conclude guilt
17 beyond a reasonable doubt, the motion must be granted.

18 In this case, the standard has not been
19 reached. There has been evidence presented by the
20 government from which a reasonable mind could conclude
21 guilt beyond a reasonable doubt. And based upon that,
22 the motion for judgment of acquittal must be denied.

23 MS. SASSOWER: May I --

24 THE COURT: There's no further discussion on
25 the motion. Now, with regard to other preliminary

1 matters.

2 MS. SASSOWER: Yes.

3 THE COURT: Please be seated. Be seated.

4 MS. SASSOWER: I have another preliminary
5 matter.

6 THE COURT: Please be seated. Is Mr. Vinik in
7 the courtroom?

8 MR. VINIK: Yes, Your Honor. Very well, would
9 you please take the podium briefly? Mr. Vinik, you are
10 counsel for the Senate's employees who are under
11 subpoena?

12 MR. VINIK: Yes, Your Honor.

13 THE COURT: Very well. What I'd like for you
14 to represent to me for the record is, based upon your
15 review of this case, what was the involvement of Ms. Eve
16 and Mr. Albert, I believe it is, as regards to Ms.
17 Sassower?

18 MR. VINIK: Based on my understanding, Your
19 Honor, the defendant in this case, Elena Sassower,
20 contacted a number of Senate offices in opposition to
21 the nomination of Judge Richard Wesley for the Second
22 Court of Appeals.

23 Specifically, with regard to these two
24 witnesses, the defendant had telephone conversations, as
25 I understand it, initially with Mr. Albert concerning

1 her opposition to Judge Wesley.

2 Those one or more initial conversations
3 resulted in one conversation of approximately 40 minutes
4 in length which was on or about May 20th, 2003.

5 In that conversation, the defendant expressed
6 her opposition to the nomination of Judge Wesley. She
7 asked Ms., Ms. Eve and Mr. Albert to communicate her
8 opposition to Senator Clinton. She asked in the, in
9 that conversation for the opportunity to testify at the
10 May 22nd, 2003 hearing.

11 Based on that conversation, there was a concern
12 that the defendant may attempt to approach Senator
13 Clinton at the hearing in a manner that might be
14 misconstrued by her security detail.

15 Because the senator is the former First Lady of
16 the United States, that detail includes not just the
17 United States Capitol police but the United States
18 Secret Service.

19 Because of that concern, there were
20 conversations between the United States Capitol police
21 and the senator's office that have previously been the
22 subject of testimony in this case, Your Honor.

23 THE COURT: Very well. Stand right there, Mr.
24 Vinik. Either Ms. Liu or Mr. Mendelsohn, is Mr. Vinik's
25 statement of the general facts of the involvement of

1 these witnesses, is his statement the same as your
2 understanding?

3 MS. LIU: Your Honor, it is.

4 THE COURT: Very well. The reason for this
5 inquiry by the Court, prior to the jury being seated
6 this morning, is for purposes of efficiency in handling
7 of the testimony of these witnesses.

8 I have no problem with inquiry being made as to
9 basic identification information, where they work, for
10 whom they work, what their duties are, as a preliminary
11 matter.

12 The heart of the testimony elicited from these
13 witnesses will be factual and it will be essentially a,
14 an opportunity to disclose what occurred during these
15 telephone conversations and any actions that these
16 individuals personally took thereafter.

17 That will be the extent of testimony that will
18 be received by this Court from those witnesses. Mr.
19 Vinik, thank you for your cooperation.

20 MR. VINIK: Thank you.

21 THE COURT: Very well. All right, any other
22 preliminary matters? First, the government.

23 MS. LIU: Your Honor, would you like to review
24 the e-mails that the Senate witnesses have produced? I
25 don't know what, if any, of these Ms. Sassower intends

1 to introduce.

2 But for the purposes of efficiency, it may make
3 sense to rule before, in terms of using them, as to
4 whether they are admissible.

5 THE COURT: Very well. How many e-mails are we
6 speaking of?

7 MS. SASSOWER: Oh.

8 MS. LIU: Your Honor, by my count, it's 10.

9 THE COURT: Very well.

10 MS. SASSOWER: Oh.

11 THE COURT: Just a minute. Are there any other
12 writings that are at issue with regard to these
13 witnesses?

14 MS. LIU: Your Honor, I am not aware of any.

15 THE COURT: Very well. I think that we should
16 address this issue preliminarily. I don't want time
17 consumed during their examination with unnecessary
18 proffers. So provide me with the copy of the e-mails
19 please. Very well.

20 I've received from the government e-mails
21 reflecting the following dates and where there is
22 duplication of date, I will also give the time.

23 May 2, 2003; May 13, 2003; May 15, 2003 6:25
24 p.m.; May 15 2003 6:23 p.m.; May 15, 2003 6:20 p.m., May
25 16, 2003; May 19th, 2003; May 22, 2003 at 8:38 a.m.,

1 attaching original message dated May 21, 2003 10:57
2 p.m.; May 22, 2003 8:38 a.m., attaching message dated
3 May 21, 2003 at 11:05 p.m. And then finally, May 22,
4 2003 8:41 a.m..

5 The following e-mail correspondence will not be
6 proffered, referred to or in anyway attempted for
7 introduction into evidence or review by any witness in
8 this case. The e-mail of May 15, 2003 at 6:25 P.M..

9 MS. SASSOWER: Excuse me.

10 THE COURT: This refers specifically to the
11 matter of, in the New York Court of Appeals, in the
12 matter of Doris L. Sassower.

13 The e-mail of May 15, 2003 at 6:23 P.M., again
14 there is reference here to the Court of Appeals and the
15 case is Elena Ruth Sassower, appellant v. Commission on
16 Judicial Conduct of the State of New York, respondent.

17 Finally, the e-mail of May 15, 2003 at 6:20
18 P.M., there's reference here to a Supreme Court of New
19 York, Appellate Division case, Elena R. Sassower, as
20 coordinator of the Center for Judicial Accountability
21 vs. the Commission on Judicial Conduct of the State of
22 New York.

23 These matters will, neither the e-mails nor
24 their contents will be addressed by either the witnesses
25 that are employees of the Senate or any other defense

1 witness including the defendant herself.

2 The documents will be preserved for the record
3 in the event of appeal. The remaining e-mails provided
4 by the government may be proffered subject to the
5 government's interposition of any objection that they
6 may have.

7 MS. LIU: Your Honor, may I say something for
8 the record?

9 THE COURT: Yes.

10 MS. LIU: Your Honor, the government objects to
11 the admission of any of these e-mails on the basis of
12 speech and debate clause.

13 In, the ruling on page 4 on the motion to quash
14 stated that at the time the case at bar, confirmation
15 hearing itself as well as any work performed by
16 subpoenaed respondents as deliberative and communicative
17 processes outside of the hearing, are protected by the
18 speech or debate clause and interpreted case law.

19 The government's position is that all 10 of
20 these e-mails involve investigation of Ms. Sassower's
21 claims about Judge Wesley, prior rulings by Judge Wesley
22 in cases in which the defendant was a party and/or
23 arrangements to speak with Ms. Sassower about her claims
24 concerning Judge Wesley.

25 These are e-mails that were sent from one

1 Senate staffer to another and discussed the concerns of
2 a constituent regarding a judicial nominee as well as
3 their communications with her.

4 And for that reason, Your Honor, we believe
5 that their introduction is barred by the speech and
6 debate clause.

7 In addition, we think that they are irrelevant
8 for some of the reasons insofar as they relate to the
9 reasons for Ms. Sassower's objection to Judge Wesley.

10 THE COURT: Very well. Response, Ms. Sassower.

11 MS. SASSOWER: The Court has already ruled and
12 it is the law of the case, which the Court continuously
13 refers to, has referred to, that the interaction of Josh
14 Albert and Leecia Eve with me that culminated in their
15 notifying Capitol police and taking action that resulted
16 in my arrest is fair inquiry here.

17 This e-mail each reflect the interaction. And
18 indeed. the excluded e-mail also materially reflect on
19 misconduct of that office which was the subject of
20 complaint by me in two voice mail messages left for the
21 chief of staff, Tamera Luzzato and is germane.

22 THE COURT: The ruling is as follows: the
23 interactions between Mr. Albert and Ms. Eve and Ms.
24 Sassower I believe were of the administrative sort,
25 falling outside of the deliberative and communicative

1 processes associated with the legislative activity that
2 would give them coverage under the speech and debate
3 clause.

4 Essentially, they spoke with Ms. Sassower about
5 her opposition to the nomination and her intent to, or
6 desire to appear.

7 To the extent that there were any
8 communications such as the telephone call on, the
9 conference call I believe took place on May 20th, if I'm
10 not mistaken. That to me falls outside of the speech
11 and debate clause.

12 I am hesitant because I notice that one of
13 these e-mail pages has three items and I'm taking the
14 time to read all three at this point. Yes, very well.

15 Let me, I think it's simply going to be easier
16 for me to identify those that may provide the basis of
17 inquiry but which are still subject to evidentiary
18 objection. May 2, 2003; May 13, 2003; May 16, 2003; the
19 e-mail of May 19, 2003. I'm going to rule that also as
20 excluded.

21 Not so much because of the, the fact of its
22 communication, rather it is the content of the e-mail
23 itself which I believe very much places this document
24 then within the deliberative and communicative process.

25 MS. SASSOWER: May I be heard, Your Honor?

1 THE COURT: No, I'm not through with my ruling.
2 Very well. May 22, 2003 at 8:38 a.m., that can be
3 discussed subject to any objections the government might
4 have.

5 May 22, 2003, 8:38 a.m., attaching the May 21,
6 2003, 11:05 p.m. correspondence, that's, that's
7 available for proffer or for objection. May 22, 2003
8 8:41 a.m., that is also available for proffer and for
9 objection.

10 The entire packet of these e-mails will be kept
11 and preserved for any appellate record. Very well.
12 Anything further by the government?

13 MS. LIU: No, Your Honor.

14 THE COURT: Very well. Ms. Sassower.

15 MS. SASSOWER: Yes. Firstly, my legal adviser
16 correctly pointed out that you inquired of the
17 government whether they ascribe to the recitation of Mr.
18 Vinik but you did not ask me.

19 THE COURT: Let me stop you right there. There
20 was a reason for that. You are going to be the
21 questioner. I don't need to hear from you.

22 What I needed to hear were the parameters of
23 the involvement that another member of the bar bound by
24 the rules of professional conduct would represent to me,
25 having reviewed the case.

1 Having had that assessment, I gave a ruling as
2 to the parameters of your inquiry. So your opinion as
3 to their interaction with you is not relevant to my
4 decision.

5 Counsel's review of the case as their counsel
6 and his representations to me as a member of the bar,
7 that was important. I've ruled on that; it is no longer
8 a preliminary matter.

9 Your objection or any objection that you could
10 possibly make is noted for the record. Do you have
11 other preliminary matters?

12 MS. SASSOWER: I most certainly do, Your Honor.

13 THE COURT: Then let's hear it.

14 MS. SASSOWER: The most stunning exclusion is
15 of the e-mail of May 19, 2003 which transmitted my
16 communications --

17 THE COURT: Excuse me, just a minute. We are
18 going to have your recitation --

19 MS. SASSOWER: All right.

20 THE COURT: -- of what those documents contain.

21 MS. SASSOWER: Okay.

22 THE COURT: The record is already made as to
23 what will be permitted and what will not be permitted.
24 I've identified them by date and where appropriate,
25 time. So their content at this point is irrelevant.

1 What is the argument that you wish to make --

2 MS. SASSOWER: Thank you, Your Honor.

3 THE COURT: -- as to why they would be subject
4 to appropriate proffer and admission into evidence.

5 MS. SASSOWER: It has already been testified to
6 by Special Agent Lippay and is so reflected in her
7 subject profile, that the basis upon which Senator
8 Clinton's office contacted the Threats Assessment
9 Section of Capitol police was a fax identified as a May
10 19 fax and a voice mail message of May 20.

11 Now you have excluded the, the May 19
12 communication, that is the fax which was the basis upon
13 which Senator Clinton's office contacted the police.
14 They found that fax as objectionable and worthy of
15 scrutiny by Capitol police.

16 Capitol police, as reflected in the subject
17 profile and is attested to by Special Agent Lippay,
18 found no threats or harassing language. Nonetheless, it
19 was the basis --

20 THE COURT: Which specific e-mail are you
21 referring to as containing the fax? What is the date at
22 the top?

23 MS. SASSOWER: The May 19, 2003, 2:00 p.m.
24 e-mail.

25 THE COURT: Very well. I need to hear no

1 further discussion on that issue. The fact of a fax
2 being transmitted and therefore placing into operation
3 certain activity is what's relevant.

4 The actual content as is reflected in this e-
5 mail, it will not come into this case. It is irrelevant
6 and it is protected by the speech and debate clause. It
7 will not come in.

8 MS. SASSOWER: Is it your contention, is it
9 your view, Your Honor, that had Capitol police preserved
10 the voice mail message, that would not be admissible?

11 THE COURT: I'd have to hear it. I'd have to
12 know the content, just as I had to know the content of
13 this document to make a determination as to how it would
14 be protected.

15 MS. SASSOWER: Well, --

16 THE COURT: The fact that the fax was
17 transmitted, received and that activity was taken based
18 upon the fact, the fax is the evidence in this case.
19 This information contained here was never recited by
20 Officer Lippay.

21 MS. SASSOWER: She, she did recite that she
22 received a one-page fax.

23 THE COURT: Very well. Absolutely, you're
24 absolutely correct. We need argue on this no further.
25 What is your next point? What is your next point?

1 This, the content of this fax will not come in
2 through these witnesses. It's simply not going to be
3 admitted in this case and it will not come in through
4 you.

5 MS. SASSOWER: Are you saying that the May 19
6 transmittal that was the basis of their, or part of the
7 basis for their contacting Capitol police cannot be
8 inquired about of these witnesses and presented to the
9 jury?

10 THE COURT: You can inquire whether a fax was
11 received. Yes, it was. Did you take any action based
12 upon the fax? Yes, I did. What did you do? That's
13 what we will hear. This content here is protected by
14 the debate and speech clause. It is not coming in. All
15 right, next.

16 MS. SASSOWER: I have a standing objection to
17 this Court's presiding over this trial based upon its
18 demonstrated actual bias before trial and manifested
19 throughout the trial and --

20 THE COURT: Very well, what's your next point?

21 MS. SASSOWER: -- now most recently by the
22 ruling this morning.

23 THE COURT: What's your next point?

24 MS. SASSOWER: To no avail on my points
25 presented.

1 THE COURT: Very well. Anything further from
2 the government?

3 MS. LIU: No, Your Honor.

4 THE COURT: Very well. All right. We have
5 another preliminary matter. It's been brought to my
6 attention that juror number 9 needs to speak with us at
7 the bench. So why don't we approach and have juror
8 number 9 brought in.

9 (Bench Conference. Juror number 9 present.)

10 JUROR NO. 9: Good morning, how are you?

11 THE COURT: Just fine, thanks. I wanted to
12 speak with you briefly about your most recent
13 information to Ms. Franklin. As I understand it, at the
14 conclusion of Sergeant Bignotti's testimony yesterday,
15 you believed that you recognized her.

16 JUROR NO. 9: Yeah.

17 THE COURT: Okay. Would you explain the --
18 just give us more facts.

19 JUROR NO. 9: The last time when I was here I
20 thought I, I told you I thought I recognized Ms.
21 Sassower.

22 THE COURT: Yes.

23 JUROR NO. 9: I'm on the Hill for my job
24 constantly.

25 THE COURT: Yes.

1 JUROR NO. 9: And I see a lot of police and I'm
2 in and out of hearings. I've waited outside the hearing
3 rooms and I, I've seen her. I know I've seen and I
4 know, I have an opin, I know her attitude. I've seen
5 and heard her talk. I've seen her, you know, I mean
6 more than just walking by me.

7 THE COURT: Yes. And, well, you need to
8 elaborate on that.

9 JUROR NO. 9: I think I guess what I'm saying I
10 have an opinion of form, opinion formed about her.

11 THE COURT: I, I, I need you to elaborate on
12 that, you, you as a person. Let me just make sure I
13 understand this. You don't know her personally, --

14 JUROR NO. 9: No.

15 THE COURT: -- correct? All right. So you
16 have seen her because your business takes you to the
17 Hill with some frequency.

18 JUROR NO. 9: Uh-huh.

19 THE COURT: So you've seen her, I guess you've
20 seen her, have you seen her performed her professional
21 duties or --

22 JUROR NO. 9: Yeah, outside hearing rooms.
23 I've seen her in work, while she's working.

24 THE COURT: Right. All right. So you've seen
25 her while she was working. And you've heard her testify

1 here, have you had any prior communication with her?

2 JUROR NO. 9: No.

3 THE COURT: All right, very well. So based
4 upon those contacts, your, you're about to say that you
5 had formulated some kind of opinion.

6 JUROR NO. 9: I just have an opinion. I know
7 her, I think I, I've heard her talk and I've seen her.
8 I kind of have an opinion formed about her.

9 THE COURT: Well, the question for us is
10 whether or not you could be a fair and impartial juror
11 in this case taking into account the evidence that's
12 presented.

13 I'm not asking you whether Officer Bignotti is
14 appealing to you personally or not or whether there is
15 something about her demeanor or delivery that is
16 irritating to you.

17 And my question is, as I instructed you
18 preliminarily, what comes from her mouth is the
19 evidence. So the question becomes whether you can be a
20 fair and impartial juror in consideration of the
21 evidence, not of her person, not of her personality but
22 of the evidence, what she, the words that she said.

23 JUROR NO. 9: Before I answer, am I, can I get
24 in trouble? I'm worried that --

25 THE COURT: The issue that is of serious

1 concern to me is that based upon the facts that you have
2 given, it seems to me that one would be hard-pressed to
3 come to some conclusion as to, some conclusion based
4 upon your limited contacts as to the quality of the
5 evidence. The evidence is what it is.

6 JUROR NO. 9: Uh-huh.

7 THE COURT: And you've indicated that you've
8 seen her do her work and you were about to say, if you
9 didn't say, I've formulated an opinion.

10 JUROR NO. 9: Uh-huh.

11 THE COURT: The concern of me is - did, an
12 opinion based on what, the evidence that came from her
13 mouth? Because if, if you have been fair and impartial
14 in evaluating that, and that's a matter for jury
15 deliberation.

16 But if you're saying that you have some kind of
17 preconceived notion -- excuse me?

18 MS. SASSOWER: No, I'm just --

19 THE COURT: If you have some kind of
20 preconceived notion that you bring to the deliberative
21 process, then that's a problem. So I will hear from
22 you.

23 JUROR NO. 9: I do have, I have an opinion
24 outside of here.

25 THE COURT: What is your opinion?

1 JUROR NO. 9: That she is tough, she's strict.
2 I don't think, I don't have a bad opinion of her. I
3 don't think she's a bad person but I'm, my seeing I just
4 remembered her as being tough and strict.

5 THE COURT: All right. So you believe her to
6 be tough and strict. Does that have any, does that in
7 any way impair your ability to fairly and impartially
8 evaluate the evidence in the case? .

9 JUROR NO. 9: I don't believe so. I don't
10 believe, I don't think so.

11 THE COURT: Very well. Then just step back at
12 the table there and let me speak with counsel here.

13 (Juror number 9 not present.)

14 THE COURT: I mean, you know, certainly it
15 seems to me that these are matters that go to the
16 credibility of the witness. And this is something that
17 maybe assumption, deliberation, I'm gonna give them an
18 instruction that they are going to determine credibility
19 based on his demeanor. I mean that's certainly within
20 the purview.

21 What I have here is that I have some
22 preconceived notion about this woman that causes me to
23 lose my ability to be fair and impartial, but I didn't
24 hear that. I'll hear from the government.

25 MR. MENDELSON: Would the Court ask him that

1 question specifically? Would the Court ask him would
2 your preconceived of her being strict and tough --

3 THE COURT: I can ask it again. I thought I
4 did, I thought I did do that but I'll do it again. Ms.
5 Sassower.

6 MS. SASSOWER: You asked the question, he
7 answered it

8 THE COURT: I'll ask it again. Just a minute.

9 (Juror number 9 present.)

10 THE COURT: I believe I asked you this before
11 but I just want to, you know, firm it up.

12 Would your opinion that officer, that Sergeant
13 Bignotti is tough, would that impair your ability to be
14 a fair and impartial juror in this case?

15 JUROR NO. 9: I would do everything I can to be
16 fair and impartial.

17 THE COURT: Very well. Thank you. Just a
18 minute. What else?

19 MR. MENDELSON: The answer is yes or no.

20 THE COURT: His real answer has to be can you
21 or can't you be fair and impartial?

22 JUROR NO. 9: Don't, I'm just worried that I'm
23 -- am I getting in trouble? I'm worried that I'm in
24 some form of trouble.

25 THE COURT: You shouldn't worry about whether

1 you're gonna get in trouble. What you should worry
2 about is whether you should, can be fair and impartial
3 and that's what I need to hear. I don't need
4 equivocation.

5 JUROR NO. 9: I don't know if I can be.

6 THE COURT: Let me tell you what it sounds
7 like. What's been brought to my attention in the past
8 was that you had a, I believe you're the juror who had a
9 job interview in Williamsburg. You're also the witness
10 who, I'm sorry, the juror who thought you might know Ms.
11 Sassower.

12 And now you're the juror who claims that you
13 can't be fair and impartial based upon certainly limited
14 contacts with Officer Bignotti and your opinion of her
15 as being tough.

16 The accumulation of this sounds to me like
17 someone who's essentially trying to evade responsibility
18 and not perform the duty for which you took an oath at
19 the outset.

20 I find that to be very disturbing. And while I
21 make the determination as to what is to be done with
22 you, I'm going to take a recess for five minutes. We'll
23 come back and then I'll call you back to the bench.

24 Don't discuss this with anyone. Bring him back
25 here. You're not to discuss this conversation with

1 anyone.

2 (Open Court)

3 THE COURT: Five-minute recess.

4 THE CLERK: The court will stand in brief
5 recess until return of the court.

6 (Thereupon, the Court recessed at 10:40 a.m.)

7 (Thereupon, the Court reconvened at 10:50a.m.)

8 THE CLERK: Your Honor, resuming the trial
9 matter United States versus Elena Sassower M4113-03.

10 THE COURT: Counsel approach.

11 (Bench Conference)

12 THE COURT: I think that for the record, I need
13 to cover one more base with this juror and then I'll
14 entertain any motions that you might have, either side.

15 (Juror number 9 present.)

16 THE COURT: Yes. In response to my last
17 question as to whether you could be fair and impartial,
18 and I told you your response had to be yes or no and you
19 responded no, I just simply need to know what is the
20 basis of your conclusion that you cannot be fair.

21 JUROR NO. 9: I'm confused by, I thought if I
22 knew her that would be bad. And I'm worried that, I
23 just thought that was wrong. I can't know her, I can't
24 recognize her at all.

25 And then I was worried that that would be, act

1 like you would find that bad. It's not so much that --
2 the reason I answered that way was because I knew her.
3 I thought that meant that I couldn't. Not --

4 THE COURT: So you were under the misimpression
5 that simply recognizing someone would disqualify you.

6 JUROR NO. 9: Yes.

7 THE COURT: All right. Then I'm confused. I
8 need to know -- let, let me just say that if that were
9 your concern, which is your simple knowledge of her,
10 maybe you've seen her do her work before, maybe you have
11 seen her on the Hill.

12 And if I tell you that that recognition is not
13 really a concern, what is a concern is in view of that,
14 are you able to fairly and impartially do your job under
15 the oath that you took?

16 JUROR NO. 9: Without a doubt, yes, yes.

17 THE COURT: All right.

18 JUROR NO. 9: My, I just thought if I knew her
19 and, and something like that outside up here, I thought
20 that was bad. And I thought that meant that I was doing
21 something wrong and I view that as I couldn't be
22 impartial.

23 THE COURT: All right. But now that you
24 understand that recognizing her by face or having you
25 seen her patrol the halls of Congress, --

1 JUROR NO. 9: Uh-huh,

2 THE COURT: -- that that fact alone isn't
3 disqualifying. It's whether in view of that fact, you
4 can still be fair and impartial --

5 JUROR NO. 9: I can be fair and impartial.

6 THE COURT: -- in evaluation of the evidence in
7 the case.

8 JUROR NO. 9: That's not, that's not a problem.
9 I misinterpreted the -- and I thought if I recognize
10 her, that that meant I couldn't be.

11 THE COURT: All right, very well. Then please
12 step back to the table, let me speak with counsel.

13 (Juror number 9 not present.)

14 MR. MENDELSON: This is very troubling. When
15 you asked him earlier, he said that he not just
16 recognized her by face or had seen her patrolling the
17 halls but that he'd seen her being tough and strict.

18 THE COURT: Right.

19 MR. MENDELSON: And when the Court asked him
20 twice if he could be fair and impartial, we heard
21 equivocation and we heard an I don't know.

22 On a lesser grounds, when the Court stated that
23 it was disappointed with juror 10, not that the juror
24 was trying to avoid his duties, the Court still let that
25 juror off.

1 THE COURT: Well, --

2 MR. MENDELSON: When the, when the Court --

3 THE COURT: -- I don't ordinarily interrupt
4 when reasonable argument is being made, but you prefaced
5 this by saying on less grounds. You know the
6 distinction between this witness and that witness, --

7 MR. MENDELSON: No, I --

8 THE COURT: -- between that juror and this
9 juror is. Juror number 10 --

10 MR. MENDELSON: I was moving on to a separate
11 argument, Your Honor.

12 THE COURT: Juror 10 was unmoving in his
13 articulation that he could not be fair and impartial.
14 Never wavered, thought about it overnight, came back.

15 So it was the steadfastness of that
16 articulation that I believe separates that witness, that
17 juror from this juror.

18 MR. MENDELSON: The argument that I was
19 beginning with respect to juror number 10 had nothing to
20 do with his --

21 THE COURT: Very well.

22 MR. MENDELSON: -- equivocation or his
23 steadfastness. The Court had instructed this juror
24 number 9, the Court was disappointed and thought that
25 this juror might be trying to avoid his duties as a

1 juror. The juror shook his head when the Court
2 instructed him that way.

3 Whereas juror number 10 had possibly been seen
4 trying to get off the jury. So it's the government's
5 position that this juror is not trying to get off the
6 jury unlike juror number 10 may have been.

7 But the more important argument is that juror
8 number 9 twice equivocated, has not just seen Officer
9 Bignotti walking the halls but said that he noted that
10 she was strict and tough. And when we brought him back,
11 he could not say yes, that he could be fair and
12 impartial.

13 I think that what happened now is, it doesn't
14 change the fact that twice before on the record he said
15 he did not know if he could be fair and impartial. The
16 questions that were asked of him now were somewhat
17 stated differently.

18 THE COURT: Well, I stated the question
19 directly and so I, I, I don't accept that
20 representation. Ms. Sassower, anything else?

21 MS. SASSOWER: You asked him --

22 MR. MENDELSON: I'm not, I'm not --

23 THE COURT: Excuse me.

24 MR. MENDELSON: May I finish?

25 THE COURT: Excuse me, she can't hear. Go

1 ahead, Ms. Sassower.

2 MS. SASSOWER: It is my recollection that upon
3 initial inquiry, he stated he could be fair and
4 impartial notwithstanding he recognized, he believes,
5 Sergeant Bignotti and she was fair and tough.

6 He said, and he said that he didn't necessarily
7 have negative opinion of her but that he had made that
8 observation.

9 He said initially he could be fair and
10 impartial and then at the insistence of Mr. Mendelsohn
11 you called him back.

12 He stated he was scared and I think what
13 happened reflected his fear. He has now come back and
14 said he could be fair and impartial. That should
15 satisfy.

16 THE COURT: Very well, Mr. Mendelsohn.

17 MR. MENDELSON: As Ms. Sassower just stated,
18 he said he was scared. You said that you were
19 disappointed in him.

20 Then he came back and it's possible that he
21 wasn't completely equivocal, that he was without a doubt
22 he could be fair because he didn't want to disappoint
23 you because he was scared after you had stated your
24 disappointment at him.

25 I think this juror should be dismissed. If

1 not, I think that it would be wise at least to make this
2 juror the alternate in this case.

3 THE COURT: Very well. I have heard the
4 arguments and I'm going to retain this juror with the
5 admonition that he is to discuss this matter with no
6 one, certainly not with the other jurors.

7 And that we, we look forward to his continued
8 service and performance under the oath that he, that he
9 took at the outset. Very well.

10 (Juror number 9 present.)

11 THE COURT: Thank you. And I needed to discuss
12 with counsel the events of this morning. And what I
13 want to say to you is that in view of your
14 representations to me that without equivocation you can
15 be fair and impartial and everything now that we know,
16 given your understanding of what your recognition of
17 Officer Bignotti actually means to the Court, which is
18 really nothing unless it impacts on your ability to be
19 fair and impartial, you assured me that it does not.

20 Then you are, we look forward to your continued
21 service under the oath that you took. Do not discuss
22 the content of this bench conference with anyone
23 particularly with your fellow jurors.

24 JUROR NO. 9: Okay.

25 THE COURT: Very well.