

1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

2 CRIMINAL DIVISION

3 ----- x  
 4 UNITED STATES OF AMERICA :  
 5 versus : Criminal Action Number  
 6 ELENA R. SASSOWER, : M-4113-03  
 7 Defendant. :  
 8 ----- x

9 Washington, D.C.  
Monday, April 12, 2004

10 The above-entitled action came on for a Trial  
11 before the Honorable BRIAN F. HOLEMAN, Associate Judge, in  
12 Courtroom Number 218, commencing at approximately 11:00 a.m.

13 THIS TRANSCRIPT REPRESENTS THE PRODUCT  
14 OF AN OFFICIAL REPORTER, ENGAGED BY THE  
15 COURT, WHO HAS PERSONALLY CERTIFIED THAT  
16 IT REPRESENTS HER ORIGINAL NOTES AND  
17 RECORDS OF TESTIMONY AND PROCEEDINGS OF  
18 THE CASE AS RECORDED.

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16 APPEARANCES:

17 On behalf of the Government:

18 JESSIE K. LIU, Esquire  
19 AARON MENDELSON, Esquire  
Assistant United States Attorneys

20 On behalf of the Defendant:  
Pro Se

21 Also present: Counsel adviser:  
22 MARK GOLDSTONE, Esquire  
Washington, D.C.

24 MISS LORETTA E. KACZOROWSKI  
25 Official Court Reporter

(202) 879-1058

P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Your Honor, before the Court at  
3 this time for trial United States versus Elena Sassower,  
4 M-4113-03.

5 THE COURT: Counsel.

6 MR. MENDELSON: Good morning, Your Honor. Aaron  
7 Mendelsohn for the United States.

8 THE COURT: Mr. Mendelsohn.

9 MS. LIU: Your Honor, Jesse Liu for the United  
10 States.

11 THE COURT: Miss Liu.

12 MS. SASSOWER: Elena Sassower, defendant pro se,  
13 assisted by Mark Goldstone, legal adviser.

14 MR. GOLDSTONE: Good morning, Your Honor.

15 THE COURT: Good morning, Mr. Goldstone.

16 Very well. Mr. Mendelsohn, is the Government ready  
17 to proceed?

18 MR. MENDELSON: We are, Your Honor.

19 THE COURT: Very well. How many witnesses?

20 MR. MENDELSON: Your Honor, we have approximately  
21 four to five witnesses.

22 THE COURT: You have witnesses that are law  
23 enforcement personnel?

24 MR. MENDELSON: That's correct, Your Honor.

25 THE COURT: And are those witnesses ready call?

1 MR. MENDELSON: Your Honor, those witnesses have  
2 been placed on call, they are not in the courthouse.

3 THE COURT: Very well.

4 All right. Miss Sassower, you ready to proceed?

5 MS. SASSOWER: I am ready but the case is not trial  
6 ready and I would like to address some of the preliminary  
7 issues, specifically including the question of my witnesses  
8 which you -- which was a question you posed to the  
9 prosecution.

10 THE COURT: Well, I didn't question the prosecution  
11 about your witnesses, I questioned them about law  
12 enforcement witnesses.

13 MS. SASSOWER: Exactly, and I have some statements  
14 regarding my own witnesses.

15 THE COURT: Very well. I'll hear from you.

16 MS. SASSOWER: With all due respect, my appearance  
17 today and my proceedings before Your Honor are without  
18 prejudice to my threshold contention that Your Honor is  
19 disqualified for actual bias, already demonstrated and made  
20 the subject of a mandamus proceeding.

21 THE COURT: Right.

22 MS. SASSOWER: As to which I --

23 THE COURT: Just a minute, so that we're clear.  
24 Your petition for writ of mandamus has been ruled upon by  
25 the Court of Appeals, it was denied, that is not an issue

1 for us on the morning of trial. Specifically, with regard  
2 to the evidence you intend to introduce --

3 MS. SASSOWER: I must --

4 THE COURT: -- some of that evidence will be  
5 testimonial in nature, and you now will address me  
6 concerning your witnesses.

7 MS. SASSOWER: Yes, Your Honor, but as you know I  
8 have -- it is incumbent upon me to preserve the record, and  
9 I, as a threshold matter, I have a continuing objection to  
10 being tried before this Court. Moving forward under  
11 compulsion and without particularizing some of the  
12 intermediate matters that additionally bear upon your bias,  
13 the question of witnesses.

14 Your Honor, I do commend the Court for its  
15 recognition, in part, of my witness rights. However, I'd  
16 like to address your observation. You do say that my right  
17 to witnesses rests on pertinent facts adduced during  
18 pretrial discovery, and my contention is and the record will  
19 reflect that I have been denied my pretrial discovery,  
20 vis-a-vis my August 12th discovery demand, which would have  
21 demonstrated not only my entitlement to documents but to  
22 witnesses relating thereto.

23 However, you go on, and after you recognize the  
24 contact that Leecia Eve and Judge Albert have had with the  
25 case, which with all due respect to Your Honor, I believe

1 flows from your having read the ex parte, in camera  
2 submission, as opposed to pages seven through 20 of my  
3 October 30th motion for discovery.

4 And you make a statement: None of the other  
5 subpoenaed respondents are known to have had telephone  
6 contact with defendant, nor are any known to have directed  
7 communication to defendant by any other means.

8 Let me go to the more significant first. Senator  
9 Saxby Chambliss did direct communication to me, both at the  
10 May 22nd hearing, but perhaps Your Honor has also  
11 overlooked, apart from his direction, that he is the  
12 complainant.

13 THE COURT: Excuse me. Mr. -- Senator Chambliss --

14 MS. SASSOWER: Yes.

15 THE COURT: -- directed comments to you during the  
16 hearing?

17 MS. SASSOWER: He --

18 THE COURT: Is that -- is that what I just  
19 understood you to say?

20 MS. SASSOWER: He directed order be restored.

21 THE COURT: During the hearing?

22 MS. SASSOWER: Yes.

23 THE COURT: Then your motion with regard to him is  
24 denied, speech and debate.

25 Next issue.

1 MS. SASSOWER: All right, he is identified as the  
2 complainant in this prosecution. Would you care to see the  
3 document?

4 THE COURT: I don't need to see the document.

5 MS. SASSOWER: Well, he is the complainant in the  
6 same way that Leecia Eve and Josh Albert initiated a process  
7 that resulted in the police entry into this scenario. Saxby  
8 Chambliss is the complainant on this prosecution, identified  
9 as such in the underlying prosecution document.

10 THE COURT: Well, I'll tell you this, Miss  
11 Sassower, if the Government calls Senator Chambliss you can  
12 cross-examine him.

13 Next witness.

14 MS. SASSOWER: I'd like him as my witness.

15 THE COURT: Did you subpoena him?

16 MS. SASSOWER: Yes.

17 THE COURT: And the grounds that I gave for denying  
18 for quashing the subpoena was speech and debate, correct?  
19 Isn't that correct?

20 MS. SASSOWER: Speech and debate has nothing to do  
21 with initiating a criminal charge, he lodged a criminal  
22 charge; that's not part of his legislative function.

23 THE COURT: I'll hear from Mr. Mendelsohn on this.

24 MS. SASSOWER: Confrontation rights, Sixth  
25 Amendment, Supreme Court case of Crawford just decided.

1 MR. MENDELSON: Your Honor, perhaps you'd like to  
2 hear from the Senate's legal counsel on this issue. They  
3 were the party that responded --

4 THE COURT: Are they present?

5 MR. MENDELSON: Yes, they are, Your Honor.

6 THE COURT: Very well.

7 Introduce yourself, sir.

8 MR. VINIK: Good morning, Your Honor. Grant Vinik  
9 on behalf of the subpoenaed Senate witnesses.

10 THE COURT: Very well. Mr. Vinik.

11 MR. VINIK: Your Honor, Senator Chambliss is  
12 protected by the Speech and Debate Clause of the United  
13 States Constitution. The District of Columbia Court of  
14 Appeals indicates Bardoff which was cited in our pleadings  
15 and are cited in your order --

16 THE COURT: Yes.

17 MR. VINIK: -- made that absolutely clear. I'm  
18 happy to speak more directly, Your Honor, to the issue, if  
19 you would like, the additional cases cited outside of  
20 Bardoff, including Schultz v. Sundberg in the Ninth Circuit  
21 where the Ninth Circuit held within the Speech or Debate  
22 Clause the conduct of the leg -- state legislator in that  
23 case which directed the arrest of another state legislator,  
24 the Ninth Circuit said: The mere fact that this may have  
25 been motivated by a conspiracy as was alleged by the

1 plaintiff in that case, was irrelevant. The conduct was  
2 within the scope, the legislative privilege, and therefore  
3 any allegations of bias, of unconstitutional conduct, of  
4 civil conspiracy or otherwise are irrelevant.

5 THE COURT: Very well.

6 MS. SASSOWER: May I be heard?

7 THE COURT: Proceed.

8 MS. SASSOWER: As I implore the Court, this is a  
9 technical area of the law.

10 THE COURT: Excuse me. I want you to respond --

11 MS. SASSOWER: Yes.

12 THE COURT: -- to the legal authority that was  
13 cited.

14 MS. SASSOWER: Well, without reading the legal --  
15 first of all Bardoff does not control in this case, no way.  
16 There was -- the circumstances are not comparable, but as to  
17 Saxby -- as to the case you cited from the Ninth Circuit,  
18 are we talking about a right of a criminal defendant --

19 THE COURT: Excuse me.

20 MS. SASSOWER: -- to call the witness?

21 THE COURT: Excuse me, Miss Sassower.

22 MS. SASSOWER: To call the complainant as witness?

23 THE COURT: Miss Sassower, excuse me. Any argument  
24 that you make make it to me.

25 MS. SASSOWER: Well, I believe I respectfully -- I



1 respectfully submit that surely in that case what is not  
2 involved is a right of a criminal defendant to have the  
3 ~~witness~~ <sup>complainant</sup> called by -- by way of confrontation rights under  
4 the Sixth Amendment. May I hand up the pertinent page  
5 showing that Saxby Chambliss is the complainant? Please.

6 THE COURT: No, I don't need to see that. Bardoff  
7 is controlling, it flows from his legislative duties, you've  
8 made your record, next issue.

9 MS. SASSOWER: May my counsel be heard on this? He  
10 has studied the Crawford case of the U.S. Supreme Court that  
11 just came down last month. Very important case.

12 MR. GOLDSTONE: Your Honor, Mark Goldstone. In the  
13 Crawford case in early March of '04 the U.S. Supreme Court,  
14 in a Justice Scalia opinion, decided that the Sixth  
15 Amendment right to confront witnesses means what it says,  
16 that you -- that the criminal defendant has a right to  
17 confront witnesses.

18 I think Mr. Vinik's argument would have made sense  
19 prior to the ruling in Crawford, and as this Court knows  
20 there's going to be a series of challenges based upon the  
21 confrontation clause of Sixth Amendment rights based upon  
22 this very current and very new Supreme Court decision in  
23 Crawford, and I would ask that -- that the Court look at  
24 that decision which Justice Scalia said the Sixth Amendment  
25 means what it says, the defendant has the right to

1 cross-examine and confront witnesses, and that there's very,  
2 very limited exceptions to that very, very, um, strong Sixth  
3 Amendment right to confront.

4 So Mr. Vinik's argument is somewhat dated in that  
5 it really doesn't take into account this new -- this new  
6 case.

7 THE COURT: Mr. Vinik's argument has been before  
8 this Court since when? April 2nd?

9 MR. VINIK: Yes, Your Honor. And I might -- and I  
10 might add, if I may, just --

11 THE COURT: Yes.

12 MR. VINIK: -- just briefly. We moved to quash the  
13 subpoenas in this case, we transmitted that by Federal  
14 Express, and facsimile to both the attorney adviser and the  
15 defendant in that case. Your Honor issued an order calling  
16 for a response last Monday.

17 THE COURT: Right.

18 MR. VINIK: No response was received. The attorney  
19 adviser did not file anything, the defendant did not file  
20 anything, the Crawford case, to my knowledge, had nothing to  
21 do with the Speech and Debate Clause of the Constitution.  
22 That the rulings in that case in the Supreme Court as cited  
23 in Bogan v. Scott-Harris, which is a very recent opinion by  
24 the Supreme Court, have not been undercut by subsequent  
25 rulings. And in this particular case any objection to that

1 motion should have been lodged in this court prior to trial,  
2 and none was so filed.

3 MS. SASSOWER: Excuse me.

4 THE COURT: Just a minute.

5 (Pause).

6 THE COURT: The record reflects that the  
7 Government's motion to quash was filed on or about March  
8 26th.

9 MR. VINIK: That is correct, Your Honor.

10 THE COURT: Yes.

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

12 THE COURT: No, not just yet.

13 At the status hearing on March 29th, 2000 --

14 MS. SASSOWER: Wait a second.

15 THE COURT: -- March 29th, 2004, I directed that  
16 all parties were ordered to respond to Senate's motion of  
17 senators and employees to quash subpoenas by Monday, April  
18 5.

19 As of the date when I issued the order, signed on  
20 April 6th, mailed from chambers on April 7th, there had been  
21 no response to the motion filed by the defense.

22 Very well.

23 MS. SASSOWER: May I be heard now?

24 THE COURT: You may.

25 MS. SASSOWER: Thank you.

1           As the transcript of the May 22nd pretrial, quote,  
2 hearing, unquote, March 22nd hearing reflects, I protested  
3 to the Court the time parameters that were imposed as being  
4 oppressive for an attorney, let alone for a pro se, whose  
5 attorney, parenthetically, was -- who's a legal adviser --  
6 was busy with other cases and scheduled to go off for a  
7 week's holiday.

8           However, as the Court is aware, the defendant has  
9 not been a slouch here, the defendant has been vigorously  
10 trying to safeguard her rights, and had to make a decision,  
11 a prioritizing decision, as to how to do it, and based upon  
12 the D.C. Court of Appeals' decisions in Scott, and Anderson,  
13 I felt I had a solid, absolute right to review of Your  
14 Honor's refusal to recuse yourself, and in reliance on that  
15 black letter controlling authority, which the Court of  
16 Appeals, in denying review, doesn't identify or address, I  
17 spent a week and a half, from the time I left this court on  
18 March 22nd, until I made a special trip to serve and file  
19 the mandamus and stay, I worked round the clock  
20 conscientiously, to the best of my ability, in a fashion  
21 that would be commendable of an attorney to produce a set of  
22 papers that are sterling.

23           THE COURT: Very well.

24           MS. SASSOWER: Now, if I may --

25           THE COURT: Miss -- Miss Sassower.

1 MS. SASSOWER: -- the Court has a duty not to be  
2 imposed upon.

3 THE COURT: Excuse me.

4 MS. SASSOWER: There was a fraud committed by Mr.  
5 Vinik and Senate legal counsel in the motion. And I --

6 THE COURT: Miss Sassower, Miss Sassower.

7 MS. SASSOWER: -- I wish that legal counsel is  
8 aware.

9 THE COURT: I ordered -- I ordered that responses  
10 be filed by a date certain. You, by your own admission  
11 here, chose to invest your energies in some other legal  
12 proceeding which was ultimately found deficient --

13 MS. SASSOWER: The Court disregarded its own  
14 controlling black letter law.

15 THE COURT: -- by the Court of Appeals.

16 That being the case, that being the case, Miss  
17 Sassower, the Court stands by the prior motion schedule that  
18 was set in this case and made known to all of the parties.  
19 You didn't file a response to the motion, I am not now going  
20 to hear novel argument that should have been made in  
21 writing, and when you exercise your right to become your own  
22 lawyer, I notified you when we were last here that you stand  
23 in the shoes of the lawyer who would be handling your case,  
24 which means, Miss Sassower, you should have complied with  
25 the Court's order pertaining to responses to the motion to

1 quash. You failed to do so.

2 Any motion that you attempt to bring now or  
3 response that you attempt to bring now, is unavailable.  
4 Therefore, with regard to the most recent order of this  
5 Court that pertains to the motion to quash, there will be no  
6 reconsideration, the only two Government -- I'm sorry,  
7 Senate employees who will be testifying in this case, if you  
8 choose to call them, will be Miss Eve and Mr. Albert.

9 MR. VINIK: Yes, Your Honor.

10 THE COURT: Is that correct?

11 MS. SASSOWER: Let the record reflect, had there  
12 been pretrial discovery to which I was entitled by my formal  
13 motion --

14 THE COURT: Which has already been ruled on and is  
15 not an issue right now, it is not an issue. The issue  
16 currently before the Court, the issue current --

17 MS. SASSOWER: (Talking at the same time the Court  
18 was speaking) -- it was the subject of my disqualification  
19 motion because I saw I could not get any kind of fairness  
20 from this tribunal that did not care about the facts or the  
21 law <sup>and</sup> ~~that~~ was going to give a pass to the Government.

22 Now Mr. Vinik, in his motion --

23 THE COURT: Miss Sassower.

24 MS. SASSOWER: -- committed fraud upon the Court.

25 THE COURT: Miss Sassower, first of all, there was

1 nothing in Mr. Vinik's motion to demonstrate or indicate  
2 fraud whatsoever, and you should be thankful that you're in  
3 court making those allegations because those allegations are  
4 questionably privileged here. But Mr. Vinik has never  
5 demonstrated to this Court any conduct other than the  
6 highest conduct that would be expected from a lawyer. So to  
7 hear you demean a member of the Bar in this way --

8 MS. SASSOWER: Would you like me to particularize?

9 THE COURT: -- is simply not appropriate.

10 No, it is not. The issue, the issue for you has to  
11 do with witnesses, nothing else.

12 MS. SASSOWER: Okay, I would just like --

13 THE COURT: With regard to Ms. Eve.

14 MS. SASSOWER: I will separately bring --

15 THE COURT: No, no, you will address --

16 MS. SASSOWER: -- a proper application and rule 11  
17 against the prosecution, including Mr. Vinik here.

18 THE COURT: Well, who's going to rule on that?

19 MS. SASSOWER: Well, somewhere along the line this  
20 record is going to be adjudicated --

21 THE COURT: Who will rule on the motion?

22 MS. SASSOWER: -- whether by <sup>a</sup> disciplinary agency or  
23 by a higher court.

24 THE COURT: Miss Sassower --

25 MS. SASSOWER: I protect my record as you see.

1 THE COURT: -- you are entirely out of order here.  
2 And what I want to hear as we begin the process of selecting  
3 a jury in this case is do you have anything else to say with  
4 regard to Senate employees Eve --

5 MS. SASSOWER: Yes.

6 THE COURT: -- or Albert.

7 MS. SASSOWER: I would like to say that the focal  
8 -- the focal -- for Your Honor to have said that it doesn't  
9 know that there were -- there was phone contact with other  
10 subpoenaed respondents can only mean that it has not read  
11 the documents that were integrally part of my discovery  
12 motion, the most important was the 39-page fax to Detective  
13 Zimmerman which contained my letter to Michael Tobman  
14 reflecting not only a phone conversation of May 21st, but an  
15 in-person conference of approximately 40 minutes in the New  
16 York City office of Senator Schumer.

17 With all respect, when Mr. Vinik, at the close of  
18 his motion, cites to a supposed December 3, 2003, ruling --

19 THE COURT: Miss --

20 MS. SASSOWER: -- Judge Milliken recognized my  
21 entitlements to documents.

22 THE COURT: Miss -- Miss Sassower, I've already  
23 ruled on documents, I've already ruled on witnesses.

24 MS. SASSOWER: Okay.

25 THE COURT: The issue before us now is simply with



1 regard to Miss Eve and Mr. Albert.

2 MS. SASSOWER: Oh, we are ready to proceed full  
3 speed with them and they will be thoroughly grilled at great  
4 length because my conversation jointly with them --

5 THE COURT: It remains to be seen.

6 MS. SASSOWER: -- was 40 minutes in length.

7 THE COURT: The questioning during trial remains to  
8 be seen. Very well.

9 MS. SASSOWER: Well, that was the basis upon which  
10 Miss Eve called the police.

11 THE COURT: Miss Sassower, very well.

12 Mr. Vinik, with regard to the witnesses, Mr. Albert  
13 and Miss Eve, are they --

14 MR. VINIK: They have canceled their vacation time,  
15 Your Honor, and will be available to testify in this case.

16 THE COURT: Very well. Thank you, Mr. Vinik.

17 MR. VINIK: Thank you, Your Honor.

18 THE COURT: Mr. Vinik, remain around in the event  
19 that I --

20 MR. VINIK: I will, Your Honor.

21 THE COURT: -- need to call you forth again.

22 MS. SASSOWER: Let me just for the record.

23 THE COURT: No, no, there is no record now to be  
24 made, I've already ruled on the issue of the witnesses that  
25 will be allowed to testify.

1 All right, now.

2 MS. SASSOWER: By the way, I would draw the Court's  
3 attention to Haines against Kerner, the Supreme Court case  
4 which recognizes that pro se litigants are entitled to a  
5 certain deference and solicitude of the Court.

6 THE COURT: Well, you can ask any lawyer in this  
7 courtroom, I've given you much more deference than you are  
8 entitled in here, maintain decorum in my courtroom please.

9 Now, I'd like to hear from the Government on the  
10 issue of Drew evidence.

11 MS. LIU: Your Honor, Jessie Liu for the United  
12 States.

13 THE COURT: Yes.

14 MS. LIU: As the Court knows we filed a motion  
15 pursuant to Drew versus United States --

16 THE COURT: Yes.

17 MS. LIU: -- asking for permission to introduce  
18 evidence surrounding some disruptive activity committed by  
19 the defendant at the Senate in 1996.

20 THE COURT: Very well.

21 MS. LIU: It's the view of the Government, as we  
22 state in our motion, that this would make -- support our  
23 contention that her activity at the hearing on May 22nd,  
24 2003, which is the subject of the trial in this case, was  
25 not an accident, it was not a mistake, but that it was

1 undertaken with the intent to impede and disrupt a  
2 congressional proceeding, which is what we're required to  
3 show under the statute.

4 Incidentally, Your Honor, of course there was no  
5 briefing schedule set on this particular motion, we have not  
6 received anything from the defendant on this issue.

7 THE COURT: Very well.

8 MS. SASSOWER: May I be heard? May I be heard in  
9 response?

10 THE COURT: Just a minute please. Very well, Miss  
11 Sassower.

12 MS. SASSOWER: Thank you. As I am a novice in all  
13 this I had no clue as to what kind of briefing schedule Your  
14 Honor was referring to on March 22nd. Indeed, because Miss  
15 Liu imposed upon the Court and Your Honor also chimed in  
16 that this case was ready to proceed on March 1st, having --  
17 there having been -- proceed to trial on March 1st, I  
18 naturally assumed there couldn't be too many pretrial issues  
19 that would have to be dealt with since you were going to go  
20 from that Friday directly to that Monday to trial without  
21 any pretrial issues.

22 Little did I realize that I would be bombarded with  
23 a series of documents requiring response in a week when Your  
24 Honor was informed that my legal adviser would be in  
25 comunicado, on vacation. And I will say to the Court that

1 I had no contact at all with Mr. Goldstone who was out of  
2 touch from the early afternoon of April 2nd, until yesterday  
3 evening. I sent an e-mail that we were on for tomorrow, he  
4 called me back, he had just arrived home, we spoke for the  
5 first time, it was about nine o'clock in the evening, so I  
6 had no counsel to assist me in dealing with these series of  
7 documents requiring my response.

8 THE COURT: Right. Miss Sassower, as I've  
9 previously articulated to you, when you decided to represent  
10 yourself you're responsible for addressing these legal  
11 matters as counsel appointed by you would have.

12 On the specific issue of the other crimes evidence  
13 pursuant to Drew versus United States, what is your  
14 position?

15 MS. SASSOWER: All right, so in other words you are  
16 denying me --

17 THE COURT: No, I'm asking you --

18 MS. SASSOWER: -- the right to have had the  
19 assistance of counsel. Okay.

20 THE COURT: No, you denied yourself that when you  
21 appointed yourself as your own attorney. Miss Sassower,  
22 please address the Drew issue.

23 MS. LIU: Your Honor, may I add one thing for the  
24 for the record please?

25 THE COURT: Yes.

1 MS. LIU: I do know in my file I have a discovery  
2 packet that was given to Miss Sassower or whoever was  
3 representing her in C-10 when she was arraigned, it's dated  
4 May 23rd, 2003. At that time the Government said we expect  
5 to use the following Drew/Toliver evidence: The defendant  
6 is known to Capitol Hill officers for being disruptive in  
7 the past, defendant <sup>was</sup> arrested in 1996 for disorderly conduct  
8 on ~~the~~ Capitol grounds.

9 So almost a year ago it was disclosed to Miss  
10 Sassower that we might very well seek to introduce this Drew  
11 evidence.

12 MS. SASSOWER: And that was one of the bases on  
13 which I requested the file of the investigation of my police  
14 misconduct complaint that I filed in 1996 with regard to  
15 that incident.

16 THE COURT: Which was disclosed by the Government.

17 MS. SASSOWER: No, it was not, nothing was  
18 disclosed with respect to the -- the complaint that I filed.  
19 There was no disclosure. What was disclosed for the first  
20 time were the prosecution documents that I had never seen  
21 from 1996, I was seeing them for the first time.

22 THE COURT: Miss Sassower, what I'm asking you for  
23 is your position on the Drew/Toliver evidence.

24 MS. SASSOWER: As Your Honor should be aware from  
25 the discovery motion Sergeant Bignotti, who arrested

1 me on May 22nd of last year, was involved in the 1996  
2 incident, and as particularized by me in that motion, had  
3 been the subject of a police misconduct complaint that I  
4 filed in 1996, that had been dismissed by Capitol Police  
5 Chief Abrecht, that is the husband of Mary Ellen Abrecht,  
6 whose seat you have assumed since she took senior status,  
7 and that incident will come in in any event, because  
8 additionally, as was made known to Capitol Police in my  
9 lengthy phone conversation with Detective Zimmerman on May  
10 21st, and prior thereto with Special Agent Lippay,  
11 to no avail, the precedent in 1996, and reflected in my  
12 correspondence to Detective Zimmerman, that 39-page fax, was  
13 that in 1996 when I rose to request to testify at the public  
14 Senate Judiciary Committee confirmation hearing I was not  
15 arrested.

16 THE COURT: Miss Sassower --

17 MS. SASSOWER: So it will come in.

18 THE COURT: -- with regard -- with regard to the  
19 Drew/Toliver evidence what is your position?

20 MS. SASSOWER: Well, I -- the Court should be  
21 aware, respectfully, that if they think they're going to  
22 prove what they claim, this trial will be quite extended. I  
23 am just advising the Court, and I am advising the Court  
24 because of the disposition of that 1996 case, which was made  
25 part of the record in my initial motion for your

1 disqualification, I included the documents from 1996, and  
2 what Judge Murphy did, and the transcript, and the  
3 correspondence, and you know I never had my day in court.

4 THE COURT: Very well.

5 MS. SASSOWER: On that case.

6 THE COURT: I take it then that you oppose the  
7 admission of the Drew/Toliver evidence?

8 MS. SASSOWER: I am advised that yes, but it will  
9 come in, the case will come in in any event.

10 THE COURT: Motion's granted.

11 All right, now, with regard to the manner in which  
12 we will proceed in the event that Ms. Sassower chooses to  
13 testify.

14 MS. SASSOWER: Miss Sassower will be testifying,  
15 Your Honor.

16 THE COURT: Very well. Then we have to develop a  
17 procedure for that, and you can consult with Mr. Goldstone  
18 on this issue. My recommendation is that you actually take  
19 the witness stand and have questions directed to you by Mr.  
20 Goldstone.

21 MS. SASSOWER: May I be heard?

22 THE COURT: Yes.

23 MS. SASSOWER: I appreciate your advice, which I  
24 may very well take, may I request that we defer until we see  
25 what has happened with the prosecution case? I will be the

1 last witness, I will assure you, okay. I will testify, but  
2 I will be the closing witness in the defense case.

3 I think that at that point we will have a better  
4 idea what is -- how to frame this, and so I would ask that  
5 we defer on that.

6 THE COURT: Very well. With regard to the defense  
7 case, without disclosing any of your trial strategy, how  
8 many witnesses do you anticipate calling?

9 MS. SASSOWER: Your Honor, with all respect, as  
10 identified in the motion papers, I believe my, offhand,  
11 don't hold me to it, I believe the December 31st affidavit  
12 on the in limine, my opposition to their in limine motion, I  
13 said the trial strategy is already laid out in a road map --  
14 map in pages seven through 20 of my discovery motion.

15 However, as to the number of witnesses --

16 THE COURT: That was the question.

17 MS. SASSOWER: Okay, having been restricted by the  
18 Court improperly, you'll excuse me, they are Leecia Eve,  
19 Josh Albert, myself and possibly the officers.

20 THE COURT: Very well.

21 MS. SASSOWER: That have been subpoenaed. And if  
22 there is any question further, although I do not believe it  
23 will be necessary, there was a stenographer who was  
24 responsible for the transcript who separately transcribed  
25 and has her own recording, and should that be at all



1 necessary, but I doubt it, potentially she'd be called but I  
2 think it highly unlikely.

3 THE COURT: Very well.

4 All right. We'll address two more issues, the  
5 first of these is clarification of the Government's ruling  
6 on the -- I'm sorry, clarification of my ruling on the  
7 Government's motion in limine in which I granted the  
8 Government's motion to preclude reference to political  
9 motivations, political beliefs, political causes, and so  
10 forth.

11 Miss Liu or Mr. Mendelsohn, you want some  
12 clarification, it was your motion that I granted, what is it  
13 that you need clarification of?

14 MR. MENDELSON: Thank you, Your Honor.

15 THE COURT: Yes.

16 MR. MENDELSON: We were -- we wanted clarification  
17 as much for our benefit as for the defendant's benefit as to  
18 what facts will be admissible at trial outside of the facts  
19 of the arrest. There has already been a ruling on the -- on  
20 the bias and that -- and there has already been -- you  
21 already granted our order with respect to no admittance of  
22 political motivations, political causes or political  
23 beliefs, and we think that that order necessitates the  
24 defendant be precluded from admitting any evidence as to the  
25 judicial nomination process or her specific opposition to

1 that nominee, because that is not relevant to the charge at  
2 issue in this case.

3 THE COURT: Very well. In my view the information  
4 that would be permitted would be the information that would  
5 be ascertainable from any other witness, such as name,  
6 residence, where do you work, what kind of duties do you  
7 perform, that kind of thing. With regard to motivations,  
8 beliefs, causes, that's irrelevant to the information. It  
9 has no bearing whatsoever on the -- on the information upon  
10 which she's charged. So --

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

12 THE COURT: I've already ruled on this, I'm asking  
13 -- I'm asking what more clarification is needed, the  
14 Government has told me.

15 Yes, Miss Sassower.

16 MS. SASSOWER: Your Honor, in a 12-and-a-half  
17 page affidavit I opposed the motion in limine made by the  
18 prosecution.

19 THE COURT: Right.

20 MS. SASSOWER: And one of the things that I said is  
21 that it is impermissibly and prejudicially vague as to the  
22 political matter it seeks to preclude by pretrial order.

23 And indeed it has been borne out because they don't  
24 even know, apparently, as I identified, what they want to  
25 preclude. There is nothing political that I know of that I

1 have introduced at any point here, so I don't know -- I  
2 haven't a clue.

3           However, I would certainly bring to the Court's  
4 attention that this arrest, it is my defense that I have  
5 particularized that my arrest had nothing to do with  
6 anything that I did at the May 22nd Senate Judiciary  
7 Committee hearing, but rather it was part of a design and  
8 plan set in motion on May 21st when I received a call from  
9 Special Agent Lippay --

10           THE COURT: Very well, all of this is documented in  
11 your papers, I don't want to cut you off, Miss Sassower,  
12 but --

13           MS. SASSOWER: Well, I don't intend to --

14           THE COURT: -- excuse me, excuse me, we're going to  
15 pass this, you don't have to leave the courtroom but I need  
16 to call another trial that we're going to send out. This  
17 has taken much longer than it should have. Let's call the  
18 case.

19           (Thereupon, the proceedings were recessed at 11:47  
20 a.m.)

21           (Thereupon, the proceedings were reconvened at 2:42  
22 p.m.)

23           THE DEPUTY CLERK: Recalling United States versus  
24 Elaine Sassower -- Elena Sassower, M-4113-03.

25           THE COURT: When we were last here we were

1 proceeding through preliminary matters and there were, as I  
2 recall, several that had not been addressed, we will address  
3 them now.

4 With regard to proposed voir dire questions, I  
5 have --

6 MS. SASSOWER: Excuse me, Your Honor, we're in the  
7 middle of the in limine just to remind you.

8 THE COURT: I'll come back to the motion in limine.

9 With regard to proposed voir dire questions, I've  
10 reviewed those that were submitted by the Government, and I  
11 have a set that I have worked up myself which I'm going to  
12 share with both sides when we suspend for the day, I need to  
13 get back to chambers and I'll fax them to both sides.

14 To the extent that the Government's are duplicative  
15 of those that -- that I have, I will use mine instead, and  
16 it would be very apparent to you when you finally get a  
17 chance to read them.

18 Mr. Mendelsohn, with regard to, or either you or  
19 Miss Liu, I noted that Miss Liu was the one who actually  
20 drafted the -- the document, with regard to item eight, has  
21 to do with events occurring at the Capitol, number nine,  
22 specific to prosecutorial associations. Number 10,  
23 applications pending with the Government. Let's start with  
24 those.

25 My question is whether the -- a more general

1 question, for example, with regard to number eight. If we  
2 were to ask jurors about whether or not they were employed  
3 by the House of Representatives or the Senate, or whether,  
4 you know, they've been a member of the House or the Senate,  
5 seems to me that that fairly covers the area, I don't know  
6 that we need to get into whether they live nearby, but I'll  
7 hear from you on it.

8 MS. LIU: Your Honor, we wouldn't have an objection  
9 to asking the question in that way.

10 THE COURT: Very well.

11 Okay. Number nine, with regard to prosecutorial  
12 association, if we ask the general question with regard to  
13 the individual or a family member being a -- trained as a  
14 lawyer or having yet legal training or serving as a lawyer,  
15 I mean it seems to me that that is general enough to cover  
16 this without specifically getting into prosecution versus  
17 defense and that kind of thing. I'll hear from you on that.

18 MS. LIU: Your Honor, we wouldn't have a problem  
19 with asking the question that way either.

20 THE COURT: Very well. All right.

21 Once we cover legal training, members of the police  
22 department, which we will do in a separate -- in a separate  
23 question, and employment or not with the House or Senate, it  
24 seems to me that it makes unnecessary number 10. I'll hear  
25 from you on it.

1 MS. LIU: Your Honor, the reason we put that in is  
2 because my understanding is that one of my colleagues who  
3 was prosecuting the case in United States District Court had  
4 an incident where it was discovered later that one of the  
5 jurors in fact had an application pending with our office,  
6 but, and I'm not sure about what questions were asked during  
7 voir dire, but I wanted to be very careful about that and  
8 not have that situation happen here so I put in a specific  
9 question about pending employment.

10 THE COURT: Miss Sassower, I'll hear from you in  
11 response to that.

12 MS. SASSOWER: I would agree, I think that's  
13 appropriate.

14 THE COURT: Very well.

15 MS. SASSOWER: Thank you.

16 THE COURT: We'll keep number 10 in.

17 Yes, Miss Sassower.

18 MS. SASSOWER: Parenthetically, it just seems to  
19 echo the case of Scott, was it, involving Judge Murphy, that  
20 issue of impending employment, so, yes, I would agree.

21 THE COURT: It's in.

22 MS. SASSOWER: Thank you.

23 THE COURT: All right, law enforcement, we will  
24 have such question.

25 It seems to me that number 13, for the reasons that

1 I previously stated with regard to prosecutorial, if we can  
2 give a broad question with regard to lawyers, legal  
3 training, it seems to me that it covers the gamut, and any  
4 individual could express one side or the other.

5 MS. LIU: I agree, Your Honor.

6 THE COURT: Very well. We will strike number 13.

7 Number 14 is the legal question, and we will keep  
8 some form of that. We will keep some form of 15. And when  
9 I say some form of it, I believe that my own voir dire  
10 encompasses the issue, and so we won't replicate.

11 All right. Grand jury, why is that necessary?

12 MR. MENDELSON: Your Honor, I think if question  
13 number 15 is asked in a broad manner then that negates the  
14 necessity of question number 16.

15 THE COURT: I agree.

16 All right, number 17, I have my own and so I will  
17 keep that but within the framework of what I have and will  
18 disclose to you later on today.

19 Number 18 we'll keep in some form. Number 19 we  
20 will keep. Number 20 we will keep. Number 21 we will keep.  
21 Number 22 we will keep in my format which I will share with  
22 you later. I will hear argument on number 23, it seems to  
23 me that if the question is kept broad so that we ask for any  
24 strong personal, religious, political conviction that would  
25 prevent them from fairly hearing the case, that that's the

1 way to go about it as opposed to narrowing it down to this  
2 specific issue.

3 Mr. Mendelsohn or Miss Liu, I'll hear from you.

4 MS. LIU: Your Honor, we put that question in  
5 because we think that this case is very closely tied up with  
6 the nomination and confirmation for federal judges. And  
7 when we ask the question broadly it may not focus the  
8 attention of the juror, in fact that this case has those  
9 overtones, and we thought that it was important to identify  
10 those jurors who may have very strong opinions about this  
11 particular issue, and it may not occur to them when they  
12 hear the broad question, is there anything that might  
13 prevent you from sitting in judgment in this case, that this  
14 -- the nomination and confirmation process are so much at  
15 the center of this case.

16 THE COURT: I understand.

17 Miss Sassower, I'll hear from you.

18 MS. SASSOWER: Excuse me. Could Mr. Goldstone be  
19 heard? I think he has a perspective that perhaps he can  
20 better express.

21 THE COURT: I'll hear from Mr. Goldstone.

22 MR. GOLDSTONE: Thank you, Your Honor. Your Honor,  
23 we would object to 23. Um, the Government it seems to me is  
24 trying to have their cake and eat it too, they're on the one  
25 hand trying to say that on any discussion about political



1 matters should be excluded as irrelevant, and yet they're  
2 acknowledging that strong opinions or people who follow  
3 closely the confirmation and nomination process is innately  
4 bound up with the sum and substance of the case.

5 So, um, if they want to withdraw their motion in  
6 limine, that's fine, or if they want this type of question,  
7 I don't see how they can take both positions, Your Honor.

8 THE COURT: Well, I'm not asking the Government to  
9 withdraw their motion in limine, that's not the issue, the  
10 issue is simply whether this selecting a fair and impartial  
11 jury could best be served with or without this question.

12 MR. GOLDSTONE: Your Honor, we would oppose also on  
13 the ground that the only person likely to have a strong  
14 opinion about that process is someone who would be opposed  
15 to that process, and then any person who would then be  
16 sympathetic to Miss Sassower would be identified through  
17 this process and, therefore, excluded by the Government. We  
18 would ask that that question not be asked.

19 THE COURT: I'll take this question under  
20 advisement. Very well.

21 Regarding number 24, Miss Liu, I'll hear from you  
22 on that.

23 MS. LIU: Your Honor, this question I think is  
24 somewhat closely related to question number 23, through this  
25 question we're simply trying to identify those members of

1 the jury panel that have been involved in any protest or  
2 demonstrations, it's such a broad question, Your Honor, that  
3 we think that it wouldn't -- I think that it's broad enough  
4 that Mr. Goldstone's concern about our being able to  
5 identify people who might be sympathetic to Miss Sassower  
6 and then exclude them is really negated because it is so  
7 broad.

8 THE COURT: Miss Sassower.

9 MS. SASSOWER: Yes, I would simply object because  
10 this question has nothing to do with the case, the case is  
11 not about a protest, it's not about a demonstration, it's  
12 about a request to be permitted to testify at a public  
13 congressional hearing, which is neither a protest or a  
14 demonstration. Irrelevant question.

15 THE COURT: I'll take it under advisement.

16 Number 25, without hearing any argument on that  
17 one, I feel strongly enough about that we won't have that  
18 one.

19 All right. Number 26, I have a form of that  
20 already, so that one will be kept, but it will be in the  
21 form that I have it.

22 Number 27, we will have some form of that.

23 MS. LIU: Your Honor, I do think it's necessary to  
24 bring one other matter to your attention in connection with  
25 the voir dire questions.

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THE COURT: Yes.

MS. LIU: Which is that this morning the Legal Times ran a front page article on Miss Sassower and so we think it is appropriate to ask the jurors whether they've seen that article.

THE COURT: Very well. Miss Liu, why don't you draft a question when we adjourn, fax it to chambers, I'll review it, and we will -- I'll review it and either we will use that or incorporate a question that I create into the proposed voir dire.

To the extent that you choose to, Miss Sassower, you can also fax to chambers any objection to the proposed voir dire question on the issue of media exposure.

MS. SASSOWER: With all respect, I --

THE COURT: Miss Sassower, I'm simply giving you the opportunity to respond to it once you see it. We don't have to have a discussion really about anything other than the fact that I'm affording you that opportunity. And so if you choose to avail yourself of it that's fine, if not then we don't need to discuss it further.

All right, now, I think that that takes care of proposed voir dire.

MS. LIU: Your Honor, there's one other issue that we listed in our list of preliminary issues which is will Your Honor be conducting voir dire and will you allow the

1 parties to ask supplemental questions?

2 THE COURT: I will conduct the voir dire, and to  
3 the extent that supplemental questions are to be asked they  
4 can be brought to my attention and I will -- I will ask  
5 them. But I'll conduct the voir dire.

6 Okay. With regard to preliminary issues, all  
7 right. Voir dire we've taken care of. Senators and Senate  
8 employees we've taken care of.

9 I've had an opportunity to rethink the issue of the  
10 prior crimes, and I think that what I'm going to do in that  
11 circumstance is I won't allow the other crimes evidence  
12 under Drew to be a part of the Government's case in chief, I  
13 will allow it on rebuttal if the evidence warrants.

14 All right. Since until, quite frankly until the  
15 trial starts, I won't have a sense for the actual defense  
16 until I start to hear evidence, so we will -- I will simply  
17 hold that until hearing the defense case, and then make a  
18 determination at that time whether Drew will be warranted on  
19 rebuttal.

20 All right, we addressed the defendant's testimony.  
21 Yes, with regard to Mr. Goldstone, Mr. Goldstone is a member  
22 of the District of Columbia Bar, and of course I afford him  
23 all of the rights and privileges attendant thereto.

24 In this case he is sitting as the attorney adviser  
25 and the question arises as to what role will the Court

1 permit Mr. Goldstone to play in the presentation to the  
2 jury. Obviously at any point in time during the proceedings  
3 Miss Sassower's free to consult with Mr. Goldstone. With  
4 regard to which of those two individuals will address the  
5 jury, that will be Miss Sassower. She has decided to  
6 represent herself, and so she will be the person to address  
7 the jury, examine and cross-examine witnesses.

8 With regard to argument to the Court, my  
9 inclination at this time is to, when there is a bench  
10 conference, and I anticipate that there will be a few of  
11 those, I will have everyone approach, and what I will say to  
12 Miss Sassower and Mr. Goldstone at this point in time is  
13 that I will be looking to Miss Sassower to make the  
14 argument; Mr. Goldstone is certainly welcome to advise her  
15 at the bench.

16 MR. GOLDSTONE: Your Honor.

17 THE COURT: Yes, Mr. Goldstone.

18 MR. GOLDSTONE: During those consultations will you  
19 be using the husher?

20 THE COURT: Yes.

21 MR. GOLDSTONE: Thank you.

22 THE COURT: All right. Now, objections at trial.  
23 My expectation, not just in this case but in any case that's  
24 tried in here, is if you have an objection stand, and give a  
25 one word or two-word statement of the objection. And I will

1 rule.

2 If the objection takes longer than one or two words  
3 because of legal complexity then the procedure should be  
4 objection, Your Honor, may we approach. There will be no  
5 arguing from the floor as to the basis of objections, if for  
6 no other reasons, number one, it's unseemly to proceed in  
7 that way in front of a jury, but number two, I believe that  
8 it directs the witness to the answer that's being sought, so  
9 we won't have any coaching by way of speaking objection.

10 The -- the better course is to let me know that you  
11 wish to come to the bench, we'll come to the bench, we'll  
12 discuss the matter at the bench.

13 Now, with regard to objections, once I (sic) make  
14 an objection, the objection stands, and unless someone  
15 brings to me law to the contrary of my position on the  
16 objection, the objection holds. What cannot be tolerated  
17 during the course of a jury trial where we have citizens  
18 giving up their time to hear a case, we can't tolerate is  
19 ruling on an objection and then further questions which  
20 essentially ignore the prior ruling. So, I tell both sides  
21 now that once I make the ruling the ruling is final, I will  
22 listen to a request for reconsideration based upon specific  
23 authority. And if I'm persuaded by that I will have no  
24 problem with stating that my opinion has changed.

25 Otherwise we are to proceed as directed by my

1 ruling on the objection.

2 MR. GOLDSTONE: Your Honor, how do you deal with a  
3 continuing objection without having one party or the other  
4 say we have a continuing objection to that line of  
5 questioning or something like that?

6 THE COURT: Well, I may in fact simply say that to  
7 you, Mr. Goldstone, I understand the point that was made by  
8 Miss Sassower at the bench, you have a continuing objection  
9 in order to preserve your appellate rights if any, but my  
10 ruling still stands, let's proceed.

11 MR. GOLDSTONE: Thank you.

12 THE COURT: All right, yeah, with regard to the  
13 last items. In my voir dire and again at the -- when I  
14 charge the jury at the end of the case, I am going to give a  
15 statement of what the law is. I am -- I just believe that  
16 when you copy a statute, blow it up and present it to the  
17 jury, it gives -- it leaves the door open for  
18 misinterpretation, and I just think that if the statement of  
19 the law such as it is comes from the bench then we don't  
20 open the door to what might be improper misinterpretation of  
21 the language of the statute. And, therefore, I am not going  
22 to allow that introduction item eight in the preliminary  
23 matters.

24 All right, now, let's go back to the motion in  
25 limine.

1 MR. MENDELSON: Your Honor, with respect to  
2 preliminary matter eight.

3 THE COURT: Yes.

4 MR. MENDELSON: The Government had requested that  
5 judicial notice be taken not only of the relevant statute  
6 but of the U.S. Constitution and also relevant Senate  
7 rule --

8 THE COURT: Right.

9 MR. MENDELSON: -- that will not be included in  
10 your jury instructions.

11 THE COURT: All right, let me -- let me give that  
12 some thought when I get back to chambers. I can tell you  
13 now preliminarily -- well, let me not -- let me not prejudge  
14 that. I'll look at it and I suppose I misread this thinking  
15 that what you had were enlarged copies of all three  
16 statutes: The Rules Committee rule 26, the Constitution  
17 Article One, Section Five, Clause Two, and the D.C. code, I  
18 thought you had copies of each one of those and you wanted  
19 to present the enlargement of same to the jury, is that  
20 correct?

21 MR. MENDELSON: That's correct, Your Honor, we  
22 have enlarged each of them individually, and all three, the  
23 Constitution, Senate rules --

24 THE COURT: Right.

25 MR. MENDELSON: -- and the D.C. code are available



1 to the public, and, therefore, we had asked that the Court  
2 take judicial notice of them as rules, the Constitution and  
3 the statute that are available to one and all.

4 THE COURT: I'll look at that, but I think one of  
5 the things that we tell juries is the law comes from the  
6 bench and we don't want them going to look at the  
7 Constitution or Senate rules or the D.C. code for the same  
8 reason that I previously articulated, it gives way to  
9 perhaps misinterpretation. So, I'll give it some thought  
10 when I get back to chambers.

11 All right, now, the remaining item is the --

12 MS. SASSOWER: Could I just address that item  
13 eight, Your Honor?

14 THE COURT: Yes.

15 MS. SASSOWER: Please. I looked on the Internet  
16 and I found rule 26, and it's a long laundry list of  
17 subparagraphs as I saw it. Now, could you show me what  
18 you're referring to by rule 26 --

19 THE COURT: I'm sorry.

20 MS. SASSOWER: -- of the Senate Judiciary?

21 THE COURT: If you want to share that with her  
22 outside of these proceedings that's fine, but the bottom  
23 line is that I am taking it under advisement, I've already  
24 expressed my concerns about it, I don't know that there's  
25 any reason for any further discussion here on the issue.

1 All right, let's go now to the motion in limine.

2 In brief, what I will say to this inquiry is that  
3 the crime with which Miss Sassower has been charged has  
4 specific elements, and it seems to me that there will reach  
5 a point in my consideration of evidence whether the  
6 information that is proffered as evidence is in fact  
7 relevant to the charge, its elements or a defense thereto.

8 It's difficult for me sitting here now without the  
9 posing of specific questions to make a ruling other than I  
10 have already. Because the rule in question simply states  
11 that it is -- where there is a willful and knowing, excuse  
12 me, participation in disorderly or disruptive conduct, then  
13 you have the elements of the -- of the offense.

14 Therefore, what I would say to you in brief is that  
15 it's difficult for me now as I sit here to see how one's  
16 political motivations, political beliefs, political causes  
17 either prove or disprove one of the elements of the -- of  
18 the offense, and it seems to me that that should be our  
19 guiding light here with regard to any of the evidence that  
20 is offered that's -- pertains to motivations, beliefs, or  
21 causes.

22 If there can't be an argument made that it is  
23 relevant to proof of an element or a defense then it's  
24 irrelevant and won't come in.

25 Now as I previously stated when we were here

1 earlier, for any other defendant preliminary questions are  
2 asked if they take the witness stand: Name, where you live,  
3 for whom do you work, what do you do, identification  
4 information. And as I sit here now without hearing the  
5 manner in which Mr. Goldstone would put the question, if  
6 Miss Sassower takes the stand, then it's very difficult for  
7 me to give any reason why such information should be  
8 excluded, I'm aware of her organization, and I don't think  
9 that its name precludes its introduction to the jury as an  
10 organization with which she's affiliated, does work for,  
11 whatever.

12 But to the extent that we get into motivations,  
13 beliefs, causes, and we are now beyond preliminary  
14 information and we are into evidence about the actual case  
15 itself, that evidence just -- is simply a nonissue, it's not  
16 relevant and it won't come in. I don't know how much  
17 clearer I can be before we're confronted with the -- with  
18 the circumstance of its attempted admission. But I'll know  
19 it when I hear it.

20 Miss Sassower.

21 MS. SASSOWER: Yes, I said the same thing in  
22 opposition to the motion which is one of the bases on which  
23 I opposed it.

24 I --

25 THE COURT: Do you have something to add right now?

1 MS. SASSOWER: Yes, I have two brief issues. One  
2 is by way of clarification, Your Honor. You did, in  
3 speaking of objections and how objections are to be handled  
4 when there is disagreement with a ruling, you said, of  
5 course, there might be reconsideration based on specific  
6 authority. And you do recognize the concept of  
7 reconsideration, and of course reargument, and I say this  
8 because you misapprehended what I am seeking with respect to  
9 Senator Chambliss, as the complainant against me, I am  
10 seeking reargument of the motion, reargument being an  
11 accepted practice, reconsideration based upon an erroneous  
12 understanding in the decision which, with all respect, is  
13 largely the result of deficient, sanctionable papers, of  
14 Senate legal counsel.

15 THE COURT: Thank you, Miss Sassower. Let me just  
16 say to you right now I'm going to stop you here.

17 I think that Judge Milliken put it appropriately  
18 when he previously had his hearing on this case, namely,  
19 that when you take the heat out of the case this is  
20 essentially a misdemeanor that's jury demandable, and it  
21 will be treated like any other case. I've previously heard  
22 argument on this issue, I've read papers on this issue, I've  
23 ruled on this issue, and I'm not entertaining any further  
24 argument on this issue.

25 Now when I spoke just now about reconsideration it

1 should be clear to anyone sitting in this room that what I  
2 was talking about was not matters that I've already ruled on  
3 as preliminary matters, that what I was speaking of is how  
4 we will conduct the trial.

5 And, Miss Sassower, there's nothing more to be  
6 said.

7 MS. SASSOWER: You're denying reargument is what  
8 you're saying?

9 THE COURT: I am, that is correct.

10 MS. SASSOWER: I need to make a record and have  
11 made a record that you are denying me confrontation of the  
12 complainant in this criminal charge.

13 THE COURT: You've made that argument, I'm not  
14 allowing reargument on it and we're done with that. There's  
15 nothing further to be said.

16 MS. SASSOWER: No, I have another issue.

17 THE COURT: What is it?

18 MS. SASSOWER: Thank you. <sup>I've</sup> ~~You've~~ been doing some  
19 reading including the case of George Montgomery against  
20 Jimmy Tire, a 1989 case of the District of Columbia Court of  
21 Appeals. And I've come to understand that rule 11 is  
22 mandatory when there is failure on the part of an attorney  
23 or a party to make appropriate inquiry before interposing  
24 papers.

25 Now, Your Honor, as you know this week, this past

1 week --

2 THE COURT: I believe that we can effectively  
3 forego any discussion of this.

4 MS. SASSOWER: It was discovery of -- there was --  
5 there was production of documents demanded in --

6 THE COURT: Rule 11.

7 MS. SASSOWER: -- August --

8 THE COURT: Rule 11.

9 MS. SASSOWER: -- for which --

10 THE COURT: Rule 11 you found in the rules of  
11 criminal procedure?

12 MS. SASSOWER: I understand that it's also  
13 applicable to -- to all proceedings.

14 THE COURT: Well, no, it isn't, and I'm aware of  
15 the matters that were disclosed as I see this, discovery is  
16 a continuing obligation, the matters were disclosed when  
17 they were discovered by the Government, you now have the  
18 items, there was no effort once they were disclosed to the  
19 Government to keep those materials away from you, you have  
20 them. I don't find prejudice, I don't find rule 11  
21 applicable, and to the extent that rule 11 could be argued  
22 applicable, a point that I don't hold, I am not finding any  
23 grounds for sanctioning the Government. There's no further  
24 discussion on --

25 MS. SASSOWER: Now --

1 THE COURT: There's no further discussion on that  
2 issue, excuse me. Miss Sassower.

3 MS. SASSOWER: On something else.

4 THE COURT: Miss Sassower.

5 MS. SASSOWER: On something else but related.  
6 Excuse me, Your Honor, with all respect.

7 THE COURT: No, Miss Sassower, you are being  
8 disrespectful. We had this problem --

9 MS. SASSOWER: The record speaks for itself.

10 THE COURT: It certainly does, it does. Very well.

11 Mr. Mendelsohn.

12 MR. MENDELSON: Your Honor, just want to return  
13 briefly to the issue of the motion in limine. It's the  
14 Government's position that some ground rules ought to be  
15 laid before trial. The defendant's charged with disruption  
16 of Congress. The Court issued an order on February 25th  
17 ordering that there will be no reference to defendant's  
18 political motivations, causes or beliefs.

19 THE COURT: Which you requested, the Government  
20 requested it.

21 MR. MENDELSON: Right.

22 THE COURT: I ruled on it, I ordered it. Very  
23 well.

24 MR. MENDELSON: And it's the Government's position  
25 that the fact that the defendant was opposed to a certain

1 judicial nomination might be admissible for the mere fact  
2 that it gives some -- some background to the jury as to why  
3 the defendant is alleged to have disrupted that  
4 congressional hearing.

5 THE COURT: As you make the argument I don't have a  
6 disagreement with that. I think that when we get into  
7 issues of, well, why was Miss Sassower opposed to this  
8 nomination, I don't see that that's relevant to prove or  
9 disprove of one of the elements essential to the -- to the  
10 charge. But go ahead.

11 MR. MENDELSON: That's exactly why I brought up  
12 this issue. It's the Government's position that why the  
13 defendant was opposed to the nomination, any background  
14 about that particular judicial nominee, is not admissible at  
15 trial. And if the defendant tries to bring that information  
16 in to this trial, and she tries to turn this court into a  
17 political forum, the defendant should be sanctioned  
18 accordingly and it's the Government's position that this is  
19 not a political forum, and those issues are wholly  
20 irrelevant, as the Court stated to the information in this  
21 case, and if the defendant tries to turn this courtroom into  
22 a political forum the defendant should be held in contempt  
23 for violating the Court's order.

24 THE COURT: Mr. Mendelsohn, your point is one well  
25 taken. With regard to any sanctions that would be imposed



1 for violating an express order by me we will deal with that  
2 if and when the issue presents itself.

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

4 THE COURT: Yes.

5 MS. SASSOWER: Thank you. As the record reflects  
6 most specifically <sup>my</sup> on discovery motion, and the 39-page fax I  
7 sent to Detective Zimmerman, I was called by Capitol police  
8 and it was expressly inquired of me, the basis upon which I  
9 was seeking to testify and was opposed to the nomination. I  
10 had a 40-minute conversation --

11 THE COURT: Excuse me, excuse me, please, please.  
12 You see, what may have been the source of inquiry during the  
13 course of investigation of this case may or may not have any  
14 bearing upon proof or disproof of the elements of the  
15 offense with which you are charged. Therefore, to the  
16 extent that full inquiry was made as to why you did what you  
17 did, what your motivations were, what your beliefs are and  
18 so forth, while that may have been helpful to law  
19 enforcement, it is inappropriate. If it does not get to the  
20 heart of an element of the offense with which you are  
21 charged, and this is a matter that I've given some thought  
22 to, and I must say that without hearing any trial proffers  
23 at this point in time, Mr. Mendelsohn's position is in fact  
24 the one that is -- that I believe is tentatively correct.  
25 Namely, that your political beliefs, motivations, causes,

1 none of that is relevant unless it addresses one of the  
2 elements that the Government must prove beyond a reasonable  
3 doubt or a defense thereto.

4 In the absence of either of those it's irrelevant  
5 and I will treat it like any other piece of irrelevant  
6 evidence if the circumstances warrant it. Again, I say it's  
7 very difficult to do this without having the question posed  
8 outside of a trial, and I'm not asking anyone to provide me  
9 with trial questions. We'll address it as it develops but I  
10 must tell you, Miss Sassower, that if the issue, if the  
11 statement of your belief, I don't care if it was inquiry  
12 made by law enforcement, if it has no bearing on the  
13 elements of the offense or a defense thereto, it's  
14 irrelevant.

15 MS. SASSOWER: My defense as reflected in my  
16 discovery motion papers is that Leecia Eve and Senator  
17 Clinton's office set in motion a chain of events to -- based  
18 upon inquiry of me, extensive inquiry of me as to the basis  
19 of the opposition. I was arrested for reasons having  
20 nothing to do with anything that took place at the hearing.

21 THE COURT: Miss Sassower, your record on this  
22 issue has been made. I will await further deliberations --  
23 I'll just await our final adjudication of these issues on a  
24 question by question basis as they arise and it will become  
25 very clear to me in short order as to whether efforts are

1 being made to get in what I perceive to be irrelevant  
2 evidence and I'll let you know that at that time.

3 All right, now, with regard to -- I believe that  
4 we've now gone through the list of preliminary matters that  
5 were previously outlined in the Government's papers. Let me  
6 just ask some other questions.

7 Miss Liu, any statements, custodial statements  
8 involved in this case?

9 MS. LIU: Your Honor, no.

10 THE COURT: All right.

11 We've already discussed the prior crimes.

12 Videotape. It seemed to me based upon my review of  
13 materials that there was a videotape.

14 MS. LIU: That's correct, Your Honor, and it's been  
15 disclosed to the defendant.

16 THE COURT: Very well. And is it the Government's  
17 position that we need to make accommodation for a playback  
18 of that tape?

19 MS. LIU: Your Honor, I believe accommodations have  
20 been made, we spoke with your chambers on Friday.

21 THE COURT: Excellent. Very well.

22 All right, then it seems to me that we have covered  
23 all of the preliminary matters. I just received a note that  
24 another judge has been kind enough to hear my regular  
25 schedule tomorrow, and so we will begin tomorrow at 9:30 at

1 which time I will ask for preliminary matters, we may  
2 briefly address voir dire, and then we will be about the  
3 business of picking a jury, so if you have a problem now,  
4 because I told you 11 instead of 10, do you think that you'd  
5 be able to get a hold of your witnesses and let them know  
6 that we're going to start jury selection at ten o'clock?

7 MS. LIU: Your Honor, won't be a problem at all.

8 THE COURT: Very well.

9 MR. MENDELSON: One question with respect to jury  
10 selection.

11 THE COURT: Yes.

12 MR. MENDELSON: When witnesses are introduced, is  
13 the Court going to request that the witnesses be introduced  
14 by name or will the Court need them --

15 THE COURT: Don't need them.

16 MR. MENDELSON: -- in person?

17 THE COURT: Name is fine. And I will probably ask,  
18 when we get to that point in the voir dire, that you or Miss  
19 Liu and Miss Sassower stand, look at the jury, and simply  
20 give the names.

21 MR. MENDELSON: Any other information --

22 THE COURT: Of potential witnesses.

23 MR. MENDELSON: -- with respect to their position  
24 for whom they work, where they live, or just their name?

25 THE COURT: No, I think that that's -- that's fair.

1 I think that name, position, employer, where they live, I  
2 think that's valid information. I don't see that this is  
3 any different than any other case, and that's the kind of  
4 witness information that we would give.

5 MS. LIU: Your Honor, are you asking for a  
6 residential address for these witnesses or sufficient to  
7 just give where they work?

8 THE COURT: Well, I would hate to get halfway  
9 through trial and find out that one of these witnesses is  
10 the next door neighbor of someone on the jury, so --

11 MS. LIU: All right, Your Honor, we'll get that  
12 information.

13 THE COURT: Mr. Mendelsohn.

14 MR. MENDELSON: In the past we have provided a  
15 quadrant or a neighborhood within the city, not a specific  
16 address.

17 THE COURT: Because of the law enforcement issue.  
18 I believe that that's acceptable.

19 MR. MENDELSON: Thank you, Your Honor.

20 THE COURT: Anything further?

21 MR. GOLDSTONE: I just had one question as to  
22 whether or not we would be allowed to store some of our  
23 written materials in the courtroom which would be locked up  
24 over the evening.

25 THE COURT: Well, let me -- let me address this in

1 as politely but as forcefully a way as I can. You know, we  
2 put in a long day here in court, and my court staff is an  
3 extension of me. If you disrespect my staff then what you  
4 have done effectively is disrespect me without me being  
5 present to see it. So, any of your remarks or any kind of  
6 inquiry should be directed to me on the bench as a matter of  
7 record. My marshal, my law clerk and my courtroom clerk are  
8 not to be addressed unless I direct them to you for a  
9 specific reason, and typically that is quite rare.

10 All right, with regard to the storage issue, I am  
11 not inclined to have my courtroom responsible for that  
12 material, and in any case that I tried as a lawyer, I was  
13 told explicitly by courtroom staff that you can leave it  
14 here, we are not responsible for it. And that is the  
15 position that I take, so if you want to tuck it away and not  
16 have to wheel it around that's fine, but I will not want to  
17 hear argument that something is missing or -- or charges  
18 along that line.

19 MR. GOLDSTONE: Thank you.

20 THE COURT: It simply will not be our  
21 responsibility.

22 Anything further?

23 MR. MENDELSON: Not from the Government, Your  
24 Honor.

25 THE COURT: Very well, then we will be in recess

1 until tomorrow morning at 9:30. As I said we will most  
2 likely begin the morning by addressing the voir dire  
3 questions that you will receive some time after I get back  
4 to chambers, and then we'll be about the business of  
5 selecting a jury.

6 Very well. Thank you.

7 THE DEPUTY CLERK: Miss Sassower, your case is  
8 continued to tomorrow morning at 9:30. If you fail to  
9 appear a warrant would issue for your arrest, if you're  
10 convicted of failing to appear you face a hundred and 80  
11 days in jail, a thousand dollar fine, or both, and that's  
12 for your failure to appear; do you understand the warning  
13 you've been given for failing to appear?

14 THE DEFENDANT: I do.

15 THE DEPUTY CLERK: Please step over, sign your  
16 notice to return and underneath your signature put your  
17 address please, include your zip code.

18 THE COURT: Miss Sassower, the letter that you just  
19 handed my courtroom -- my law clerk, you can take that back.

20 MS. SASSOWER: Indicated recipient, Your Honor.

21 THE COURT: Excuse me?

22 MS. SASSOWER: You <sup>are an</sup> indicated recipient of the  
23 letter.

24 THE COURT: What is it?

25 MS. SASSOWER: This is related to the production

1 that Miss Liu made last week which she then followed up with  
2 a letter, so this is the letter that she was responding to  
3 <sup>W</sup> which the Court <sup>was an</sup> ~~has~~ indicated recipient.

4 THE COURT: Miss Liu.

5 MS. LIU: Yes, Your Honor.

6 THE COURT: What is -- what is the issue here?

7 MS. SASSOWER: I'm providing the Court its copy.

8 THE COURT: And my position is that we're about to  
9 enter trial, I'm not receiving -- we aren't receiving  
10 documents in here. Is this related to the discovery matter  
11 that I've already ruled on?

12 MS. LIU: Your Honor, this is from the defendant,  
13 it's not from me, she's simply saying that she wants to give  
14 it to you.

15 MS. SASSOWER: You <sup>are an</sup> indicated recipient, if I had  
16 mailed it it would be arriving today.

17 THE COURT: Right, well, I'm not receiving it  
18 personally --

19 MS. SASSOWER: Fine.

20 THE COURT: -- in court.

21 MS. SASSOWER: I had an obligation to provide it to  
22 you as an indicated recipient.

23 THE COURT: Very well.

24 MS. SASSOWER: You refused it. Fine.

25 THE COURT: Anything further?



1 MR. MENDELSON: No, Your Honor.

2 (Thereupon, the proceedings were adjourned at 3:41  
3 p.m.)

4 \* \* \* \* \*

5 CERTIFICATE OF REPORTER

6  
7 I, Loretta E. Kaczorowski, an Official Court  
8 Reporter for the Superior Court of the District of Columbia,  
9 do hereby certify that I reported, by machine shorthand, in  
10 my official capacity, the proceedings had and testimony  
11 adduced upon the trial in the case of the **UNITED STATES OF**  
12 **AMERICA versus ELENA R. SASSOWER**, Criminal Action Number  
13 M-4113-03, in said court on the 12th day of April, 2004.

14 I further certify that the foregoing 56 pages  
15 constitute the official transcript of said proceedings, as  
16 taken from my machine shorthand notes, together with the  
17 backup tape of said proceedings.

18 In witness whereof, I have hereto subscribed my  
19 name, this the 27th day of April, 2004.

20  
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25 COURTS

22 *Loretta E. Kaczorowski*  
23 Official Court Reporter