

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 13, 2004

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

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DISTRICT OF COLUMBIA  
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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  
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P R O C E E D I N G S

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

4 MS. SASSOWER: Your Honor, I apologize for the  
5 delay. I was instructed by your courtroom clerk to  
6 explain and I am happy to do so.

7 THE CLERK: Excuse me, Your Honor. I indicated  
8 to Ms. Sassower she could not leave the courtroom  
9 because court is getting ready to start.

10 THE COURT: Very well.

11 MS. SASSOWER: I'm sorry. I thought I  
12 understood I was to explain the delay.

13 THE COURT: No, I don't, I don't need to hear  
14 that from you. It's my understanding that you have some  
15 issues with exhibits or something, getting them through  
16 security. So --

17 MS. SASSOWER: Yes, indeed. And unfortunately,  
18 the Senate Judiciary Committee would not retain these  
19 documents until the trial nor would Mr. Mendelsohn.

20 They had to be brought back by me to New York  
21 and then transmitted yesterday with me here. And yes,  
22 there have been problems.

23 THE COURT: Very well. All right. You  
24 received from me via fax and should have had placed  
25 before you this morning the proposed voir dire

1 questions, a synthesis of questions that I have in  
2 chambers and those that were submitted by the  
3 government.

4 I did receive, and thank you, from Ms. Liu and  
5 Mr. Mendelsohn a proposed supplemental voir dire  
6 question that addresses the media coverage issue.

7 When I compared that question to my question  
8 number one and its subparts A and B, my feeling was that  
9 the less attention that is drawn to the exact  
10 publication and the exact date benefits the orderly  
11 process of this case.

12 My thought being that human nature might drive  
13 either the panel or the jury that we actually sit  
14 directly to the particular publication and the date to  
15 review this matter that we're trying to have them avoid.

16 So I thought that my instruction number one was  
17 broad enough to cover that. Once we empanel the jury, I  
18 will have preliminary instructions to give them. And  
19 during the preliminaries, I will ask them not to read  
20 local newspapers.

21 We're going to provide them with in cha, in the  
22 juryroom the New York Times or the, what is it, USA  
23 Today. So that they will have some newspaper,  
24 newspapers to read.

25 But they, we won't provide them with the

1 Washington Post or the Washington Times or obviously the  
2 Legal Times. So that we try as best we can to keep them  
3 away from an article that might prejudice them one way  
4 or the other.

5 So I'm certainly willing to hear argument from  
6 the government on this issue. But my thought is that  
7 I've considered it and my inclination is to proceed with  
8 voir dire question one, ask the media question as well.

9 MS. LIU: Your Honor, I think that's a great  
10 way to handle the media question. We have no problem  
11 with question number one as it's been stated.

12 THE COURT: Very well. Ms. Sassower.

13 MS. SASSOWER: I couldn't agree more.

14 THE COURT: Very well. All right. So we will  
15 proceed in that way. I believe that we don't have any  
16 other preliminary matters and we can call for a jury.

17 Let me review with you what we anticipate  
18 happening with the, with the panel this morning. When  
19 the panel is called, essentially every seat is going to  
20 be filled in the audience.

21 We're either gonna call for a panel of 48 or  
22 60. I haven't really figured that out. And the only  
23 reason for calling for more is a calculation that has no  
24 scientific basis at all as to how many might be lost due  
25 to cause.

1           Once the panel is seated and, and they're  
2 sworn, I will then give some preliminary information  
3 about the process. We will then proceed with my asking  
4 the several questions.

5           You will have at that time a list of juror  
6 names and juror numbers. And you'll also have space to  
7 write notes. You can handle this however you choose.

8           But my recommendation is that when I ask a  
9 question and a juror, juror stands up and gives his  
10 number, that you note on your chart the number that has  
11 been asked, the number of the question that's been asked  
12 beside the juror or beside the juror number.

13           And you do that for every question. You note  
14 the number of the question that the person has responded  
15 to. After we get through the entire list of 18  
16 questions, then we will field beginning with juror one,  
17 who will sit right here where this lady is sitting in  
18 our courtroom.

19           We will start with juror one and we will work  
20 our way through calling the jurors up to the bench and  
21 engaging them in discussion on the various questions  
22 that they responded to.

23           So juror one, for example, we note that you  
24 responded to question one with regard to having heard,  
25 read or knowing something about this case, could you

1 tell us why you answered that question. The person will  
2 respond.

3 I will engage them in conversation about their  
4 knowledge or their exposure and then ultimately ask them  
5 whether or not this exposure impacts their ability to be  
6 a fair and impartial juror in the case.

7 To the extent that either the government or Ms.  
8 Sassower would like any follow-up questions asked, I  
9 will entertain those. And we will proceed in that way.

10 That person will then be asked to go back to  
11 their seat, read, do whatever it is that they're doing  
12 and we'll bring up the next juror. And we will follow  
13 this process for all of the jurors.

14 It should come as no surprise that there will  
15 be some jurors who will do anything to remove themselves  
16 from jury duty. And they will answer the broad  
17 questions that I must ask - is there any reason that you  
18 can think of that you would not be able to serve as a  
19 juror in this case.

20 When they answer that question in the  
21 affirmative, I want you to know right now that as far as  
22 our discussions at the bench are concerned, I am going  
23 to skip over those individuals.

24 And the reason for that is, if we have say five  
25 of those individuals who have made it clear through

1 their answering of that question that they're not going  
2 to want to serve or be able to serve, I don't want to go  
3 through the full discussion of the several questions  
4 that they asked, unnecessarily.

5 We're going to lose them anyway, let's not even  
6 engage them in questioning at the bench unless and until  
7 we are forced to do so because of attrition. Is there  
8 anybody who doesn't understand what I'm, what I'm saying  
9 here?

10 So we will take everyone in order. And let's  
11 say juror 15 is one of those people who has gotten up  
12 and responded to every question and has answered the  
13 broad question that he can't serve.

14 And so you know, as we sit here and ask these  
15 questions, that this is a person who appears to be  
16 trying to get out of jury duty.

17 When we call individuals to the bench, I will  
18 call juror 14, I'll ask juror 15 to wait there for just  
19 a minute. Then I'll call juror 16. And we'll bring  
20 those people up.

21 And that happy group that wants to avoid  
22 service, we will save them to the end. It may well work  
23 itself out that mathematically, we don't need to even  
24 question them because we will have a panel that will  
25 give us a jury, given the number of people that we have



1 and the number of strikes that you are allowed.

2 The number of strikes for each side will be  
3 three. All right. And we will address that matter  
4 further when we get to it. And you should know that a  
5 pass on a strike is also a strike.

6 So, in any event, you can use that as best you  
7 see fit. I think then that what we need to do is to be  
8 about getting a panel up here. It takes them about 20  
9 minutes to assemble a panel. So why don't we do that.  
10 Very well, all right, Ms. Sassower.

11 MS. LIU: Yes. May I use the facilities, Your  
12 Honor?

13 THE COURT: Oh, certainly, certainly.

14 MR. MENDELSON: Your Honor, Aaron Mendelson  
15 for the United States.

16 THE COURT: Yes.

17 MR. MENDELSON: Just a couple of questions  
18 about the jury selection process.

19 THE COURT: Yes.

20 MR. MENDELSON: One, we have --

21 THE COURT: Ms. Sassower --

22 MR. MENDELSON: We have --

23 THE COURT: Excuse me. You may want, you may  
24 want to hear this.

25 MR. MENDELSON: We have three strikes for the

1 panel, do we have any strikes on the alternates? Do we  
2 get one strike for --

3 THE COURT: Well, the way that I'm going to  
4 handle the alternate is once the jury is empanelled I  
5 will run - well, actually before it's empanelled I'm  
6 going to randomly select two numbers.

7 Those two numbers will be the alternates. No  
8 one will know who the alternates are except me. So  
9 that, that's the way we'll handle that issue.

10 MR. MENDELSON: And --

11 THE COURT: Go ahead.

12 MR. MENDELSON: -- with respect to striking  
13 jurors for cause, --

14 THE COURT: Yes.

15 MR. MENDELSON: -- how will we know when the  
16 court has decided to strike juror -- will we be able to  
17 make arguments --

18 THE COURT: Yes.

19 MR. MENDELSON: -- for cause?

20 THE COURT: Yes. Once I excused juror number  
21 one back to first seat, I will then entertain arguments  
22 from counsel right here at the bench.

23 Your Honor, we move that this juror be  
24 stricken for cause for the following reasons. This jury  
25 has worked for law enforcement, has demonstrated an

1 inability to hear this case fairly and impartially.  
2 That kind of, of argument.

3 And then I'll rule at that time. However, I  
4 won't be excusing any jurors at that time. The person  
5 will still be here.

6 MR. MENDELSON: Two additional questions.

7 THE COURT: Yes.

8 MR. MENDELSON: One, Senate legal counsel,  
9 Grant Vinik, --

10 THE COURT: Yes.

11 MR. MENDELSON: -- may he remain in the  
12 courtroom perhaps seated here during jury selection?

13 THE COURT: I don't have -- excuse me. I  
14 don't have any objection to that.

15 MR. MENDELSON: And Ms. Liu has an additional  
16 preliminary issue.

17 THE COURT: Ms. Liu.

18 MS. LIU: Your Honor, the government has two,  
19 what I hope will be very brief issues, concerning the  
20 elements of the offense.

21 THE COURT: Yes.

22 MS. LIU: I don't know if you'd like to discuss  
23 those now or wait until some later time.

24 THE COURT: Well, certainly by the time I give  
25 my preliminary instructions to the panel I will, will

1 have to address that. Because in the preliminary  
2 instructions to the, I shouldn't say the panel, to the,  
3 the jury, that we assemble, I, I have to give them some  
4 guidance in that regard. Go ahead.

5 MS. LIU: Our concerns, Your Honor, concern  
6 number one of the elements of the offense.

7 THE COURT: Yes.

8 MS. LIU: And our position is that the  
9 language, your recitation of the elements should track  
10 exactly the language of the statute.

11 THE COURT: All right.

12 MS. LIU: Which reads that, defendant is  
13 prohibited from uttering loud threatening or abusive  
14 language as well as to engage in any disorderly or  
15 disruptive conduct.

16 Moreover, the language of the statute is not  
17 within a United States Capitol Building but within any  
18 of the United States Capitol Buildings plural.

19 And the reason why I ask for that particular  
20 language is that I think it makes it more clear to the  
21 jury that any United States Capitol Building not just  
22 the Capitol itself --

23 THE COURT: Right.

24 MS. LIU: -- is covered by the statute. Now  
25 with respect to the first phrase in the statute,

1 uttering loud, threatening or abusive language, I was  
2 looking back at our information and I realized this  
3 morning that that specific language, -

4 THE COURT: Go ahead.

5 -MS. LIU: -- that that specific language does  
6 not appear in the information. And so at this time we  
7 would move to amend the information to add that language  
8 from the statute.

9 MS. SASSOWER: I'm sorry, what did you wish to  
10 add? And which is the information that you are --

11 THE COURT: What is the --

12 MS. SASSOWER: Excuse me, excuse me, Your  
13 Honor. I'll go to my discovery motion where those  
14 underlying prosecution documents were set forth by me as  
15 exhibits.

16 THE COURT: Ms. Sassower, just, let me just say  
17 this before we have the citizens in here who are going  
18 to judge this case.

19 Every time that we have an issue that arises  
20 that warrants some clarification, we really shouldn't be  
21 going back to matters that have previously transpired.

22 MS. SASSOWER: I understand. And the jury is  
23 not present and I am so advised.

24 THE COURT: No.

25 MS. SASSOWER: And understand that, but thank

1 you.

2 THE COURT: Yes, but I'm present. And what  
3 this does is it delays the proceedings. And quite  
4 frankly, it demonstrates a certain disregard for the  
5 orderly progression of this case.

6 So I'm simply going to ask you that if you need  
7 to make a, if you feel compelled to make a point, let's  
8 make the point. We don't need the --

9 MS. SASSOWER: I will --

10 THE COURT: Go head.

11 MS. SASSOWER: -- one last time --

12 THE COURT: Very well.

13 MS. SASSOWER: -- note my objection to  
14 proceeding to trial. The case is not trial ready. It  
15 has not proceeded orderly with proper disposition of my  
16 dis, discovery rights on which my witness rights, right  
17 rested.

18 THE COURT: Very well. And --

19 MS. SASSOWER: So without prejudice, all those  
20 objec, objections including to Your Honor's presiding, I  
21 will --

22 THE COURT: The record --

23 MS. SASSOWER: -- no longer make reference --

24 THE COURT: Thank you. The record --

25 MS. SASSOWER: -- to those issues.

1 THE COURT: -- on that has been made clear.

2 And --

3 MS. SASSOWER: Thank you.

4 THE COURT: -- I don't think there's any  
5 further need to address that.

6 MS. SASSOWER: Thank you. We would move on.

7 THE COURT: Ah. Thank you. Now for, on the  
8 specific issue of this information, Ms. Liu, I was  
9 distracted by trying to get my hands on a copy of the  
10 information. What is the point that you're making here?

11 MS. LIU: My point, Your Honor, is that the  
12 statute under which we're proceeding and which is listed  
13 in the information, --

14 THE COURT: Yes.

15 MS. LIU: -- that language says, it shall be  
16 unlawful for any person or group of persons willfully  
17 and knowingly to utter loud, threatening or abusive  
18 language, or to engage in any disorderly or disruptive  
19 conduct at any place upon the Capitol grounds or within  
20 any of the Capitol Buildings.

21 I noticed that in our information, what we have  
22 said is that the defendant willfully and knowingly  
23 engaged in disorderly and disruptive conduct.

24 We did not state in the information or did not  
25 charge that she uttered loud threatening or abusive

1 language which is the language of the statute itself.

2 And we think that it would be appropriate to  
3 have the charging documents as well as the elements of  
4 the offense that Your Honor has put together for us  
5 track exactly the language of the statute.

6 THE COURT: Very well.

7 MS. SASSOWER: May I be heard?

8 THE COURT: Yes, you -- yes, Ms. Sassower.

9 MS. SASSOWER: As Ms. Liu has made known to the  
10 Court, this case is virtually one year old. The  
11 government had one year to amend this information. This  
12 is now right at trial, not even the eve of trial, right  
13 at trial.

14 It is untimely, it is late and it is  
15 unnecessary. If the government felt that was germane,  
16 they had sufficient opportunity to do it prior to, prior  
17 to this moment.

18 MS. LIU: May I respond briefly, Your Honor?

19 THE COURT: Yes.

20 MS. LIU: Your Honor, the government is  
21 permitted to move to amend at anytime prior to trial.  
22 We have not yet selected a jury nor sworn the jury.

23 In addition, we don't believe that there would  
24 be any prejudice to Ms. Sassower. The information lists  
25 exactly what provision of the D.C. Code we're proceeding



1 under. That language is plainly in that section and  
2 she's known all along exactly what she's accused of  
3 doing.

4 We've provided videotape to her. We have  
5 provided the police statements that described her  
6 conduct and we don't believe there is any prejudice.

7 THE COURT: Very well. My ruling is that, as  
8 Ms. Liu correctly states, the, the information may be  
9 amended at anytime prior to trial.

10 This happens all the time in misdemeanor cases  
11 where the information contains one charge and perhaps  
12 the trial is held on a lesser included offense because  
13 of lack of proof on a particular element. So the  
14 government is allowed to amend the information in that  
15 regard.

16 MS. SASSOWER: I would --

17 THE COURT: This, this circum -- I'm ruling,  
18 Ms. Sassower. This circumstance really is no different.  
19 It is an effort to bring the information into conformity  
20 with the statute and the instruction to the jury as to  
21 the elements of the charge into conformity with the  
22 statute. So I'll grant the, the motion.

23 Ms. Liu, what I expect from you is given that  
24 you have found, and quite frankly I'm in concurrence,  
25 you have found a deficiency with my proposed statement

1 of the elements of the ca, of the offense.

2 Prior to my giving the preliminary instructions  
3 to the jury panel, the jury that we assemble, I need you  
4 to prepare, and it can be handwritten and exchanged with  
5 Ms. Sassower. I need your proposal as to the  
6 modification here.

7 MS. LIU: Very well, Your Honor.

8 THE COURT: It's not enough simply to state it,  
9 I need to actually see it.

10 MS. LIU: We'll provide --

11 THE COURT: Because that's what I'm going to  
12 read.

13 MS. LIU: We will certainly provide it in  
14 writing, Your Honor.

15 MS. SASSOWER: I would just --

16 THE COURT: Very well.

17 MS. SASSOWER: I would just wish for the record  
18 to state, as I had stated, that the evidence in the  
19 government's possession shows there is no basis for the  
20 charge.

21 THE COURT: Ms., excuse me.

22 MS. SASSOWER: That they have amended --

23 THE COURT: No, excuse me, excuse me, Ms.  
24 Sassower. This was a matter that I tried to handle in a  
25 very dispassionate manner just a few minutes ago. I

1 have ruled and you're going to be confronted with my  
2 rulings --

3 MS. SASSOWER: Okay.

4 THE COURT: -- throughout the trial. Once I  
5 rule, your record is preserved by way of court reporter  
6 for any appellate purposes. But once I've ruled, then  
7 the ruling is final unless there is legal authority  
8 presented to me for purposes of reconsideration.

9 And on this issue, there is no authority that  
10 could possibly be presented to me for purposes of  
11 reconsideration. Therefore, on this issue of amending  
12 the information and restating the elements of the  
13 offense, we are done.

14 I am not hearing any more discussion on that  
15 issue. And any objection by any party as to that matter  
16 will be noted for the record.

17 Now, I believe now that we're in a position to  
18 go forward with the calling of the, the jury. During  
19 that time, Ms. Sassower, you may take care of the matter  
20 that you had previously sought.

21 MS. SASSOWER: Thank you.

22 THE COURT: But before you go, I'd like both  
23 you and Mr. Goldstone to step up ex parte.

24 (Ex Parte Bench Conference)

25 THE COURT: There are two reasons that I called

1 you up here. Number one is that I want to assure you,  
2 Ms. Sassower, that you are going to receive a fair trial  
3 in my courtroom.

4 MS. SASSOWER: Thank you.

5 THE COURT: All right.

6 MS. SASSOWER: I had been --

7 THE COURT: Now, now there's a certain decorum  
8 that I must maintain.

9 MS. SASSOWER: Absolutely, you can.

10 THE COURT: And to the extent that you  
11 encounter objections, that you encounter rulings by me  
12 that you feel is being unfavorable and warrant further -

13 MS. SASSOWER: I do have no objection --

14 THE COURT: And warrant further discussion, Ms.  
15 Sassower, then your record will be made by virtue of the  
16 court reporter having noted your objection. So any  
17 appeal that you seek to take later on, you will have the  
18 transcript.

19 You can go directly to the page and line and  
20 you can demonstrate how I was in error in doing what I  
21 did. But I have to tell you and you need to understand  
22 this during the trial and I've got a jury empanelled.

23 MS. SASSOWER: I know, I know.

24 THE COURT: All right.

25 MS. SASSOWER: I think Your Honor can discern

1 from my questions that I am very professional and I  
2 will do the best I can.

3 THE COURT: Okay.

4 MS. SASSOWER: Please also recognize that I am  
5 very unfamiliar with a criminal trial which is a  
6 different ball of wax entirely.

7 THE COURT: Well, I'm going to assist as best  
8 I can here and --

9 MS. SASSOWER: I appreciate --

10 THE COURT: -- certainly Mr. Goldstone --

11 MS. SASSOWER: Definitely.

12 THE COURT: -- is a member of the bar and he  
13 will understand when I rule, asking, for example, to  
14 move on, he will understand what that means and can  
15 instruct you accordingly.

16 Now the other thing I wanted to mention to you  
17 is that one of the things that judges are concerned  
18 about in every jury trial are matters that may influence  
19 a jury but which are not stated as evidence.

20 One of those things, for example, your box  
21 with the ribbons. You're going to have to place that  
22 box down below.

23 MS. SASSOWER: That's, that's what supposedly  
24 is a demonstration of how I'm not rational. I'm  
25 professional but I'm not rational.

1 THE COURT: Well, at the point in time that  
2 that becomes relevant -- for example, if this were a  
3 case involving a shooting, we don't brandish about the  
4 weapon or the ammunition until such time as it becomes  
5 relevant evidence. Therefore, Ms. Sassower, that  
6 material I want you to keep below.

7 MS. SASSOWER: We need to have this on the  
8 record, Your Honor.

9 THE COURT: It is on the record.

10 MS. SASSOWER: No, no.

11 THE COURT: It is on the record.

12 MS. SASSOWER: This, this conference is on the  
13 record?

14 THE COURT: This conference is on the record.

15 MS. SASSOWER: Okay.

16 THE COURT: Everything --

17 MS. SASSOWER: I'd like --

18 THE COURT: -- that you say is on the record.

19 And I am directing you to place that material out of  
20 sight of the jury until it becomes a part of your case.  
21 And at that point in time --

22 MS. SASSOWER: Okay.

23 THE COURT: -- that you seek its introduction  
24 into evidence, you make sure, just like any other piece  
25 of evidence, and offer it.

1 MS. SASSOWER: Okay, okay.

2 THE COURT: It, it should be marked.

3 MS. SASSOWER: Yes.

4 MR. MENDELSON: You can offer it.

5 MS. SASSOWER: Yes.

6 THE COURT: The government will have its  
7 opportunity to object and I will rule. You understand?

8 MS. SASSOWER: Okay. These are the actual  
9 documents as returned to me from the Senate Judiciary  
10 Committee.

11 THE COURT: Ms. Sassower, I don't care about  
12 the documents. What I care about is the appearance of  
13 the box. And what I want in my courtroom is --

14 MS. SASSOWER: Those are the boxes.

15 THE COURT: I want those boxes --

16 MS. SASSOWER: Okay.

17 THE COURT: -- out of sight --

18 MS. SASSOWER: Okay.

19 THE COURT: -- until you offer them as  
20 evidence. And at that point in time they may be  
21 displayed. They will be provided, the government will  
22 have an opportunity to examine and then interpose any  
23 objection. If it requires discussion, we'll have the  
24 discussion at the bench and I will rule.

25 MS. SASSOWER: Now, Your Honor, I just would

1 like to remind you in the event you were not present on  
2 December 3rd. But in any event, it's reflected in the  
3 transcript that I objected to the loss of custody by the  
4 government of these boxes.

5           These boxes, I didn't want to take them back.  
6 I said they are going to be evidence introduced at the  
7 trial.

8           THE COURT: Well, well, that, that is now, Ms.  
9 Sassower, --

10           MS. SASSOWER: Okay.

11           THE COURT: -- a non-issue because the boxes  
12 are here. And to the extent --

13           MS. SASSOWER: Those are the same boxes.

14           THE COURT: And to the extent that you have  
15 custody of them, put them out of sight.

16           MS. SASSOWER: Okay, okay.

17           THE COURT: That's, and that's, okay. We don't  
18 need to discuss it any further.

19           MS. SASSOWER: Well, I do, I do, this is, I do  
20 not want to create a problem.

21           THE COURT: Okay.

22           MS. SASSOWER: I will advise the Court in  
23 advance because it is my intention, I'm so, telling the  
24 jury. Because it's my intention to take the stand in my  
25 own defense.



1 THE COURT: Yes.

2 MS. SASSOWER: My opening statement is cursory,  
3 very limited, very short, not to be duplicative because  
4 nothing I say in an opening statement is evidence, only  
5 from the witness stand.

6 THE COURT: Well, you don't have to tell them  
7 that because I will. But, Ms. --

8 MS. SASSOWER: But --

9 THE COURT: Ms. Sassower, --

10 MS. SASSOWER: Well, what I'm saying is my, I  
11 had planned in my opening statement as part of --

12 THE COURT: To use demonstrative evidence? No,  
13 because it's not in evidence.

14 MS. SASSOWER: Okay.

15 THE COURT: So you won't be using that. And  
16 let me ask you while you're here, what is this mark in  
17 your left hand? What, in the hand, what is that?

18 MS. SASSOWER: Oh, it's, I don't know. It's,  
19 it's some dirt.

20 THE COURT: Okay, very well.

21 MS. SASSOWER: It's --

22 THE COURT: Okay.

23 MS. SASSOWER: I was carrying all these boxes  
24 and, and the wheels of the cart --

25 THE COURT: All right. Well, you might want --

1 MS. SASSOWER: Yes.

2 THE COURT: -- to take care of that.

3 MS. SASSOWER: I was planning to go to the rest  
4 room.

5 THE COURT: Very well. All right, is there  
6 anything further?

7 MR. GOLDSTONE No, thank you.

8 THE COURT: Thank you.

9 (Open Court)

10 THE CLERK: The court will stand in brief  
11 recess until return of the Court.

12 (Thereupon, the court recessed at 10:52 p.m.)

13 (Thereupon, the court reconvened at 11:05  
14 a.m.)

15 MS. SASSOWER: Your Honor, --

16 THE COURT: Yes.

17 MS. SASSOWER: There has arisen an issue that  
18 we require your assistance with.

19 THE COURT: Very well.

20 MS. SASSOWER: The last preliminary issues  
21 raised by the government concerned their enlargement.

22 THE COURT: Yes.

23 MS. SASSOWER: They wanted to make three  
24 enlargements.

25 THE COURT: Yes.

1 MS. SASSOWER: And I noted to Ms. Liu that she  
2 had as yet not provided me with what specific rule the  
3 government had wanted to enlarge. And she would not  
4 identify it to me and she indicated that I should take  
5 it up with your honor.

6 THE COURT: Very well.

7 MS. SASSOWER: Also, apparently it's not quite  
8 clear to me <sup>and</sup> ~~but~~ perhaps even to the government, which  
9 enlargements, if any, <sup>they are to be</sup> ~~are to be~~ fair to be permitted to  
10 use.

11 THE COURT: Thank you. I apologize for not  
12 having addressed that issue before as a preliminary  
13 matter. Overnight, I had the opportunity to review not  
14 only the statutes that directly pertain to the  
15 information in this case, but I also reviewed the  
16 Senate committee rules and the, and the Constitutional  
17 provision in question.

18 My ruling is, is as follows: I will take  
19 judicial notice of those matters. They will not be used  
20 as demonstrative evidence for the reasons that were  
21 previously articulated.

22 I think this is particularly true when it comes to  
23 the Senate committee rules. They are voluminous and an  
24 argument could be made that the entire Rule 26 would not  
25 be subject to ready enlargement and display.

1           And therefore, certain extractions would have  
2 to be made, which theoretically at least could be  
3 interpreted as taking a provision out of context. I  
4 want to avoid all of that, any misinterpretation, any  
5 arguments about faulty context and the like.

6           Therefore, the statutory provisions, D.C. Code,  
7 Section 10-503.16, the United States Constitution,  
8 Article one, Section 5, Clause two and the Senate  
9 committee rules, Rule 26 will not be allowed as  
10 demonstrative evidence. Okay. Anything further?

11           MR. MENDELSON: May I ask for some  
12 clarification?

13           THE COURT: Yes.

14           MR. MENDELSON: Your Honor said you, that the  
15 Court would take judicial notice --

16           THE COURT: Certainly.

17           MR. MENDELSON: -- of them --

18           THE COURT: Yes.

19           MR. MENDELSON: -- but would not allow them as  
20 demonstrative --

21           THE COURT: That's correct.

22           MR. MENDELSON: -- exhibits. How then might  
23 those -- will you, will the Court then read that  
24 provision of the Constitution as part of the Court's  
25 jury instructions?

1 THE COURT: No. It seems to me that the issue  
2 before us is whether or not this person violated  
3 10-503.16. That's the information, that's the proof  
4 that needs to be made. With regard to the House  
5 determining the rules of its proceedings and the, --

6 MR. MENDELSON: I believe I understand.

7 THE COURT: -- and the committee having the  
8 ability to call roll, keep order and so forth, it seems  
9 to me that those are not matters of fact to be addressed  
10 by the jury. Rather, they are issues of law for my  
11 determination.

12 And I don't think there's any dispute but that  
13 the House, that, that the House is able to conduct its  
14 proceedings and the committee is able to govern itself  
15 per the, per the rule.

16 So to the extent that you sought to bring my  
17 attention to the statutory provisions and the rule, so  
18 noted.

19 Addressing these matters to the jury for  
20 determination of fact I believe is not called for here,  
21 except with regard to 10-503.16 where we have the  
22 information and we have elements of an offense based  
23 thereon. Yes.

24 MS. SASSOWER: Now, Your Honor, then I  
25 understand that there will be no enlargements?

1 THE COURT: That's co -- on, on that issue  
2 there would be no enlargements.

3 MS. SASSOWER: Oh, okay. Now I would just like  
4 to say and reflected by my question to Ms. Liu, you  
5 know, and by what Your Honor has just said. Rule 26 of  
6 the Senate rules relating to committee procedure are  
7 quite extensive --

8 THE COURT: Ms. --

9 MS. SASSOWER: -- and I downloaded them from  
10 the Internet. And I simply wish to know for my  
11 edification what specific subsection I am thought to  
12 have violated, what subsection of this huge rule.

13 THE COURT: Excuse me. Ms. Sassower, first of  
14 all, I've ruled on the issue so we don't need further  
15 discussion.

16 MS. SASSOWER: Will it not come up?

17 THE COURT: Correct, it will not come up within  
18 the context of the information that the jury is entitled  
19 to decide, as a matter of fact, in this case.

20 MS. SASSOWER: All right. Now one, one final  
21 question on that subject. When I got that notice of, of  
22 preliminary issues and that final question about blow-  
23 ups, enlargements, I did want to be properly prepared,  
24 which is why I did download from the Internet the Senate  
25 rule.

1           And, of course, I was familiar with the D.C.  
2 provision I am alleged to have violated, and I also took  
3 a look at the Constitution and what was being referred  
4 to.

5           And in reflecting, I decided that there was  
6 something that already was blown up by our Founding  
7 Fathers.

8           THE COURT: Ms., Ms. Sassower --

9           MS. SASSOWER: Am I able to use --

10          THE COURT: No, no, you will not be using that  
11 in this case.

12          MS. SASSOWER: -- the Founding Father's view --

13          THE COURT: Ms. Sassower, --

14          MS. SASSOWER: -- of --

15          THE COURT: Ms. Sassower --

16          MS. SASSOWER: -- what was most important --

17          THE COURT: Ms. Sassower --

18          MS. SASSOWER: -- in the Constitution?

19          THE COURT: Ms. Sassower, Ms. Sassower, --

20          MS. SASSOWER: Yes.

21          THE COURT: That will not be permitted --

22          MS. SASSOWER: That's why I'm asking.

23          THE COURT: -- in this court. Put it away

24 please.

25          MS. SASSOWER: That's why I am asking, Your

1 Honor.

2 THE COURT: Put it away please. Let the record  
3 reflect that Ms. Sassower has what appears to be a  
4 parchment version of the United States Constitution.

5 Clearly, this is not proper and certainly if  
6 it's displayed for the jury, it's not proper. I am  
7 giving an order now --

8 MS. SASSOWER: I am --

9 THE COURT: -- that that, that display will not  
10 take place in this courtroom.

11 MS. SASSOWER: Your Honor, --

12 THE COURT: Do you understand?

13 MS. SASSOWER: -- that's why --

14 THE COURT: Do you, do you understand?

15 MS. SASSOWER: That's why I asked the question.

16 THE COURT: Then, then please put it away.

17 MS. SASSOWER: Am I, isn't that understood by  
18 Your Honor?

19 THE COURT: Put it away, I've ruled.

20 MS. SASSOWER: I, I asked because --

21 THE COURT: Ms. Sassower, there's no  
22 further, --

23 MS. SASSOWER: Okay.

24 THE COURT: -- further discussion --

25 MS. SASSOWER: Okay.



1 THE COURT: -- on the issue. Your record is  
2 made.

3 MS. SASSOWER: For the record, it's "We, the  
4 People", that the Founding Fathers saw fit to enlarge in  
5 the original --

6 THE COURT: Very well.

7 MS. SASSOWER: -- authentic version of the  
8 United States Constitution.

9 THE COURT: Very well, Ms. Sassower, please, --

10 MS. SASSOWER: Last issue.

11 THE COURT: -- please put the document away.

12 MS. SASSOWER: It no longer will be presented  
13 because they are not presenting their enlargements.

14 THE COURT: There's really no need for the  
15 discussion of it. Do you have another matter?

16 MS. SASSOWER: Yes. There is a kind spectator  
17 who has, I would like to have able to witness also the  
18 jury selection.

19 THE COURT: Won't happen. Mr. Vinik is here by  
20 virtue of the fact that he's a member of the bar  
21 and there are witnesses which I assume you intend to  
22 call that are represented by Mr. Vinik.

23 He will be permitted to stay. If you have an  
24 objection, it is noted for the record. Whomever it is  
25 that you have saw to have seated here, they are not

1 your attorney adviser.

2 They aren't counsel for any witness that will be  
3 called in this case. You have identified them as a nice  
4 person I believe that you said.

5 MS. SASSOWER: She also is giving me some jury  
6 advice --

7 THE COURT: Well, well, --

8 MS. SASSOWER: -- actually.

9 THE COURT: Well, she won't.

10 MS. SASSOWER: She's informal jury  
11 consultant --

12 THE COURT: Very well.

13 MS. SASSOWER: -- based on her experience.

14 THE COURT: She won't be in here for jury  
15 selection. Your record is made. And to the extent that  
16 it's found in error by the Court of Appeals, so be it.  
17 Are we prepared now to bring the jury?

18 THE CLERK: Yes, Your Honor.

19 THE COURT: Very well.

20 MR. MENDELSON: Your Honor, --

21 THE COURT: Yes.

22 MR. MENDELSON: I'm sorry, just one last  
23 question. In the proposed voir dire questions, --

24 THE COURT: Yes.

25 MR. MENDELSON: We had identified the parties

1 involved in the trial --

2 THE COURT: Yes.

3 MR. MENDELSON: -- by name. Would you ask  
4 that Mr. Vinik also be identified. He won't be giving  
5 any testimony to the Court --

6 THE COURT: He won't be giving any --

7 MR. MENDELSON: -- I think is the  
8 representation, but he will be here during jury  
9 selection.

10 THE COURT: I don't I think that there's any  
11 need for that, just as if there were a paralegal or a  
12 law clerk seated with counsel. There's no need to  
13 introduce Mr. Vinik.

14 MR. MENDELSON: Thank you.

15 MS. LIU: Your Honor, very briefly. I did have  
16 a question.

17 THE COURT: We have the jury panel coming in.

18 (Thereupon, the jury panel were sworn on voir  
19 dire examination. Thereafter, the jury was duly  
20 selected and the proceedings continued as follows:)

21 THE COURT: Very well. Please be seated.  
22 Thank you. You've been selected as the jury that will  
23 hear this case.

24 What we're going to have you do now is, Ms.  
25 Franklin, my courtroom clerk, will show you the

1 facilities that will serve as your place of business for  
2 the next couple of days.

3           You have a juryroom where you will come in the  
4 mornings prior to taking the, the jury box to hear  
5 testimony. And during your breaks you will go back to  
6 the, the juryroom which is right behind this wall.

7           Ms. Franklin will also show you the rest room  
8 facilities and so forth which are back here with your,  
9 in the juryroom. We're going to give you a break now.  
10 You'll be with Ms. Franklin, she'll tell you how long  
11 the break will last.

12           When we come back, what we will have is you  
13 will be sworn in and I will give you some further  
14 instructions.

15           It seems to me that as a practical matter  
16 today, by the time we take our break and I give you  
17 further instructions, we will likely begin the opening  
18 statements and the testimony tomorrow. And let me just  
19 check.

20           Very well, all right. We can talk about our  
21 start time later when, after you come back. But for  
22 now, Ms. Franklin will show you to the facilities here.  
23 Thank you again for your service.

24           (Thereupon, the jury returned to the juryroom  
25 at 3:30 PM.)

1 THE COURT: Ms. Sassower, be seated. Ms.  
2 Sassower.

3 MS. SASSOWER: I just for the record must  
4 express to the Court that the objection of the  
5 government, based on the fact that the three  
6 peremptorily stricken jurors happened to be black fem,  
7 black females, was absolutely coincidental.

8 There was never any intent to strike either  
9 black persons or female persons, you can be assured.

10 THE COURT: Ms. Sassower, let me just say to  
11 you that --

12 MS. SASSOWER: And I am certainly happy to  
13 articulate why they were stricken.

14 THE COURT: Well, excuse me. One thing that we  
15 have to make sure that we're certain of before we begin  
16 the trial is that when I start to speak you stop. No  
17 matter what you're saying, you stop.

18 Now with regard to your position on this, I can  
19 understand how someone who is not familiar with  
20 courtroom procedure might feel when that challenge is  
21 made.

22 But let me assure you, it is a purely legal  
23 challenge. And the law under Batson vs. Kentucky, a  
24 Supreme Court case, allows the government or the defense  
25 to bring such a challenge.

1           It is then my responsibility to make a  
2 determination whether there could be any association  
3 between the race, gender composition of those stricken  
4 and the motive of the striker.

5           In some cases, there is a conjunction; in  
6 others, it may well be coincidental. In this case, I  
7 have ruled so it is no longer an issue and no one thinks  
8 of you any less for the strikes that you have made.

9           Indeed, when I assessed that very issue, I go  
10 back to the list and I make a determination in my own  
11 head whether those individuals could be stricken for any  
12 other reason. And I did that.

13           I am satisfied that they could be stricken for  
14 other reasons. And I have -- well, the government has  
15 not sought to pursue, and even if they had, I would have  
16 ruled against them. So it is no longer an issue.

17           MS. SASSOWER: Understand that --

18           THE COURT: Very well.

19           MS. SASSOWER: -- my good name and my motives  
20 are --

21           THE COURT: Ms. --

22           MS. SASSOWER: -- important --

23           THE COURT: Ms. Sassower, --

24           MS. SASSOWER: --that there be no question --

25           THE COURT: Ms. Sassower, --

1 MS. SASSOWER: -- about that.

2 THE COURT: -- excuse me.

3 MS. SASSOWER: And I simply wanted to make a  
4 record on that subject.

5 THE COURT: Well, well, the record is made.  
6 And I don't want us to venture into the issue of good  
7 names and reputations because there had been things said  
8 in this very courtroom that go to the heart of that  
9 issue. And but for the fact that these are legal  
10 proceedings, offense could be taken.

11 Therefore, Ms. Sassower, you need not make any  
12 reference to how this affects your good name. The  
13 government preserved a legal point. That point has been  
14 addressed, the matter is closed now.

15 MS. SASSOWER: I just did not wish there to be  
16 any thought that I am in any respect a racist.

17 THE COURT: Ms. Sassower, the issue no longer  
18 warrants --

19 MS. SASSOWER: Thank you.

20 THE COURT: -- discussion. Mr. Mendelsohn.

21 MR. MENDELSON: Your Honor, we have two  
22 witnesses waiting outside. The Court had mentioned  
23 earlier that opening statements and witness testimony  
24 begin tomorrow morning. May I --

25 THE COURT: I mean as, quite frankly, as a

1 practical matter, by the time they get back, I have to  
2 give a preliminary charge for which I need the, the  
3 elements of the offense.

4 And by the time that's done, it would be I  
5 think not in our best interest to begin with opening  
6 statements and evidence today. Certainly, you can  
7 excuse the witness.

8 MR. MENDELSON: May I let them know what time  
9 the Court would like them back tomorrow morning?

10 THE COURT: Yeah. It's my understanding that  
11 my calendar is also being covered tomorrow morning. So  
12 my thought is that we will tell the jury to be here at,  
13 Wednesday, have the jury be here at -- as much as I  
14 would like to say 9:30, I think if we tell them 9:45,  
15 we'll just start 10 o'clock.

16 MS. SASSOWER: There's a problem.

17 THE COURT: I think we'll tell them that, then  
18 we are, we're in good stead.

19 MR. MENDELSON: I'll have our witnesses here  
20 at 10 AM.

21 THE COURT: Thank you.

22 MR. MENDELSON: And, Your Honor, just for  
23 technical purposes for our office, will Judge Morrison  
24 be covering your calendar again tomorrow?

25 THE COURT: Yes.



1 MR. MENDELSON: Thank you, Your Honor.

2 THE COURT: Yes.

3 MS. LIU: Your Honor, I'm just gonna pass up  
4 the proposed elements of the offense.

5 THE COURT: Thank you.

6 MS. SASSOWER: Your Honor, --

7 THE COURT: Yes, Ms. Sassower.

8 MS. SASSOWER: I'm reading the proposed element  
9 of the defen, of the offense put forward by the  
10 government. It seems to me that there was an error in  
11 the representation of the law.

12 And I wanted to see a copy of the law and Ms.  
13 Liu has refused to provide it. Perhaps the Court would  
14 oblige with a copy.

15 THE COURT: Well, certainly Ms. Liu isn't  
16 obliged to provide you with the tools that you need  
17 to --

18 MS. SASSOWER: Well, I believe there's an error  
19 in this.

20 THE COURT: Well then check your materials, Ms.  
21 Sassower. You're now in trial. It is an adversarial  
22 process. They aren't entitled to do that work for you.  
23 Or you aren't entitled to have them do that work for  
24 you.

25 MS. SASSOWER: Well, if the Court doesn't need

1 me to tell it, surely that it's more than the orderly  
2 conduct of a session of Congress, what is here involved  
3 is a hearing. So, shouldn't that be included?

4 THE COURT: No, no, not as I read the, the  
5 actual language of the statute.

6 MS. SASSOWER: Well, even the information has  
7 that language of a hearing.

8 THE COURT: The, the information was amended  
9 this morning to comport with the language of the  
10 statute. That is what the discussion was given to this  
11 this morning for.

12 The government essentially seeks to make sure  
13 that the elements of the offense that are expressed to  
14 the jury are --

15 MS. LIU: Your Honor, --

16 THE COURT: -- the language of the statute.  
17 Yes.

18 MS. LIU: I think I see Ms. Sassower's point  
19 and I don't disagree with it. I think what she's trying  
20 to say is that the statute refers to the orderly conduct  
21 not only of a session of Congress in either house  
22 thereof, but also the orderly conduct within any such  
23 building of a hearing before and deliberations of the  
24 committee or subcommittee of the Congress in either  
25 house thereof.

1 THE COURT: And so --

2 MS. LIU: And if that's the language she would  
3 like to add, we would join in her request because we do  
4 want the elements to track the language of the statute.

5 THE COURT: Then why do I have this not  
6 verbatim from the statute? That was the whole point  
7 behind having this revised. Give me something that I  
8 can read to the jury that tracks the statute.

9 If there is agreement on these issues, I don't  
10 much care. But, you know, we need to be complete if  
11 you're going to give me something to --

12 MS. LIU: Your Honor,

13 MS. SASSOWER: My, my adviser, my attorney  
14 adviser --

15 THE COURT: Excuse me. Ms., Ms. Liu, you were  
16 saying?

17 MS. LIU: I was just gonna say that I apologize  
18 that I didn't realize that the third element did not  
19 quite track the language of the statute until it was  
20 pointed out to me by Ms. Sassower.

21 THE COURT: Very well.

22 MS. LIU: And with your permission, Your Honor,  
23 I can go right now and make the necessary changes.

24 THE COURT: Right. Let's take a break until  
25 four o'clock. We'll bring the jury back. I will give

1 them their preliminary instructions, we can let them go  
2 for the day.

3 MR. GOLDSTONE: Judge, I have one quick  
4 question. When you read the proposed elements, do you  
5 intend to read statutory cites and the caselaw cites?

6 THE COURT: No.

7 MR. GOLDSTONE: You just read the text.

8 THE COURT: Yes.

9 (Thereupon, the Court recessed at 3:40 PM.)

10 (Thereupon, the Court reconvened at 4:00 PM.)

11 MR. MENDELSON: Your Honor, may I approach,  
12 hand up to the Court the government's newly proposed  
13 elements of the offense?

14 THE COURT: All right. Is there any objection  
15 to the proposed elements as now presented by the  
16 government?

17 MS. SASSOWER: None, Your Honor.

18 THE COURT: Very well. Now, this is my  
19 intention. During this preliminary instructions I will  
20 read the opening sentence and the three elements.

21 I will not go on to describe what willingly or  
22 knowingly or disorderly or disruptive means. That  
23 information I will give during final instructions.

24 Does anyone have any, take any issue with that?  
25 I'm willing to hear from you on that.

1 MS. LIU: No, Your Honor.

2 THE COURT: Very well. Ms. Sassower.

3 MS. SASSOWER: We want the whole elements to be  
4 read.

5 THE COURT: Well, the --

6 MS. SASSOWER: Minus the cites. You indicated  
7 you will not read the cites.

8 THE COURT: I'm not reading the cites. But my  
9 point is that for purposes of giving them the elements,  
10 the actual elements of the offense are set forth in  
11 items one, two and three.

12 The remaining items explain to the jury, and I  
13 believe it's appropriate to explain at the end of the  
14 case what those, how that proof is made.

15 I believe that it's inappropriate at the  
16 beginning and perhaps even confusing to get into that  
17 issue at this time.

18 And one of my preliminary instructions is that  
19 I will give them further instructions on the elements.  
20 I'll be talking to you in a little more detail at the  
21 end of the trial about the offense.

22 But for now I just want you to understand the  
23 essential elements that the government is required to  
24 prove beyond a reasonable doubt. I think that that is  
25 enough information to provide the jury at the outset of

1 the case.

2 MS. SASSOWER: I would respectfully request --

3 THE COURT: Very well. Your --

4 MS. SASSOWER: -- that the additional items  
5 certainly - an act is willingly and knowingly if it  
6 is -- an act is willingly and knowingly if it is done  
7 voluntarily, purposefully and deliberately and with the  
8 intent to violate the law.

9 THE COURT: Yes, I drafted that. I know how it  
10 reads. The, you have stated your objection to my not  
11 reading it at the outset of the case for the record.  
12 Your record is preserved.

13 MS. SASSOWER: Thank you, Your Honor.

14 THE COURT: All right.

15 (Thereupon, the jury returned to the courtroom  
16 at 4:06 PM.)

17 THE CLERK: Ladies and gentlemen, please rise  
18 and raise your right hand.

19 (Thereupon the jury was sworn by the deputy  
20 clerk.)

21 THE CLERK: You may be seated.

22 THE COURT: Good afternoon, ladies and  
23 gentlemen. I previously introduced myself. I'm Judge  
24 Brian Holeman. I preside over misdemeanor calendar one  
25 in the criminal division of the Superior Court of the

1 District of Columbia.

2 I'm the presiding judge in the matter of United  
3 States versus Elena Sassower, the case that you will  
4 hear and that you will ultimately decide.

5 Before we start the trial, I want to talk with  
6 you about how the trial will work and about some of the  
7 legal principles that are important in a trial.

8 The remarks that I give at this time will not  
9 be a substitute for the instructions that I will give at  
10 the end of the case before you begin your deliberations.

11 These instructions are preliminary and they're  
12 just intended to give you a feel for what will be going  
13 on in the courtroom, what your job will be, what my job  
14 will be and what the jobs of Mr. Mendelsohn, Ms. Liu,  
15 Ms. Sassower and Mr. Goldstone will be.

16 You have by now noticed that there are 14 of  
17 you sitting in the jury box. And many of you probably  
18 know that only 12 of you will retire to deliberate the  
19 case.

20 The reason that we have 14 jurors is because  
21 two of you are occupying alternate juror seats in the  
22 event that a regular juror becomes unavailable for some  
23 emergency or unexpected reason during the trial.

24 In some courtrooms, the alternate jurors are  
25 seated in the last two seats, 13 and 14 in the second

1 row. These are automatically alternates and everybody  
2 knows it from the beginning of the trial. I do it  
3 differently.

4 At the beginning of the trial, I randomly  
5 select alternate seats from among all of the jury seats  
6 so that any two seats might turn out to be alternates.

7 I will not disclose who the jurors in the  
8 alternate seats are until the end of the trial just  
9 before you retire to begin deliberations.

10 It is important that all of you think of  
11 yourselves as regular jurors in the case and that all of  
12 you give this case your fullest and your most careful  
13 attention.

14 Let me talk with you a little bit about this  
15 case, about some of the procedures that we will use and  
16 about some of the rules of law that will be important.

17 As you already know, this is a criminal case.  
18 It was begun by the United States, and the defendant in  
19 this case, Ms. Sassower, is charged in what is called an  
20 information. I'm going to read the information to you  
21 in a minute.

22 But before you I do that, I want you to  
23 understand what an information is and what it's not.  
24 You must understand that the information in this case is  
25 not evidence.



1           An information is only a legal word that is  
2 used for a formal document to charge a person with a  
3 crime in order to bring that person to trial.

4           You must not think of the information as any  
5 evidence of the guilt of the defendant and you may not  
6 draw any inference of guilt because the defendant has  
7 been formally charged.

8           Now let me tell you what the information  
9 charges in this case. It charges that on or about May  
10 22nd, 2003, within the District of Columbia, Elena  
11 Sassower, willfully and knowingly engaged in disorderly  
12 and disruptive conduct upon the United States Capitol  
13 grounds or within any of the Capitol buildings with the  
14 intent to impede, disrupt and disturb the orderly  
15 conduct of a session of the Congress and either house  
16 thereof or the orderly conduct within any such building  
17 or hearing before and deliberations of a committee or  
18 subcommittee of the Congress and either house thereof.

19           Ladies and gentlemen, I want to talk with you  
20 about the essential elements of the offense charged,  
21 each of which the government must prove beyond a  
22 reasonable doubt in this case.

23           I'll be talking with you in more detail at the  
24 end of the trial about the offense. But for now, I just  
25 want you to understand the essential elements that the

1 government is required to prove beyond a reasonable  
2 doubt.

3           They are: that the defendant uttered loud,  
4 threatening or abusive language or engaged in disorderly  
5 and disruptive conduct within any of the United States  
6 Capitol buildings.

7           That defendant did so willfully and knowingly  
8 and that at the time that she did so, she had the intent  
9 to impede or disrupt or disturb the orderly conduct of  
10 any session of Congress or either house thereof or the  
11 orderly conduct within any such Building of any hearing  
12 before or any deliberations of any committee or  
13 subcommittee of the Congress or either house thereof.

14           In telling you how this trial will proceed, I  
15 will be referring to the government and to the  
16 defendant.

17           When I refer to the government in this case, I  
18 am referring to Assistant United States Attorney, Aaron  
19 Mendelsohn or Jessie Liu. When I refer to the defendant  
20 in this case I'm referring to Ms. Sassower.

21           Now as I told you at the outset, Ms. Sassower  
22 has chosen to represent herself and that Mr. Goldstone  
23 is here to be of assistance to her.

24           I'll reiterate the status of that association.  
25 Under the law, the defendant has the right after having

1 been advised of her right to counsel and after having  
2 been offered the assistance of counsel, to choose, to  
3 choose not to have counsel and to represent herself with  
4 the help of an attorney adviser.

5           Upon making that decision, the defendant is  
6 bound by the same rules applicable to attorneys. I am  
7 instructing you now that you are to draw no inference  
8 whatsoever from Ms. Sassower's decision to represent  
9 herself.

10           As the first step in the trial of this case,  
11 the government and the defendant will have the  
12 opportunities to make an opening statement. If the  
13 government makes an opening statement, it must do so at  
14 the beginning of its case.

15           The defendant may make an opening statement  
16 right after the opening statement of the government or  
17 the defendant may decide not to make an opening  
18 statement until the beginning of her case. Or, she may  
19 not make an opening statement at all, if that is her  
20 choice.

21           The opening statements of the lawyers and of  
22 Ms. Sassower, if she chooses to make one, are not  
23 evidence and they are not supposed to be arguments of  
24 the facts or law.

25           They simply are statements of what the lawyers

1 expect the evidence to be, and they are intended to help  
2 you to understand the evidence that will be introduced.

3 After the opening statements, the government  
4 will introduce evidence in support of the charge  
5 contained in the information.

6 After the government presents its evidence, Ms.  
7 Sassower may present evidence but she is not required to  
8 do so because the law does not require a defendant to  
9 prove her innocence or to produce any evidence.

10 During the testimony of witnesses, you  
11 sometimes may hear a lawyer ask a question that contains  
12 an assertion of fact. Let me give you an example.

13 Suppose a lawyer says the car was going 90  
14 miles an hour, wasn't it, Mr. Smith? And the lawyer  
15 states the question in such a way that you know the  
16 lawyer believes the car was going 90 miles an hour.

17 Please remember that the lawyer's question, no  
18 matter how convince, convincing the lawyer sounds, is  
19 not evidence in the case. It is only Mr. Smith's answer  
20 that is the evidence.

21 So, if in response to the question the car was  
22 going 90 miles an hour, wasn't it, Mr. Smith? If Mr.  
23 Smith says no, there is no evidence that the car was  
24 going 90 miles an hour. And you cannot from any  
25 inference from the way the lawyer asks the question that

1 there is such evidence.

2 Always remember this. It's the witness's  
3 answers that are the evidence. It is not the lawyer's  
4 questions. Let me explain one thing further about that  
5 kind of question because it will come up frequently  
6 during a trial.

7 When a lawyer poses a question in such a way as  
8 to tell the witness the answer that the lawyer wants,  
9 that question is called a leading question. Sometimes  
10 you will hear leading questions during the trial and I  
11 will sustain objections to them.

12 Other times you will hear leading questions  
13 without any objection. The reason is because sometimes  
14 the law permits leading questions, sometimes it does  
15 not.

16 A lawyer is not permitted to ask a leading  
17 question of a witness called by that same lawyer,  
18 because the law presumes that that witness will be  
19 favorably disposed toward that lawyer. And the lawyer  
20 therefore should not be able to suggest to the witness  
21 the answer the lawyer wants.

22 On the other hand, the law does permit a lawyer  
23 to ask a leading question when the lawyer is cross-  
24 examining a witness called by an opposing party, because  
25 the law presumes that such a witness will not be

1 predisposed to give the lawyer the answer the lawyer  
2 wants. And leading questions can speed up the trial.

3 At the end of all of the evidence, each party  
4 will have a chance to make oral arguments in support of  
5 its case.

6 The statements of the lawyers in their closing  
7 arguments, just as in their questions and in their  
8 opening statements, are not evidence in the case. They  
9 are only intended to help you understand the evidence  
10 and what each party claims that the evidence shows.

11 Finally, at the end of all of the evidence and  
12 the arguments for both sides, I will instruct you once  
13 more on the rules of law that you are to apply in your  
14 deliberations. Your verdict must be unanimous.

15 Now let me talk with you briefly about your job  
16 and my job, that is the functions of the jury and  
17 functions of the judge.

18 It is my job to conduct the trial of this case  
19 in an orderly, fair and efficient manner, to rule on  
20 questions of law that come up during the trial and to  
21 instruct you on the law that applies to this case.

22 It is your duty to accept the law as I state it  
23 to you and it is your job to determine the facts. You  
24 and only you, not me, are the judges of the facts.

25 You alone determine the weight, the effect and

1 the value of the evidence as well as the credibility of  
2 the witnesses. That is whether the witnesses are  
3 telling the truth.

4 You must consider and weigh the testimony of  
5 all of the witnesses who appeared before you in this  
6 case.

7 And you must pay very careful attention to that  
8 testimony because you will not have any transcripts or  
9 testimony available to you during deliberations.

10 You will have to rely on your memory and  
11 you will have the notes that you have taken during  
12 court. I want to emphasize that so that now you will  
13 remember it during the trial.

14 You alone are to decide whether to believe any  
15 witness and the extent to which any witness should be  
16 believed.

17 It is your job to resolve any conflicts in the  
18 testimony that might arise during the trial and to  
19 decide where that truth lies.

20 My actions during this trial in ruling on  
21 motions or objections by the lawyers, in comments to the  
22 lawyers, in questions to the witnesses, or in setting  
23 forth the law in these instructions are not to be taken  
24 by you as suggesting any opinion that I might have about  
25 how you should decide the facts.

1           `Indeed, I try not to have an opinion about the  
2 facts in these matters. But if I should slip up or if  
3 one of you come to think that I have slipped up during  
4 the trial or that I have somehow hinted to you or  
5 suggested to you any opinion I might have as to the  
6 facts in this case, you should entirely disregard that.  
7 What the verdict shall be in this case is your sole and  
8 exclusive responsibility.

9           In this regard, let me say that there will  
10 frequently be occasions during this trial when lawyers  
11 will come up to the bench. You saw some of that earlier  
12 today. Either I'll ask them to come to the bench or  
13 they will ask to come to the bench.

14           And when they do so we'll have the husher on.  
15 We will be talking up here quietly. And, of course, the  
16 reason that we have the husher on is because you are not  
17 supposed to hear what we're talking about. We're  
18 talking about the legal issues that are unrelated to  
19 your job.

20           Nevertheless, the, the acoustics being what  
21 they are in this courtroom, if you try, you'll be able  
22 to hear what's going on. So I will ask that you not try  
23 to hear what's going on during my bench conferences.

24           And, in fact, what I will suggest to you, if it  
25 is your preference to do so, is when I'm having a bench



1 conference talk among yourselves.

2 And when the lawyers step back to the table and  
3 we're ready to begin anew, you'll notice that. You can  
4 cease discussions and we can proceed.

5 The other thing that might happen while we're  
6 at the bench is that even if you're not listening, you  
7 will have your eyes open. You'll see, you'll see what's  
8 happening and you, and you will undoubtedly see me  
9 looking at one lawyer or the other.

10 You'll be able to tell from the expression on  
11 my face that I view quite favorably or unfavorably what  
12 one lawyer or the other is telling me about the matter  
13 we're discussing.

14 Please do not draw any inferences from what you  
15 perceive to be my reactions to those discussions.  
16 Remember, at the bench we're only discussing legal  
17 issues. We're not discussing your job.

18 And so, just because I might disagree or agree  
19 with a particular lawyer on a particular legal issue,  
20 that should not be construed by you as suggesting any  
21 opinion that I might have about the facts of this case.

22 Now, you may consider only the evidence that is  
23 properly admitted in this case. That evidence  
24 undoubtedly will include the sworn testimony of  
25 witnesses. It will very likely include exhibits that

1 are received in evidence.

2 And in addition, it may include stipulations or  
3 matters about which the Court take judicial notice. If  
4 it includes those matters, I will define what those  
5 terms mean for you at the appropriate time during the  
6 trial.

7 If there is any reference by me or by the  
8 lawyers in the case to the evidence and that reference  
9 does not coincide with your memory of the evidence,  
10 again, it is your memory that should control during the  
11 deliberations.

12 Now during the trial, ladies and gentlemen, a  
13 lawyer on one side may object when the other lawyer  
14 offers argument, or evidence, or testimony that the  
15 objecting lawyer believes is not admissible.

16 You must understand that it is the job of a  
17 lawyer to object to testimony or evidence or argument.  
18 And that, you know, if she believes such evidence is  
19 improper or not admissible, you must not be prejudiced  
20 in anyway against that lawyer who makes objections.

21 The same holds true for any objection that  
22 might be made by Ms. Sassower, in that she represents  
23 herself.

24 Indeed, in these circumstances, if a lawyer or  
25 Ms. Sassower did not object to argument or evidence that

1 the lawyer thought to be improper, the lawyers, in this  
2 case, Ms. Liu and Mr. Mendelsohn, and Ms. Sassower,  
3 would not be doing their job.

4 And if during the trial I sustain an objection  
5 by one lawyer to a question asked by the other lawyer,  
6 then you are to disregard the question and you must not  
7 speculate or guess as to what the answer would have  
8 been.

9 Every defendant in a criminal case is presumed  
10 to be innocent. And this presumption of innocence  
11 remains with the defendant throughout the trial unless  
12 and until she is proven guilty beyond a reasonable  
13 doubt.

14 The burden is on the government to prove the  
15 defendant guilty beyond a reasonable doubt, and that  
16 burden of proof never shifts throughout the trial. The  
17 law doesn't require that a defendant prove her innocence  
18 or to produce any evidence.

19 If you find that the government has proved  
20 beyond a reasonable doubt every element of an offense  
21 with which the defendant is charged, then it is your  
22 duty to find the defendant guilty of that offense.

23 On the other hand, if you find that the  
24 government has failed to prove beyond a reasonable doubt  
25 any element of an offense with which the defendant is

1 charged, then you must find the defendant not guilty of  
2 that offense.

3 I specifically caution you not to permit the  
4 character of the charge itself in this case to affect  
5 your minds in arriving at your verdict.

6 In the final analysis, it is your job to decide  
7 this case without prejudice, without fear, without  
8 sympathy and without favor. You decide this case based  
9 only on a fair consideration of the evidence presented  
10 here in the courtroom.

11 It is for that reason that you must completely  
12 disregard any press, television or radio reports that  
13 you might read, see or hear about this matter.

14 And if any such reports should come to your  
15 attention, it is your sworn duty as a juror to put them  
16 aside and to direct your attention elsewhere.

17 I will follow-up on that. I would appreciate  
18 and would expect that you would not view local news for  
19 the period of time that you are sitting in this case.

20 I would also expect that you not read local  
21 newspapers while you are sitting in this case. We will  
22 make available to you in the juryroom New York Times,  
23 USA Today, those newspapers that are not local to this,  
24 this area.

25 But due to the fact that there may be some

1 media account of this event and its potential for  
2 prejudice, I'm asking you not to avail yourself of local  
3 news broadcast, whether television or radio or the local  
4 newspapers.

5 It is also for this reason of potential  
6 prejudice that you not discuss this case with anyone  
7 until it is submitted to you at the end of my final  
8 instructions.

9 You must not discuss it with the parties to the  
10 case, with the witnesses to the case, with the lawyers,  
11 with Ms. Sassower or with anyone connected with the  
12 case.

13 You can't even talk with your fellow jurors,  
14 friends or members of your family about this matter.  
15 And while the trial is in progress, it is a good idea  
16 from even having any communication with the lawyers, the  
17 parties and the witnesses about anything because then  
18 you can avoid even the appearance that you might be  
19 discussing something improper.

20 Let me just tell you that you will see, during  
21 the course of your comings and goings, you will see me  
22 walking the corridors. You will see Mr. Mendelsohn, Ms.  
23 Liu, Ms. Sassower, Mr. Goldstone.

24 Under any other circumstance, you might give a  
25 greeting, you might exchange pleasantries about the day.

1 While you're sitting as a juror, you are to engage in  
2 none of that.

3 That way, no one can ever say that you were  
4 improperly exchanging information with any parties in  
5 the case. And that includes me as well.

6 I will see you coming and going. And  
7 unfortunately during the course of this case, I will not  
8 be able to communicate with you in anyway except when  
9 you're in this room.

10 So please be mindful of that. No one means you  
11 any ill feeling or ill will, that is simply the way that  
12 it has to be during the pendency of the trial.

13 After the case is submitted to you, you may  
14 discuss it only when I so instruct you and only in the  
15 juryroom and in the presence of all of your fellow  
16 jurors.

17 I cannot overemphasize how important this  
18 instruction is about not talking about the case. If  
19 it's brought to my attention during the trial that any  
20 juror has discussed this case with either other jurors  
21 or with other persons, then I have no choice but to end  
22 the trial at that point and to start it all over again  
23 with an entirely new jury.

24 Now, if at anytime during the trial anyone  
25 tries to talk with you about this case, you simply

1 refuse to do so and let me know immediately. Either by  
2 directly telling me or by telling my courtroom clerk  
3 whom you've already met, Ms. Karen Franklin.

4 Do not tell your fellow jurors or anyone else  
5 if anyone tries to talk with you about this case. Just  
6 let Ms. Franklin or me know as soon as possible.

7 In addition, and again because you're required  
8 to judge this case based only on the evidence presented  
9 in the courtroom, at no time should any of you ever  
10 attempt to visit the location of any of the events that  
11 are described in the testimony in this case.

12 Finally, at the beginning of jury selection  
13 there were names of witnesses that were given to you.

14 I want to emphasize to you that if at any time  
15 during this trial you suddenly think that you recognize  
16 or might know a party, a witness, a lawyer, someone  
17 referred to in the testimony or the evidence, or anyone  
18 connected with this case in any way, you should not tell  
19 any other member of the jury.

20 However, you should immediately let Ms.  
21 Franklin know about it as soon as you realize it. If it  
22 happens while testimony is occurring, you should raise  
23 your hand immediately so that I can have you come to the  
24 bench and we can discuss it.

25 Ladies and gentlemen, it is important that you

1 keep an open mind during this trial. It's important  
2 that you not decide any issue in this case until the  
3 entire case is submitted to you with my final  
4 instructions.

5 I appreciate your attention, your patience for  
6 these lengthy remarks. And I hope you find that they  
7 had been helpful as you now listen to the rest of the  
8 case commencing tomorrow morning.

9 I would like to have everyone here and ready to  
10 go by 9:45. And we should begin at that time with  
11 opening statements and then the government's case. Very  
12 well.

13 (Thereupon, the jury was excused at 4:35 p.m.)

14 THE COURT: Very well. Any other matters  
15 before we, any other matters before we adjourn for the  
16 day?

17 MS. LIU: Your Honor, one very brief matter,  
18 which is --

19 THE COURT: Yes.

20 MS. LIU: -- that when you read the information  
21 to the jury, I believe you read the unamended version of  
22 the information, .

23 THE COURT: Why don't you draft, set forth for  
24 me in writing the, the information as amended, and  
25 tomorrow morning before we begin I'll read that to them.



1 MS. LIU: Very well, Your Honor.

2 THE COURT: All right. Anything further? Very  
3 well, we are adjourned until tomorrow . I've asked them  
4 to be here 9:45. I think that your witnesses coming in  
5 at 10 is, is fine because we're gonna have to have  
6 openings.

7 And it's been my experience that if you tell  
8 them 9:45 and not everyone is here at that time, so  
9 we'll start a little bit after that. So be ready to go  
10 tomorrow morning. Very well, thank you.

11 MS. LIU: Thank you, Your Honor.

12 (Thereupon, the proceedings concluded at 4:40  
13 p.m.)

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