

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 19, 2004

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

APPEARANCES:

On behalf of the Government:

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

On behalf of the Defendant:

ELENA SASSOWER, Pro Se  
MARK GOLDSTONE, Esquire  
Attorney Adviser

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OFFICIAL COURT REPORTER

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1 P R O C E E D I N G S

2 THE COURT: Very well. Any preliminary  
3 matters?

4 MS. SASSOWER: Yes, Your Honor.

5 THE COURT: Yes.

6 MS. SASSOWER: We are going to move the  
7 video monitor for the playing of the tape which will be  
8 analyzed during my direct case.

9 THE COURT: During your, your testimony.

10 MS. SASSOWER: Exactly.

11 THE COURT: Very well. Anything further?

12 MS. SASSOWER: I don't believe so, Your Honor.  
13 Oh, yes, Your Honor. I estimate that my testimony will  
14 take longer than approximately an hour.

15 I have marked exhibits which obviously will be  
16 ruled on by Your Honor. I would, there are certain  
17 exhibits that I certainly need at hand.

18 Others, if you would permit me to have on the  
19 table as they become germane so that time is not wasted  
20 running to cue them up.

21 And I will, Your Honor, I have prepared the  
22 defendant's trial exhibit list. I am prepared to hand  
23 that up and will provide to the Government.

24 THE COURT: Please do.

25 MS. SASSOWER: A moment.

1 MR. MENDELSON: Your Honor, just for the  
2 record, Aaron Mendelsohn for the United States.

3 MS. LIU: Jessie Liu for the United States.

4 THE COURT: Good morning.

5 MR. GOLDSTONE: Mark Goldstone,  
6 Attorney adviser. Good morning, Your Honor.

7 THE COURT: Mr. Goldstone.

8 THE CLERK: I'm sorry, Your Honor, let me call  
9 the case.

10 THE COURT: I thought you called it when I  
11 first took the bench.

12 THE CLERK: The tape is on but just for the  
13 record. .United States versus Elena Sassower, case  
14 number M4113-03.

15 THE COURT: Very well. Counsel, just introduce  
16 yourselves for the record.

17 MR. MENDELSON: Aaron Mendelsohn for the  
18 United States.

19 THE COURT: Yes.

20 MS. LIU: Jessie Liu for the United States.

21 MS. SASSOWER: Elena Sassower, criminal  
22 defendant, pro se.

23 MR. GOLDSTONE: Mark Goldstone,  
24 Attorney adviser.

25 THE COURT: Very well, thank you. With regard

1 to your exhibit list, may I see it please?

2 MS. SASSOWER: Yes. May I approach the bench?

3 THE COURT: Just hand it. Mr. Mendelsohn, Ms.  
4 Liu, have you had an opportunity to review this list?

5 MR. MENDELSON: We have, Your Honor. And it's  
6 apparent to the government that many of these exhibits  
7 are not relevant to the case.

8 THE COURT: Very well. Then, and let me just  
9 state for the record that I anticipated this to occur.  
10 The short of it is that the fact that documents are  
11 turned over during discovery does not make them  
12 admissible for purposes of trial.

13 And so what we have to do essentially is to go  
14 through these 87 items identified here and make  
15 determinations whether there are any of these that --

16 MS. SASSOWER: May I --

17 THE COURT: -- would not be remotely  
18 admissible into evidence. So as not to consume time  
19 when the jury is present, offering them, having  
20 objections and then reaching the inevitable ruling that  
21 they are not admissible.

22 Ms. Sassower?

23 MS. SASSOWER: Yes. With all respect, Your  
24 Honor, I would like to focus on certain specific  
25 documents which I, which would be the focal point of my

1 testimony.

2 I believe we should commence with those and the  
3 rest will be obvious. I was not intending to introduce  
4 all of them into evidence, but I had them marked so as  
5 to prepare for any cross-examination.

6 If you would like me to expedite this by going  
7 through the most immediate exhibits which I did plan to  
8 introduce on my direct case, I think that would expedite  
9 things.

10 THE COURT: I'll hear from you.

11 MS. SASSOWER: All right. To begin with, I  
12 have Defendant's Exhibit 59, 60 and 61 being the diaries  
13 that I keep of phone conversations and communications,  
14 from which not only my testimony will be drawn as to the  
15 relevant fact but on which the correspondence relating  
16 to this matter is drawn.

17 These are the raw untranscribed, these are the  
18 raw documents from which the correspondence was,  
19 contemporaneous to the event.

20 THE COURT: Well, it seems to me, Ms. Sassower,  
21 that you're able to testify as to what you did or didn't  
22 do.

23 Once we have documents in which you had made  
24 entries, and on direct examination you seek to introduce  
25 those documents for the truth of what they assert,

1 that's hearsay. It's inadmissible hearsay.

2 Now just so the, the record is clear, if on the  
3 other hand, you were being cross-examined, having denied  
4 that there were any such contemporaneous notes and the  
5 prosecution sought to impeach you by using that  
6 material, that is appropriate impeachment.

7 But on direct examination, you can't offer that  
8 material for its truth.

9 MS. SASSOWER: No, I'm not offering it for its  
10 truth. I asked each and every one of the witnesses that  
11 I crossed, whether they keep logs, diaries, they make  
12 entries of phone conversations, communications, and they  
13 answered in the negative. By contrast, I do as a  
14 regular course and practice.

15 THE COURT: Very well. Which really is not  
16 pertinent to the elements of the offense or a defense to  
17 it.

18 To the extent that you recall the entries made  
19 in these diaries and they're somehow germane to the  
20 elements or your defense, then that testimony comes.  
21 But the actual diary entries themselves or the fact that  
22 you have these diaries, I don't see that they're,  
23 they're relevant.

24 MS. SASSOWER: I should mark them for  
25 identification and acknowledge that my testimony rests

1 on contemporaneous logs that were then embodied in the  
2 correspondence.

3 THE COURT: Well, I don't think that there  
4 would be any objection to your saying that you spoke  
5 with so and so and you kept a record of that.

6 MS. SASSOWER: Yes. And --

7 THE COURT: As to the specifics of the record,  
8 it will not be entered into evidence. And so 59, 60 and  
9 61 are, they will not be offered or admitted into  
10 evidence.

11 MS. SASSOWER: But they can be used for  
12 identification by me in refer -- in making my direct  
13 case, I can refer to any entries here that might be  
14 germane.

15 They have to be marked in order for me to use  
16 them at the witness stand. Is that not correct?

17 THE COURT: Let me make this clear. You aren't  
18 going to use them. You're going to testify as to  
19 certain facts. But whether or not you have this  
20 material in these diaries, as I said, it is not coming  
21 in. It is not admissible in this case.

22 I just got through discussing how it might be  
23 admitted, if you were being cross-examined and impeached  
24 with material that you had previously denied. But  
25 that's not the case here.

1           What you're asking is you want to tell the jury,  
2 on the one hand, this is what happened. And then back  
3 it up, support it by saying and I have diaries to prove  
4 that. You tell them that this is what occurred.

5           Nobody is challenging whether you have diaries to  
6 prove that. There is no -- as I see it, no one is going  
7 to say well, she's not being truthful here. Look in her  
8 diary, this is what it says here. This can't possibly  
9 be truthful. We're impeaching her because of that.  
10 That, that's not going to occur here.

11           MS. SASSOWER: I will move on.

12           THE COURT: Thank you.

13           MS. SASSOWER: Taking exception to your ruling,  
14 --

15           THE COURT: Very well.

16           MS. SASSOWER: -- needless to say. The next and  
17 most important series of exhibits are my correspondence  
18 relating to this matter. Beginning with Exhibit 39, my  
19 March 14th letter to the Senate Judiciary Committee in  
20 which I expressly request "any written informational  
21 materials about the committee's confirmation process.

22           This would include information concerning the  
23 committee's investigative procedures upon receiving  
24 notification such as this of citizen opposition and  
25 request --



1 THE COURT: You have to slow down so that the  
2 court reporter can get this.

3 MS. SASSOWER: This would include information  
4 concerning the Committee's investigative procedures upon  
5 which receiving notification such as this of citizen's  
6 opposition and request to testify in opposition.

7 This would also include the Committee's  
8 written standards for evaluating the qualifications of  
9 federal judicial nominees, including the weight accorded  
10 to bar association ratings such as those of the American  
11 Bar Association and the Association of the Bar of the  
12 City of New York.

13 Your Honor will bear in mind that it was  
14 represented by Mr. Mendelsohn that I am someone who does  
15 not adhere to procedures and rules.

16 And from the outset of my communications I  
17 made express request for rules, procedures including as  
18 to testify so that I might be guided accordingly. The  
19 next.

20 THE COURT: Which exhibit were you just  
21 speaking of?

22 MS. SASSOWER: Thirty-nine, Your Honor.

23 THE COURT: Thirty-nine?

24 MS. SASSOWER: March 14, 2003.

25 THE COURT: Let me see the letter.

1 MS. SASSOWER: Yes, Your Honor. I'm sorry.

2 THE COURT: Government?

3 MR. MENDELSON: Your Honor, without seeing the  
4 letter, our objection --

5 THE COURT: No, I, I thought you'd seen it.  
6 Next time just let me know whether you've seen it.

7 MR. MENDELSON: Yes, Your Honor. After  
8 reviewing this letter, we believe that it is the  
9 defendant's intention to introduce this for the truth of  
10 the matter asserted.

11 We believe that it's hearsay and we object for  
12 that reason. We also object because we believe that  
13 this letter is cumulative.

14 If the defendant intends to testify that she  
15 sent a letter on March 14th, 2003, requesting whatever  
16 information she requested from the committee, the  
17 Government does not object to that.

18 But beyond that, this letter is cumulative to  
19 that testimony. So we object for those two reasons.

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

21 THE COURT: No, I'm gonna rule and this is the  
22 way it's going to go here out. We've got too much to  
23 take care of today to have back and forth. Make your  
24 argument, Government responds and then I'm going to  
25 rule.

1 Thirty-nine may come in. Next. Well, let's  
2 put it this way. You may offer 39 subject to the manner  
3 in which she attempts to use it. That's what determines  
4 your objection at the time. Do you understand?

5 MR. MENDELSON: Yes, Your Honor.

6 THE COURT: Very well. Let me just say this to  
7 everyone concerned. We're going to be through with this  
8 process by 10:15. If you haven't made your case or  
9 document by 10:15 we will suspend this process at that  
10 time.

11 This is something that should have been well  
12 taken care of. Proceed. We're going much too slowly  
13 now.

14 We will not consume a full morning dealing with  
15 records that quite frankly have little chance of being  
16 admitted into evidence. What's the next document?

17 MS. SASSOWER: Yes. I informed the Court  
18 this case was not remotely trial ready. My May 5th  
19 hand-delivered letter to Chairman Hatch.

20 THE COURT: What is the exhibit number?

21 MS. SASSOWER: I'm sorry. Exhibit Number  
22 15 which in addition to transmitting the five boxes of  
23 documentary evidence and one redweld file folder,  
24 concluded by referencing the March 14th written request  
25 to testify and expressing willingness, looking forward

1 to answering your questions including under oath.

2 THE COURT: Government?

3 MR. MENDELSON: No objection depending on the  
4 way this document is sought to be --

5 THE COURT: Very well. So it's okay to  
6 proffer. Ms. Sassower.

7 MS. SASSOWER: Yes, Your Honor. Excuse me. For  
8 immediate purposes to speed things on, okay. The May --

9 THE COURT: Exhibit number.

10 MS. SASSOWER: I'm sorry. Let me take them  
11 together since they go together. Exhibits 3 and 4,  
12 consisting of the May 19th memos to home state senators  
13 Schumer and Clinton, two pages, transmitting the 10-page  
14 memo of that same date addressed to Chairman Hatch and  
15 ranking member Leahy regarding the request to testify  
16 and again inquiring as to procedures and what kind of  
17 review had been undertaken by the Senate Judiciary  
18 Committee.

19 THE COURT: Government?

20 MR. MENDELSON: No objection at this time.

21 THE COURT: Very well. So that's exhibit what,  
22 four?

23 MS. SASSOWER: Three and four, Your  
24 Honor.

25 THE COURT: Very well.

1 MS. SASSOWER: Exhibit 9, Your Honor, my May  
2 22nd memo to Chairman Hatch, ranking member Leahy, what  
3 took place two and a half hours after sending the May 19  
4 fax and e-mail communication to the Senate Judiciary  
5 Committee and my unsuccessful attempt to speak with  
6 somebody in a supervisory position, counsel, chief of  
7 staff, about what was taking place and the request to  
8 testify at the hearing.

9 THE COURT: Government?

10 MR. MENDELSON: No objection at this time.

11 MS. SASSOWER: The, Exhibits 30, Exhibit 8 and  
12 36 are identical. The only difference -- they are my  
13 May 21st fax to Capitol police Detective Zimmerman of 39  
14 pages.

15 The only difference between these two documents  
16 is that Exhibit 9 was turned over by the Government  
17 pursuant to my --

18 THE COURT: I think we're talking about 8 and  
19 36, are we not?

20 MS. SASSOWER: Yes, we are, Your Honor.

21 THE COURT: Very well. Then 9, 9 is not an  
22 issue here.

23 MS. SASSOWER: I'm sorry?

24 THE COURT: You, you --

25 MS. SASSOWER: Nine we, we disposed of.

1 THE COURT: Correct.

2 MS. SASSOWER: And now we're on 8 and 36,  
3 identical documents. The only difference is that  
4 Exhibit 8 was turned over by the Government pursuant to  
5 my discovery demand and reflect receipt by or  
6 transmittal to the Capitol police.

7 THE COURT: Or you can make up your mind as to  
8 which one of these you're going to offer. I don't  
9 see --

10 MS. SASSOWER: I want the clean document. But  
11 this --

12 THE COURT: Well, is that thir --

13 MS. SASSOWER: This is the one that was turned  
14 over by the Government, that is faxed.

15 THE COURT: The Government doesn't have any  
16 issue with whether you use the document originally sent  
17 or the one that they returned to you. Which one do you  
18 seek to offer?

19 MS. SASSOWER: I, I, the one that shows the --  
20 well, the one that shows the fax receipt by the U.S.  
21 Capitol pol -- well, it doesn't show the fax receipt.  
22 I, I respectfully request to submit both, they're  
23 identical documents.

24 THE COURT: And for that reason, we're not  
25 going to have submission of both, cumulative evidence.

1 MS. SASSOWER: Okay. I will submit my clean  
2 copy since it already has been --

3 THE COURT: And which exhibit number is that?

4 MS. SASSOWER: Exhibit 36.

5 THE COURT: Government?

6 MR. MENDELSON: No objection at this time.

7 THE COURT: Okay, proffer. Very well, next.

8 MS. SASSOWER: I have 36A, the component pie,  
9 the relevant component pieces of the May 21st fax to  
10 reflect the receipts, the fax and e-mail receipts by  
11 Senator, by, by the Senate Judiciary Committee Chairman  
12 Hatch, ranking member Leahy, receipts by Senator  
13 Clinton, receipts by Senator Schumer.

14 THE COURT: Is there some dispute as to whether  
15 these people received it?

16 MS. SASSOWER: I just want to be sure that is  
17 understood.

18 THE COURT: Well, I, that's not an issue. So  
19 that one's 30, 36A is cumulative. It's not gonna be  
20 admitted. Next.

21 MS. SASSOWER: Okay. The, I have marked the  
22 May 28th memo that I sent to Chairman --

23 THE COURT: Exhibit number?

24 MS. SASSOWER: I'm sorry, Exhibit Number 33.  
25 The memo of May 28th that I sent to Chairman Hatch,

1 ranking member Leahy with copies to presiding Chairman  
2 Chambliss as well as --

3 THE COURT: Government?

4 MR. MENDELSON: We object to Defense Exhibit  
5 Number 33. I can't fathom how Defense Exhibit 33 could  
6 be relevant to this case because it's dated six days  
7 after defendant's act occurred.

8 THE COURT: Let me see the document.

9 MS. SASSOWER: I'd like to clarify how it's  
10 relevant, if I may.

11 THE COURT: No. You may bring me the document.  
12 Next time pass it to Ms. Franklin. Ah, yes. You won't  
13 proffer this.

14 MS. SASSOWER: May I identify why it's  
15 relevant?

16 THE COURT: No, you may not.

17 MS. SASSOWER: I have provided --

18 THE COURT: This --

19 MS. SASSOWER: -- contemporaneous recitation as  
20 to what took place at the hearing without seeing the  
21 transcript, without seeing --

22 THE COURT: Ms., Ms. Sassower, you're  
23 presumably going to testify as to what took place.  
24 You've asked for the video to be played yet again so  
25 that you can give your analysis of what took place.



1           At minimum, this is cumulative. But as I read  
2 it, the extent to which all manner of opinion is  
3 contained here, this, this would do nothing except  
4 create confusion. It is irrelevant.

5           You'll give testimony, you'll have the  
6 videotape. That is sufficient documentation of the  
7 events that occurred.

8           MS. SASSOWER: I just want to point out, Your  
9 Honor, that it recites what took place in the hallway.

10          THE COURT: Which you will testify to.

11          MS. SASSOWER: Okay.

12          THE COURT: Very well. Quick, quick, what was  
13 the number there?

14          MS. SASSOWER: Thirty-three, I believe.

15          THE COURT: Very well, that is out.

16          MS. SASSOWER: Okay. In connection with this  
17 five boxes and one reel, redweld presentation that was at  
18 the Senate Judiciary Committee delivered on May 5th.

19          THE COURT: Do I have, do I have an exhibit  
20 number?

21          MS. SASSOWER: Yes, you have. We have, we  
22 have already discussed the May 5th.

23          THE COURT: What's the exhibit number?

24          MS. SASSOWER: Fifteen, Your Honor. I have  
25 separately marked as Exhibit 11 the March 26th statement

1 summarizing the documentary evidence establishing the  
2 unfitness --

3 THE COURT: Right.

4 MS. SASSOWER: -- of Judge Wesley.

5 THE COURT: Statement of opinion, that won't  
6 come in. Next.

7 MR. MENDELSON: Your Honor, what number?

8 MS. SASSOWER: Lob one back to me.

9 THE COURT: Eleven.

10 MS. SASSOWER: Lob one back to me, Your Honor.

11 THE COURT: Because --

12 MS. SASSOWER: I made a written presentation, a  
13 written proffer as to what I wished to testify about and  
14 what needed to be investigated.

15 THE COURT: All of which is irrelevant. I mean  
16 this isn't going to be a forum as to your opinions on  
17 this judge's unfitness.

18 MS. SASSOWER: That's right.

19 THE COURT: The fact, the fact that the, your  
20 opinions formed the basis for the action that you took,  
21 fine. But we, there may be forums within our society  
22 for you to stand up and espouse your opinions. This  
23 courtroom is not one of them.

24 MS. SASSOWER: Your --

25 THE COURT: So 11 is out. Next, next exhibit.

1 You've got four minutes.

2 MS. SASSOWER: Okay. Your Honor, I would just  
3 point out that I did not espouse opinions to the Senate  
4 Judiciary Committee and to the home state senators. I  
5 presented them with a fact specific presentation.

6 THE COURT: Which what you stated --

7 MS. SASSOWER: Outlining the evidence and I  
8 think --

9 THE COURT: Absolutely. You said enough,  
10 that's what I needed to hear. It's out.

11 MS. SASSOWER: I'd like marked, I have  
12 marked Exhibit 37 which was hand delivered to Senator  
13 Clinton's office, the April 23rd 2003 letter which was  
14 acknowledged eventually through the e-mail  
15 correspondence that went into evidence.

16 THE COURT: Government?

17 MR. MENDELSON: No objection at this time.

18 THE COURT: Very well. Okay, proffer 37.

19 MS. SASSOWER: Only because I am being so  
20 rushed, I cannot go methodically and properly through  
21 the documents so that I can defend myself. However, the  
22 pivotal portion of my testimony will relate to the  
23 video.

24 THE COURT: Very well.

25 MS. SASSOWER: I have prepared a written

1 analysis so that, with copies for the jurors which I  
2 will hand up so that they can have the benefit of a  
3 narration as to what they are seeing. Because there is  
4 no slow down of the video and there is no enhancement of  
5 the sound.

6 THE COURT: Which, which exhibit is this?

7 MS. SASSOWER: It has been marked by me  
8 Exhibit Number 58. I'm ready to hand it up to you so  
9 you can see exactly what kind of analysis and narration  
10 we have here.

11 THE COURT: Pass it to Ms. Franklin  
12 please.

13 MS. SASSOWER: This is a little of a high-tech  
14 slow downs and audio enhancements.

15 THE COURT: Very well. I'm looking at what has  
16 been identified as Exhibit, I don't have it on the back.  
17 What's the number?

18 MS. SASSOWER: I'm sorry.

19 THE COURT: Fifty-eight.

20 MS. SASSOWER: Fifty-eight.

21 THE COURT: Very well. That's been identified  
22 as Exhibit 58. It's dated July 7, 2003. And the  
23 essence of this is that it appears to be narration and  
24 argument as to the events transpiring on May 22nd, which  
25 is reflected in the videotape.

1           This document contains such narration, argument  
2 and opinion, that it is not subject to redaction that  
3 would result in any meaningful communication.

4           Indeed, so much of this would have to be  
5 redacted that it would make no sense to, to even attempt  
6 that after the, so this document won't even be  
7 proffered.

8           And what I will state, say to you is that to  
9 the extent that you take objection with the prior view  
10 of any witness in this case as to what is depicted in  
11 the tape, we won't have argument on that issue in front  
12 of the jury. What you will be allowed to do is to play  
13 the tape and state what is happening.

14           MS. SASSOWER: Uh-huh.

15           THE COURT: And that's it. There won't be  
16 argument, there won't be references to either of the  
17 officers that testified pertaining to the tape.

18           They have stated what transpired based  
19 upon -- well, actually it was only one officer, stated  
20 as to what transpired when the, as the tape played.

21           You will have the same opportunity and you  
22 won't refer to the officer's testimony in your statement  
23 as to what is occurring.

24           The jury will then be free to draw its own  
25 conclusion based upon its observation of the tape, the

1 officer's testimony as to what was there and your  
2 testimony as to what was depicted there.

3 MS. SASSOWER: Now -

4 THE COURT: That's it.

5 MS. SASSOWER: Now, now I of course have a  
6 standing objection. Now, are we going to be permitted,  
7 is defense going to be permitted to enter into evidence  
8 the, the transcript which I sought to have admitted into  
9 evidence during the testimony of Officer Jennings?

10 THE COURT: The tape is the evidence.

11 MS. SASSOWER: No, the transcript was turned  
12 over by the Government.

13 THE COURT: As a discovery document. The tape  
14 is the evidence, the transcript is out. All right.  
15 What, what --

16 MS. SASSOWER: The, the transcript, you cannot  
17 discern -- unless it were enhanced, you cannot properly  
18 discern from the video, but the transcript gives  
19 material clarification of what it is I said.

20 THE COURT: Government, I'll hear from you on  
21 this.

22 MR. MENDELSON: Your Honor, it's the  
23 Government's position that it's exactly the opposite.  
24 It's the video that's the best evidence. The manuscript  
25 is secondary. We are opposed to its introduction.

1 THE COURT: Very well. Any other documents,  
2 Ms. Sassower?

3 MS. SASSOWER: Absolutely.

4 MR. GOLDSTONE: Your Honor, I didn't understand  
5 the ruling on 53, or not 53, the use of the transcript,  
6 I'm sorry.

7 THE COURT: Just a minute, I'll give it to you.

8 [Pause]

9 MS. SASSOWER: Oh, yes, my legal adviser wishes  
10 me to highlight, and I certainly would agree, that the  
11 transcript further reflects that I spoke after the  
12 hearing had been declared adjourned by the presiding  
13 chairman, Saxby Chambliss.

14 THE COURT: Very well. My ruling is as  
15 follows, Mr. Goldstone, and I have to believe that you  
16 anticipated this. And this will be the last matter.  
17 We're already at 8 minutes beyond the time that I stated  
18 I would give to this.

19 Jury instruction 2.3 addresses transcripts and  
20 tape recordings. Even when transcripts are allowed into  
21 the juryroom, the purpose is to help to identify  
22 speakers, clarify portions of the tape which are  
23 difficult to hear.

24 The tapes, however, are the evidence in the  
25 case. The transcripts are not evidence. If you

1 perceive any variation between the transcripts and the  
2 tapes, you must be guided solely by the tapes and not by  
3 the transcripts.

4 If you cannot determine from the tape that  
5 particular words were spoken, you must disregard the  
6 transcript so far as those words are concerned. Very  
7 well.

8 MS. SASSOWER: Now I, --

9 THE COURT: We will now bring in --

10 MS. SASSOWER: I had in hand a written, written  
11 notes from which I read when I rose and stated what I  
12 stated on May 22nd. It was conceded by the Government  
13 in their May 23rd letter, which extended no plea and  
14 purported to make --

15 THE COURT: What is your proffer with regard to  
16 the notes?

17 MS. SASSOWER: The notes say exactly what it is  
18 that I said when I rose.

19 THE COURT: And presumably you're going to say  
20 that when you're explaining the tape, correct?

21 MS. SASSOWER: The Government acknowledged when  
22 they --

23 THE COURT: I don't, I don't much care what the  
24 Government acknowledged. -

25 MS. SASSOWER: I'd like -



1 THE COURT: Answer my question please.

2 MS. SASSOWER: I'd like this to go in.

3 THE COURT: Answer my question. Are you going  
4 to testify as to what you said as the tape is playing  
5 for the jury? You'll pause it and then you'll state  
6 what you said.

7 In some way you're gonna get in front of the  
8 jury the information that came out of your mouth at the  
9 time these events took place, correct?

10 MS. SASSOWER: Yes, but it was --

11 THE COURT: All right.

12 MS. SASSOWER: -- corroborated by the  
13 Government -

14 THE COURT: The notes --

15 MS. SASSOWER: -- when they turned --

16 THE COURT: -- offered for the truth of the  
17 matter are hearsay. They will not be admitted. All  
18 right, we're going.

19 MS. SASSOWER: I wanted to impeach the  
20 witnesses.

21 THE COURT: You've got, you have no other  
22 witnesses to impeach. And your notes as to what you  
23 said at the time aren't the appropriate vehicle for  
24 impeachment of another witness.

25 Therefore, we will proceed with the trial and

1 the exhibits that are open to your proffer are the ones  
2 that we have previously discussed.

3 MS. SASSOWER: Excuse me.

4 THE COURT: Three, four, 9, 15, 36, 37, 39, and  
5 that's it.

6 MS. SASSOWER: Excuse me, I have Defendant's  
7 Exhibit 27 which is a contemporaneous document where I  
8 first became aware that Officer Jennings was being  
9 represented as the arresting officer and I protested.  
10 And it's so reflected by this contemporaneous document  
11 from Capitol Police --

12 THE COURT: Irrelevant.

13 MS. SASSOWER: -- on May 22nd.

14 THE COURT: Irrelevant, and it won't be  
15 proffered. We're about to bring the jury in. I think  
16 you should prepare for your testimony.

17 MS. SASSOWER: Could I have 10 minutes to put  
18 my things in order?

19 THE COURT: You'll have five minutes. We'll  
20 call them in at 10:30.

21 (Thereupon, the Court recessed at 10:25 a.m.)

22 (Thereupon, the Court recessed at 10:30  
23 a.m. and the jury was brought to the courtroom.)

24 THE COURT: Good morning, ladies and  
25 gentlemen. Thank you for returning and doing so