

1 (Discussion at the bench.)

2 THE COURT: There has been some concern raised by
3 the U.S. Attorneys about the inquiry in open court about
4 a particular witness who is or isn't -- at least the
5 Defense suspects that he is engaging in, as a
6 participant in, the Witness Security Program.

7 The attorney for the Government has asked that
8 the Court consider that motion not in open court but in
9 a closed session. The Defense has objected to that
10 proceeding.

11 Anything either side wants to put in in reference
12 to that statement of the record?

13 MR. MARTI: I'm not saying that we need to close
14 the courtroom. What I am saying is there is no
15 necessity to have argument now in open court. And
16 largely, that the basis for the motion is a Giglio
17 Motion. They are looking for information that they
18 believe may impeach a potential Government witness. And
19 the Government has its duty and we will respond to the
20 motion that we will provide Giglio in discovery. And
21 that it is not necessary for purposes of resolving the
22 motion to have this argument in --

23 THE COURT: Okay, are you suggesting that any
24 argument that would be made would be placed under seal?
25 I mean, what exactly are you asking the parameters to be

1 on the Defense side?

2 MR. MARTI: Well, if they have an additional
3 argument that they want to submit, then we can probably
4 do it on the pleadings. But to allow Mr. Engh to stand
5 up at the podium and allege that a Government witness is
6 in the Witness Security Program, whether or not that is
7 true, puts that witness -- puts that witness' family and
8 puts court personnel at risk. And it is not necessary
9 to resolve this motion.

10 MR. ENGH: Well, number one, the motion has been
11 filed and it is part of the public record and it has
12 been publicized. So, this is no secret to begin with.

13 Number two, we have a right to a public proceeding
14 here. This is a case of state and nationwide interest,
15 apparently.

16 Number three, it is not Giglio, it is Brady, this
17 guy was a percipient witness and we need to know
18 everything about him. I mean he has got a Nebraska
19 Social Security number with a Boston, Brooklyn accent.
20 He was never born in Nebraska.

21 We have a good faith belief for raising our
22 motion. We have good faith information to support it,
23 which I am not going to disclose to you. And it is not
24 just about whether they will call him, which is what
25 their memo has. It is about impeaching what he has

1 done, and it is also about governmental complicity in
2 this alleged scheme.

3 So, we want it as a part of the Government
4 record. I am sorry. They indicted him. They didn't
5 have to have him in the case. He is on all of the
6 tapes. They didn't have to do that, either. They took
7 the risk.

8 THE COURT: The Court is going to Order that the
9 Government's Motion is denied in part and granted in
10 part. I am going to deny the part where the Government
11 is seeking to deny the Defense attorneys the opportunity
12 in open court to make an argument.

13 I am going to grant it in part as follows: In
14 your argument, you may not identify the witness.

15 MR. ENGH: Okay, I object to that. I note my
16 objection.

17 THE COURT: Sure. Anything further on the
18 Government's side?

19 MR. MARTI: No. The Court has ruled.

20 THE COURT: Anything further on the Defense side?

21 MR. HOPEMAN: No, sir.

22 THE COURT: Okay.

23 (In open court.)
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