

Zgoznik relies on *Giglio v. United States* and *Presser* in arguing that the Government must produce all evidence, pre-trial, relating to impeachment of potential witnesses. 405 U.S. 150 (1972); 844 F.2d 1275. However, as both Supreme Court and Sixth Circuit precedent make clear, the Government's only duty with respect to evidence relating to impeachment is to produce evidence relating to witnesses that actually testify, and then only to do so at trial, giving defense counsel enough time to review that material before conducting its cross-examination.

The Supreme Court in *Giglio* held that obtaining a conviction while withholding impeachment evidence concerning a material witness was a violation of due process. 405 U.S. at 154-55. It did not, however, hold that such material must be provided to the defendant pre-trial. In fact, both the Jencks Act and Rule 26.2 of the Federal Rules of Criminal Procedure expressly permit the Government to refuse disclosure until after a witness has actually testified at trial. 18 U.S.C. § 3500(a); FED. R. CRIM. P. 26.2(a).

In *Presser*, the Sixth Circuit held that neither *Giglio* nor *Brady* "gives the defense a general right to pre-trial discovery of evidence impeaching defense witnesses, where the prosecution denies that any such material is exculpatory and material under *Brady*." 844 F.2d at 1283. Such impeachment evidence is generally governed by the Jencks Act and Rule 26.2. *Id.* (holding that "[t]he clear and consistent rule of this circuit is that the intent of Congress expressed in the Act must be adhered to and, thus, the government may not be compelled to disclose Jencks Act material before trial") (citations omitted).

Therefore, so far as Zgoznik's motion seeks pre-trial disclosure of material "within the ambit of the Jencks Act, then the express provisions of the Jencks Act control" and his motion is denied. So far as Zgoznik seeks non-Jencks material on promises made to potential witnesses where that evidence is not exculpatory, the court lacks the power to order pre-trial disclosure.

For the foregoing reasons, Zgoznic's motion for immediate disclosure [Docket No. 19] is denied.

IT IS SO ORDERED.

/s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: November 3, 2006