

1 law in this. But I am going to just cite a case, if I could
2 cite this for the record. It is a case out of the Texas
3 Court of Criminal Appeals that -- this is a quote: It is
4 error for the State to call a witness who it knows will claim
5 his or her Fifth Amendment privilege. That's Coffey versus
6 State, 796 S.W.2d 175 at 177, note 4. It's an en banc
7 decision out of the Court of Criminal Appeals. It is also
8 cited in United States versus Beechum, which is a Fifth
9 Circuit Case, 582 F.2d 898. I'm sorry, Coffey sites Beechum,
10 not the other way around. And the quote from Beechum is that
11 it is impermissibly prejudicial for the government to attempt
12 to influence the jury by calling a witness it knows will
13 invoke the Fifth Amendment.

14 It goes on to say, Moreover, when the
15 government witness indicates beforehand that he will invoke
16 the privilege, the court may properly refuse to allow him to
17 testify before a jury. Also cites a Court of Appeals case
18 out of El Paso, Castillo versus State, 901 S.W.2d 550.

19 So I apologize for not getting that in my
20 motion. I probably should have supplemented it while I was
21 waiting. I just thought I would be --

22 PRESIDING OFFICER: Well --

23 MS. EPLEY: Sorry, just one last piece. I
24 understand you're absolutely right. I just want the body to
25 be aware that the cases she cited by definition of the title

1 are state and federal criminal offenses. So that is a
2 distinction.

3 I can pose -- I hope my team is not upset by
4 this -- a possible solution. It isn't our fault either that
5 she's unable to testify. Could a statement be made to the
6 Senate body that Ms. Olson has been present but will be
7 deemed unavailable for testimony?

8 MR. COGDELL: I'm fine with that.

9 MR. BUZBEE: That's the statement?

10 MS. GRAHAM: We would like -- we would like
11 the jury -- we would like it to be clear for the record and
12 for the jury to know that if she -- if the motion is granted
13 for whatever reason, she is -- she does not have to take the
14 stand, that it is not because we are withdrawing our right to
15 call her.

16 MR. COGDELL: Well, that's a different
17 statement.

18 MS. GRAHAM: That's why I wanted it to be
19 clear.

20 MS. EPLEY: Well, I'm not the legal -- so can
21 we backpedal what I said?

22 PRESIDING OFFICER: No. I think I was getting
23 to rule in favor of quashing the subpoena, so I think what
24 you offered would be a step more than you were going to get,
25 but no more.

1 MS. EPLEY: Is that okay?

2 MS. HOLLINGSWORTH: Our concern is just
3 because it is an Article, we have a burden, that there is an
4 impression left in the room that we chose not to call
5 Ms. Olson, and we did not do that.

6 PRESIDING OFFICER: Ma'am, how do you feel
7 about that?

8 MS. STILLINGER: That the statement would be
9 Ms. Olson is not available?

10 MS. EPLEY: Ms. Olson is present but has been
11 deemed unavailable to testify.

12 MS. STILLINGER: We have no problem with that.

13 PRESIDING OFFICER: Are you okay with that?

14 MS. EPLEY: I'm okay.

15 PRESIDING OFFICER: Are you okay? I like when
16 we can all come together.

17 (End of chamber conference at 4:40 p.m.)

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