

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 99-1417 JP

WEN HO LEE,

Defendant.

ORDER

On July 12, 2000 at a Classified Information Procedures Act (CIPA), 18 U.S.C. App. III, § 6(a) hearing and a hearing on Defendant's Motion to Compel Discovery on Issues Other than Selective Prosecution (Doc. No. 62) filed May 10, 2000, Plaintiff was represented by Assistant United States Attorneys George Stamboulidis, Robert Gorence, Michael Liebman, Sara Criscitelli, and Laura Fashing; Defendant was present in person and was represented by Attorneys John Cline and Mark Holscher.

The initial part of the hearing was open to the public. During the public part of the hearing, the Court requested counsel to confer as soon as possible to select as a mediator or as mediators, one or more of the distinguished federal judges identified in a letter sent by the Court to counsel on July 6, 2000 so that mediation can begin as soon as practicable on the subjects of pretrial release and plea negotiations.

Counsel for the Defendant stated that he intended to request another hearing on release on conditions. The Court instructed counsel for the Defendant to file a written motion for release on conditions to which the government may respond in writing. Counsel were encouraged to select a mediator soon so that mediation efforts regarding release on conditions can begin in advance of the requested hearing.

During the closed part of the hearing, counsel argued their positions on the First Notice of Dr. Wen Ho Lee Under Section 5 of the Classified Information Procedures Act (Doc. No. 56) filed April 24, 2000 and on Defendant's Motion to Compel Discovery on Issues Other than Selective Prosecution (Doc. No. 62) filed May 10, 2000.

During the closed part of the hearing, various non-classified matters were discussed. The Court encouraged counsel to consider using types of discovery authorized by the Federal Rules of Civil Procedure in an effort to prepare for trial in a manner that will permit, as much as possible, resolution of evidentiary issues in advance of trial. During the hearing, counsel for the Defendant provided more specificity with respect to Defendant's CIPA § 5 notice to disclose confidential information. Based on that, the Court granted the request of counsel for the government to have until July 21, 2000 to consult with the government's experts and then identify in writing which parts of the classified information disclosed by Defendant the government agrees meets the use, relevance and admissibility standard of CIPA § 6(a). If the government takes the position that some of the classified information described by Defendant in his CIPA § 5 notice does not meet the use, relevance, and admissibility standard of CIPA § 6(a), the Defendant, by July 25, 2000, may file a response to the government's position.

On July 5, 2000, Defendant filed his Motion of Dr. Wen Ho Lee for Clarification of Government's CIPA § 10 Notice and to Compel Production of Rule 1006 Summaries (Doc. No. 98). During the closed part of the hearing, the Court established August 28, 2000 as the deadline for production by the government of its FED. R. EVID. 1006 expert summaries.

With respect to Defendant's Motion to Compel Discovery on Issues Other than Selective Prosecution (Doc. No. 62), the Court made the following decisions:

- A. The Court will reserve ruling on Defendant's request for a nuclear weapons blueprint until after the Court receives further information resulting from discovery pertaining to this issue.
- B. Defendant's request for computer security audits and information or computer security reports from the Department of Energy Office of Oversight will be granted as to the time frame of January 1, 1990 through March 8, 1999.
- C. The Court granted Defendant's request that the following documents be reviewed *in camera* by the Court:
 - i. Documents reflecting Sylvia Lee's cooperation with the Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), and Department of Energy (DOE).
 - ii. Certain FBI memoranda regarding the propriety of prosecuting the Defendant.

Counsel for the government stated that the government had no objection to an *in camera* review of these documents, but questioned their relevance. Counsel for Defendant outlined what the Court should look for in making the *in camera* review.
- D. The Court will deny Defendant's request for documents relating to computer codes used by the Peoples Republic of China for the modeling and design of nuclear weapons because of an inadequate showing by Defendant of a factual basis for the request and the speculative nature of the requested information.

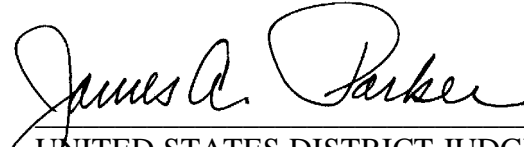
The government requested additional time to respond to Defendant's Motion to Compel Discovery on Selective Prosecution Issues (Doc. No. 87) filed June 23, 2000 and the Court extended to July 21, 2000 the deadline for the government's response and extended to August 4, 2000 the deadline for Defendant's reply to the government's response.

IT IS THEREFORE ORDERED THAT:

1. Counsel must confer, promptly, in an effort to select a mediator or mediators from the list of distinguished federal court judges identified in the Court's July 6, 2000 letter to counsel;
2. Defendant must make his request for another hearing on release on conditions in the form of a written motion to which the government may respond in writing;
3. Counsel for the government will have until July 21, 2000 to file and serve a written statement as to which information identified in Defendant's CIPA § 5 Notice the government agrees meets the use, relevance and admissibility standard of CIPA § 6(a);
4. By July 25, 2000, Defendant may file and serve a written response to the government's statement regarding use, relevance and admissibility of information disclosed by Defendant in his First CIPA § 5 Notice, if the government takes the position that some of the information identified by the Defendant does not meet the use, relevance and admissibility standard of CIPA § 6(a);
5. The government must produce its FED. R. EVID. 1006 expert summaries by August 28, 2000;
6. The deadline for the government filing and serving a response to Defendant's Motion to Compel Discovery on Selective Prosecution Issues (Doc. No. 87) is

extended to July 21, 2000, and the deadline for Defendant filing and serving a reply to the government's response is extended to August 4, 2000; and

7. Defendant's Motion to Compel Discovery on Issues Other than Selective Prosecution (Doc. No. 62) is granted, in part, as described above.


UNITED STATES DISTRICT JUDGE