

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.

SECOND SCHEDULING ORDER

At a status conference on June 13, 2000, Plaintiff United States of America was represented by Assistant United States Attorneys George A. Stamboulidis, Robert J. Gorence, Paula G. Burnett, and Laura Fashing; Defendant was present in person and was represented by Attorneys Mark Holscher, Nancy Hollander, John D. Cline, and K.C. Maxwell. This Second Scheduling Order is being entered based on discussions with counsel during the status conference.

The Court entered the first Scheduling Order on February 17, 2000 after finding that this case presented complex legal issues and would involve voluminous classified discovery, and that the Court's standard order regarding discovery and the filing of motions did not afford the parties adequate time to prepare for pretrial proceedings and the trial itself. The First Scheduling Order was intended to set deadlines relating primarily to discovery. At the time the First Scheduling Order was entered, the parties anticipated the necessity of a Second Scheduling Order which would set deadlines relating to substantive motions, Classified Information Procedures Act ("CIPA") notices, and other miscellaneous filings required before trial.

This case originally was assigned to Chief Judge John Edwards Conway, who set a trial date of November 6, 2000. On June 5, 2000, Chief Judge Conway recused and vacated the trial

date as well as the then scheduled suppression hearing and CIPA hearing. The status conference on June 13, 2000 fulfilled the purpose of the second scheduling conference as contemplated in the First Scheduling Order.

This case, as expected by the parties, continues to present complex legal issues, and has generated voluminous classified discovery and multiple motions. Several motions currently are pending: Defendant's Motion to Suppress Evidence, filed April 17, 2000; Defendant's Motion for Bill of Particulars, filed May 10, 2000; and Defendant's Motion to Compel Discovery on Issues Other Than Selective Prosecution, filed May 10, 2000. Defendant filed his First Notice Under Section 5 of CIPA on April 24, 2000. The parties anticipate the filing of several other motions and CIPA notices. Defense counsel has informed counsel for the government that Defendant intends to file a motion relating to selective prosecution. The government intends to file its first notice under Section 10 of CIPA no later than June 26, 2000, and may file additional notices before trial. The government also intends to seek hearings under Section 6 of CIPA regarding the use, relevance and admissibility of all classified information that the Defendant reasonably expects to disclose at trial.

For the reasons set forth above and in the First Scheduling Order, the ends of justice served by establishing an alternative, extended scheduling for the production of discovery and the filing of motions and other documents outweigh the best interest of the public and Defendant in a speedy trial. The time schedules in the standard discovery order and the time restraints in the Speedy Trial Act, 18 U.S.C. §3161, do not afford the parties to this complex case adequate time to prepare for pretrial proceedings and the trial itself.

IT IS THEREFORE ORDERED as follows:

1. **FIRST SCHEDULING ORDER:** Except to the extent that deadlines in the First Scheduling Order are modified by this Second Scheduling Order or subsequent court orders, the deadlines set in the First Scheduling Order will remain in full force and effect.
2. **DEFENDANT'S MOTION TO SUPPRESS EVIDENCE AND DEFENDANT'S MOTION FOR BILL OF PARTICULARS:** A hearing on these motions is scheduled to begin at 10:00 a.m. on Monday, June 26, 2000. (Counsel stated that they do not expect classified information to be discussed during this hearing).
3. **FIRST NOTICE OF DR. WEN HO LEE UNDER SECTION 5 OF CIPA:** A hearing in regard to this notice is scheduled to begin at 10:00 a.m. on July 12, 2000. (Counsel advised that this will be a closed hearing at which classified information will be discussed).
4. **DEFENDANT'S MOTION TO COMPEL DISCOVERY ON ISSUES OTHER THAN SELECTIVE PROSECUTION:** A hearing, if necessary, will be held on this motion on July 12, 2000 following conclusion of the hearing on Defendant's first notice under Section 5 of CIPA. (Counsel advised that the hearing of this motion may also involve a discussion of classified information and this hearing also will be closed).
5. **DEFENDANT'S MOTION REGARDING DISCOVERY ON SELECTIVE PROSECUTION ISSUE:** Defendant must file his motion seeking discovery on

the issue of selective prosecution no later than June 23, 2000; the government must file its response no later than July 14, 2000, and Defendant must file his reply no later than July 28, 2000. This motion is scheduled for hearing beginning at 10:00 a.m. on August 15, 2000.

6. **ALL OTHER NON-DISCOVERY PRE-TRIAL MOTIONS:** All other non-discovery pre-trial motions, including any motions brought under Rule 12(b)(1), (2), (3), or (5) of the Federal Rules of Criminal Procedure -- but excluding any motions *in limine* -- must be filed and served no later than August 7, 2000. Any response must be filed and served no later than August 21, 2000; and any reply must be filed and served no later than September 5, 2000. These motions will be scheduled for hearing during three days – September 19, 20 and 21, 2000 – which have been reserved on the Court’s calendar for that purpose

7. **OTHER CIPA NOTICES:** The parties must abide by the following schedule of deadlines regarding currently anticipated CIPA notices and requests for hearings:

June 26, 2000	Filing and service of government’s first notice under Section 10 of CIPA
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July 5, 2000	Filing and service of defendant’s second notice under Section 5 of CIPA, including designation of materials in response to government’s first notice under Section 10 of CIPA
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July 20, 2000	Filing by government of written request for hearing under Section 6(a) of CIPA regarding Defendant’s
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second notice under Section 5 of CIPA and notice under Section 6(b)(1) of CIPA of classified information at issue

On August 15, 2000, a hearing will be held on defendant's first notice under Section 5 of CIPA following conclusion of the hearing that date on defendant's motion regarding discovery on the selective prosecution issue.

Any supplemental notices and requests for hearings under CIPA must be filed and served in accordance with the deadlines in the following schedule:

August 21, 2000	Government's supplemental notices under Section 10 of CIPA
September 5, 2000	Defendant's supplemental notices under Section 5 of CIPA
September 15, 2000	Government's motion for hearing under Section 6(a) of CIPA and notice under Section 6(b)(1) of CIPA of classified information at issue


A hearing on any supplemental notices will take place during the days of September 19, 20 and 21, 2000 which have been reserved on the Court's calendar for that purpose.

8. **RULE 404(b) EVIDENCE:** The government must file and serve notice of evidence that it intends to offer at trial under Federal Rule of Evidence 404(b) by no later than August 7, 2000; Defendant must file and serve objections to proposed Rule 404(b) evidence by no later than August 14, 2000.

9. **JURY QUESTIONNAIRES:** The parties must confer and attempt to agree to a single jury questionnaire to be submitted to the Court no later than August 7, 2000, but if the parties cannot agree to a single jury questionnaire, each party must submit its proposed jury questionnaire to the Court no later than August 7, 2000. Each party must submit its objections to the other party's questionnaire no later than August 14, 2000. Prospective jurors will be instructed to attend a proceeding at the courthouse approximately thirty days prior to trial to answer the questionnaires and the prospective jurors' written answers to the questionnaires will be made available to counsel soon thereafter.
10. **PROPOSED JURY INSTRUCTIONS:** Proposed jury instructions must be submitted to the Court by October 5, 2000.
11. **MOTIONS *IN LIMINE*:** Motions *in limine* must be filed and served no later than September 5, 2000; any response must be filed and served no later than September 20, 2000; and any reply must be filed and served no later than September 27, 2000.
12. **PROPOSED VOIR DIRE:** Proposed written voir dire questions must be submitted to the Court no later than October 25, 2000.
13. **EXCLUSION OF TIME UNDER SPEEDY TRIAL ACT:** The time between the status conference on June 13, 2000 and the date trial begins will be excluded for purposes of the Speedy Trial Act computation in accordance with 18 U.S.C. § 3161(h)(8)(B)(i) based on the Court's findings that the ends of justice served by setting an alternative schedule for the production of discovery and the filing of

motions, notices and other documents, and the hearing of those matters outweigh the best interest of the public and the Defendant in an earlier trial.

14. **TRIAL:** Trial is scheduled to begin at 9:00 a.m. on Monday, November 6, 2000 with jury selection.


UNITED STATES DISTRICT JUDGE