

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACR 05-00293-CJC

Date: May 1, 2008

Title: UNITED STATES OF AMERICA v. CHI MAK et al.

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PRESENT:

**HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE**

Michelle Urie  
Deputy Clerk

N/A  
Court Reporter

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ATTORNEYS PRESENT FOR PLAINTIFF:      ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

**PROCEEDINGS: (IN CHAMBERS) ORDER REGARDING INVESTIGATION  
INTO RULE 6(e) VIOLATION**

During the course of proceedings in this case, *Washington Times* reporter Bill Gertz authored a May 16, 2006 article (the “May 16 article”) that revealed secret information before a federal grand jury.<sup>1</sup> Mr. Gertz reported that impending grand jury charges “will include a new indictment against Chi Mak, Tai Mak, Rebecca Chiu and a fourth Mak relative. All four will be charged with conspiracy to export defense articles and attempted unlawful export of defense articles.” Bill Gertz, *New Charges Expected in Defense Data Theft Ring*, THE WASHINGTON TIMES, May 16, 2006. The article further disclosed that “Tai Mak also will be charged with aiding and abetting and possession of property to aid a foreign government.” *Id.* Mr. Gertz attributed the source of this information to “Senior Justice Department officials [who] have approved the new charges.” *Id.* Based on the content of this article, Defendant Rebecca Chiu brought a motion asserting that the Government violated Federal Rule of Criminal Procedure 6(e).<sup>2</sup>

In an order dated November 20, 2006, the Court found that Ms. Chiu had established a *prima facie* violation of Rule 6(e). Courts engage in a two-step analysis to determine whether media reports establish a *prima facie* case of a Rule 6(e) violation.

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<sup>1</sup> A copy of the May 16 article immediately follows this Order.

<sup>2</sup> Rule 6(e)(2) states, in relevant part, that “an attorney for the government, or any person to whom disclosure is made under paragraph 3(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules.” FED. R. CRIM. P. 6(e)(2).

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*Barry v. United States*, 865 F.2d 1317, 1321 (D.C. Cir. 1989). First, courts must evaluate “whether the reports actually disclose information about what occurred before the grand jury,” and second, “whether the source of information was likely one of those persons listed in the rule.” *United States v. Lopez*, 854 F. Supp. 41, 46 (D.P.R. 1994). In this case, the first element of a *prima facie* case was satisfied because the article “expressly identif[ied] the nature of the crimes which would be charged and the number of persons who would be charged.” See *In re Grand Jury Investigation (Lance)*, 610 F.2d 202, 218 (5th Cir. 1980). Mr. Gertz directly attributed the information “to senior Justice Department officials [who had] approved the new charges,” thus establishing the second element. See *Barry*, 865 F.2d at 1325-26.<sup>3</sup>

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Finding that Ms. Chiu had established a *prima facie* Rule 6(e) violation, the Court was obligated to uncover the source of the grand jury leak. See *id.* at 1321 (“Once a *prima facie* case is shown, the district court *must* conduct” further investigation . . . .) (emphasis added). Accordingly, the Court ordered the United States Attorney’s Office for the Central District of California (“C.D. Cal. USAO”) to undertake a full investigation. (See Order Granting in Part and Denying in Part Defs.’ Mot. for Disc. or Other Relief Relating to Gov’t Misconduct, November 20, 2006 (the “November 20 Order”).) However, the Department of Justice determined that the C.D. Cal. USAO should be recused from handling the investigation into the leak of grand jury information and from any subsequent litigation. The investigation was therefore assigned to the United States Attorney’s Office for the District of Columbia (the “Government”). The Court’s November 20 Order directed the Government to determine whether any government official disclosed secret grand jury information to Mr. Gertz. Alternatively, if the Government concluded that government officials were not responsible for the leak, it was instructed to provide evidence to that effect.<sup>4</sup> (See *id.*)

The Government conducted a comprehensive, year-long investigation and interviewed over 500 persons of interest. In a recent report to the Court detailing the results of its investigation, the Government conceded that a violation of Rule 6(e) had

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<sup>3</sup> See also FED. R. CRIM. P. 6(e)(2)(B)(vi) (prohibiting disclosure by “an attorney for the government;” 6(e)(2)(B)(vii) (prohibiting disclosure by “any governmental personnel” permissibly informed of grand jury information pursuant to subsection (e)(3)(A)).

<sup>4</sup> In other words, the Court instructed the Government to submit evidence to rebut Ms. Chiu’s *prima facie* case.

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occurred. The Government, however, was unable to determine the identity of the person or persons who leaked the grand jury information contained in the May 16 article to Mr. Gertz. Based on the content of the May 16 article and the Government's concession of an impermissible leak, the Court finds that the individual who leaked the grand jury information to Mr. Gertz violated Rule 6(e). Accordingly, the Court finds it necessary to subpoena Mr. Gertz to testify regarding the identity of the source that provided him with the grand jury information contained in the May 16 article. Pursuant to a subpoena issued on April 30, 2008, Mr. Gertz shall appear before this Court on June 13, 2008 at 9:00 a.m.

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# The Washington Times

www.washingtontimes.com

## New charges expected in defense data theft ring

By Bill Gertz

THE WASHINGTON TIMES

Published May 16, 2006

Federal prosecutors are expected to add new charges against several people in Los Angeles linked to a covert program to provide China with Navy defense technology and at least one will be charged with espionage, U.S. government officials said.

Defense contractor Chi Mak and his wife, Rebecca Laiwah Chiu, along with brother Tai Mak were arrested last year and charged with failing to register as Chinese government agents after a yearlong counterespionage probe.

Documents obtained after the Oct. 28 arrests provided investigators with new clues about the technology theft ring that included proprietary corporate information and embargoed defense technology related to Navy warships, officials said. Investigators think the spy ring passed the sensitive data to Beijing.

The charges, which will be made public as early as this week, will include a new indictment against Chi Mak, Tai Mak, Mrs. Chiu and a fourth Mak relative. All four will be charged with conspiracy to export defense articles and attempted unlawful export of defense articles.

Additionally, Chi Mak, an electrical engineer with the Los Angeles defense contractor Power Paragon, will be indicted on charges of unlawful export of defense articles and gathering defense information, an espionage charge, the officials said.

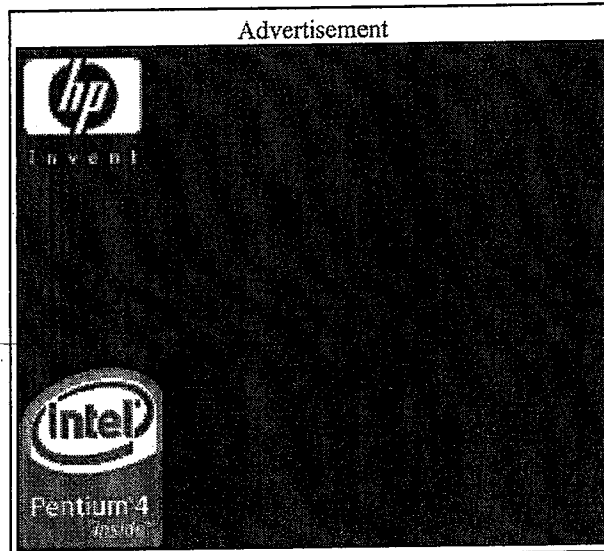
Chi Mak is thought to have supplied China with sensitive information about the electrical systems of U.S. warships and submarines, including details of the Virginia-class submarine, and information on a new electromagnetic catapult to launch jets from aircraft carriers.

A spokesman for the U.S. attorney in Los Angeles declined to comment, but Assistant U.S. Attorney Gregory Staples said in court last week that the government is expected to seek a new indictment in the case. He did not specify the new charges.

Senior Justice Department officials have approved the new charges, which prosecutors will announce in Los Angeles, said the officials, who spoke on the condition of anonymity.

Chi, Tai and Rebecca Mak have pleaded not guilty to the original charges in the case.

"We presented evidence throughout this case that undermines the government's conclusion that these individuals were involved in espionage," Ronald Kaye, Chi Mak's attorney, said in an interview. An attorney for Mrs. Chiu, Stanley Greenberg, said he is confident that his client will be found not guilty. An attorney for Tai Mak could not be reached for comment.



U.S. officials described Tai Mak, an engineer with Phoenix Television, as an intelligence courier for the Chinese military who was carrying an encrypted computer disk holding defense technology data when he was arrested.

Tai Mak also will be charged with aiding and abetting and possession of property to aid a foreign government. He and his wife were arrested at Los Angeles International Airport as they were about to fly to Hong Kong. Tai Mak was carrying an encrypted disk that FBI officials said contained data on a new technology for destroyers known as quiet electric drive.

Earlier charges that Chi Mak, Tai Mak and Rebecca Mak failed to register as Chinese government agents will be kept in the new indictment.

Chi and Tai Mak were born in Guangzhou, China.

The new charges were based on thousands of pages of documents found at the home of Chi Mak, officials said.

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