

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 2002 Grand Jury

UNITED STATES OF AMERICA,)	CR 03-_____
)	
Plaintiff,)	<u>I N D I C T M E N T</u>
)	
v.)	[18 U.S.C. §§ 1343, 1346:
)	Honest Services Wire Fraud;
JAMES J. SMITH,)	18 U.S.C. § 793(f): Removal
)	of National Defense
Defendant.)	Information Through Gross
_____)	Negligence]

The Grand Jury charges:

INTRODUCTION

I. From on or about October 19, 1970, through on or about November 3, 2000, defendant JAMES J. SMITH ("SMITH") was a public official employed as a Special Agent with the Federal Bureau of Investigation ("FBI"), a department and agency of the United States. On or about November 5, 1971, defendant SMITH transferred to the FBI's office in Los Angeles, California where he remained until he retired in or about November 2000.

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I. In or about mid-1978, defendant SMITH was assigned to work on an FBI foreign counterintelligence squad focusing on the People's Republic of China ("PRC").

II. The Ministry of State Security ("MSS") is an intelligence service of the PRC. Among other functions, MSS conducts intelligence operations for the PRC focusing upon the United States intelligence community, including the FBI, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the military, the National Reconnaissance Office, and the National Imaging and Mapping Agency.

III. Classified information is defined by Executive Order 12958 and its predecessor orders (including Executive Order 12356) as information in any form that: (1) is owned by, produced by or for, or under the control of the United States government; (2) falls within one or more of the categories set forth in Section 1.5 of the Order (including intelligence sources or methods, cryptology, military plans, and vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security); and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security. Where such unauthorized release could reasonably result in "serious" damage, the information may be classified "SECRET." Where such damage is "exceptionally grave," the information may be classified "TOP SECRET." Access to classified information at any level may be further restricted through compartmentation in

"SENSITIVE COMPARTMENTED INFORMATION" ("SCI") categories.

IV. At all times relevant to this indictment, the FBI had rules, regulations, and standards of conduct which governed the conduct of FBI agents, including the following:

a. The FBI Manual of Administrative Operations and Procedures ("MAOP") was issued in approximately 1978 and remains in force, with certain amendments and modifications. The MAOP Part I, Section 1-1(9) required all FBI agents to abide by the "fundamental rules of ethical services" in Executive Order 12674 dated April 12, 1989, including the following standards of conduct:

(a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.

* * *

(e) Employees shall put forth honest efforts in the performance of their duties.

* * *

(h) Employees shall act impartially and not give preferential treatment to any private organization or individual.

b. The FBI's Foreign Counterintelligence Manual ("FCIM") was issued in or about March 1978 and remained in force until in or about January 1995, with certain amendments and modifications. The FCIM Part I, Section 134 governed the handling of foreign counterintelligence assets and included the following definitions and rules:

Section 134-2.1(2) - Operational Asset (OA) - A person

who is directed by the FBI to undertake activity outside the normal course of his/her daily and/or business routine in order to obtain information in support of the [foreign counterintelligence] programs and/or to conduct activities in support of FBI operations. . . .

Section 134-2.2(1) - Double Agent - A double agent is any asset who is seeking or actively cooperating with, receiving assignments from and/or performing tasks for a foreign intelligence service as a clandestine agent, but who, in actuality, is operating in this capacity on behalf of and under the control of the U.S. Government

Section 134-4.8(2) - Continuing Assessment of Bona Fides - The question of an asset's bona fides should be continually addressed even though the initial investigation reasonably established the asset's origins and access. If, during the course of the operation of the asset, circumstances occur which would cause questions to be raised about the bona fides, additional checks should be made. . . .

Section 134-4.9(1) - Necessity of Reliability - Reliability issues encompass accuracies, controllability, dependability and truthfulness. Assessment of an asset's reliability is to take place during the asset's entire relationship with the FBI. . . . The handling Agent will most likely retain an ability to objectively evaluate an asset's reliability

through the Agent's professional conduct. In this regard, the handling Agent should not allow his/her relationship with the asset to cloud the Agent's judgment of the asset's reliability.

Section 134-4.10(1) - Evaluation Teletypes - . . .

.for [operational assets], submit a routine teletype to FBIHQ containing an evaluation of the asset. . . . The following information shall be contained in the evaluation teletype:

* * *

(g) Characterization of reliability as set out in FCIM, Part I, 134-4.9(2), including justification for this characterization.

(h) Examples of any unreliable information furnished by asset since last evaluation.

(i) Steps that have been taken, if any, to establish asset bona fides since last evaluation.

c. The FCIM Part II, Section 1-5 governed the handling of classified material, including the following rules:

Section 1-5.2 - Storage of "Secret" and "Confidential" Material - Whenever "Secret" and "Confidential" material is not under the direct supervision of authorized persons . . . it must be stored in specific types of cabinets according to the Code of Federal Regulations. . . . Access to "Secret" and "Confidential" material is limited to employees with a need to know and this requirement can be met through strict adherence to file and serial charge-out

regulations. (Effective 6/29/89)

Section 1-5.3 - Removal of Classified Material to Residence -

(1) Employees may not remove classified material from official premises to their residence during nonworking hours without approval from the Director, the FBIHQ Security Programs Manager, the [Supervisory Agent in Charge] for the FBI field offices, or the appropriate Assistant Director at FBIHQ. In every instance of approval, the material removed must remain in the personal control of the authorized employee at all times unless a safe and an alarm are installed in the residence by the FBI. . . . (Effective 5/16/91)

d. The FBI's National Foreign Intelligence Program Manual ("NFIP") took the place of the FCIM when it became effective in or about January 1995 and has been in force since 1995, with certain amendments and modifications. The NFIP Part I, Section 5 governs the handling of foreign counterintelligence assets and contains most of the same provisions as FCIM Part I, Section 134. In particular, NFIP Part I, Sections 5-2.1(2) (Definition of Operational Asset), 5-4.8(2) (Continuing Assessment of Bona Fides), 5-4.9(1) (Necessity for Reliability), and 5-4.10 (Evaluation Teletypes) are identical, in relevant part, to the respective sections of the FCIM cited above. From on or about January 31, 1995 until on or about September 8, 1997, NFIP Part I, Sections 8-5.2 (Storage of "Secret" and "Confidential" Material) and 8-5.3 (Removal of Classified Material to Residence) were in effect and identical to FCIM Part

II, Sections 1-5.2 and 1-5.3.

I. From in or about August 1983 and continuing through in or about December 2002, Katrina Leung was an FBI asset, and was tasked with providing the FBI with information relating to the PRC. In particular, Leung was supposed to provide the FBI with information gathered from her contacts with the MSS, based on the FBI's belief that Leung would pretend to be an asset for the MSS, while, in truth, she would be a double agent for the FBI.

II. The intelligence officer ("IO") who operates an asset is called the "handler." From in or about August 1983 until his retirement in or about November 2000, defendant SMITH was Katrina Leung's FBI "handler." To preserve an asset's ability to covertly obtain intelligence, IOs go to great length to maintain the secrecy of the asset's identity, even within the IO's own intelligence organization. To this end, assets are commonly assigned code names and numbers, and those code names and numbers, and not the asset's true name, are used in the intelligence organization's communications regarding the agent or asset. As an FBI asset, Katrina Leung was assigned the code name "Parlor Maid."

COUNTS ONE THROUGH FOUR

[18 U.S.C. §§ 1343, 1346]

I. The Grand Jury hereby realleges paragraphs 1 through 7 of this Indictment as though fully set forth herein.

A. SCHEME TO DEFRAUD

I. Beginning on a date unknown and continuing until in or about November 2000, in Los Angeles County, within the Central District of California and elsewhere, defendant JAMES J. SMITH knowingly and willfully devised and intended to devise a scheme and artifice to defraud and deprive the FBI and the citizens of the United States of their right to his honest services by: (1) having an improper sexual relationship with Katrina Leung; (2) failing to make truthful and complete reports to the FBI concerning his contacts with Katrina Leung, including, in particular, his improper sexual relationship with her and her refusal to take a polygraph examination in May 1991; (3) failing to make truthful and complete reports to the FBI concerning Katrina Leung's unauthorized contacts with the PRC, including, in particular, her admission in May 1991 that she had secretly passed information to the PRC without authorization and her claim in May 1991 that the MSS had learned that she was an FBI asset in mid-1990; (4) filing reports and causing other FBI agents to file reports which concealed and omitted negative information about Katrina Leung; and (5) mishandling information relating to the national defense and classified information.

B. MANNER AND MEANS

I. From in or about mid-1978 and continuing until in or about November 2000, as an FBI agent assigned to work on an

FBI counterintelligence squad focusing on the PRC, defendant SMITH had access to SECRET, TOP SECRET, and SCI information relating to investigations being worked by the squad.

II. In or about August 1982, defendant SMITH began recruiting Katrina Leung to be an asset for the FBI's counter-intelligence program.

III. In or about August 1983, defendant SMITH recommended that the FBI's counterintelligence program use Katrina Leung as an asset tasked with providing the FBI with information relating to the PRC.

IV. From in or about August 1983 and continuing to in or about November 2000, defendant SMITH was Katrina Leung's FBI handler, responsible for supervising her as an FBI asset tasked with providing the FBI with information relating to the PRC.

V. In the early 1980s, defendant SMITH began a sexual relationship with Katrina Leung that continued until in or about December 2002. Defendant SMITH never reported this sexual relationship to his superiors at the FBI. This sexual relationship violated FBI rules and regulations regarding relationships between handlers and assets, in that it deprived defendant SMITH of the required objectivity in evaluating the ongoing reliability of Katrina Leung.

VI. In or about late 1990 and early 1991, the San Francisco FBI obtained recordings of conversations between a woman identified as "Luo" and a man in the PRC identified as "Mao." In or about April 1991, a Supervisory Special Agent ("SSA") assigned to the FBI's San Francisco office listened to these recordings, recognized the voice of "Luo" to be that of

Katrina Leung, and determined that the recordings related to the passage of information by Leung to the MSS.

VII. In or about April 1991, defendant SMITH was notified that Katrina Leung had been recorded passing information to the MSS using the alias "Luo."

VIII. In or about May 1991, defendant SMITH traveled to FBI Headquarters in Washington, D.C., to discuss Katrina Leung's unauthorized communications with "Mao."

IX. On or about May 31, 1991, defendant SMITH informed Katrina Leung that he was aware of her secret unauthorized conversations with "Mao." In response, Katrina Leung stated to defendant SMITH, among other information, that: (1) "Mao" had learned that she was an FBI asset; (2) she had engaged in secret unauthorized conversations with "Mao"; and (3) she had used the alias "Luo" when secretly communicating with "Mao." Defendant SMITH was aware that these unauthorized conversations included information relating to sensitive intelligence matters. Nevertheless, defendant SMITH never reported the full extent of Katrina Leung's statements to the FBI.

X. On or about May 31, 1991, defendant SMITH requested that Katrina Leung take a polygraph examination to establish her continuing bona fides and reliability. Katrina Leung refused to take a polygraph examination. Defendant SMITH never reported Katrina Leung's refusal to take a polygraph examination to the FBI.

XI. On or about June 7, 1991, defendant SMITH submitted to the FBI a required periodic asset evaluation report

relating to Katrina Leung. In this report, defendant SMITH stated that Leung was "reliable" and that her reliability and bona fides had been tested, checked, and reviewed in part through the use of a polygraph examination. Defendant SMITH failed to disclose material information in this report, including: (1) that he was involved in a sexual relationship with Katrina Leung; (2) that Katrina Leung had admitted secret unauthorized communications with an MSS officer "Mao"; (3) that Katrina Leung had stated that the MSS officer "Mao" had learned Leung was an FBI asset; and (4) that, in May 1991, Katrina Leung had refused to take a polygraph examination.

XII. Between in or about May 1991 and March 2000, defendant SMITH submitted to the FBI approximately 19 periodic evaluation reports relating to Katrina Leung. In each of these reports, defendant SMITH stated, among other information, that: (1) Katrina Leung's bona fides were not subject to question; (2) she continued to be a reliable asset; and (3) she had not provided any unreliable information. In each of these reports, defendant SMITH failed to disclose material information, including: (1) that he was involved in a sexual relationship with Katrina Leung; (2) that Katrina Leung had admitted secret unauthorized communications with an MSS officer "Mao"; (3) that Katrina Leung had stated that the MSS officer "Mao" had learned Leung was an FBI asset; and (4) that, in May 1991, Katrina Leung had refused to take a polygraph examination.

XIII. Between in or about May 1991 and November 2000, defendant SMITH removed documents and information relating to the national defense from their proper place of custody and took

them with him to meetings with Katrina Leung, thereby enabling her to take possession of documents and information relating to the national defense.

XIV. On a date unknown, between in or about May 1991 and in or about November 2000, defendant SMITH removed from its proper place of custody and took with him to a meeting with Katrina Leung, thereby enabling her to take possession of it, a document relating to the national defense, namely, a five-page document containing transcripts and summaries of a series of conversations between "Luo" and "Mao" in late 1990 and early 1991.

XV. On a date unknown, between in or about December 1993 and in or about November 2000, defendant SMITH removed from its proper place of custody and took with him to a meeting with Katrina Leung, thereby enabling her to take possession of it, a document relating to the national defense, namely, a document relating to the FBI's case assigned the codename "Royal Tourist," that contained information concerning a classified offsite location.

XVI. On a date unknown, between on or about June 12, 1997 and in or about November 2000, defendant SMITH removed from its proper place of custody and took with him to a meeting with Katrina Leung at her residence, thereby enabling her to take possession of it, a document relating to the national defense, namely, an FBI electronic communication dated June 12, 1997 that had been classified "SECRET."

XVII. On or about September 22, 1998, defendant SMITH submitted to the FBI a required periodic asset evaluation report

relating to Katrina Leung. In this periodic assessment report, defendant SMITH wrote that Leung was "reliable" and also that "Los Angeles has identified no unreliable information furnished by this asset." Defendant SMITH failed to disclose material information in this report, including: (1) that he was involved in a sexual relationship with Katrina Leung; (2) that Katrina Leung had admitted secret unauthorized communications with an MSS officer "Mao"; (3) that Katrina Leung had stated that the MSS officer "Mao" had learned Leung was an FBI asset; and (4) that, in May 1991, Katrina Leung had refused to take a polygraph examination.

XVIII. On or about February 16, 1999, defendant SMITH submitted to the FBI a required periodic asset evaluation report relating to Katrina Leung. In this periodic assessment report, defendant SMITH wrote that Leung was "reliable" and also that "Los Angeles has identified no unreliable information furnished by this asset." Defendant SMITH failed to disclose material information in this report, including: (1) that he was involved in a sexual relationship with Katrina Leung; (2) that Katrina Leung had admitted secret unauthorized communications with an MSS officer "Mao"; (3) that Katrina Leung had stated that the MSS officer "Mao" had learned Leung was an FBI asset; and (4) that, in May 1991, Katrina Leung had refused to take a polygraph examination.

XIX. On or about September 2, 1999, defendant SMITH submitted to the FBI a required periodic asset evaluation report relating to Katrina Leung. In this periodic assessment report, defendant SMITH wrote that Leung was "reliable" and also that

"Los Angeles has identified no unreliable information furnished by this asset." Defendant SMITH failed to disclose material information in this report, including: (1) that he was involved in a sexual relationship with Katrina Leung; (2) that Katrina Leung had admitted secret unauthorized communications with an MSS officer "Mao"; (3) that Katrina Leung had stated that the MSS officer "Mao" had learned Leung was an FBI asset; and (4) that, in May 1991, Katrina Leung had refused to take a polygraph examination.

XX. On or about March 20, 2000, defendant SMITH submitted to the FBI a required periodic asset evaluation report relating to Katrina Leung. In this periodic assessment report, defendant SMITH wrote that Leung was "reliable" and also that "Los Angeles has identified no unreliable information furnished by this asset." Defendant SMITH failed to disclose material information in this report, including: (1) that he was involved in a sexual relationship with Katrina Leung; (2) that Katrina Leung had admitted secret unauthorized communications with an MSS officer "Mao"; (3) that Katrina Leung had stated that the MSS officer "Mao" had learned Leung was an FBI asset; and (4) that, in May 1991, Katrina Leung had refused to take a polygraph examination.

XXI. Between in or about May 1991 and in or about November 2000, based on the nature and content of defendant SMITH's reports, the FBI paid Katrina Leung service payments totaling approximately \$255,000 and expense reimbursements totaling approximately \$696,703.

C. USE OF THE WIRES

I. On or about the date of each count listed below, for the purpose of executing the scheme and artifice to defraud and deprive, defendant JAMES J. SMITH did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, and signals, that is, the following reports sent to FBI Headquarters located in Washington D.C. via wire transmissions from Los Angeles, California, concerning Katrina Leung's work for the FBI:

<u>Count</u>	<u>Date</u>	<u>Use of Interstate Wire</u>
1	Sept. 22, 1998	Transmission of periodic asset evaluation relating to Katrina Leung from Los Angeles, California to Washington D.C.
2	Feb. 16, 1999	Transmission of periodic asset evaluation relating to Katrina Leung from Los Angeles, California to Washington, D.C.
3	Sept. 2, 1999	Transmission of periodic asset evaluation relating to Katrina Leung from Los Angeles, California to Washington, D.C.
4	March 20, 2000	Transmission of periodic asset evaluation relating to Katrina Leung from Los Angeles, California to Washington, D.C.

COUNT FIVE

[18 U.S.C. § 793(f)]

I. The Grand Jury hereby realleges paragraphs 1 through 7 and 10 through 30 of this Indictment as though fully set forth herein.

II. On a date unknown, between in or about December 1993 and in or about November 2000, in Los Angeles County, within the Central District of California and elsewhere, defendant JAMES J. SMITH, being entrusted with and having lawful possession and control of a document, writing and note relating to the national defense, that is, a document relating to the Federal Bureau of Investigation's case assigned the codename "Royal Tourist,"

that contained information concerning a classified offsite location, did, through gross negligence, permit said document relating to the national defense to be removed from its proper place of custody, delivered to a person in violation of defendant's trust, lost, stolen, and abstracted.

[18 U.S.C. § 793(f)]

I. The Grand Jury hereby realleges paragraphs 1 through 7 and 10 through 30 of this Indictment as though fully set forth herein.

II. On a date unknown, between on or about June 12, 1997 and in or about November 2000, in Los Angeles County, within the Central District of California and elsewhere, defendant JAMES J. SMITH, being entrusted with and having lawful possession and control of a document, writing and note relating to the national defense, that is, a Federal Bureau of Investigation electronic communication dated June 12, 1997 that had been classified "SECRET," did, through gross negligence, permit said document relating to the national defense to be removed from its proper place of custody, delivered to a person in violation of defendant's trust, lost, stolen, and abstracted.

A TRUE BILL

Foreperson

DEBRA W. YANG
United States Attorney
Central District of California

GEORGE S. CARDONA
Chief Assistant United States Attorney

REBECCA S. LONERGAN
Assistant United States Attorney
Deputy Chief, Government Fraud & Public Corruption Section

JOHN B. OWENS
Assistant United States Attorney
Government Fraud & Public Corruption Section