



## A F F I D A V I T

### INTRODUCTION

I, Randall Thomas, being duly sworn, hereby depose and say:

1. I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and have been so employed for five years. I am presently assigned to the FBI's Los Angeles Division. I am currently assigned to a foreign counterintelligence investigation, in the course of which I have received training and briefings on foreign counterintelligence matters. While attending the FBI Academy in Quantico, Virginia, I received a block of instruction in conducting foreign counterintelligence investigations and the special legal provisions, policies, and techniques pertinent thereto.
2. This affidavit is made in support of a complaint and arrest warrant for **JAMES J. SMITH** for a violation of Title 18, United States Code, Section 793(f) (Gross Negligence in Handling Documents Relating to the National Defense). This affidavit is further made in support of an application for a search warrant to search **SMITH's RESIDENCE**, located at 4422 Guildhall Court, Westlake Village, California, 91361 (described in Attachment A) for items constituting the fruits, evidence, and instrumentalities of violations of Title 18, United States Code, Section 793(f) (Gross Negligence in Handling Documents Relating to the National Defense) and Title 18, United States Code, Section 1343/1346 (Deprivation of Right to Honest Services/Wire Fraud).
3. On several occasions in July 2002, I personally viewed the **SMITH RESIDENCE**. On March 7, 2003, I confirmed with FBI personnel conducting surveillance of the **SMITH RESIDENCE** that day that the following description remained accurate: The **SMITH RESIDENCE** is a single-family, two-story dwelling located at 4422 Guildhall Court, Westlake Village, California. The address is on the east side of the street, at the corner where Guildhall Court turns to the west and forms a cul-de-sac. Immediately south of the residence is the entry to a public walkway admitting to a common park area running behind the cul-de-sac portion of Guildhall Court. There is an attached garage on the north side of the house. Immediately south of the garage, between the garage door and a white metal gate admitting to the covered front entry, there is a chimney sheathed in flagstone. The garage and house are white. Just south of the driveway, directly in front of the residence, the numbers "4422" are painted on the curb against a white background. The investigation has revealed that other than a post office box, **SMITH** has no office, storage locker, or other place to store items.
4. Because this affidavit is being filed for the limited purpose of supporting warrants to (1) search **SMITH's RESIDENCE**, and (2) arrest **SMITH**, I have not related herein all of the facts known to me as part of this investigation.

### PROBABLE CAUSE

#### **Overview**

5. In the course of conducting an FBI counterintelligence investigation over the last year, and as further detailed below, I have learned that Katrina Leung (a.k.a. CHAN Man Ying, CHEN Wen Ying, LUO Zhongshan, Parlor Maid) was operated from the early 1980's until 2002 as an FBI "asset" providing information about the People's Republic of China (PRC) to the FBI. **JAMES J. SMITH** was the FBI Agent who recruited her and was her primary "handler" until he retired from the FBI in November 2000. **SMITH** routinely debriefed Leung at her residence and on occasion took classified documents there and left them unattended. Leung surreptitiously photocopied some of them, and documents she obtained in this manner have been recovered from her residence. Investigation has revealed that from the early 1980's until December 2002, **SMITH** and Leung had a sexual relationship. Investigation has also revealed that in 1991, **SMITH** learned Leung was providing classified information to PRC intelligence services without authorization by **SMITH** or the FBI, after which **SMITH** continued to allow Leung access to classified information.

#### **Background Re: Counterintelligence Investigations**

6. Beginning in early April 2002 and continuing through the present, I have been assigned to a counterintelligence investigation regarding **SMITH** and Leung. In the course of this investigation, I have conferred with FBI agents experienced in foreign counterintelligence matters, received training, and reviewed training materials prepared by FBI personnel with expertise in the area of foreign counterintelligence, and learned the following:

a. 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 (CIA), the National Security Agency (NSA), the Defense Intelligence Agency, the military, the National Reconnaissance Office, and the National Imaging and Mapping Agency.

b. Persons operating to obtain intelligence for foreign intelligence officers (IOs) are called "agents" or "assets." The IO who operates the agent is called the agent's "handler." To preserve an agent's ability to covertly obtain intelligence, IOs go to great lengths to maintain the secrecy of the agent's identity, even within the IO's own intelligence organization. To this end, agents are commonly assigned code names, and those code names, not the agent's true name, are used in the intelligence organization's communications regarding the agent. These and other measures are designed to protect the identity of the agent from compromise. A "Double Agent" is an agent who is cooperating with an intelligence service of one government on behalf of and under the control of an intelligence or security service of another government, and is manipulated by one to the detriment of another.

c. Agents also travel domestically to thwart detection or to foreign countries beyond the reach of U.S. law enforcement in order to meet with intelligence officers for the purposes of conducting debriefings, receiving tasking and payment, and passing classified and national defense information. d. The information sought by PRC intelligence services includes the identities of FBI employees and the nature of FBI investigations.

i. The identity of FBI employees and information regarding those employees' personal, familial, and professional relationships are of use to hostile intelligence services (including those of the PRC) in their attempts to identify individuals who may have access to classified information and national defense information desired by the PRC, and to identify such individuals' potential vulnerabilities to approach or recruitment by the hostile intelligence service. Because success at such efforts would compromise the United States' counterintelligence capability, intelligence regarding FBI personnel involved in counterintelligence investigations concerns the national defense.

ii. The nature of FBI investigations are of value to hostile intelligence services both because the subject matter of the investigations may reveal foreign intelligence of value to the hostile intelligence service, and because details regarding sensitive or classified methodologies, techniques, and technology employed in FBI investigations enable foreign governments to adopt and/or develop countermeasures to defeat them.

e. Classified information is defined by Executive Order 12958 and its predecessor orders (including E.O. 12356) as follows: 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 as 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. Dissemination of classified information at any level may also be restricted through caveats such as: NOFORN (Not Releasable to Foreign Nationals), NOCONTRACT (Not Releasable to Contractors or Contractor/Consultants), WNINTEL (Warning Notice: Intelligence Sources and Methods Involved), and ORCON (Dissemination and Extraction of Information Controlled by Originator).

#### **SMITH's Position And Access To National Defense Information**

7. On March 7, 2003, I reviewed portions of **SMITH's** FBI personnel file and security file. I have also spoken with other FBI Special Agents who knew and worked with **SMITH**, including SAs Thomas E. Powers and Edgar Del Rosario. From my review of his personnel files and those conversations I have learned the following:

a. **SMITH** was an FBI Agent in the FBI's Los Angeles office. **SMITH** began his career with the FBI in October 1970 and retired in November 2000. **SMITH** transferred from his first FBI office in Salt Lake City, Utah, to the Los Angeles Office in 1971. In approximately July 1978, **SMITH** was assigned to work on a Foreign Counterintelligence (FCI) squad focusing upon the PRC. From that time until his retirement, **SMITH** worked on FCI PRC matters.

b. **SMITH** was the Acting Supervisor of the Los Angeles FCI China squad from March 1983 through October 1983, and was the Relief Supervisor for the squad in the 1990's. During 1991, **SMITH** was the squad's Acting Supervisor, and became the Supervisory Special Agent (SSA) of the squad in 1996. **SMITH** remained the Los Angeles FBI FCI China squad SSA until his retirement.

8. As an FBI Agent, I know that squad supervisors have an obligation to review the cases being investigated by agents whom they supervise on a regular basis, and that such review entails personal meetings with each agent on the supervisor's squad regarding that agent's cases, as well as review of the FBI file regarding each case. I therefore know that **SMITH** would have had access to and a duty to review cases being worked by the FCI PRC squad, both while he was Acting SSA and SSA, and, in the absence of the squad SSA, while he was the Relief Supervisor. This access and review would have included any SECRET, TOP SECRET, or COMPARTMENTED investigations being worked by the squad.

### **SMITH's Relationship With Katrina Leung**

9. In early April 2002, Special Agent Steve Conley (now a Supervisory Special Agent at FBI Headquarters) told me that Katrina Leung (a.k.a. CHAN Man Wing, CHEN Wen Ying, LUO Zhongshan, Parlor Maid) was a long-time FBI asset providing information regarding the PRC. SA Conley told me that he was Leung's current FBI handler, but that retired SSA **JAMES SMITH** had recruited Leung as an asset for the FBI in the early 1980's and had been her handler until his retirement in November 2000. My review of portions of Leung's FBI file in the ensuing months confirmed this.

10. Since approximately April 2002, **SMITH** was the subject of surveillance under the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. Section 1801, et seq. This surveillance, authorized by the Foreign Intelligence Surveillance Court ("FISC") in Washington, D.C. (established under the authority of Title 50 U.S.C. Section 1803), included covert physical searches, interception of telephone and fax communications, and interception of e-mails. The investigation also included physical surveillance, which did not require a FISC authorization. To the extent this affidavit contains any information which may have at one time been classified, such information has been declassified.

11. On December 20, 2002, I swore out an affidavit before United States Magistrate Judge Jeffrey W. Johnson in support of an application for warrants to search Leung's residence and business for evidence of violations of: (a) Title 18, United States Code, Section 152 (concealment of assets from bankruptcy trustee; making false oaths and claims in bankruptcy); (b) Title 18, United States Code, Section 157 (bankruptcy fraud); (c) Title 18, United States Code, Section 371 (conspiracy to violate Title 18, United States Code, Sections 152 and 157, and to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service in the ascertainment, computation, assessment and collection of revenue, to wit, income taxes); and (d) Title 18, United States Code, Section 794(a) (Unlawfully Delivering National Defense Information to Aid a Foreign Government). Thereafter, Judge Johnson issued warrants to search both locations in Magis. Case Nos. 02-2680M and 02-2679M, respectively. Judge Johnson also granted my request that the affidavit be sealed.

12. On March 9, 2003, I reviewed an audio/video recording of a consensual interview of Leung conducted on December 11, 2002 by SA Peter Duerst and SSA D. Brent Robbins. During that interview, both Leung and the interviewing agents refer to **SMITH** as "JJ." Leung admitted to first becoming intimate with **SMITH** in the early eighties "(v)ery long ago, but I cannot tell you what year."

### **SMITH's Access To Classified Materials**

13. As related in paragraph 8, above, **SMITH's** position as both a Special Agent and later a Supervisory Special Agent of the Los Angeles FBI Chinese FCI squad afforded him access to classified material relating to Chinese FCI matters.

14. On March 10, 2003, I reviewed a report prepared by SA Stephen Phillips on February 5, 2003. From that review I learned the following:

- a. Prior to becoming a Special Agent, Phillips was a support employee in the FBI Los Angeles Office assigned to counterintelligence matters. His duties between June 1997 and June 2000 included logging TOP SECRET files and documents in and out of the Secure Compartmented Information Facility (SCIF).
- b. The SCIF is a vault containing safes for the storage of TOP SECRET documents. Security regulations dictate that TOP SECRET materials be stored in a SCIF and be released from the SCIF only under certain conditions and pursuant to controls that assure the TOP SECRET documents are securely maintained.
- c. During the period that SA Phillips worked in the SCIF, authorized personnel generally reviewed TOP SECRET documents in the SCIF. Occasionally, supervisory personnel would sign for TOP SECRET documents, take them from the SCIF to review in their offices, and then return the documents to SA Phillips in the SCIF. With the exception of SSA **SMITH**, supervisory personnel always promptly returned TOP SECRET documents to the SCIF after reviewing them.

d. On at least one occasion when **SMITH** checked out a TOP SECRET document from the SCIF, he did not return the document until the next day or perhaps the day after that. SA Phillips believed this happened in 1999. No other FBI personnel ever retained TOP SECRET documents overnight that they had checked out from SA Phillips in the SCIF.

### **Evidence Showing Leung Obtained National Defense Information From SMITH**

15. On December 12, 2002, I spoke with FBI Assistant Section Chief (ASC) Bruce Carlson, who told me that on December 11, 2002, ASC Carlson met Leung at her residence so that she could voluntarily provide the FBI with certain items she had discussed during an interview with ASC Carlson that day. In the presence of ASC Carlson and SA Del Rosario, Leung voluntarily removed a document from a locked safe in the upstairs bedroom suite and provided it to ASC Carlson. Leung told ASC Carlson in this and subsequent interviews that she could not remember, but believed that she must have obtained the document from **SMITH** without **SMITH's** knowledge approximately twelve years earlier.

16. I have reviewed a photocopy of that document and noted that it appears to include excerpts of transcripts and/or summaries of a conversation or conversations between a female named "Luo" and someone named "Mao." There are five pages. (As discussed in paragraph 23f, below, Leung stated during interviews that "Mao" was her MSS handler, and "Luo" was her MSS alias.)

17. On December 20, 2002, I spoke with SA Duerst and ASC Carlson, who told me the following: Both reviewed photocopies of the document provided by Leung from her safe. On December 16, 2002, they went to the FBI Los Angeles SCIF to examine TOP SECRET FBI documents. The documents had been transmitted by secure means to the FBI Los Angeles Division from FBI Headquarters in Washington, DC. The documents contain verbatim transcripts and several summaries of conversations between a "Mao" and a "Luo." They learned in their review that the five-page document provided by Leung consists of identical portions of the TOP SECRET document they examined, although the line spacing and fonts differ.

18. On December 11, 2002, SA Bruce Carlson and SA Edgar Del Rosario engaged in a recorded conversation with **LEUNG**. I have reviewed a transcript of that conversation. During that conversation, **LEUNG** read the five-page document and stated that she recognized the document as her conversation with "Mao."

19. My training, experience, and review of the excerpted five-page document provided by Leung and the TOP SECRET document containing essentially the same information satisfy me that both documents contain national defense information within the meaning of Title 18, United States Code, Section 793(f).

20. On December 12, 2002, I participated in a limited consensual search of Leung's residence in San Marino, California. Also present and assisting in the search was SA Stephen Lawrence. Shortly thereafter, and again on March 7, 2003, SA Lawrence told me that while searching a shelf in a bookcase to the left of a desk on the second floor close to the stairs, he found the following documents: (1) a FBI Los Angeles NSD-2 squad telephone directory dated December 20, 1994; (2) a telephone list relating to an FBI investigation codename "Royal Tourist"; (3) a SECRET FBI memorandum regarding Chinese fugitives dated June 12, 1997; and (4) a FBI Legat Directory dated March 17, 1994.

21. On March 11, 2003, I spoke with FBI SSA Serena Alston, who told me that "Royal Tourist" was the code name of an espionage investigation of Peter Lee. Lee was employed by TRW in California and admitted passing SECRET restricted information to the PRC during travel to the PRC in 1985. In 1997, Lee pled guilty to Title 18, United States Code, Section 793(d) (Willful Transmission of National Defense Information to a Person Not Entitled to Receive It).

22. Based on my training, experience, and review of the SECRET FBI memorandum dated June 12, 1997 found in Leung's residence, I believe that the document contains national defense information within the meaning of Title 18, United States Code, Section 793(e). This is because the 1997 memorandum was classified SECRET and discussed reporting of national defense information by a confidential FBI source.

23. On December 18, 2002, I spoke with ASC Carlson and SA Duerst who told me they had interviewed Leung over the course of several days between December 11 and December 17, 2002. These interviews were all videotaped and I have reviewed portions of those recordings. Based on my conversation with ASC Carlson and SA Duerst, and my review of the recordings, I know the following occurred during Leung's interviews:

a. Leung admitted taking the five-page document described in paragraphs 16 and 17, above, from **SMITH**. Leung specifically stated, "I think I sneaked it," and subsequently stated that although **SMITH** sometimes allowed her to review classified documents, he never permitted her to retain them.

b. During the interview, Leung was shown copies of the documents described in paragraph 20, above. The copies were all stapled together in a packet. When SA Duerst displayed this packet to Leung during the interview, Leung specifically admitted she took the NSD-2 squad telephone directory, and generally admitted surreptitiously taking and copying documents from **SMITH**.

c. Leung also admitted that **SMITH** would leave his briefcase open, and that the file-folder pockets in the briefcase often contained documents, with the text facing out. Leung stated this enabled her to see documents that she wanted, and that she would remove them and copy them without **SMITH's** knowledge when he left his briefcase unattended.

d. Leung admitted that she made copies of documents from **SMITH's** briefcase using either a photocopier or facsimile machine in her house. Generally, she would make handwritten notes from documents she surreptitiously copied, and then discard the copies in the trash.

e. Leung admitted that she also made notes regarding documents she surreptitiously obtained from **SMITH** without copying the documents. Leung also made notes regarding information **SMITH** told her. Over the years, Leung provided intelligence she gained in this manner to the MSS.

f. Leung admitted that she had an MSS handler named "Mao." "Luo" was her MSS alias, provided to her by a high ranking PRC official.

24. Investigation has revealed that **SMITH** continued to provide information about the FBI and FBI Agents to Leung after he retired. On November 11, 2002, I participated in a FISC-authorized covert search of Leung's luggage at Los Angeles International Airport (LAX) prior to Leung's departure for the PRC. In Leung's luggage there was a facsimile cover sheet from **SMITH** to Leung. A second page, bearing the same facsimile telephone number across the top, bore six photographs from a meeting of the Society of Former Special Agents of the FBI, held in October 2002. Two of the photographs were of active-duty Special Agents who conduct community affairs for the Los Angeles FBI and attended the meeting. On November 25, 2002, I participated in a similar covert search of Leung's luggage at LAX when Leung returned from the PRC. That search was also authorized by the FISC. The photographs of FBI Agents observed in Leung's luggage for her outbound flight on November 11, 2002 were not present in her luggage when she returned.

25. On December 9 and 10, 2002, I monitored via closed circuit television as **SMITH** was interviewed by FBI Agents regarding his relationship with Leung and operation of her as an asset. During the interviews, **SMITH** made the following statements:

a. At multiple points in the interview, **SMITH** stated that any information Leung had obtained regarding FBI operations, sources, and the like, must have come from **SMITH**.

b. **SMITH** stated at several points in the interview that he had probably told Leung too much in the course of operating her as an asset.

c. When asked whether he was having a sexual relationship with Leung, **SMITH** first refused to answer the question, and then denied having a sexual relationship. On November 5, 2002, I participated in a FISC-authorized electronic surveillance of **SMITH** and Leung at a hotel in the Los Angeles area. The electronic surveillance revealed **SMITH** and Leung having sexual relations.

d. **SMITH** stated he had traveled to Hong Kong in February 2001, and again a year or so later. Each trip was for about a week. **SMITH** initially stated that he had traveled alone each time and had not met anyone there. **SMITH** also reported business travel to London years earlier, but did not reveal that he had been in London with Leung.

e. Later in the interview, **SMITH** again stated he traveled alone to Hong Kong, and that he had not gone with his wife or son. When specifically asked if Leung had accompanied him, **SMITH** stated, "she's, she was there."

f. Later in the interview, **SMITH** denied that he had traveled with Leung to any overseas location other than Hong Kong. When pressed, **SMITH** stated that he had met with Leung in London, and had flown back to the United States with Leung.

#### **Evidence Showing SMITH Knew Leung Had Unauthorized Contact With The MSS**

26. As explained in paragraphs 17 through 19, above, and 27d, below, the documents Leung obtained from the safe in her residence and provided to ASC Carlson on December 11, 2002 derived from a TOP SECRET

document.

27. On March 26, 2003, I reviewed a memorandum prepared by SA Todd Wight, summarizing interviews conducted by the FBI of a former FBI SSA on December 19, 2002, January 28, February 3 and February 4, 2003. SA Wight's memorandum also summarized the former FBI SSA's career in the FBI. On March 10, 2003, I reviewed portions of transcripts of those interviews. I have also spoken with SA Duerst, who conducted the first three interviews of the former FBI SSA. From my review of Wight's memorandum and the transcripts, and from my discussions with SA Duerst, I learned that the former FBI SSA provided the following information during the interviews:

a. The former FBI SSA was the supervisor of a Chinese counterintelligence squad in the San Francisco FBI office, and knew both **SMITH** and Leung. Leung provided information to the former FBI SSA and met many times with the former FBI SSA both in Los Angeles and San Francisco, often in the company of **SMITH**.

b. During the second interview on January 28, 2003, the former FBI SSA admitted that he had a long-term sexual relationship with Leung while he was a Special Agent. The former FBI SSA stated that the relationship began in 1991 and continued until 1994. During the third interview on February 3, 2003, the former FBI SSA stated his sexual relationship with Leung began in 1989. On February 4, 2003, in a pre-polygraph examination interview, the former FBI SSA stated that his sexual relationship with Leung began in 1988 and continued until his retirement in 1993. The former FBI SSA further stated that the affair continued in 1997 and 1999.

c. The former FBI SSA did not report his sexual relationship with Leung to the FBI. After he retired, he obtained employment with the University of California. That job requires a security clearance, and provides the former FBI SSA access to classified information. The former FBI SSA had not reported his sexual relationship with Leung to the University of California.

d. The San Francisco FBI had access to a TOP SECRET source, and it was that source which provided the information related in the TOP SECRET document and the related five-page document provided by Leung from her safe described in 16 through 19, above. In 1991, the source provided an audio recording of the conversation between "Luo" and "Mao," transcripts and/or summaries of which formed the substance of the TOP SECRET document and the related five-page document provided by Leung.

e. When the former FBI SSA listened to the audio recording provided by the source, he recognized the voice of "Luo" as Leung. The former FBI SSA immediately notified **SMITH** in Los Angeles. The former FBI SSA was alarmed, because the recording revealed that Leung was communicating with the MSS unbeknownst to **SMITH** or the FBI, and passing information to the MSS without FBI authorization.

f. **SMITH** immediately traveled to San Francisco from Los Angeles to confer with the former FBI SSA about this development. **SMITH** told the former FBI SSA he was not aware of Leung's alias of "Luo" or her communications with "Mao." **SMITH** was visibly upset at the news of Leung's unauthorized communication with the MSS.

g. The former FBI SSA relied on **SMITH** as Leung's handler to appropriately address the problem. Sometime thereafter, prior to meeting with **SMITH** and Leung again, the former FBI SSA asked **SMITH** if the problem with Leung's unauthorized disclosures had been addressed, and **SMITH** affirmed that it had.

#### **Probable Cause That Relevant Items Are In SMITH's House**

28. On March 7, 2003 I spoke with SA Thomas E. Powers, who told me the following: SA Powers has known **SMITH** since the early 1980's, when the two car pooled together to the Los Angeles FBI headquarters building. Through the years, **SMITH** always kept a small calendar/date book in his inside jacket pocket. **SMITH** would frequently refer to the date book and make notations about meetings, telephone numbers, and the like in the book.

29. On March 13, 2003, I spoke with SA Kevin Adley, who participated in the interview of **SMITH** on December 9 and 10, 2002, referenced in paragraph 25, above. SA Adley told me the following: On December 9, **SMITH** referred to a small date book or calendar he had with him to locate a telephone number, and then used his cellular telephone to cancel a lunch meeting he had scheduled that day. (It is my experience that agents frequently note telephone numbers, personal contacts, and meetings regarding their work in personal calendars and date books that they keep with them.)

30. When **SMITH** was interviewed on December 9 and 10, 2002, as referenced in paragraph 25, above, he acknowledged that Leung (and not his wife) had picked him up on his last day of work. **SMITH** also acknowledged he had invited Leung to attend his FBI retirement party in November 2000. He also acknowledged that he had permitted Leung to video tape the party, even though FBI Agents and CIA officers were in attendance. When asked where the tape was, **SMITH** stated "at home."

31. During the same interview, **SMITH** acknowledged that he had decided early in his operation of Leung as an asset to appear with her frequently and publicly as an FBI Agent. My review of evidence seized during the

execution of the search warrant at Leung's residence (referenced in paragraphs 11 and 12, above) revealed photographs of **SMITH** with Leung. Also recovered was a photograph of **SMITH** seated at Leung's kitchen table posing near large coin sacks, with many coins in his hands. The photograph appeared to be comic in intent, as **SMITH** had an exaggerated expression and pose.

32. On December 10, 2002, I spoke with SA Powers, who told me the following: On December 9, 2002 **SMITH** consented to a limited search of the upstairs study at his residence, and to a search of the computer in his study. SA Powers conducted such a search that evening, with the assistance of an FBI computer specialist. No relevant evidence was found in the study, and an electronic image of the computer was obtained.

33. On March 14, 2003, I spoke with SA Samuel B. Whitman, who told me the following: SA Whitman coordinated the review of electronic evidence obtained by FBI computer specialists from **SMITH's** computer during the consensual search at **SMITH's** residence on December 9, 2002. That review has been completed, and the electronic image of **SMITH's** computer yielded no relevant information.

#### **OTHER RELEVANT INFORMATION**

34. In February 2003, **SMITH** voluntarily produced forty-seven journals containing extensive notes regarding his debriefings of Leung between approximately 1988 and 2000, fourteen video tapes, and miscellaneous documents, all pursuant to a grant of act-of-production immunity.

35. On March 26, 2003, I reviewed a surveillance report and learned the following: On February 13, 2003, FBI Surveillance monitored **SMITH** leaving his residence in his vehicle in the morning. He stopped at a liquor store, a bank, and a gas station, and then at a diner where he ate breakfast alone. He then drove to the building where his attorney has an office. Using a luggage carrier, he carted three large boxes and a briefcase into the building. When he departed several hours later, he had only one box and the briefcase.

36. On February 13, 2003, I spoke with SA Duerst, who told me that on that date he went to the office of **SMITH's** attorney, where the attorney provided SA Duerst with one box containing twenty-five of the forty-seven journals described in paragraph 34, above.

37. The information set forth in paragraphs 34 through 36, above, is not offered as probable cause in support of this warrant.

#### **ITEMS TO BE SEIZED**

38. Based on the foregoing, I believe probable cause exists that **JAMES J. SMITH** has violated Title 18, United States Code, Section 793(f) (Gross Negligence in Handling National Defense Information) and that evidence of that violation, and violation of Title 18, United States Code, Section 1343/1346 (Deprivation of Right to Honest Services/Wire Fraud), as more specifically enumerated below, will be found at **SMITH's RESIDENCE**. I therefore request the Court issue a search warrant authorizing a search of **SMITH's RESIDENCE** for the following:

a. any visual recording of **SMITH's** retirement party in November 2000 on printed or magnetic media, specifically including video tape;

b. **SMITH's** calendars and date books for the period 1982 through the present;

c. evidence tending to establish the nature of **SMITH's** relationship with or communication with Leung between 1982 and the present, including letters, cards, facsimiles, diaries, notebooks and other printed materials, audio tapes, photographs, and video tapes; and

d. evidence tending to show travel by **SMITH** and Leung jointly between 1982 and December 2002, including:

i. credit card statements, accommodation receipts, air travel receipts, and itineraries;

ii. photographs, video tapes, letters, notebooks, post cards, and printed images of such travel.

#### **ARREST WARRANT**

39. Based on the foregoing, I also believe probable cause exists that **JAMES J. SMITH** has committed a violation of Title 18, United States Code, Section 793(f) (Gross Negligence in Handling National Defense Information), and request that the Court issue a warrant for his arrest.

#### **REQUEST FOR SEALING**

40. The criminal investigation described herein is continuing. Based on my training and experience, I believe that disclosure of the contents of this affidavit would seriously impede the investigation by disclosing details of the government's investigation and evidence gathered in connection herewith. The targets of the ongoing investigation would be able to learn the present extent of the government's knowledge. In addition, I believe disclosure of the information contained in this affidavit to Katrina Leung would significantly increase her apprehension of arrest and prosecution and therefore would increase the risk that she would destroy evidence and/or flee. For similar reasons, my request for sealing of the affidavit in support of a warrant to search Leung's residence (referenced in paragraph 11, above) was granted by the Court. Accordingly, I request that the court issue an order sealing this affidavit and the sealing order, until the government notifies the court that it is appropriate to unseal these documents.

RANDALL THOMAS

Special Agent

Federal Bureau of Investigation

Sworn and subscribed to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2003

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UNITED STATES MAGISTRATE JUDGE



