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Spy Case Dismissed For Misconduct

Plea Deal Silenced Defendant's Ex-Lover

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LOS ANGELES, Dec. 6 -- A federal judge dismissed all charges Thursday against a California woman accused of spying for China, saying prosecutors illegally blocked the primary witness in her case -- a federal agent with whom she carried on a decades-long affair -- from talking with her attorneys.

The ruling brought an abrupt end to the case against Katrina M. Leung, a San Marino socialite and Republican fundraiser who was arrested in 2003 along with her lover, former FBI agent James J. Smith. The case was a high-profile embarrassment for the FBI, which had paid Leung for years to provide intelligence on the Chinese government.

Even as the government scrambled to assess how much Leung and Smith may have compromised national security, it struggled early on with how to prosecute her without airing more sensitive information in court.

Now it seems those concerns may have doomed the case. In a sharply worded opinion, U.S. District Judge Florence-Marie Cooper said prosecutors committed misconduct by making a plea agreement with Smith in which he was barred from sharing any more information with Leung or her lawyers.

ra W. Yang, the U.S. attorney in Los Angeles, said late Thursday that the prosecutors in the case had behaved ethically and had denied prohibiting Smith from talking to Leung's attorneys.

She said her office would consider appealing the ruling. Justice Department officials said an appeal is likely, because a different federal judge had signed off on Smith's plea agreement.

But Leung's attorneys Janet I. Levine and John D. Vandavelde, in a statement, expressed optimism that "Katrina Leung's nightmare is over."

The lawyers said that prosecutors "engaged in misconduct," gagging Smith and then trying to cover it up: "You can't do that in America."

In a separate case, the Justice Department found evidence of extensive errors and misconduct in a Detroit terrorism case last summer and voided the convictions of three Detroit men.

Leung's arrest was a devastating blow for the FBI, coming two years after the revelation that counterintelligence agent Robert P. Hanssen had sold secrets to the Russians for 20 years.

A Chinese American civic leader, Leung was recruited by Smith in 1982 for her valuable contacts in the top ranks of the Chinese government. Over two decades, she was paid \$1.7 million for intelligence she brought back about the country's military and espionage capabilities and its efforts to influence U.S. electoral politics.

Investigators came to believe during those same years that she was also secretly copying documents that Smith -- with whom she had begun a romantic relationship -- brought to her house.



Though Leung was charged with taking classified documents, neither she nor Smith was ever charged with espionage.

Smith last spring pleaded guilty to lying about the affair during an FBI background review and agreed to cooperate with the government's investigation of Leung in exchange for the dropping of more serious charges of mail fraud and handling of classified documents.

Though prosecutors had argued that they never intended to prevent Smith from talking to Leung's attorneys, Cooper cited an e-mail from a Justice Department lawyer who explained that the clause was added to Smith's plea agreement because the department's counterespionage unit viewed him as a source of classified information who had to be prevented from communicating further with the alleged spy.

Justice officials said late Thursday that they believe the case against Leung could move forward, arguing that Smith's plea agreement could easily be changed in order to help her mount the defense she is entitled to.

In her ruling, however, Cooper maintained that the case had been irreversibly prejudiced against Leung.

She noted that Smith had been facing five felony charges that could have sent him to prison and cost him his pension before he signed the plea agreement. Now, as he awaits sentencing, Cooper wrote, that agreement remains "suspended over his head" with "the sure knowledge that if he violates any of the terms of his plea agreement, the deal is canceled, and his future returns to its former bleak state."

Therefore, Cooper said, "the possibility that he would now feel free to be interviewed on behalf of Ms. Leung is ephemeral at best."

Staff writer Susan Schmidt in Washington contributed to this report.

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