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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA, )

CR 03-434 FMC

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Plaintiff,

ORDER ON DEFENDANT'S  
MOTION TO DISMISS COUNTS 3,  
4, AND 5

vs.

KATRINA LEUNG,

MOTION FOR RELEASE OF  
GRAND JURY TRANSCRIPTS

Defendants.

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The matter came on for hearing on July 7, 2003, on defendant's Motion to Dismiss Counts 3, 4, and 5 of the Indictment. Defendant argued that the Indictment was defective, because it failed to allege that defendant had reason to believe the documents she possessed could be used to the injury of the United States or to the advantage of any other nation.

The Government responded that the plain language of 18 U.S.C. §793(e) does not require such an additional element.

The Court indicated its tentative decision to grant the Motion, and following oral argument, authorized further briefing on the issue. The Court has now read and considered the Government's Supplemental Brief, defendant's Response, and the Government's Supplemental Reply.

The Court was concerned that interpreting the statute to prohibit the unauthorized possession and retention of documents, unaccompanied by knowledge of the nature of the documents, or any "reason to believe" that they

1 could injure the United States, would render the statute unconstitutionally  
2 vague, relying on *Gorin v. United States*, 312 U.S. 19, 26-27.

3 The Court is now persuaded that because §793(e) requires a finding that  
4 defendant “wilfully” retained or delivered the documents, the scienter  
5 requirement is satisfied. In the context of a criminal statute, wilfully refers to  
6 a culpable state of mind. “...when used in the criminal context, a ‘willful’ act is  
7 one undertaken with a ‘bad purpose.’ In other words, in order to establish a  
8 ‘willful’ violation of a statute, ‘the Government must prove that the defendant  
9 acted with knowledge that his conduct was unlawful.’ *Ratzlaf v. United States*,  
10 510 U.S. 135, 137, 114 S.Ct. 655, 657, 126 L.Ed.2d. 615 (1994) . . . it generally  
11 means an act done with a bad purpose. [citations]” *Bryan v. United States*, 524  
12 U.S. 184, (1998). Wilfully has been defined to mean an act done without ground  
13 for believing it is lawful. *Roby v. Newton*, 121 Ga. 679, 49 S.E. 694 [cited with  
14 approval in *Bryan, supra*). In *United States v. Murdock*, 290 U.S. 389, 394, the  
15 Court equated an act done wilfully as one done with a bad purpose.

16 The Government cannot, then, obtain a conviction of defendant for  
17 violation of 18 U.S.C. §793(e) without proving that she had unauthorized  
18 possession of documents relating to the national defense, and that she wilfully  
19 retained the same, knowing that her conduct was unlawful. See also *U.S. v.*  
20 *Truong Dinh Hung*, 629 F.2d. 908, 918.

21 In light of the Courts, ruling on Defendant’s Motion to Dismiss Counts  
22 3, 4, and 5, the Court deems release of the grand jury transcripts as unnecessary.

23 Defendant’s Motion to Dismiss is denied.

24 Defendant’s Motion for Release of Grand Jury Transcripts is denied.

25 Dated this 14<sup>th</sup> day of July 2003.

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28 FLORENCE-MARIE COOPER  
United States District Judge