



Criminal Prohibitions on Disclosing the Identities of Covert Intelligence Assets

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The [recent arrest](#) of a former Central Intelligence Agency (CIA) officer with knowledge of human intelligence operations targeting China that reportedly have been compromised raises questions regarding possible legal recourse the United States may take. The alleged perpetrator, Jerry Chun Shing Lee, was arrested in New York and is being transferred to Virginia on a [criminal complaint](#) alleging willful retention of national defense information in violation of the [Espionage Act](#). Such an offense is punishable by up to 10 years' imprisonment and a fine. If other reported allegations regarding the damage to the U.S. human intelligence network can be substantiated, more charges may be possible. For example, if, as alleged, the retained information was disclosed to any person not authorized to receive it, the Espionage Act, [18 U.S.C. §793\(e\)](#) could also be charged.

More serious charges could potentially stem from [18 U.S.C. §794](#), which applies when protected national security information is given to a foreign government for its benefit or to the detriment of the United States. Punishment up to life imprisonment is available plus forfeiture of any property gained due to the violation or used for it. The death penalty is available in the event of a finding that “the offense resulted in the identification by a foreign power ... of an individual acting as an agent of the United States and consequently in the death of that individual,” among other things.

The [Intelligence Identities Protection Act \(IIPA\)](#) may be another potential source for criminal charges in the case. [50 U.S.C. §3121](#) provides, in pertinent part:

Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined under Title 18 or imprisoned not more than 15 years, or both.

The [applicable maximum fine](#) is \$250,000, unless any pecuniary gain or loss resulted from the offense, in which case the fine may be set at twice the amount of loss or gain. A sentence under Section 3121 is to be served consecutively with respect to any other prison sentence.

To date, there do not appear to be any reported cases interpreting the IIPA, but it did result in two convictions pursuant to guilty pleas. In 1985, [Sharon Scranage](#), a former CIA clerk, pleaded guilty for

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providing classified information regarding U.S. intelligence operations in Ghana to a Ghanaian agent with whom she was romantically involved. It was [reportedly suspected](#) that a Ghanaian source may have been killed due to her disclosure. She was initially sentenced to five years in prison, but a federal judge [reduced her sentence](#) to two years in light of the relatively lenient treatment the U.S. government accorded the Ghanaian agent, who was sentenced to 20 years after pleading no contest to espionage but was soon thereafter returned to Ghana as part of a [spy exchange](#).

In 2012, a former CIA officer [pleaded guilty](#) to one count of violating the IIPA for giving the names of one covert agent to a journalist. The defendant, John Kiriakou, was initially [charged](#) under the Espionage Act, 18 U.S.C. §793, as well, but these charges were dropped as part of the plea agreement. He was sentenced to 30 months in prison. The disclosures [came to light](#) after defense counsel for certain high-value detainees at the U.S. Naval Station in Guantanamo Bay, Cuba, filed classified papers in connection with military commission trials that included photographs of the agents. Investigators concluded that the detainees' defense team had not violated any statute.

Other spies whose crimes are known to have resulted in the deaths of covert agents were charged with more serious offenses under 18 U.S.C. §794, but not under the IIPA, possibly because of the stiffer punishments available under the Espionage Act. [Aldrich Ames](#), whose activities [resulted](#) in the executions of 10 Soviet sources for the Federal Bureau of Investigation (FBI) and CIA, pleaded guilty to espionage and was sentenced to life imprisonment. [Robert Hanssen](#), whose work as an FBI “mole” for the Soviet and later Russian security services resulted in the deaths of [at least three covert agents](#), pleaded guilty in 2001 to multiple counts of espionage and likewise received multiple life sentences. This history suggests that, if the allegations against Mr. Lee can be proven and the damage to the intelligence network severe, he will most likely be tried for violating the Espionage Act.

For more information about laws prohibiting the disclosure of classified information, see CRS Report R41404, *Criminal Prohibitions on Leaks and Other Disclosures of Classified Defense Information*, by Stephen P. Mulligan and Jennifer K. Elsea. For information about espionage involving China, see CRS Report RL30143, *China: Suspected Acquisition of U.S. Nuclear Weapon Secrets*.

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