



© Photo Art Lucas | AdobeStock

## Theft of Trade Secrets:

### The Economic Espionage Act, China Initiative, and Silicon Valley

#### I. Introduction

With white collar prosecutions generally on the decline, one area is on the Justice Department's hot button list: theft of trade secrets. The perceived diversion of American innovation fits right in with the administration's interests and political aspirations. The result: the revival of the Economic Espionage Act ("the Act").

The Economic Espionage Act, enacted in 1996, criminalized the theft of trade secrets. For more than a decade after passage, prosecutions were exceedingly rare; federal prosecutors brought a mere 96 cases from 1996 to 2009.<sup>1</sup> During the Obama administration, the number of prosecutions continued to gradually creep upward until suddenly skyrocketing in 2017.<sup>2</sup> The reason for this sudden flurry of activity? A renewed interest by the current administration in "coordinating and developing the United States' overall intellectual property enforcement policy and strategy ... to ensure effective intellectual property protection and enforcement, domestically and abroad."<sup>3</sup>

To that end, the Economic Espionage Act was extended in 2016 to include the Defend Trade Secrets Act ("DTSA"), which created a federal private civil right of action for trade secret misappropriation and increased penalties for corpo-

rations convicted of trade secret theft.<sup>4</sup> The statute also included a requirement that the attorney general, in consultation with other agencies, submit to Congress a report on the "scope and breadth of trade secret theft affecting U.S. companies occurring outside the United States."<sup>5</sup>

And in November 2018, the Trump administration announced the "China Initiative," an unequivocal Department of Justice ("DOJ") directive to "redouble [its] efforts" to prevent China-related trade secret theft.<sup>6</sup> Assistant Attorney General Brian A. Benczkowski promised to bring "every necessary resource to bear" to "counter Chinese economic aggression."<sup>7</sup> The DOJ's broad view that "[e]very day, the Chinese engage in efforts to steal American trade secrets and commit other illegal acts intended to enrich their economy at the expense of American businesses" explains its renewed deployment of the Economic Espionage Act.<sup>8</sup>

All these initiatives, policies and statutes, aimed at reducing theft of trade secrets domestically and internationally, mean that white collar practitioners should have a clear understanding of the Economic Espionage Act and its applications. This article will examine (1) definitions and elements under the Act; (2) possible defenses; (3) parallel civil proceedings under the Trade Secrets Act; (4) the China Initiative; and (5) recent case examples.

#### II. Breakdown of the Economic Espionage Act

The Economic Espionage Act<sup>9</sup> contains two provisions — 18 U.S.C. § 1831 and § 1832 — criminalizing the theft of trade secrets. Section 1831 addresses economic or industrial espionage and requires that the theft benefit a foreign

BY JULIA JAYNE AND ASHLEY RISER

entity. Section 1832 concerns the commercial theft or misappropriation of trade secrets. Individual offenders face up to 15 years of imprisonment for economic espionage and up to 10 years for trade secret theft. The penalties carry steep fines as well, particularly for organizations.

### A. Misappropriation of Trade Secrets

To establish a violation of § 1832, the government must prove that (1) the defendant obtained, destroyed or conveyed information without authorization; (2) the defendant knew the information was proprietary; (3) the information was a trade secret; (4) the defendant intended to convert the trade secret to the economic benefit of someone other than the owner; (5) the defendant knew or intended that the owner would be injured; and (6) the trade secret was related to or included in a product produced or placed in interstate or foreign commerce.<sup>10</sup>

#### Trade Secret

It is critical to first understand the definition of a “trade secret” in this context. Broadly speaking, a trade secret is (1) information that is nonpublic; (2) which the owner has taken reasonable measures to protect; and (3) the information derives independent economic value from not being publicly known.<sup>11</sup>

While trade secrets are defined as “all forms and types of . . . information,”<sup>12</sup> the information must be unknown to outsiders because the owner took measures to keep the information confidential. As such, generalized knowledge or standard industry practices will not — on their own — qualify. Indeed, the legislative history of the Economic Espionage Act advises that, “[w]hile we do not strictly impose a novelty or inventiveness requirement in order for material to be considered a trade secret, looking at the novelty or uniqueness of a piece of information or knowledge should inform courts in determining whether something is a matter of general knowledge, skill or experience.”<sup>13</sup>

Additionally, to qualify as a trade secret, the owner of the information must take “reasonable measures” to keep the information *secret*.<sup>14</sup> Examples of such reasonable measures include the following:

- ❖ nondisclosure and confidentiality agreements for both employees and contractors<sup>15</sup>
- ❖ installation of monitoring software on employees’ computers in order to track employee usage and actions<sup>16</sup>

- ❖ coded product labels<sup>17</sup>
- ❖ password-protected databases and documents<sup>18</sup>
- ❖ limited distribution<sup>19</sup> and disclosure practices<sup>20</sup>
- ❖ physical barriers (e.g., fencing, locking gates, and security guards)<sup>21</sup>
- ❖ marking documents as confidential<sup>22</sup>

Even if a company uses reasonable measures to secure a trade secret, that very same company may easily forfeit trade secret protection with sloppy electronic storage practices. In one Florida case, Yellowfin, a manufacturer of high-end fishing boats, limited its employees’ access to information and used password-protection on all company computers.<sup>23</sup> However, these “positive steps” towards securing trade secret information were fatally compromised when Yellowfin encouraged an employee to keep customer information on the employee’s personal phone and computer.<sup>24</sup>

In another civil case, a Pennsylvania court held that GEICO did not take reasonable measures to protect its trade secrets — here, “claims data, numbers, and values” — when GEICO used that very same information to support a notice of removal.<sup>25</sup> The notice was publicly filed because GEICO failed to file a motion to seal, as required. Perhaps most egregiously, GEICO did not abide by the requirements of its own Protective Order: GEICO filed the motion without stamping the document “confidential.”<sup>26</sup>

Finally, information qualifies for trade secret protection if “the information derives independent economic value, actual or potential, from not being generally known.”<sup>27</sup> The value can be established by showing what the trade secret could be sold for in the open market (or what competitors would be willing to pay).<sup>28</sup>

#### Mens Rea

The government must further prove that the defendant knew, or was substantially certain, that he or she stole, downloaded or received a trade secret.<sup>29</sup> The legislative history suggests the government would not have to prove the defendant knew of the statutory definition of a trade secret before engaging in the alleged act of misappropriation. Rather, the knowledge element is directed at obtaining information the defendant knew or should have known to be proprietary and economically valuable.<sup>30</sup>

#### Economic Benefit of Another

What if the defendant obtained a trade secret for reference or educational purposes only, but never intended to economically benefit another? That is what happened in *United States v. Shiah*, a case in the Central District of California.<sup>31</sup> There, a defendant (albeit, in a bench trial) was acquitted of trade secret theft on the asserted ground that he only had the information for reference purposes. While the government claimed that Mr. Shiah stole trade secrets in order to “line his own pockets,” the court rejected this argument, reasoning that Mr. Shiah never used the information while working for a new company.<sup>32</sup> Thus, the completed crime necessitates that someone else is the intended beneficiary for trade secret theft. Notably, an *actual* economic benefit does not need be proven; a mere intent to provide an economic benefit will suffice.

#### Intent to Injure

A violation of § 1832 includes an intent to injure the owner of the trade secret. This means the government must prove the defendant “knew or was aware to a practical certainty that his conduct would cause some disadvantage to the rightful owner.”<sup>33</sup> Yet proof of an actual injury is not required.

#### Stole, Copied, or Received

Stealing a trade secret is only one method by which someone can be found guilty of trade secret theft. The Economic Espionage Act includes other prohibited conduct: destroying, altering, replicating, or receiving. Each of these actions, combined with the other elements, can result in criminal charges and possible conviction. Because it is rare that an alleged thief would obtain exclusive access to a particular trade secret, the statute provides for these alternative means of proving theft.

### B. Industrial or Economic Espionage

A breach of § 1831 of the Economic Espionage Act requires the government to prove that (1) the defendant obtained, destroyed or conveyed information without the authorization of the trade secret’s owner; (2) the defendant knew that this information was proprietary; (3) the information was a trade secret; and (4) the defendant knew that stealing the information would benefit — or was intended to benefit — a foreign government, instrumentality, or agent.<sup>34</sup> This last element, unique to economic espionage, requires a substantial connection to a foreign government.<sup>35</sup> The foreign

agent definition similarly requires a nexus to the foreign government.

A key distinction between § 1831 and § 1832 is the defendant's state of mind.<sup>36</sup> Someone commits economic espionage if they know a foreign entity *could* benefit from the disclosure of the trade secret. This “benefit” is not limited to financial gain; “reputational, strategic, or tactical” advantages are also considered benefits. Conversely, misappropriation of trade secrets (§ 1832) requires a *specific intent* to financially benefit someone other than the owner and an intent to injure the trade secret's owner.<sup>37</sup>

Ultimately, while misappropriation requires the secret to be produced or placed in interstate or foreign commerce, economic espionage does not have a similar commerce component. Simply put, economic espionage refers to *any* U.S. trade secret.

### III. Defending a Trade Secrets Case

With these elements in mind, it might seem dubious as to how one might defend a case with facts that, on the surface, appear to meet all the requisite elements. As with most white collar cases, the gems lie in the granular details, and the *mens rea* requirement opens up a possible line of defense.

#### A. Not a Trade Secret

As tempting as it may be to categorize a particular recipe, customer list, formula or strategy as a trade secret just because it lies within the password-protected computers of a Silicon Valley campus, not every corporate development is a trade secret. Courts have previously declined to extend trade secret protection — in some instances — to the following:

- ❖ improvements to fortune telling cards<sup>38</sup>
- ❖ job description and job requirements<sup>39</sup>
- ❖ textbooks<sup>40</sup>
- ❖ macaroni and cheese<sup>41</sup>
- ❖ patented inventions<sup>42</sup>
- ❖ product functionality<sup>43</sup>

When evaluating potential trade secret classifications, it is critical to remember that the definition of a trade secret does not include general knowl-

edge, skills, or abilities. One cannot undermine the intellect and personal abilities of individuals who set off to a competitor and develop a competing product based on their own talents coupled with generalized knowledge. This is an area ripe for investigation, exploration, and research.

#### B. Owner Did Not Sufficiently Protect the Secret

Another defensive strategy that can chip away at the trade secret element is the argument that the information was publicly known, or at least accessible to the public. Defense counsel should spend time investigating whether the information at issue was available through technical journals, external publications, government-issued protocols and standards, or otherwise known to industry (rather than company) insiders.

The revelation that any low-level employee in a large company had access to the alleged trade secret can overcome a finding that the company took measures to keep the information under wraps. It may be worth the effort to inquire into precisely which employees at a given company could access the allegedly proprietary materials.

Surprisingly, a trade secret can lose its protected status if someone discloses it through legal filings — either through prior litigation or during the issuance of a patent — or through accidental or intentional disclosure by employees at conferences, trade shows, industry publications, or other writings.<sup>44</sup> Defense counsel will likely need to hire expert witnesses to interpret complicated data and reports in anticipation of what may come down to a battle of the experts. Differing expert opinions may be just enough to create reasonable doubt in a juror's mind.

Aside from having an expert witness, to further negate the allegation of a proprietary nature, defense counsel should review patent applications, industry journals, and industry tradeshow presentations to uncover whether purported “trade secrets” are really just a work-product compilation of publicly available information. This is admittedly tedious work, but locating the supposed trade secret in the public domain may significantly turn the tide for the client.

#### C. Traditional Civil Action Defenses

When defending against claims of trade secret theft, the criminal defendant should explore two traditional civil defenses: reverse engineering and parallel development. Reverse engineering refers to the

practice of “starting with the known product and working backward to divine the process which aided in its development.”<sup>45</sup> Similarly, parallel development is the use of “skills, knowledge and experience to solve a problem or invent a product that they know someone else is working on.”<sup>46</sup>

Both affirmative defenses address the misappropriation element of trade secret theft. Misappropriation requires obtaining the information through “improper means,” and improper means does not include “reverse engineering, independent derivation, or any other lawful means of acquisition.”<sup>47</sup> While the Act does “not expressly address when reverse engineering would be a valid defense,” the legislative history suggests that prosecutions for trade secret theft should “focus on whether the accused has committed one of the prohibited acts.”<sup>48</sup>

#### D. No Intent to Benefit Another or Injure the Owner

As discussed above in *Shiah*, one possible defense to defeat the “benefit” element is that the accused did not intend to benefit a third party or injure the owner. A defendant may gain some real traction by arguing that the materials were obtained for an innocuous purpose such as personal education or development, for posterity, or some other reason that does not implicate an economic benefit to another (at least for § 1832).

#### E. Defendant Did Not Intentionally Misappropriate Trade Secrets

The language of § 1832 necessarily incorporates the common law doctrine of conversion.<sup>49</sup> At common law, conversion is a willful act that deprives the rightful owner the use and possession of the property.<sup>50</sup> By requiring the government to prove that the defendant acted with the intent to steal, or convert, and further requiring the defendant to injure the trade secret's owner, § 1832 ostensibly prevents prosecution for inadvertent acquisition of trade secrets.<sup>51</sup>

## IV. The Defend Trade Secrets Act

Before the passage of the Defend Trade Secrets Act, civil trade secret misappropriation claims were generally confined to state courts. While 48 states adopted different versions of the Uniform Trade Secrets Act (“UTSA”), the interpretations of key statutory provisions differed.<sup>52</sup> A March 2016 Senate Judiciary

Committee report observed that “(a)lthough the differences between State laws and the UTSA are generally relatively minor, they can prove case-dispositive.”<sup>53</sup>

For example, the Uniform Trade Secrets Act defines misappropriation as the “acquisition ... by a person who knows ... that the trade secret was acquired by improper means” or “use of a trade secret ... by a person who ... used improper means to acquire knowledge ... or ... knew ... that his knowledge ... was ... through a person who ... utilized improper means.”<sup>54</sup> However, the UTSA does not define “improper means”; the UTSA merely states that “[i]mproper means includes theft, bribery, misrepresentation, breach or espionage.”<sup>55</sup>

## The revelation that any low-level employee had access to the alleged trade secret can overcome a finding that the company took measures to keep the information under wraps.

The Defend Trade Secrets Act corrected this uncertainty because it created a uniform standard for trade secret misappropriation by expanding the Economic Espionage Act to provide a *federal* civil remedy for trade secret misappropriation. The creation of this federal cause of action effectively allows companies to litigate theft of trade secret issues twice. An owner of a trade secret can now bring a civil federal action alleging misappropriation of trade secrets against the same defendant(s) as in a state case. Moreover, the trade secrets protected by the Defend Trade Secrets Act are the same ones subject to criminal prosecution.<sup>56</sup>

Under the Economic Espionage Act, companies did not have a robust set of pretrial civil remedies; the only way to address theft was the provision allowing courts to issue protective orders.<sup>57</sup> The Defense of Trade Secrets Act significantly expanded the types of pretrial and post-trial remedies available to companies. In addition to protective orders, remedies include injunctive relief, damages, and *ex parte* property seizures.<sup>58</sup> While intended to offer substantial protection to trade secret owners, the civil remedies often do so at the expense of the defendants. For example, the *ex parte* seizure provision permits a company to petition the court — without notice — to order federal law enforcement to seize property to prevent the circulation or distribution of alleged trade secrets.<sup>59</sup>

## V. China Initiative

The Trump administration’s trade war with China continues to escalate,<sup>60</sup> at least in part due to the perceived theft of trade secrets. American officials allege that China’s rapidly expanding tech market is a result of the theft of American innovation,<sup>61</sup> and it is this theft that has galvanized the administration to push tougher sanctions in the form of tariffs. In September 2018, the administration imposed tariffs — affecting approximately \$200 billion worth of goods — citing China’s refusal to eliminate policies and practices<sup>62</sup> that unfairly discriminate against U.S. products.<sup>63</sup> And in May 2019, the administration

announced an intention to increase tariffs on \$200 billion of Chinese goods from 10 percent to 25 percent as a rebuke to unfair trade practices.<sup>64</sup>

In an April 2019 speech, Deputy Assistant Attorney General Adam Hickey stated that China used “vague and discretionary administrative approval processes” to pressure American businesses to transfer technology as a prerequisite to join the lucrative Chinese market.<sup>65</sup> It is the administration’s position that these market access restrictions and technology transfer requirements prevent U.S.-based companies from fairly competing within China.<sup>66</sup> In response to these mounting concerns, the DOJ launched the China Initiative in late 2018.<sup>67</sup>

The China Initiative, building upon the previous administration’s attempts to combat China’s “economic aggression,”<sup>68</sup> prioritizes the investigation and prosecution of economic espionage cases with ties to China. The DOJ explained that the initiative will — in addition to identifying and prosecuting trade secret theft and economic espionage — increase efforts to protect U.S. infrastructure against “foreign direct investment, supply chain threats and the foreign agents” who have failed to register as such.<sup>69</sup> Moreover, the Trump administration has invested heavily in local initiatives intended to thwart trade secret misap-

propriation and economic espionage at the ground level. This multifaceted approach is considered experimental,<sup>70</sup> and it represents a shift in federal treatment of economic espionage.

Before formally announcing the China Initiative, the administration considered numerous other methods to curb the flow of American information to China. Some of these measures included the restriction of visas for students in STEM (science, technology, engineering, and mathematics) fields, increased official scrutiny of China-backed research in the United States, and banning certain Chinese companies from utilizing 5G networks in the United States.<sup>71</sup>

Remarkably, U.S.-based companies have generally responded positively to the China Initiative. Companies themselves are typically reticent to directly criticize China because of concerns regarding economic blowback from Chinese regulators.<sup>72</sup> As such, many businesses have traditionally articulated concerns or criticisms via trade industry groups,<sup>73</sup> a move that lacks the bite of federal prosecution.

## VI. Corporate Trends and Increased Trade Secret Prosecutions

### A. Shifting Attitudes in Silicon Valley

Silicon Valley’s historically fraught relationship with the government has inspired countless lawsuits. Google notoriously refused to comply with a subpoena for user data in relation to the Child Online Protection Act,<sup>74</sup> Microsoft rebuffed requests for information related to international drug smuggling,<sup>75</sup> and Facebook rejected a defense subpoena in a murder case.<sup>76</sup> While tech companies remain decidedly chilly towards law enforcement — as Google, Amazon, and Microsoft employees’ recent refusal to work on Department of Defense projects<sup>77</sup> demonstrates — interest in retaining market shares and reducing foreign competition may be taking priority in the trade secret context.

Working with federal law enforcement has exposed a real benefit for companies: criminal investigations offer yet another cudgel against competitors. In fact, after refusing to work with the government for decades, companies have begun approaching law enforcement with information or referring cases regarding misappropri-

ation in efforts to inspire criminal investigation and prosecution.<sup>78</sup>

### B. Increased Indictments

And the feds are eating it up.

In February 2019, the Trump administration released the Annual Intellectual Property Report to Congress (“AIPRC”).<sup>79</sup> The report explores intellectual property rights (“IPR”). According to the report, at the end of 2018, the FBI had 195 pending IPR investigations.<sup>80</sup> The largest number of investigations — 67 — dealt with the theft of trade secrets. Further, the FBI reported that it initiated “54 new investigations, made 22 arrests, obtained 12 convictions, forfeitures totaling \$3,176,949, and restitutions totaling \$64,549,217.”<sup>81</sup> As previously discussed, the number of prosecutions under the Economic Espionage Act remained nearly non-existent for more than a decade after its passage.

When companies begin internal investigations — particularly with the goal of eventual legal action — law enforcement has an opportunity to piggyback on those efforts.<sup>82</sup> Further, if civil litigation is underway, law enforcement can more easily access vital documents. These cost-saving strategies make it that much more appealing for the government to prioritize trade secret prosecutions.<sup>83</sup> After all, law enforcement, including the FBI, “does not have the resources to investigate every case of trade secret theft.”<sup>84</sup>

Thus, it is not surprising that this wave of recent federal trade secret theft prosecutions coincides with a significant increase in civil trade secret theft claims filed in federal court.<sup>85</sup>

### C. Decreased Employee Mobility

More than 1,100 civil trade secret misappropriation suits were filed in 2017,<sup>86</sup> and most of these suits were directed at employees who defected to other companies.<sup>87</sup> Companies may argue these lawsuits are necessary for protection of valuable assets. However, in present times, these suits carry an implicit threat of criminal prosecution.<sup>88</sup> Through litigation — or at least its implication — companies increase the stakes for an employee considering leaving for a competitor.

Trade secret suits thus function as a sort of noncompete clause.<sup>89</sup> In fact, these claims are potentially preferable to traditional noncompete clauses because the latter are illegal in some states, or at least subject to significant limitations.<sup>90</sup>

The advertisement features a yellow background. At the top center is a logo consisting of a blue shield with a white outline, containing a stylized blue 'W' and a profile of a head with a blue brain-like shape inside. The shield is flanked by two sets of white wings. Below the shield is the text 'TM'. Below the logo, the word 'WINGMAN' is written in large, bold, red, serif capital letters. Underneath that, 'Opportunity' and 'Noiacoin' are written in blue, serif font. Below these, 'The “Bitcoin” of addiction' is written in a smaller blue, serif font. At the bottom, the website 'alexaforaddiction.com' is written in a blue, sans-serif font. To the right of the text is a circular logo for 'NOIACOIN'. The logo has a white background with a blue border. Inside the circle is a stylized eye or brain symbol. Text around the inner edge of the circle reads: 'Come to believe that a power greater than ourselves could make us to happy. AddictionBlockChain.com'. The word 'NOIACOIN' is written in bold, black, sans-serif capital letters at the bottom of the circle.

As an added bonus for companies, this type of litigation protects business interests and warns would-be defectors of the cost of leaving.

## VII. Case Studies

### A. Prosecutions Following Civil Actions

#### DRAM Trade Secrets Allegedly Stolen from Micron

In late 2018, a grand jury indicted United Microelectronics Corporation (“UMC”), Taiwan’s first semiconductor company, Fujian Jinhua Integrated Circuit Company (“Jinhua”), a state-backed memory chip maker, and three Taiwan nationals for allegedly stealing trade secrets related to dynamic random access memory (“DRAM”) from Micron, an Idaho-based semiconductor company.<sup>91</sup> The indictment followed a civil lawsuit filed by Micron in 2017 alleging misappropriation of its trade secrets under the Defend Trade Secrets Act, among other claims.<sup>92</sup>

This was the first case indicted under the China Initiative.<sup>93</sup> The government alleged that the theft of Micron’s trade secrets was intended to benefit the People’s Republic of China (“PRC”), as Jinhua is a state-owned enterprise that

did not possess DRAM prior to the events alleged in the indictment.<sup>94</sup>

The Micron case is also significant because federal prosecutors evoked a previously unused provision of the Economic Espionage Act, and they brought a simultaneous civil lawsuit.<sup>95</sup> In doing so, prosecutors seek to block Jinhua from exporting DRAM, alleging it relies on technology stolen from Micron. As a further blow to Jinhua, the U.S. Commerce Department blocked sales of U.S. chip-making gear to the Taiwanese company, virtually eliminating their ability to produce semiconductors.<sup>96</sup>

Such multipronged tactics are a strong signal that the United States is taking an aggressive approach when it comes to allegations of stolen technology, particularly when en route to Chinese industry.

#### Former Employees Indicted After Moving to Competitor

Prosecutors in the Northern District of California brought charges against six former employees of the wearable technology company Jawbone following trade secret litigation between Jawbone and its competitor Fitbit.<sup>97</sup> The indictment alleges that the defendants accepted employment with Fitbit — who was

not charged or otherwise implicated — and stole 14 separate trade secrets after they had signed confidentiality agreements with Jawbone. Interestingly, the defendants argued that they were not alleged to have worked together or even have known one another; as a result, the district court judge recently granted a motion to sever misjoined defendants.<sup>98</sup>

Both companies are based in San Francisco, indicating the DOJ's relatively new interest in prosecuting trade secret theft even when no foreign actor is involved.

### B. Engineers Charged with Trade Secret Theft from Apple

In the wake of layoffs affecting 190 employees,<sup>99</sup> two Apple employees were indicted for “similar (acts of) espionage.”<sup>100</sup> Both engineers were members of Apple's self-driving car project, Project Titan. On July 12, 2018, Xiaolang Zhang was indicted for one count of stealing trade secrets<sup>101</sup> and on Jan. 31, 2019, Jizhong Chen was indicted on one count of copying or duplicating trade secrets.<sup>102</sup>

Mr. Zhang was indicted after allegedly taking photos of a 25-page document with detailed drawings of a circuit board.<sup>103</sup> The alleged theft occurred while Mr. Zhang was purportedly setting off to work for a Chinese startup specializing in electric cars and self-driving technology.<sup>104</sup>

Apple began investigating Mr. Chen after a fellow employee reported seeing him take photos of documents. When Apple searched his computer, they discovered thousands of files, such as “manuals, schematics, and diagrams.”<sup>105</sup> After discovering the documents, Apple learned that Mr. Chen had recently applied for a position with a Chinese competitor of Apple.

Interestingly, Mr. Zhang's charges involve more deceit than Mr. Chen's — a violation of § 1831, sub§ (a)(1) requires the defendant to steal, “carry away,” or “conceal.”<sup>106</sup> Conversely, a violation of § 1831, sub § (a)(2) merely requires the defendant to copy, duplicate, or download without authorization.<sup>107</sup>

### C. Industrial Espionage Alleged in Theft of Turbine Technology

In April 2019, two individuals in the Northern District of New York were charged with economic espionage and conspiring to steal General Electric's trade secrets surrounding turbine technologies for the alleged purpose of benefiting the People's Republic of China.<sup>108</sup>

The defendants are engineers accused of using their access to General Electric's files to steal design models, engineering drawings and other material specifications related to General Electric's gas and steam turbines. Prosecutors assert that the defendants took the materials to benefit not only two Chinese companies that research and develop parts for turbines, but also the Chinese government and other state-owned institutions.

### D. Medical Devices

The case of Wengfeng Lu reveals the type of sentence one may face in a modern trade secrets prosecution. Mr. Lu was sentenced to 27 months in federal prison in January of this year after he pled guilty to six counts of unauthorized possession and attempted possession of trade secrets.<sup>109</sup> Mr. Lu admitted to copying documents containing technical information and trade secrets from two medical device companies he had worked for in Southern California. According to the allegations, he then traveled to Taiwan, where he was preparing to open a company that would use the stolen technology to manufacture devices that would treat vascular problems. He purportedly was to receive funding and financial benefits from the Chinese government.

### E. After Sharing Files with a Competitor, Former Employee Sent to Prison

In this case, the victim was chemical company DuPont. Josh Isler was sentenced in April 2019 to 42 months in prison after entering a guilty plea to one count of trade secret misappropriation, as well as one count of lying to the FBI.<sup>110</sup> The trade secret theft occurred after a U.S.-based DuPont competitor recruited Mr. Isler with an offer of a new car and significantly higher salary. After accepting the job, Mr. Isler submitted his resignation to DuPont, transferred “hundreds of DuPont's electronic files to an external media device folder,” and shared those documents with the competitor.<sup>111</sup>

## VIII. Conclusion

Is a corporate development or a password-protected document really a “trade secret?” Did the defendant know the materials were proprietary? Was the information obtained for an innocuous purpose, with the intent to injure the owner? These are questions that must be skillfully answered and dissected by defense counsel in conjunction with the advice of unconflicted expert witnesses.

The handful of cases described here are indicative of the administration's determined efforts to coordinate various government agencies to combat intellectual property theft and firmly crack down on economic and industrial espionage, even at the cost of a trade war with China. To date, the government has sought to vindicate the proprietary interests of big names such as Coca Cola, T-Mobile, Genentech, GlaxoSmithKline, and Oracle, among others.

Thus, it behooves a white collar practitioner to be fluent in the language of the Economic Espionage Act and be on alert that civil trade secret litigation could easily lead to criminal charges. As described in this article, companies will play nice with the federal government in this context, doing the legwork of costly investigations on behalf of law enforcement.

To boot, the DOJ reports employing more than “270 specially trained federal prosecutors who make up the Department's Computer Hacking and Intellectual Property Network.”<sup>112</sup> Accordingly, one should expect tailored and well-investigated cases by prosecutors unafraid to delve into highly technical and complex materials. In response, defense attorneys should be prepared to wield their legal sophistication and technological muscle in the face of companies seeking to squash competition ... with government agents on their heels.

© 2019, *National Association of Criminal Defense Lawyers*. All rights reserved.

## Notes

1. Conor Mercadante, *Secrets, Secrets: The Trump Administration and Chinese Intellectual Property Theft*, COLUM. BUS. L. REV. (2019), <https://cblr.columbia.edu/secrets-secrets-the-trump-administration-and-chinese-intellectual-property-theft>.

2. From 2009 to 2016, federal prosecutions of trade secrets cases jumped 20 percent from the preceding 13-year window. *Id.*

3. U.S. Intellectual Prop. Enf't Coordinator, *Annual Intellectual Property Report to Congress 1* (2019), <https://www.whitehouse.gov/wp-content/uploads/2019/02/IPEC-2018-Annual-Intellectual-Property-Report-to-Congress.pdf>.

4. Pub.L. 114–153, 130 Stat. 376.

5. *U.S. Dep't of Justice Report to Congress Pursuant to the Defend Trade Secrets Act 2* (2018), <https://www.justice.gov/ipftf/page/file/1101901/download>.

6. Brian A. Benczkowski, Assistant Attorney Gen., U.S. Dep't of Justice, Remarks

Regarding Chinese Economic Espionage (Nov. 1, 2018).

7. *Id.*

8. *Id.*

9. 18 U.S.C. § 1831 (West 2019).

10. *Id.* § 1832; U.S. Dep't of Justice, U.S. Attorneys' Manual: Criminal Resource Manual § 1129 ("Criminal Resource Manual") (2018).

11. § 1839.

12. § 1839(3).

13. 142 Cong. Rec. 12201-03 (1996).

14. The Economic Espionage Act's legislative history cautions that an owner is not "required to have taken every conceivable step to protect the property from misappropriation." H.R. REP. 104-788, 7, 1996 U.S.C.C.A.N. 4021, 4026.

15. *Crane Helicopter Servs., Inc. v. United States*, 56 Fed. Cl. 313, 326 (2003) (requiring employees and contractors to sign nondisclosure and confidentiality agreements, when coupled with other security measures, demonstrates company's efforts to maintain secrecy of information).

16. *AirFacts, Inc. v. de Amezaga*, 909 F.3d 84, 97 (4th Cir. 2018).

17. *Mangren Research & Dev. Corp. v. National Chem. Co.* 87 F.3d 937 (7th Cir. 1996) (court held that the company took reasonable measures to protect its secret because employees signed confidentiality agreements and product ingredients had coded labels).

18. *United States v. Hanjuan Jin*, 833 F. Supp. 2d 977, 1008 (N.D. Ill. 2012), *aff'd*, 733 F.3d 718 (7th Cir. 2013).

19. In *United States v. Lange*, the court held that company's practice of "dividing ... work among vendors," ensured "that none can replicate the product." This eliminated the need for confidentiality agreements because the company relied "on deeds (splitting of tasks) rather than promises to maintain confidentiality." *United States v. Lange*, 312 F.3d 263, 266 (7th Cir. 2002).

20. *United States v. Liew*, 856 F.3d 585, 602 (9th Cir. 2017) (holding that DuPont's use of "secure eye contractors" was a reasonable measure because contractors were required to have worked with DuPont for several years, sign confidentiality agreements, given information on a "need to know" basis, and not allowed to keep materials with trade secrets).

21. In *United States v. Chung*, the Ninth Circuit held that Boeing took reasonable measures to maintain secrecy because "Boeing implemented general physical security measures." These measures included requiring employees entering the building to show identification, regular training regarding confidentiality, and marking documents as proprietary. *United States v. Chung*, 659 F.3d 815, 827 (C.D. Cal. 2011).

22. *Id.*

23. *Yellowfin Yachts, Inc. v. Barker Boatworks, LLC*, 898 F.3d 1279 (11th Cir. 2018) (during Mr. Barker's last day at Yellowfin, he downloaded hundreds of documents from Yellowfin's server, including purchasing history, drawings, and manufacturing information. Mr. Barker then founded a Yellowfin competitor, Barker Boatworks. In its subsequent complaint, Yellowfin alleged that Boatworks' sheer line was nearly identical to Yellowfin's bay boats. After the district court held that Yellowfin did not make reasonable efforts to protect its trade secrets, Yellowfin appealed. The court of appeals affirmed the lower court's ruling).

24. *Id.*

25. *Gov't Employees Ins. Co. v. Nealey*, 262 F. Supp. 3d 153, 168 (E.D. Pa. 2017).

26. *Id.* at 160.

27. § 1839(3)(B).

28. S. Rep. No. 104-359, at 16 (1996). When monetary value cannot be established, courts generally reject a strict market valuation approach; instead, "any reasonable method may be employed to ascribe an equivalent monetary value. ..." *United States v. Drebin*, 557 F.2d 1316, 1331 (1972) (quoting *United States v. Lester*, 282 F.2d 750, 755 (1960)); see also *United States v. Seagraves*, 265 F.2d 876, 880 (1959). These methods include an evaluation of the development, research, and production costs. See, e.g., *United States v. Wilson*, 900 F.2d 1350, 1356 (9th Cir. 1990); *United States v. Stegora*, 849 F.2d 291, 292 (8th Cir. 1988).

29. H.R. Rep. No. 104-788, at 12 (1996); 142 Cong. Rec. 27,117 (1996) (government must show the defendant was "aware or substantially certain" he was misappropriating a trade secret); (knew he misappropriated a trade secret). See, e.g., *United States v. Nosal*, 844 F.3d 1024, 1044 (9th Cir. 2016) (holding that defendant knew he misappropriated a trade secret because he was "deeply familiar" with the trade secret's market advantage and the company's security measures, including marking materials as "Korn/Ferry Proprietary & Confidential").

30. The statute's *mens rea* requirement can be established by marking documents as proprietary, implementing security measures, and having employees sign confidentiality agreements. 142 Cong. Rec. S12201 (1996). While "wrongfully" is not statutorily defined, this section's use of the term involves the defendants' knowledge that their actions — "copying or otherwise exerting control over the information" — were improper. H.Rept. 104-788, at 12 (1996).

31. While working for Broadcom, Mr. Shiah saved thousands of confidential emails, files, and documents to an external hard drive in order to create a "toolkit." This

# FEDERAL PRISON AUTHORITY

(214) 431-2032

<https://www.FederalPrisonAuthority.com>

[federalprisonauthoritybob@gmail.com](mailto:federalprisonauthoritybob@gmail.com)

## WE OFFER THE FOLLOWING SERVICES:

- FIRST STEP ACT ANALYSIS
- PRE-TRIAL/PSR INTERVIEW
- PSR REVIEW/ REVIEW OBJECTIONS
- SECURITY & CLASSIFICATION ASSESSMENT
- SENTENCE COMPUTATION
- INITIAL DESIGNATION
- PROGRAMS RDAP/SEX OFFENDER
- REDESIGNATION TRANSFERS
- ADMINISTRATIVE REMEDIES
- RRC ASSESSMENT/SECOND CHANCE ACT



BRUCE CAMERON MS, LPC-S, LSOTP-S  
& JOSE A. SANTANA JD

toolkit functioned as a sort of repository for his work, and some of the documents would easily give competitors an advantage, including "the ability to successfully compete ... on price, negotiate terms from their suppliers and customers more successfully, and take advantage of ... research and development." Even after leaving Broadcom, Mr. Shiah continued to access and download documents. *United States v. Shiah*, No. SA CR 06-92 DOC, 2008 WL 11230384, at \*4 (C.D. Cal. Feb. 19, 2008).

32. *Id.* at 24.

33. H.Rept. 104-788, at 11-12 (1996).

34. 18 U.S.C. § 1832.

35. "(F)oreign instrumentality" means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government." 18 U.S.C. § 1839 (1).

36. H. Rept. 104-788, at 11-12 (1996), quoted in U.S. Dep't of Justice, Executive Office for United States Attorneys, *Prosecuting Intellectual Property Crimes* 185 (4th ed. [2013]).

37. Criminal Resource Manual § 1133.

38. *Walker v. Univ. Books, Inc.*, 602 F.2d 859, 865 (9th Cir. 1979) (using the Restatement, the court held that design

improvements in fortune cards do not qualify as trade secrets).

39. *Metro Traffic Control, Inc. v. Shadow Traffic Network*, 22 Cal. App. 4th 853, 861-63 (1994) (listing sound and personality requirements for radio DJ job not a trade secret).

40. *Am. Ctr. for Excellence in Surgical Assisting Inc. v. Cmty. Coll. Dist.* 502, 315 F. Supp. 3d 1044, 1059 (N.D. Ill. 2018) (holding that under Illinois' Trade Secret Act, "economic value of a textbook or workbook (or an assignment[ ]) from [a] textbook ... consists in it being read and distributed, not in its being kept secret from other persons who can obtain economic value from its disclosure or use.") (internal quotations omitted).

41. *Buffets, Inc. v. Klinke*, 73 F.3d 965, 968 (9th Cir. 1996). The Ninth Circuit held that recipes for typical or basic American fare, such as BBQ chicken and mac 'n cheese, are not worthy of trade secret protection because these dishes are in the public domain.

42. *Ideal Innovations, Inc. v. United States*, 139 Fed. Cl. 737, 746 (2018) (holding that issuance of patent "extinguished" trade secret claim).

43. *Comprehensive Tech. Int'l, Inc. v. Software Artisans, Inc.*, 3 F.3d 730, 737 (4th Cir. 1993) (computer software not trade secret if the "arrangement and interaction of the functions" of the program substantially similar to other software programs).

44. At least one court has held that information can lose its status as a trade secret through an anonymous posting on the internet, even for a very limited time. *Religious Technology Ctr. v. Netcom On-Line Com.*, 923 F. Supp. 1231 (N.D. Cal. 1995).

45. *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 476 (1974); see Criminal Resource Manual § 1136.

46. *United States v. Hsu*, 155 F.3d 189, 197 (3d Cir. 1998) (quoting 142 Cong. Rec. S12,213 (daily ed. Oct. 2, 1996) (Managers' Statement)) (internal quotations omitted).

47. 18 U.S.C. § 1839(6).

48. Criminal Resource Manual § 1136 (quoting 142 Cong. Rec. S12201, S12212 (daily ed. Oct. 2, 1996)) (internal quotations omitted).

49. Charles Doyle, Cong. Research Serv., R42681, *Stealing Trade Secrets and Economic Espionage: An Overview of 18 U.S.C. 1831 and 1832* 3 (2016).

50. See, e.g., *United States v. Collins*, 56 F.3d 1416, 1420 (D.C. Cir. 1995); Doyle, *supra* note 49 at 3.

51. Doyle, *supra* note 49 at 3.

52. This was further complicated by two versions of the UTSA: the 1979 version and the amended version, passed in 1985. UNIF. TRADE SECRETS ACT § 1(4) (amended 1985), 14 U.L.A. 438 (1990).

Some states adopted the 1979 version whereas other states adopted the amended version, and where still other states adopted the UTSA with significant modifications. See, e.g., Christopher Rebel J. Pace, *The Case for a Federal Trade Secrets Act*, 8 HARV. J. LAW & TECH. 427, 442 (1995).

53. S.Rept. 114-220, at 2-3.

54. Unif. Trade Secrets Act § 1.

55. *Id.*

56. 18 U.S.C. § 1839.

57. "In any prosecution ... under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of trade secrets. ... An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of any trade secret." § 1835(a); see also *Hsu*, 155 F.3d at 193-94.

58. § 1836(b)(2).

59. *Id.*

60. The Trump administration noted that the United States previously imposed a 25 percent duty on Chinese imports, such as farm equipment, cars, medical equipment, and aluminum and steel. A second round of tariffs affected nearly \$16 billion in Chinese goods. In September 2018, the administration imposed additional tariffs — affecting approximately \$200 billion worth of goods — citing China's refusal to eliminate policies and practices that unfairly discriminate against U.S. products. *Annual Intellectual Property Report to Congress*, *supra* note 3 at 12. See Ana Swanson & Keith Bradsher, *Trump Threatens China with More Tariffs Ahead of Final Trade Talks*, N.Y. TIMES (May 5, 2019); Press Release, USTR Finalizes Tariffs on \$200 Billion of Chinese Imports in Response to China's Unfair Trade Practices (Sept. 18, 2018).

61. Takashi Kawakami, *Self-Driving Espionage: US Companies Accelerate Lawsuits Against China*, NIKKEI ASIAN REVIEW (Apr. 7, 2019).

62. USTR, *Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of The Trade Act of 1974* (Mar. 22, 2018).

63. *Annual Intellectual Property Report to Congress*, *supra* note 3 at 12.

64. Sherisse Pham, *The US Just Raised Tariffs on Chinese Goods. China Says It Will Hit Back*, CNN (May 10, 2019), <https://www.cnn.com/2019/05/10/business/china-us-tariffs-trade/index.html>.

65. Deputy Assistant Attorney General Adam S. Hickey of the National Security Division Delivers Remarks at the Fifth National Conference on CFIUS and Team Telecom (Apr. 24, 2019), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-adam-s-hickey-national>

## Forensic DNA Consultant

**LISA MOKLEBY**

B.Sc., M.S.F.S.

**306-960-7495**

- Trial preparation/ assistance
- DNA case file review and data interpretation
- Expert witness testimony
- Can educate and give lectures on DNA



check out my website:  
[www.AuroraForensics.ca](http://www.AuroraForensics.ca)

-security-division-delivers-0.

66. *Annual Intellectual Property Report to Congress*, *supra* note 3 at 6.

67. U.S. Dep't of Justice, Attorney General Jeff Session's China Initiative Fact Sheet [hereinafter Fact Sheet] (Nov. 1, 2018), <https://www.justice.gov/opa/speech/file/1107256/download>.

68. Office of Trade & Mfg., *How China's Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World* (Jun. 19, 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/06/FINAL-China-Technology-Report-6.18.18-PDF.pdf>.

69. Fact Sheet, *supra* note 67.

70. Joel Rosenblatt, *U.S. Deploys New Tactics in Prosecution of Chinese Chipmaker*, BLOOMBERG (Jan. 8, 2019).

71. Ellen Nakashima, *With New Indictment, U.S. Launches Aggressive Campaign to Thwart China's Economic Attacks*, WASH. POST (Nov. 1, 2018).

72. Paul Wiseman & Michael Liedtke, *Here Are 5 Cases Where the U.S. Says Chinese Companies and Workers Stole American Trade Secrets*, CHI. TRIB. (Feb. 21, 2019), <https://www.chicagotribune.com/business/ct-biz-us-china-trade-war-ip-theft-20190221-story.html>.

73. *Id.*

74. Katie Hafner & Matt Richtel, *Google*

*Resists U.S. Subpoena of Search Data*, N.Y. TIMES (Jan. 20, 2006).

75. *United States v. Microsoft Corp.*, 138 S. Ct. 1186, 1187 (2018).

76. *Facebook, Inc. v. Superior Court*, 4 Cal. 5th 1245, 1254 (2018).

77. Alexia Fernández Campbell, *How Tech Employees Are Pushing Silicon Valley to Put Ethics Before Profit*, VOX (Oct. 8, 2018).

78. See, e.g., Charles Duhigg, *Did Uber Steal Google's Intellectual Property?*, NEW YORKER (Oct. 15, 2018); Lauren Goode, *Indictment of Ex-Fitbit Employees Marks a Bigger Legal Shift*, WIRED (Jun. 23, 2018); David Pridham, *Steal a Trade Secret, Go to Jail?*, FORBES (Jun. 1, 2017).

79. *Annual Intellectual Property Report to Congress*, *supra* note 3 at 1.

80. *Id.* at 18.

81. *Id.*

82. Of course, this practice may backfire. For example, the *Shiah* court chastised the government for not initiating and building the case against the defendant, citing private entities' investigative inexperience and incentives not to objectively evaluate evidence. *Shiah* at \*48-49.

83. Andrea Sharrin, Deputy Chief, Computer Crime and Intellectual Property Section of the United States Dep't. of Justice, Colloquium on Innovation Policy Class Discussion (April 2, 2013) (citing a 39 percent increase in prosecutions in 2012 compared to 2011 and a desire on the part of the DOJ to work with companies to bring additional prosecutions on their behalf).

84. H.R. Rep. No. 529, 114th Cong., 2d Sess. 2016.

85. In the years 2009 and 2016, civil trade secret suit filings ranged from 860 to 930 cases per year. However, in 2017, the number of filings increased to 1,134 cases filed. Further, the number continues to rise. For example, during the first half of 2018, 581 suits were filed. Steve Brachmann, *Reports Shows Significant Increase in Trade Secret Litigation Since Passage of D TSA*, IPWATCHDOG (July 27, 2018), <https://www.ipwatchdog.com/2018/07/27/reports-increase-trade-secret-litigation-dtsa/id=99646/>.

86. Brachmann, *supra* note 85.

87. See, e.g., Vivek Mani & Sachin Sancheti, *Economic Approaches to Remedies in Trade Secrets Cases*, CORNERSTONE (Aug. 17, 2016), <https://www.cornerstone.com/Publications/Articles/Economic-Approaches-to-Remedies-in-Trade-Secrets-Cases>.

88. See Pridham, *supra* note 78.

89. David S. Levine & Ted Sichelman, *Why Do Startups Use Trade Secrets?* 94 NOTRE DAME L. REV. 751 (2019).

90. *Id.*

91. Press Release, U.S. Dep't of Justice, PRC State-Owned Company, Taiwan

Company, and Three Individuals Charged With Economic Espionage (Nov. 1, 2018), <https://www.justice.gov/opa/pr/prc-state-owned-company-taiwan-company-and-three-individuals-charged-economic-espionage>.

92. Complaint, *Micron Technology v. United Microelectronics Corporation, et al.*, 17-cv-06932-MMC, No. 1 (filed Dec. 5, 2017).

93. Rosenblatt, *supra* note 70.

94. See *PRC State-Owned Company, Taiwan Company, and Three Individuals Charged with Economic Espionage*, *supra* note 91.

95. Rosenblatt, *supra* note 70.

96. *Id.*

97. Press Release, U.S. Dep't of Justice, Six Former and Current Fitbit Employees Indicted for Possessing Multiple Trade Secrets Stolen from Jawbone (Jun. 14, 2018), <https://www.justice.gov/usao-ndca/pr/six-former-and-current-fitbit-employees-indicted-possessing-multiple-trade-secrets>.

98. Order on Motion to Sever Defendant, *United States v. Mogal, et al.*, 18-cr-00259, No. 75 (N.D.C.A., filed Mar. 8, 2019), ECF No. 68.

99. See Roland Li, *Apple Self-Driving Car Layoffs Hit 190 Employees in Santa Clara, Sunnyvale*, S.F. CHRON. (Feb. 27, 2019), <https://www.sfchronicle.com/business/article/Apple-self-driving-car-layoffs-hit-190-employees-13649994.php>.

100. Lucas Laursen, *Apple Engineer Accused of Stealing Autonomous Car Secrets*, FORTUNE (Jan. 31, 2019).

101. Mr. Zhang allegedly violated 18 U.S.C. § 1832(a)(1). Indictment, *United States v. Xiaolang Zhang*, 5:18-cr-00312-EJD, \*1-2 (N.D.C.A., filed Jul. 12, 2018), ECF No. 5.

102. Mr. Chen allegedly violated § 1832(a)(2). Indictment, *United States v. Jizhong Chen*, 5:19-cr-00056-EJD, \*1-3 (N.D.C.A., filed Jan. 31, 2019), ECF No. 12.

103. Indictment, Zhang.

104. Wiseman, *supra* note 72.

105. Michael Bott, *Another Apple Engineer Accused of Stealing Autonomous Vehicle Trade Secrets*, NBC Bay Area — KNTV (Jan. 29, 2019), <https://www.nbcbayarea.com/news/local/Another-Apple-Engineer-Accused-of-Stealing-Autonomous-Vehicle-Trade-Secrets-50505701.html>.

106. § 1831(a)(1).

107. § 1831(a)(2).

108. Press Release, U.S. Dep't of Justice, Former GE Engineer and Chinese Businessman Charged with Economic Espionage and Theft of GE's Trade Secrets (Apr. 23, 2019).

109. Press Release, U.S. Dep't of Justice, Chinese National Who Stole Trade Secrets While Working for Medical Device Companies Sentenced to Federal Prison

(Jan. 28, 2019), <https://www.justice.gov/usao-cdca/pr/chinese-national-who-stole-trade-secrets-while-working-medical-device-companies>.

110. Press Release, U.S. Dep't of Justice, Former DuPont Employee Sentenced to Over Three Years in Prison for Stealing Trade Secrets and Lying to the FBI (Apr. 17, 2019), <https://www.justice.gov/usao-ndia/pr/former-dupont-employee-sentenced-over-three-years-prison-stealing-trade-secrets-and>.

111. Information, *United States v. Josh Harry Isler*, 18-CR-02032, \*7 (N.D. Iowa, filed Jun. 28, 2018), ECF No. 2.

112. *U.S. Dep't of Justice Report to Congress Pursuant to the Defend Trade Secrets Act*, *supra* note 5 at 9. ■

## About the Authors

Julia Mezhinsky Jayne is the founder of Jayne Law Group, P.C., a Bay Area law firm focusing on white collar and general criminal defense. Ms. Jayne has 20 years of extensive trial experience in state and federal courts. She is also an Adjunct Professor of Trial Advocacy at U.C. Hastings College of the Law. Ms. Jayne serves on several NACDL committees.



NACDL MEMBER

### Julia Jayne

Jayne Law Group, P.C.  
San Francisco, California  
415-623-3600

EMAIL [julia@jaynelawgroup.com](mailto:julia@jaynelawgroup.com)

WEBSITE [www.jaynelawgroup.com](http://www.jaynelawgroup.com)

TWITTER @crimdefense1

Ashley Riser is an associate attorney at Jayne Law Group, P.C., a boutique Bay Area law firm. She specializes in federal and state criminal defense. She graduated from U.C. Davis, School of Law.



### Ashley Riser

Jayne Law Group, P.C.  
San Francisco, California  
415-623-3600

EMAIL [ashley@jaynelawgroup.com](mailto:ashley@jaynelawgroup.com)

WEBSITE [www.jaynelawgroup.com](http://www.jaynelawgroup.com)

TWITTER @crimdefense1