



International Business & Trade Law Alert

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No Lenience for Professor's Export Control Violations in the Research Field

In one more chapter of Professor Reece's case of sharing military data with foreign students and transporting data overseas, on July 1, 2009, Judge Thomas A. Varlan, U.S. District Court Judge in Knoxville, Tennessee, sentenced Professor Reece to 48 months in prison.¹ Nothing persuaded the Judge to be more lenient and forgo imposition of prison time: not Professor Reece's age, not his or his wife's fragile health.

Professor Reece, a former engineering professor at the University of Tennessee, "exported" military technical data related to advanced plasma technology that had been designed and was being tested for use on the wings of drones operating as weapons or surveillance systems. The violation occurred when Professor Reece transmitted research data to foreign students in the U.S. and carried it on his laptop on a trip to China. Professor Reece's attorney, Tom Dundon, argued that the professor was guilty only of being ignorant of the law, believing that the export prohibition applied only to a finished military product, not research related to it. This is a common misconception in the area of export control. The Arms Export Control Act and its regulations prohibit not only the export of defense products but also the export of services and technical data, including related research.

Professor Reece's imprisonment is not an isolated case. As the government pointed out in its sentencing memorandum, in the last two years, six other export violation convictions resulted in imprisonment. Of those, one defendant was sentenced to 120 months in prison for a conspiracy to export U.S. naval technology to China. His co-conspirator, a 65 year old engineer with a U.S. Navy contractor, was sentenced to 293 months in prison.

Universities and research laboratories involved in scientific work covered by the export control regulations should be aware that the government is stepping up enforcement actions in this area. As David Kris, Assistant Attorney General for the National Security Division, U.S. Department of Justice, stated in a press release: "...The illegal export of restricted military data represents a serious threat to national security. We know that foreign governments are actively seeking this information for their own military development. Today's sentence should serve as a warning to anyone who knowingly discloses restricted military data in violation of our laws." FBI Special Agent in Charge Richard Lambert added: "Safeguarding

(Footnotes)

¹ Please consult the following link for more detailed information on Prof. Reece's case, the subject of a previous PWMA client alert: <http://www.porterwright.com/publications/publicationdetail.asp?pubid=784>

sensitive military technologies vital to our nation's defense remains a top priority of the FBI..."

Research institutions that do not have a formal compliance program, and those that are unsure whether existing compliance arrangements are sufficient, should consult counsel to avoid problems in this area of increased enforcement.