

LAW BLOG

Trading with the Enemy? Jury in SV Says ‘No’

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We’re hard pressed these days to come up with many practice areas that are “hot.” One that might qualify, however: trade secrets. Dockets will almost assuredly keep filling up with these types of cases so long as moving data off a hard drive is as easy as a click-and-drag onto a thumb drive.



An increase in these will also likely mean we’ll see more of a certain type of subset of cases — those involving criminal allegations of “economic espionage,” i.e., trade secrets that wind up in the hands of foreign governments.

If so, we’d imagine that the U.S. government hopes future cases go better than one which ended on Friday out in Silicon Valley, where a federal jury acquitted two Silicon Valley engineers on a pair of counts and deadlocked on three others.

The problem with the government’s case? According to this Recorder story, jurors who sided with Lan Lee and Yuefei Ge felt the government relied too heavily on evidence supplied by NetLogic Microsystems Inc., the alleged victim. The government’s case was based on evidence found on defendants’ computers was, in fact, a trade secret. The government’s witnesses from the company itself.

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But those corporate witnesses had an interest in testifying that way, juror Qin Yuqiang told The Recorder on Friday, and therefore weren’t entirely credible.

“The government should bring a third party, independent. That would be more

convincing,” said Yuqiang, a Chinese-American juror with a tech background. (According to reporter Dan Levine, prosecutors tried to strike Yuquiang during voir dire, but the defense successfully argued that he was being targeted because of his racial background.)

The trial lasted three weeks, and the jury deliberated for five days.

A government spokesman declined to comment Friday afternoon. Lee’s attorney, Thomas Nolan of Nolan, Armstrong & Barton, said his client was very pleased. “My sense is that this is an effort to try to intimidate people from starting businesses in China,” Nolan said.

Ge’s attorney, Edward Swanson of Swanson McNamara & Haller, said some of the pro-government jurors were clearly troubled that the defendants had materials in their possession that belonged to NetLogic. “For a lot of people that was the beginning and the end of it,” he said.

However, Swanson said jurors correctly applied trade secret law and concluded that the company didn’t take sufficient steps to protect the information — and that the defendants’ possession of it didn’t harm the company.

Forewoman Christy Masangcay said the government didn’t have evidence of a fully developed connection to the Chinese. “They found documents that had indications they were working with the [Chinese] government, but there was no smoking gun,” Masangcay said.

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