

Report on Research Compliance Volume 19, Number 5. April 21, 2022 After Researcher's Conviction on Some Counts, Attorney Chides Universities, Sees 'No Harm'

By Theresa Defino

In an address at George Mason University in February, U.S. Assistant Attorney General Matthew Olsen said the government had “heard concerns from the civil rights community that the ‘China Initiative’ fueled a narrative of intolerance and bias.”^[1] Olsen was referring to the prosecution of dozens of individuals of mostly Chinese descent, many of them university professors, for allegations of grant fraud, undisclosed foreign ties and undeclared conflicts of interest.

The complaints, which weren’t just from the civil rights community, had prompted a review that convinced Olsen, as he put it, “this initiative is not the right approach.” Yet, despite being widely interpreted as a move by the government to abandon the China Initiative, there have been no discernable changes, attorney Peter Zeidenberg, who represents accused scientists, told *RRC*.

An indication of a shift would have been dismissal of charges against Zeidenberg’s client Feng “Franklin” Tao before trial, he said, and against those in other “pending grant fraud cases that [don’t] involve any national security interests.” Instead, the government went forward with the prosecution of Tao, a University of Kansas (KU) associate professor of chemical engineering, on eight charges.

After a 12-day trial featuring more than 30 witnesses for the prosecution (and three for Tao), the jury deliberated a day-and-a-half and, on April 7, announced a split verdict: guilty on four of eight counts—three for wire fraud and one for making a false statement—and not guilty on three other charges for wire fraud and one of making a false statement. The charges each carry from 10 to 25 years in prison and fines from \$250,000 to \$500,000.

Yet Tao remains hopeful Julie A. Robinson, senior district judge for the District of Kansas, will reverse the jury’s verdict, Zeidenberg said. He also told *RRC* universities need to start standing up to the government to thwart the criminalization of what he termed “trivial documentation errors.”^[2] Research institutions also need to step up their training of principal investigators (PIs) on completing disclosure forms, he added.

In its announcement of the verdict, the Department of Justice (DOJ) didn’t mention Tao’s acquittal on half the charges.^[3] It said the jury found Tao “concealed that he was also employed by a government-affiliated university in the People’s Republic of China (PRC), while working on U.S. government funded research at KU.” The government contended Tao “accepted a position with Fuzhou University in China that designated him as a Changjiang Scholar Distinguished Professor,” but did not disclose this to KU. Tao had funding from the Department of Energy and the National Science Foundation, which, per usual policy, is awarded to KU.

In the complicated case, Tao was the subject of a total of three indictments rendered by separate grand juries as the government tinkered with the charges. The first indictment was in August 2019.^[4] Ten charges were whittled to eight. But the central allegations didn’t change. In his defense, Zeidenberg and other attorneys for Tao contended, among other arguments, that disclosure wasn’t required because his activity did not rise to the definition of being a significant financial interest nor constitute a time commitment.

His time at Fuzhou in the spring of 2019 had been properly authorized by KU and he had been “granted a buyout,” his defense team said. Robinson ruled for the prosecution that Tao’s attorneys could not introduce evidence that he was targeted as a suspected spy for China, and the China Initiative itself was not allowed to be discussed with the jury.

No new developments in Tao’s case are expected for several months. Robinson did not set a sentencing date because she wants to hear motions. Under the schedule Robinson established, the motion for acquittal Zeidenberg told RRC he intends to file (and any others) is due by May 9; the government’s response is due June 8. Tao’s attorneys may react to the government’s filings by June 22, according to court documents.

Zeidenberg’s motion will be based on a lack of evidence to support the charges.

‘No Actual Harm Whatsoever’

At trial, “the agencies said they were fully satisfied with all the work that was performed, and that Dr. Tao had done all the required research. We think that that precludes a conviction on wire fraud because the victims are saying they weren’t victimized,” he said.

Asked to explain the jury’s split verdict, Zeidenberg said it “appears that they had issues with the Department of Energy counts, which makes sense because [agency officials] said that, not only was all the work done, but the... program manager said it would not have mattered to her if he had a second job in China, or if he was setting up a lab in China would not have made any difference to her.”

Added Zeidenberg: “What I think is notable for this case is there was no allegation of overlap” between U.S. government-supported research and work done in China or with Chinese support. “There’s no allegation that he couldn’t get the work done, and there was no allegation that the work wasn’t done. There was no actual harm, whatsoever.”

The government also never introduced evidence showing that Tao was paid for work in China.

Hong Peng, Tao’s wife, testified at trial that she is working three jobs to support their family, which includes teenage children. Tao has been on unpaid leave since 2019. Peng launched a GoFundMe campaign to support his defense, which had raised more than \$650,000 as of mid-April.

RRC asked Zeidenberg if he represents clients such as Tao pro bono, or if in Tao’s case at least, money raised through the GoFundMe is being used to pay his fees. Zeidenberg said he is not taking cases pro bono, but added, “to the extent that I’m getting paid, it’s through these contributions.”

The GoFundMe account includes an update urging support by Sherry Chen, Xiaoxing Xi, Qing Wang, Anming Hu and Gang Chen, who wrote that they “were once prosecuted by our own government. The charges were either later dropped by the government or rejected by a judge because they were false.”^[5] Zeidenberg represented Chen, Xi and Wang.

Other Cases Going Forward

Even among researchers who have had charges dropped, won acquittal or otherwise successfully fought allegations, life is anything but normal. Reputations have been damaged and employment has not returned—except in rare cases.

Zeidenberg told RRC he is currently representing “maybe a half dozen” accused university researchers with cases similar to Tao’s, another indication that the China Initiative appears to be alive and well. He said he could not

discuss the cases as they have not yet resulted in any public actions, such as arrests or indictments, with the exception of one.

That case concerns Ling Yang, who the government claims “fraudulently obtain[ed] \$1.75 million” from NIH and concealed “support he received from the Chinese government and a company that he founded in China to profit from that research.” He is charged with six counts of wire fraud and four of making false statements, the government announced when it unsealed his indictment in February of last year.^[6]

Yang was an associate professor of biomedical engineering at the University of Florida. The award spanned from 2014 to 2020. There have been no new filings in his case since the month his indictment was unsealed.

Zeidenberg also pushed back against the lumping together of cases like Tao’s and his other clients with that of Charles Lieber, despite the association the government (and media) often make.

In December, a jury convicted Lieber, former chair of Harvard University’s Department of Chemistry and Chemical Biology on “two counts of making false statements to federal authorities, two counts of making and subscribing a false income tax return and two counts of failing to file reports of foreign bank and financial accounts,” the government announced.^[7] These were related to “lying to federal authorities about his affiliation with People’s Republic of China’s Thousand Talents Program and the Wuhan University of Technology (WUT) in Wuhan, China, as well as failing to report income he received from WUT.”

Lieber has not yet been sentenced.

“That case is very different than these other cases,” said Zeidenberg. “They did not charge him with wire fraud. They charged him with [failure to pay] taxes and lying to the agents when he was interviewed.”

Stop Being ‘Junior G-Men’

As cases have evolved over the past five to six years, they have gone from centering on allegations of espionage and theft of trade secrets to failure to disclose foreign support resulting in criminal charges.

RRC asked Zeidenberg how universities and others with federal research dollars should be acting now—given the government may say the China Initiative is off but the reality may be different—and what their role is in not criminalizing failures to disclose.

“Universities should be not acting as junior G-men for the FBI,” Zeidenberg said. “They should be standing behind their professors. They should be offering them support. They shouldn’t be firing them summarily. They should be paying them. They should be paying their attorneys in most of these cases.”

He added that institutions “should be acknowledging their lack of training that they’ve provided to their professors on these issues and own responsibility for failures to disclose.”

Providing accurate and complete information is a “shared responsibility, and the universities are every bit as responsible for these failures and omissions [as] these PIs are,” Zeidenberg said.

RRC asked DOJ to comment explicitly on the status of the China Initiative or prosecution efforts of those with alleged inappropriate or undisclosed ties, particularly in light of the continuation of Tao’s case and others. In response, a spokesperson sent a link to Olsen’s February speech at George Mason and did not answer specific questions.

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- 1** Department of Justice, “Assistant Attorney General Matthew Olsen Delivers Remarks on Countering Nation-State Threats,” news release, February 23, 2022, <https://bit.ly/3uLWNKa>.
- 2** Peter Zeidenberg, “Biden’s DOJ Needs to End War on Chinese-American Scientists,” *Bloomberg Law*, January 28, 2021, <https://bit.ly/3JS9Uou>.
- 3** Department of Justice, “Jury Convicts University of Kansas Researcher for Hiding Ties to Chinese Government,” news release, April 7, 2022, <https://bit.ly/38JWhUf>.
- 4** Department of Justice, U.S. Attorney’s Office for the District of Kansas, “University of Kansas Researcher Indicted for Fraud for Failing to Disclose Conflict of Interest with Chinese University,” news release, April 21, 2019, <https://bit.ly/3M7LOR1>.
- 5** “Legal Defense for Franklin Tao,” GoFundMe, update on March 30, 2022, by Hong Peng and Jesse Song, <https://bit.ly/3jITZqD>.
- 6** Department of Justice, “Former University of Florida Researcher Indicted for Scheme to Defraud National Institutes of Health and University of Florida,” news release, February 3, 2021, <https://bit.ly/3jNjIhE>.
- 7** Department of Justice, U.S. Attorney’s Office for the District of Massachusetts, “Harvard University Professor Convicted of Making False Statements and Tax Offenses,” news release, December 21, 2021, <https://bit.ly/3uLZ4VI>.

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