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Citing 'Deception,' Not 'Espionage,' Judge in KU Case Imposes Supervised Release, Not Jail

By Theresa Defino

Since his arrest in August 2019, Feng “Franklin” Tao has published 16 “research articles” for the University of Kansas (KU), authored a book and began writing a second one. To attorneys for the associate professor of chemical engineering, these activities are further evidence that Tao’s “truly breath-taking” productivity continued at home and that he should be sentenced to no more than time served.

Prosecutors, however, argued Tao was “appearing to act as if he has done nothing wrong” and said his research-related efforts demonstrated his “lack of remorse” that warranted a 30-month jail term on the sole count of making a false statement for which he was convicted in September. The government, claiming Tao’s “unreported support and affiliations call into question the validity of all of the research that he has performed” under National Science Foundation (NSF) awards, also wanted Tao to be fined \$100,000.

Tried on eight charges, a jury in April found Tao, 51, not guilty on four and guilty on four.^[1] In September, Julie A. Robinson, senior judge for the District of Kansas, reversed the guilty verdict on three charges but upheld the charge of making a false statement, which related to his failure in 2018 to disclose on a KU form his affiliation with a Chinese university.^[2] Robinson tossed wire and grant fraud charges.

Tao’s crime of being “deceptive” about what he was doing, Robinson said, did not warrant jail time. Her remarks during sentencing provide rare insight into such highly controversial cases related to investigators’ ties to China, illuminating both the pressures Tao faced and how KU responded, as well as the seemingly fraught nature of most of the government’s claims. Tao plans to appeal his conviction.

Citing her changed understanding of the case, on Jan. 18, Robinson sentenced Tao to two years of supervised release (which, unlike probation, is imposed instead of jail, not afterward). In her view, Tao was a “mid-career” researcher whose work had little commercial value and went to China to see if his academic fortunes would be superior there than at KU.

“Frankly, I thought going into this case I was going to hear evidence that whatever Dr. Tao’s research was about, it was something that would hurt our taxpayer-funded research [and] science agencies, it would hurt the taxpayers that he went to China and spent time there working with them because he was sharing information that taxpayers had funded for him to share with KU and with the federal government or whatever, but that’s not what the evidence was,” Robinson said, according to a transcript of the sentencing hearing RRC obtained.

Tao Raised in Extreme Poverty

Tao, who also had awards from the Department of Energy (DOE), was not engaged in espionage, Robinson said, adding there was no “evidence that Dr. Tao stole anything from KU, NSF, DOE, or the American taxpayers. This is not a case where there’s any evidence that the time he spent in China was spent to share intellectual property, proprietary information, inside information that was funded by the taxpayers or anyone else with the People’s

Republic of China.”

In reality, Tao went to China to explore “starting to build a lab” at Fuzhou University [FZU] during a period when he obtained a buyout from KU or during the semester that he was able to be off campus,” Robinson said.

Tao’s attorneys described him as a rare success who overcame a childhood “marked by depravation” to obtain a post at KU, only to lose his job, reputation and suffer, along with his family members, “great psychological trauma”—due to his failure to report being named a professor at FZU.

His parents were “forcibly relocated [and] forced to farm a tiny plot of land assigned by their local government,” according to his attorneys’ sentencing memorandum. “Their home was a small cottage made of clay and straw, consisting of two small bedrooms where seven people—grandparents, parents, Dr. Tao and his siblings—all lived. The cottage had no living room and no indoor bathroom, running water or electricity. The only light source was a kerosene lamp.”

Tao “never drank a glass of milk, enjoyed an apple or tasted beef until he left for college,” according to the court document. Motivated by a “dream of making foods for his family and neighbors so that they would not be hungry,” Tao graduated college and obtained a master’s degree in China and, in 2006, a Ph.D. from Princeton, his defense team wrote.

In their sentencing memorandum, government attorneys said a significant sentence would keep Tao out of the research enterprise and deter others “like Tao here, who perform scientific research funded by the U.S. government and may not be truthful in their disclosures to their universities and government agencies.”

A harsh penalty would discourage individuals from “undermining the U.S. research enterprise and the integrity of fundamental research funded by the federal government by flouting funding disclosure requirements and lying to the sponsoring university and federal funding agency about foreign activities that could compromise the research funding process and the scientific research itself,” the government argued.

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