

HOW UNIVERSITIES CAN PREVENT FACULTY PROSECUTIONS FOR FAILURE TO DISCLOSE FOREIGN AFFILIATIONS

Lost in the uproar over the China Initiative that the Justice Department eventually shut down was the role of universities in ensuring compliance with disclosure requirements related to foreign affiliations. In at least some of the cases, signs of potentially inappropriate affiliations seem to have been missed by university officials, leading to intrusive and disruptive criminal investigations. Even in cases where a prosecution is successful, you must ask whether it was worth it when it could have all been so easily avoided.

Driving the News: Recently, Franklin Tao, a Chinese research professor at the University of Kansas was convicted on four counts of fraud and making false statements related to his alleged failure to disclose an affiliation with a Chinese University while he was receiving grants from the U.S. government. Prior to the conviction, a [23-page New Yorker magazine article](#) chronicled the sad story of the arrest and its effect on Tao's employment and on the lives of his wife and children.

Whether you believe the prosecution of Tao was justified or an overreach, the whole situation may have been avoidable, preserving Tao's career and reputation and preventing a black eye for the University and its research community. While the New Yorker article hints at ways his affiliations might have been discovered before the FBI came calling, it fails to assess whether more due diligence on the part of the University could have resolved any concerns before it reached the FBI. From this case and others, it appears that it could have.

While the article portrays much of the evidence against Tao as coming from a former research scholar with a vendetta against Tao, documentary evidence supplied by that source included links to two articles written by Tao in which he listed his affiliation with both the University of Kansas and Fuzhou University in China. How could the University have been unaware of this affiliation if it is included in published articles? How could it have accepted Tao's conflict of interest statements (that he had none) without doing even a modest review of publicly available information that might

have disclosed this affiliation?

Another Example: Similarly, Professor Anming Wu of the University of Tennessee at Knoxville (“UTK”) was prosecuted for failing to disclose his affiliations with the Beijing University of Technology (“BJUT”) in connection with an application for grant funding from the National Aeronautic and Space Administration (“NASA”). The government introduced evidence at trial, in the form of an employment contract, that Wu held a position at BJUT. Wu did not report this position in his annual activities statement or in his annual outside interests statement.

There were ample signs, however, that Wu might have held such a position. In his [decision acquitting Wu](#), Federal District Judge Thomas A. Varlan noted, “In many of [his] annual activity reports, defendant reported publications that specifically identified him as affiliated with both UTK and BJUT.” Judge Varlan also noted that Wu reported multiple other connections to BJUT and other Chinese organizations, including advising BJUT graduate students, publishing articles in BJUT and other Chinese journals, and participating in seminars and conferences in China.

The Big Picture: These potential red flags, however, do not appear to have been investigated more fully to determine whether there might have been more to them. According to the decision, “research grant proposals generally contain a “biosketch” section, which typically contains information provided by the faculty member, and UTK trusted that the faculty member’s provided biosketch was accurate.”

Moreover, the university official responsible for clearing so-called China Assurance letters for NASA funding, was able to access the outside interest disclosure forms and began signing all of UTK’s China Assurance letters herself, because she believed she could solely rely on the faculty member’s outside interest disclosure form to identify potential conflicts.

Why It Matters: In both of these cases, universities might have saved themselves, their faculty, and their communities significant time, money, and heartache by taking a more active approach to their faculty disclosures.

- In Tao’s case, his affiliations were a matter of public record that basic research would surely have discovered. That discovery could have initiated more internal discussion and resolution without bringing in the FBI.
- In Wu’s case, meaningful review of disclosures outside of Wu’s own form would have enabled university officials to discover the affiliations.

Such review should occur long before a grant application is submitted. University disclosure documents are not the end of the process; they are just the beginning. They provide clues to affiliations that should then be investigated for deeper ties.

What’s Next: Despite the demise of the China Initiative, government research grant funding is still subject to restrictions on foreign affiliations with Chinese and other foreign governments and institutions. Universities would be wise to improve their review processes up front rather than expose themselves and their faculty to the risk of criminal prosecutions of the researchers they support. In some instances, it can be prudent to have a third-party conduct a comprehensive due diligence investigation. They can dig deeper and collect additional intelligence from industry

sources and in some cases through targeted, discreet interviews to provide insight needed to be confident all relevant affiliations are identified.



J. KEITH AUSBROOK

Senior Managing Director

Keith Ausbrook is a key member of Guidepost Solution's high-profile monitoring and compliance practice. He has led teams reviewing compliance programs in financial institutions around the world. Mr. Ausbrook was also a member of the monitor team reviewing the safety programs at General Motors under a deferred prosecution agreement with the U.S. Department of Justice. Mr. Ausbrook is a distinguished lawyer with an accomplished record of managing complex crises. He has held numerous senior executive and legislative branch positions where he oversaw homeland and national security policy development and implementation, including serving as the chief lawyer on the House Committee investigating Hurricane Katrina and as Executive Secretary of the Homeland Security Council at the White House.