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The FBI accused him of spying for China. It ruined his life.

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In April 2018, Anming Hu, a Chinese-Canadian associate professor at the University of Tennessee, received an unexpected visit from the FBI.

The agents wanted to know whether he'd been involved in a Chinese government “talent program,” which offered overseas researchers incentives to bring their work back to Chinese universities.

Not too long ago, American universities encouraged their academics to build ties with Chinese institutions by means including the talent programs, but the US government is now suspicious of these programs, seeing them as a spy recruitment tool that the Chinese government could use to steal sensitive technology. Hu told the agents he had not participated in any talent programs, and the agents left shortly afterwards. But a little less than two years later, they showed up again—this time to arrest him. They alleged that he had defrauded NASA, and therefore the US government, by purposely hiding his affiliations with a Chinese university.

Hu is one of dozens of scientists, mostly of Chinese descent, whom the US government has investigated over the years amid allegations that they were hiding their connections to China. Since 2018, such cases have been investigated under the “China Initiative,” a controversial multi-agency program that aims to detect, prosecute, and stop economic espionage linked to Beijing.

In the global economy, companies that steal trade secrets rarely face the consequences

While the US government says the program is necessary to combat what FBI director Christopher Wray calls “the greatest long-term threat” to the United States, a growing group of activists, legal scholars, and national security experts have argued that it rests on shaky foundations, is limited in its efficacy, and fuels wide-scale racial profiling that has profoundly damaged the US scientific community.

In mid-June, Hu’s case became the first China Initiative case to go to trial and put both sides of the argument to the test. The result? A mistrial when the 12 jurors deadlocked after only a day of deliberations.

The testimony of the primary FBI agent on the case, Kujtim Sadiku, likely did not help: he admitted in court that his probe into Hu’s activities—which involved putting the researcher and his son under surveillance for 21 months, adding Hu to a no-fly list, and seizing his computer and phone—was based on false information, according to the Knoxville News Sentinel. Sadiku also admitted to spreading false information about Hu that damaged his reputation in the international research community and giving UT false information implicating him as an operative for the Chinese military, which led the university to fire him. Sadiku never followed up with the university to correct the record.

By the time the case went to trial, the charges against Hu did not involve economic espionage—the original reason for the investigation—but, rather, six charges of wire fraud and making false statements. The latter allegations hinged on a single administrative form at UT that the FBI says Hu filled out incorrectly to intentionally conceal a relationship with Beijing University. Hu and his lawyer maintained that Hu filled it out according to university rules and disclosed his relationship on multiple other forms and in email exchanges with UT and a NASA contractor.

The Department of Justice has said that it is still weighing its next steps, which could include moving to retry the case.

Regardless of whether the government continues to pursue Hu, many concerned academics feel that the case has confirmed the China Initiative’s shifting goalposts—without providing clearer answers on how to avoid suspicion themselves.

“It’s just shocking,” says Yasheng Huang, a business school professor at MIT, who brought together a group of academics, known as the Asian American Scholar Forum, to discuss these issues after his colleague Gang Chen, the head of MIT’s mechanical engineering department, was arrested for grant fraud under the China Initiative. “The standard is incredibly low to put a guy in jail and charge him with serious crimes, destroying his life and destroying his career.”

“This trial has literally put the federal government’s China Initiative on trial,” said Jinliang Cai, the chairman of the nonprofit United Chinese Americans, in a press statement. “I believe the government must fully investigate the whole range of disturbing problems by our own law enforcement agencies revealed throughout this trial.”

A “whole-of-society” threat

The China Initiative launched in November 2018, amid the Trump administration's increasing economic protectionism and its trade war with China. Economic espionage cases against China had already been accelerating under the Obama administration, with a focus on prosecuting theft of trade secrets. But the new program sought to put even more resources behind the issue. It was the first focused government program to go after espionage by a specific country.

The Department of Justice said China posed a unique threat to US economic and technological superiority, and Attorney General William Barr later asserted that the country was engaged in “an aggressive, orchestrated, whole-of-government (indeed, whole-of-society) campaign ... to surpass the United States as the world's preeminent technological superpower.”

China, the argument went, relies on “non-traditional collectors”—including businesspeople, academics, students, tourists, or anyone with what the DOJ terms a “nexus to China”—to gather up little bits of intelligence. The US needed to respond, Barr said, with its own coordinated government approach.

Scientists and researchers born in China, especially those affiliated with talent programs, became one of the main targets.

But critics say that while the threat of economic espionage from China is real, the US government response has been disproportionate and ineffective. In 2014, former US defense secretary Robert Gates named “a dozen or 15 countries” that steal US technology, including NATO ally France. And an analysis by the Cato Institute of spies convicted from 1990 to 2019 found that, excluding violations related to the Arms Export Control Act, commercial espionage benefiting China accounted for only 27.5% of convictions. Domestic espionage benefiting US entities, meanwhile, accounted for 30.8%, and commercial espionage benefiting Iran accounted for 19.4%.

“It's perfectly appropriate to have an economic espionage program, because that is a persistent problem, and China's certainly one aggressive actor in that realm of criminal activity,” says Michael German, a former FBI agent turned whistleblower and a fellow at the Brennan Center for Justice at New York University. But having a specific program on China, he says, takes resources away from investigating other legitimate threats.

That's not the only concern about the program, however.

Low-level mistakes vs. espionage

In an analysis of DOJ press releases covering 79 cases brought as a result of the initiative, the civil rights organization Asian Americans Advancing Justice found that 48% of them resulted in no actual charges of economic espionage, but rather charges like wire fraud, tax issues, or other infractions that amount to disclosure mistakes on administrative forms, as in the case of Hu.

“The government can have it one way or another,” says the Brennan Center's German. “Either it's a huge problem involving thousands of people and they're just not very good at catching

them, or it's a manageable problem that should be focused on actual state-sponsored economic espionage, regardless of what country it's coming from.

Spies and blunders

Advocates say the China Initiative has become an excuse for racial profiling, part of a long US history of treating Asian-Americans as untrustworthy foreigners. In 1882 the Chinese Exclusion Act barred Chinese immigrants from entering the country for 10 years, and during World War II the federal government detained hundreds of thousands of innocent Japanese-Americans. Under the Clinton and Obama administrations there was a string of failed espionage cases against Chinese-American scientists, including Wen Ho Lee of Los Alamos National Laboratory, Temple University's Xi Xiaoxing, and the National Weather Service's Sherry Chen.

“The China Initiative is premised explicitly on the theory that there is an ethnic affinity ... on the part of people of Chinese descent—even if they are United States citizens or Canadian citizens—to act in violation of American law for the benefit of Beijing,” says Frank Wu, the president of Queens College at the City University of New York. Under this system, he says, “ordinary behaviors such as scientific cooperation or visiting your mother [in China] suddenly become suspicious.”

It has also had a chilling effect on Chinese-American scientists, says MIT's Huang. During his regular meetings with the Asian American Scholar Forum, he says, others have expressed fear of being arrested, fear of losing their funding, and fear about the way they might be perceived by their non-Asian colleagues. Young PhD students are no longer looking for professorships in the US, he says, while established scientists are now searching for international options. A number returned to China to prestigious posts—an outcome the China Initiative had hoped to avoid—after their careers in the United States were destroyed.

“It's pretty bad and pretty pervasive. We're seeing this climate of fear engulfing Chinese-American scientists,” Huang says. “The US is losing the most talented people to other countries because of the China Initiative. That's bad for science. That's bad for America.”

The Hu case played out

To activists and civil society researchers who've been following the China Initiative, Hu's case is anything but surprising.

Hu, a Chinese-born Canadian citizen, is a celebrated researcher in nanotechnology. In 2013, the University of Tennessee recruited him to teach and continue his research. Hu disclosed on multiple occasions that he'd worked part time teaching graduate students and researchers at the Beijing University of Technology, according to the Knoxville News Sentinel.

None of this raised any issues at the time. When Hu began collaborating with NASA, which is legally barred from funding any research that involves “participation, collaboration, or coordination” with “China or a Chinese-owned corporation,” UT administrators assured both

him and the government agency that this part-time work didn't violate the restriction. The law is meant to apply to NASA, not to its research collaborators.

In 2018, however, the FBI identified Hu as a potential spy. During his court testimonial, Agent Sadiku said he had found and made a "rough translation" via Google of a Chinese-language news release and flier that suggested Hu had once received a short-term contract from the Thousand Talents Program. That was evidence enough for Sadiku to open up a formal probe.

During Sadiku's first visit to Hu's office, Hu says, the agent tried to get him to admit to involvement in a talent program.

"They said, 'You are so smart. You should be in the Thousand Talents Program,'" he recounted during his trial. "I say, 'I'm not that smart.'"

Sadiku also tried to persuade him to become a spy for the US government, using his Beijing University work as a cover. Hu declined via email after Sadiku's visit. After this, Sadiku doubled down on his investigation, placing Hu and his son—then a freshman at UT—under surveillance.

But after nearly two years, Sadiku turned away from the espionage claims and instead started building the fraud case that Hu ended up being charged with. The evidence rested on a form that the university requires academics to fill out, disclosing any outside work that earns them more than \$10,000. Hu did not disclose his part-time job because it earned him less than \$2,000. Sadiku says this is evidence that Hu intentionally hid his China-affiliated work to defraud NASA. The jury, however, could not decide, and the deadlock triggered a mistrial.

FBI under pressure

Observers say the details of the case echo those of others brought as part of the China Initiative: a spy probe on an ethnically Chinese researcher is opened with little evidence, and the charges are later changed when no sign of economic espionage can be found.

According to German, the former FBI agent, this is due to the pressure "on FBI agents across the country, every FBI field office, [and] every US Attorney's office to develop cases to fit the framing, because they have to prove statistical accomplishments."

On Thursday, June 17, shortly after news of the mistrial, members of the House Judiciary Committee wrote to the inspector general of the Department of Justice requesting that the DOJ investigate whether there was adequate evidence unrelated to race or ethnicity for the FBI to open the case, whether the bureau had used false information and made false statements, and whether the China Initiative resulted in "untoward pressure" to engage in ethnic and racial profiling.

This follows increasing demands to investigate whether the initiative has led to such profiling—and calls to end that program altogether.

“The DOJ doesn’t need a special initiative targeting China to go after spies,” says Alex Nowrasteh, the director of immigration studies and the Center for Trade Policy Studies at the Cato Institute. “They should be able to use their normal methods and procedures.”

Hu’s trial suggests “that the scope of Chinese espionage is probably a lot less than people think,” he adds. “If there was a lot more of it, you’d think it’d be a little bit easier to find, and they wouldn’t have to make up cases.”

As for Hu, his nightmare is far from over.

He is still under house arrest, pending a decision from either the Department of Justice to renew the case or drop it, or the judge to dismiss the government’s charges entirely. He has been jobless since his US work visa expired, but he has also not been granted leave from house arrest so he can return to Canada to renew it. Doing so could put him in the crosshairs of Immigration and Customs Enforcement, according to his lawyer.

All he can do is wait for the US government to make its next move.