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A Researcher's Conviction

By Seth Shulman

The tragic nine-year odyssey of Petr Taborsky is best captured in the tale of two government-issued numbers glaringly at odds. First, there is federal patent 5,082,813, awarded to Taborsky, a bright young undergraduate at the University of South Florida, for inventing a way to make a reusable cleaner for sewage-treatment facilities. Then there is prisoner number 514527, issued by the North Florida penitentiary to Taborsky, a convicted felon who, for several months, was held in shackles on a chain gang.

Taborsky is surely not the first researcher to serve time; he may, however, be the first to be incarcerated for stealing his own research. His story caricatures the U.S. system of sponsored university research and intellectual property rights, featuring an overzealous university and a remarkably bullheaded young inventor.

Taborsky's tale begins in 1987 when, as a student at the Tampa-based University of South Florida, he took a job as a laboratory assistant. A nearby holding company, Florida Progress Corp., had paid USF \$20,000 to conduct research on a claylike substance called clinoptilolite. The material, commonly used in cat litter, absorbs ammonium but becomes saturated relatively quickly. The company was hoping to find a bacteriological way to increase the amount of ammonium the clay could absorb so it might more affordably be used to filter the chemicals from wastewater in sewage-treatment plants.

As an undergraduate, Taborsky earned \$8.50 per hour while working on the project in a civil engineering laboratory managed by Robert Carnahan, a dean for research at USF's College of Engineering whose long career had already earned him several patents. The project followed the standard arrangement between the university and the firm, or sponsoring agency: if any inventions or patents resulted from the research, the university would retain the patent but the firm would retain a preferential right to license the technology.

In what would become an important twist in this case, however, USF had not yet adopted a policy governing undergraduates' rights to their own research. In fact, all

parties in this case now agree that Taborsky never signed a confidentiality agreement with the university delimiting his legal rights to the work he was engaged in.

"Taborsky's case was something of an oversight; undergraduates simply aren't supposed to invent things," quips Leonard Minsky, director of the Washington-based National Coalition for Universities in the Public Interest, a Ralph Nader-affiliated nonprofit organization now aiding in Taborsky's legal defense.

Staking Claims

The hotly contested versions of Taborsky's case diverged in the latter half of 1988. Because Florida Progress had been hoping to find some kind of bacteria or enzyme to be used as an additive to the clay, the 26-year-old Taborsky, who was studying chemistry and biology, spent his summer trying to understand clinoptilolite's chemical properties. But when the three months of sponsored research on behalf of Florida Progress had ended, Taborsky says he received his professor's permission to pursue his own research, hoping he might use it as the basis for a master's thesis.

Spending many nights in the lab, often waking every 20 minutes to monitor his experiments, Taborsky had a breakthrough that summer. He found that when clinoptilolite was heated to a temperature of 850 F, its ability to absorb ammonium was significantly enhanced.

Taborsky knew he had found something both important and lucrative. The question was: who had a right to this intellectual property? The firm claimed, with some legitimacy, that the discovery grew out of its sponsored research. Taborsky's professor told him that the discovery belonged to the university because it had "shop rights" to any work undertaken at a campus lab. For his part, Taborsky believed that his work, undertaken largely on his own, was a novel departure that owed little debt to anyone. As Taborsky, now 34, tells it: "I decided I wasn't going to let them intimidate me."

For a brief moment, a resolution of the dispute looked possible. After Taborsky's professor reported the discovery to representatives from the university and the sponsoring firm, a subsidiary of Florida Progress agreed to offer Taborsky a job and told him they would name him as the primary author on their patent application. Taborsky was tempted enough to sign a routine confidentiality agreement with the company—the first agreement he had signed. But the arrangement immediately fell through when Taborsky realized the contract offered him no real guarantee of employment, since it stated that the company could fire him at will. At this point, in the fall of 1988, Taborsky alarmed the parties involved by threatening to seek his own

patent.

In a momentous turn of events, Taborsky, presumably intimidated and confused by the forces arrayed against him, left the school and his lab job, did not take finals, and did not return to USF in any capacity. Weeks later, he was arrested and criminally charged with theft. A police report indicates that Carnahan, the project's principal investigator, told police Taborsky had taken two research notebooks from the university laboratory in violation of a confidentiality agreement. Taborsky admits that he took the notebooks, but he contends that they belonged to him. And, he rightly argued, he never signed any agreement with the university.

Taborsky maintains that USF pressed criminal charges initially to scare him into giving in. The university's actions only strengthened his resolve, but he has paid dearly for his obstinacy. Taborsky, a Czech citizen, saw his application for U.S. citizenship put on hold because of the case. His marriage crumbled. The university withheld his chemistry degree. In 1990, he was found guilty of grand theft and sentenced to 15 years of probation and 500 hours of public service.

Though he was forced to turn the material over to the university, he began applying for a patent. In Taborsky's view, his only hope for retaining his scientific integrity would come if the U.S. Patent Office, after reviewing the entire situation, would deem his work novel enough to merit a patent in his own name.

Despite the intervention of the university and of Carnahan, who claimed to be the invention's owner, the Patent Office held that Taborsky was the rightful inventor and awarded him a patent in 1992. But when university lawyers heard of the patent, they filed suit and successfully argued that Taborsky had violated his probation, which prohibited him from making further use of the research he had undertaken at USF.

Frustrated by Taborsky's recalcitrance, and terrified that the case might scare away would-be research sponsors, Francis Borkowski, then president of USF, successfully appealed for the judge in the case to sentence Taborsky to prison. Taborsky, still claiming that the patent was rightfully his, was sentenced to three and a half years. Following appeals, Taborsky began serving his sentence in January 1996 and has remained behind bars ever since, serving four months in a maximum-security state prison where he was shackled and required to work on a chain gang clearing trees and brush.

When media accounts last summer depicted a promising young scientist in leg irons,

the governor's office stepped in to review the case. Dexter Douglass, legal counsel to Florida Governor Lawton Chiles, told the press that "we are concerned that the government overreached in this young man's case."

Clemency Rejected

But when Douglass tried to arrange a pardon, Taborsky refused, stating that "clemency will not undo my conviction. Petitioning for clemency is asking for forgiveness. My main concern is overturning my wrongful conviction."

Meanwhile, USF has remained steadfast. "The case is no different from that of a former student stealing something from the university, like precious books from the library," says Henry Lavendera, an attorney for the university. "We are concerned that potential sponsors will view it as a black eye for the institution if we allow student researchers to steal information."

USF president Betty Castor said in a recent statement that Taborsky has no one to blame but himself for his imprisonment. But in the future, Castor said, the university will file only civil suits for intellectual theft instead of pressing for criminal charges.

For the present, Taborsky will remain incarcerated, though now at a minimum-security prison after intervention from the governor's office. However, hearings on the outstanding civil suits in this case will resume this April. After having reportedly spent more than \$300,000 in outside legal counsel to prosecute the case, USF recently succeeded in persuading a Florida judge to assign one of three patents to the university as restitution. It is now suing Taborsky over the remaining two patents. And Taborsky is countersuing the university, its board of regents, and two principal investigators personally, including Carnahan.

Leonard Minsky, whose organization is aiding in Taborsky's defense, considers the case a clear example of the negative effects that can result from corporate involvement in university research. The problem stems, he maintains, from a 1980 federal-policy change that gave universities the right to own patents on discoveries made on campus, and companies the right to obtain exclusive licenses by sponsoring the research. Since then, the financing of research by private industry on campuses has grown nationally to \$1.5 billion per year, according to the National Science Foundation. And at USF, with 36,000 students the second-largest state university in Florida, sponsored research has grown from \$22 million in 1986 to about \$100 million today.

Offering some perspective on the matter, Cornelius Pings, president of the Association

of American Universities, a Washington, D.C.-based consortium of the nation's largest research universities, notes that Taborsky's is the only case he has heard of where someone has been jailed over a patent dispute. But despite what he calls the "bizarre" nature of the case, Pings says that underlying tensions over intellectual property rights at universities are real and mounting.

"To the extent that patent income is there, there is no reason the university should give it away," Pings says. After all, he notes, "universities have profited handsomely from patent revenues for years and, for the most part, the system has been managed as it should be." But while today's universities cannot, and perhaps should not, maintain they are "above commerce," he says, they do need to protect their role "as temples of intellectual inquiry."

Pings says his association has "urged its member institutions to work out detailed rules governing intellectual property issues that are mutually acceptable to all parties." If they can't tackle these issues, universities stand to lose more than money, he says. "We could lose a lot of our credibility."

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