Final Agenda

0. Introduction of New Speakers

a. Rep. Andy Kim, Member, U.S. Congress (NJ-03)
b. Mary McAlpin, Distinguished Professor of the Humanities and Professor of French at the University of Tennessee, Knoxville (UTK); President, UTK Chapter of American Association of University Professors (AAUP)
c. Andrea Liu, Hepburn Professor of Physics, University of Pennsylvania; Past Speaker of the Council of the American Physical Society

Opening Remarks

Phil Lomonaco, attorney, led off the meeting with the good news about the acquittal of Professor Hu on September 9, 2021.

Phil expressed appreciation for the interest, support, and help from many to Professor Hu and his family through these trying times. There were many twists and turns in the case. As the first academic to go to trial under the “China Initiative,” it was very important to have a good outcome for Professor Hu’s case, and we could not ask for anything better.

The judge right from the beginning was open. The judge looked at the pre-trial motions where Phil set off the facts and arguments. The judge was open to wait to see the evidence at trial - whether what Phil said in his papers really came true through the witnesses’ testimonies at trial. The judge paid attention and was very much on point with everything in his memorandum opinion, granting the rule 29 motion by tracking the trial.

Basically, the judge found there was no preponderance of the evidence to convince a jury that Professor Hu was guilty even given in a light most favorable to the government. The government did not provide sufficient evidence of guilt.

The judge found two reasons why Professor Hu was innocent of wire fraud. The first being that there was insufficient evidence to show that he intended to deceive NASA, or fraudulently represent a material fact to NASA, that there was no satisfactory evidence to prove that.

The second theory Phil had propounded was that there was no damage or Professor Hu did not intend to injure NASA. Phil found a case law supporting the theory that if NASA is not damaged, or if Professor Hu was not taking property or money from NASA, or intended to take property and money from NASA, he could not be convicted of wire fraud.
Phil cited a case out of the 11-th Circuit that held if there is no harm there is no foul, so to speak. It was a district court judge who is sitting on the Sixth Circuit Court of Appeals. So it would have been Judge Varlan's boss if he disagreed with that theory. That was another blessing that God provided.

On page 38 of the ruling, Judge Varlan wrote

“The Sixth Circuit’s Frost decision is squarely aligned with Takhalov’s conclusion that the federal wire fraud statute requires the intent to cause a tangible harm to the victim regarding the benefit of the bargain between the parties. Frost’s ultimate conclusion that the lack of tangible harm meant there was insufficient evidence on the element of intent to Case 3:20-cr-00021-TAV-DCP Document 141 Filed 09/09/21 Page 38 of 52 PageID #: 2333 39 defraud, 125 F.3d at 361–62, further confirms that Takhalov’s definition of the term “defraud” in the federal wire fraud statute is correct and applies equally in this Circuit.”

Without the proof that Professor Hu knowingly and intentionally tried to deceive NASA, the last three counts on false statements were also not supported by evidence. If he did not intend to deceive NASA, then he did not intend to make false statements.

Under Rule 29, the judge granted an acquittal on all six counts of the indictment.

The last email Phil received from the government was that they were still trying to figure out their appeal options, which Phil does not think they have any, but will see what they will say. They have a few days to absorb what has happened to make a statement officially in court if they are going to.

Phil is very happy with Anming for being a trooper all the way through this process. Anming did not waver going forward to prove his innocence. And that is the kind of client Phil likes – those who are innocent although it is the most stressful type of representation. Phil wishes all his clients had two PhDs, which would be a lot more helpful.

Ivy Yang, wife of Professor Anming Hu, followed Phil and expressed gratitude on behalf of their family including three children. The broad support they have received gave them comfort and inspiration to fight against injustice with determination and faith.

History is made by people who are the true patriots of this country. Ivy thanked Phil as their beloved attorney and wise and humble man. History was made by Phil, the jury, Jamie Satterfield, Judge Varlan, CAPAC, APA Justice, AAJC, United Chinese Americans, Committee of Concerned Scientists and others who wrote to Judge Varlan, Asian American Scholar Forum, American Association of University Professors, Tennessee Chinese American Alliance, and many, many more persons and organizations.

For everyone who made donations, provided encouragement, and watched the case closely, Ivy thanked them for providing the strength for her family to continue the fight. Anming is an ordinary passionate scientist who only wanted to perform his research and to contribute his talents to the academic world. What has happened in the past years has damaged his career and reputation that was built over many years of tremendous unbelievable hard work. Although
their lives have been forever changed and they are not sure of what the future holds, they will be forever thankful for the selfless actions of individuals who believed and supported them throughout the entire journey despite the backlash, oppression, and fear of injustice.

**Professor Anming Hu** concluded with his brief comments. It was too challenging for him to find the proper words and no words would be adequate to express his deep appreciation for what so many have done for him. The scars and the painful memories are still there in his heart. For now, he preferred to remain silent and let Phil speak on the case and Ivy to speak for the family.

You can support Professor Anming Hu by making a donation to his legal defense fund: [https://gofund.me/54289bcb](https://gofund.me/54289bcb).

### 1. Remarks by Rep. Andy Kim
   a. Speaker: Rep. Andy Kim, Member, U.S. Congress (NJ-03)

Congressman Kim was first elected to the U.S. House of Representatives in 2018. He represents the Third Congressional District of New Jersey. As a member of the House, Congressman Kim serves on the House Armed Services Committee, the House Foreign Affairs Committee, and the House Committee on Small Business. Prior to serving in the House, Congressman Kim worked as a career public servant. He served at USAID, the Pentagon, the State Department, the White House National Security Council, and in Afghanistan as an advisor to Generals Petraeus and Allen. Congressman Kim is a member of CAPAC.

Congressman Kim expressed appreciation to hear from Phil, Ivy, and Anming because it provides a tangible and specific understanding of what we are facing today.

In a broader context, Congressman Kim addressed the questions of how we confront the ideas of loyalty and trust as a country, who belongs in this country, who is an American, and who has opportunities to be able to seek the fullness of what it means to be here in this nation that goes beyond just any individual case.

Congressman Kim spoke through his own lens that roughly about 9 or 10 years ago he was working for the United States State Department as a diplomat for the United States at the time. He remembered serving out in Afghanistan, he put himself in harm's way for this country. However, when he came back to the United States working in Washington DC, there was a letter at his desk one day. It was a letter to inform him that he was banned from working on issues related to Korea because Congressman Kim is a Korean American.

He was not applying to work on anything related to Korea. This was a preemptive and proactive effort, letting him know that while he was in Afghanistan his country, the United States, had suspicions about whether or not he would be able to take on the full measure of the roles at the State Department.
It was a devastating experience because he had already gone through multiple security checks before he abided by all these different protocols and to have this on top of that this idea that they still just did not trust him, was hurtful.

Congressman Kim remembered trying to find a way to appeal it and he was told that there was no such way for him to do so at that time. He was told by people to just move on and ignore that it had happened.

But Congressman Kim felt this was a stain on his reputation - this inability for him to prove to others that he should be allowed to do whatever job that any other American can do at the State Department despite his last name, and as a Korean American confronting what it needs to be informed policy, as we have undoubtedly challenges when it comes to the Korean peninsula.

Congressman Kim is married to a Chinese American. As we enter this new era, we are all talking about what happens next. He is on the Armed Services Committee and the Foreign Affairs Committee in Congress and feels it everyday. We are entering an era where we are much more dominated by the thinking about what is the US relationship with China. In that question, we not only need to think about what that relationship will look like, but also how it is going to affect people around the world, in particular people here in the United States and in particular, Asian Americans, Chinese Americans, and how that is going to interact.

The experiences of Congressman Kim, Professor Hu, and others gave a lens at the issue. What we need to beware is to understand all the different manifestations that this type of questioning of loyalty and trust will foster and find the different tools that we have at our disposal, whether legal, cultural, or educational, to try to combat this and try to make sure that we do not have people drawn under the kind of suspicion that we fear.

With this broader context, Congressman Kim pledged to do everything that he can in Congress to draw from these experiences and what he is hearing from others, to try to find the best ways to move forward. He made no promise that he can solve every single element, but he wanted to work with all of us, and pull our minds together and think about what are the different things that we can accomplish and try to make sure that we move forward.

Congressman Kim has a four-year-old and a six-year-old growing up here in this country. He is worried about what kind of world his Korean and Chinese American baby boys are growing up in this era. He wants to make sure that he does everything he can to deliver a fair, just, and equal society for them and give them the opportunities that they deserve.

2. CAPAC updates
   a. Speaker: Nisha Ramachandran, Executive Director, Congressional Asian Pacific American Caucus

Nisha reminded the audience that CAPAC leaders, including Congressman Kim, issued a “Dear Colleague” guidance on Anti-China messaging and anti-Asian violence on July 16, 2021.
When we talk about these issues, words matter, especially based on what we have seen and known throughout this pandemic in the last year and a half. The words that our elected officials are using and the way they talk about our communities matters. CAPAC will continue to work with congressional committees and members, especially those writing legislation through the next couple of weeks. Wherever CAPAC sees language that is outside of the scope of their bills, specifically anti-China language, we will try to address the issues with committee staff.

Nisha reported on two topics. First is to congratulate Dr. Hu and his family on the acquittal with special regards from CAPAC Chair Rep. Judy Chu, who is thrilled to hear the news and extends her support and congratulations. On September 10, 2021, CAPAC issued a statement on the Acquittal of Dr. Anming Hu After Mistrial Based on False Evidence, in which Reps. Judy Chu, Ted Lieu, and Jamie Raskin gave their remarks and referenced the Congressional Roundtable on the use of ethnic profiling against Chinese American scientists and the need to end the “China Initiative.” This is certainly not the end of what we are seeing out of the “China Initiative” and CAPAC will continue to push for the end of that initiative.

Nisha acknowledged receipt of the letter from 177 Stanford University faculty members from Associate Senior Dean Peter Michelson. This is something high on the CAPAC list to address with the Attorney General and officials at the Department of Justice. It is also frequently raised with our contacts in the White House. CAPAC stands firmly behind ending the “China Initiative.”

Lastly, it has been a little over a week now since CAPAC received the results of the ITMS investigation at the Department of Commerce. CAPAC welcomes the decision to eliminate this rogue unit, but it has also heard concerns regarding national origin and race. CAPAC is working to schedule a meeting with the Department of Commerce at the staff level on a briefing so that a few more detailed questions can be asked. CAPAC issued a statement on the decision to eliminate rogue investigative unit at the Commerce Department on September 3, 2021.

Nisha and CAPAC will work closely with APA Justice and this coalition on these big issues.

3. American Association of University Professors
   a. Speaker: Mary McAlpin, Distinguished Professor; President, UTK Chapter of AAUP (AAUP/UTK)
      - APA Justice: Anming Hu

Mary McAlpin is President of the University of Tennessee (UTK) Chapter of American Association of University Professors (AAUP). She is Distinguished Professor of the Humanities and Professor of French at UTK.

As Mary started her talk about her ex-colleague Professor Hu, she hoped that the “ex” in front will be removed in the near future so that they can be faculty colleagues again at the University of Tennessee.

AAUP is a nonprofit membership association of faculty and other academic professionals. Headquartered in Washington, DC, AAUP members and chapters based at colleges and universities across the country. Founded in 1915, AAUP has helped to shape American higher education by developing the standards and procedures that maintain quality in education and
academic freedom in this country’s colleges and universities. AAUP defines fundamental professional values and standards for higher education, advance the rights of academics, particularly as those rights pertain to academic freedom and shared governance, and promote the interests of higher education teaching and research.

AAUP looks into not only questions of tenured professors but also the protection of non-tenure track faculty and graduate teaching assistants. Mary is a professor of 18th century French literature with 26 years of experience at UTK.

Mary first heard of Professor Hu’s case from Jamie Satterfield’s report in the local newspaper, The Knoxville News Sentinel. People started posting many messages and questions in the AAUP listserv – What is going on? What happened? Is AAUP looking into this? What is the administration doing? People were upset and confused.

Although the case comes down to simple injustice, trying to figure out what happened through reading has been a challenge.

Mary provided a summary of three primary concerns.

First is the FBI investigation and how it seemed to be a travesty of justice, which was also what the judge concluded.

Second is the UTK’s role with this investigation, which was covered by Jamie Satterfield. One of her articles went into details about how the UTK administration responded to this case. The university is a giant bureaucratic entity and it protects itself. When an FBI agent comes calling, the university is not there to help or protect the employee. This has happened several times over the course of Mary’s career, but it was never in such an egregious and shocking fashion as in Dr. Hu’s case.

Third is the government’s targeting of international faculty. They are particularly vulnerable to losing their employment at UTK which was what happened with Dr. Hu. There are many international faculty members working at UTK. Many of Mary’s colleagues in the Department of Modern Foreign Languages and Literatures at UTK are on green cards or H1 visas.

The international faculty members are probably following this situation very closely, but not speaking out the way that Mary believes she can as a U.S. citizen born in the U.S. and possessing tenure. Mary also said that she is closer to the end than the beginning of her career. As President of AAUP/UTK, she is also speaking for those who might be afraid to speak up, particularly employees who are not citizens at UTK.

When the acquittal of Dr. Hu came through, Mary and her colleagues were thrilled to hear the news. AAUP/UTK sent an email to Provost Zomchick, hoping that Dr. Hu will be reinstated with back pay and perhaps for emotional and other damages.

That is not what happened. Apparently, the university is expecting Dr. Hu to demonstrate proof that he is able to work in the U.S. before they will rehire him.

The UTK Faculty Senate is leading on this case and trying to figure out what exactly is going on with the reinstatement and the legal issues involved. While Mary could not speak to the legality of what happened, the Provost has said that in every case and every situation surrounding this case, the UTK administration followed both the letter and the spirit of the faculty handbook.
Even if the letter was followed, which Mary was not sure, the spirit of the faculty handbook was not followed in this case.

From what Mary could piece together, Dr. Hu was indicted by the federal government. At that point the UTK administration put him first on paid and then on unpaid suspension. According to the faculty handbook, the UT administration did not have to put Dr. Hu on unpaid suspension.

For example, he could have been reassigned to another job unrelated to the indictment that was in play. It was a choice made to put Dr. Hu on unpaid leave. Then, because Dr. Hu was on unpaid leave, he no longer qualified for the H1B visa, with which he was working and at which point they fired Dr. Hu not for cause, but because he did not have an H1B visa, which he did not have because they suspended him without pay, which they did not have to do.

When they suspended him without pay, they knew that this would cause the revocation of the H1B visa, which meant that they basically triggered their own ability to fire Dr. Hu because they probably did not want to deal with the legal fallout of the indictment, which Jamie Satterfield has detailed in her articles about the FBI investigation.

From what Mary understands, Provost Zomchick is saying that UTK will rehire Dr. Hu but he has to prove that he is eligible to work in the U.S., which would mean having a visa, which was lost precisely because the UTK administration suspended him.

This is a catch-22 Kafka situation. The faculty members at UTK and perhaps the Faculty Senate are not going to stop pushing on this issue. This is a clear travesty of justice, and it has been continued unfortunately at the level of the university even after the acquittal of Dr. Hu.

4. APS Webinar on Immigration and Science
   a. Speaker: Andrea Liu, Professor, University of Pennsylvania; Past Speaker of American Physical Society

Professor Andrea Liu is Past Speaker of the American Physical Society (APS) and Hepburn Professor of Physics at the University of Pennsylvania.

Andrea started by describing the importance of professional societies, especially in STEM, in advocating for Asian Americans on visa and immigration issues. APS represents 55,000 physicists, with more than 45,000 of them in the US. APS has taken a strong stance on immigration and visa issues, as well as the “China initiative.”

Last summer, the Trump administration was thinking of canceling F1 and M1 visas for students who are studying off campus during the pandemic. APS filed an amicus brief in support of legal action by Harvard and MIT against the policy change and helped organize other professional societies to join in. That action was successful.

APS has an active Office of Governmental Affairs and lobbied the State Department to successfully defend the J1 OPT (Optional Practical Training), which the administration was thinking of suspending for all of STEM. It also managed to protect H1B’s for those who are
already in the US. So scientific and professional societies have an important role to play. In preparing the defense, they put together a report with personal statements from members talking about how the J1 had benefited them, the US, and OPT.

More recently, APS wrote a letter to the Department of Justice and the Office of Science and Technology Policy at the White House about the “China initiative.”

Andrea urges all of us to get involved with our professional societies, optimally at the highest levels, where we can actually influence policy because that is an important way for us to get our voices out.

APS will host the next webinar titled "Effects of Federal Immigration Policy on US Science and All Scientists" on Friday, September 17, 2021, between 2 and 4 pm ET. Please help spread the word and join the event: https://bit.ly/2WJaUQj.

It will feature Steve Chu, who won the Nobel Prize for laser trapping of atoms and was Secretary of Energy in the Obama administration. Dr. Jeong Kim, a tech entrepreneur who was President of Bell Labs and is now CEO of Kiswe Mobile will talk about his immigration experience.

These are inspiring stories, but there will also be personal statements from people who do not feel very welcome in the U.S. and are worried about being here. This could have a huge impact on science and the U.S. dominant position in science. It also has a tremendous human cost, especially for immigrants. This is the message APS hopes to convey with this webinar.

Members of the APS have also put together a toolkit in collaboration with members of the Asian American Scholar Forum on how to put pressure on universities to support scientists who are collaborating internationally, instead of abandoning them. The tool kit contains a template letter to research institution administrations and suggestions for how researchers can put maximum pressure on their institutions. That link will be provided along with the webinar.

5. Anti-Racial Profiling Project - Asian Americans Advancing Justice | AAJC
a. Speaker: Gisela Kusakawa, Staff Attorney
   - Advancing Justice | AAJC: Anti-Racial Profiling Project
   - Legal Referral Service: Contact 202-935-6014 using the Signal app for attorney referrals. AAJC staff can assist you in Mandarin Chinese and English.

Gisela discussed Advancing Justice | AAJC’s next steps for organizations, community organizations, and concerned community members for Professor Hu’s case.

1. As we discuss this case, we should focus on the correctness of the judge's ruling, how it is reasonable, and the importance of the judicial role when there is government overreach. It is important to highlight that the Department of Justice has overreached under the “China initiative.”

2. Second, we should lift up the harm that Professor Hu has suffered despite this acquittal including loss of employment, financial ramifications, and immigration consequences. Professor Hu is not alone. Advancing Justice | AAJC is seeing many cases like his
across the country. We must also lift up his story to allies who are not as aware of the “China Initiative.”

3. Advancing Justice | AAJC will be holding a webinar on the criminalization of AMEMSA and Chinese American and immigrant communities. In October, we will be looking to conduct further engagement on the Hill. If you are interested in learning more, please contact Gisela Kusakawa at gkusakawa@advancingjustice-aajc.org.

4. Additionally, this week commemorates not only the lives lost during 9/11, but also two decades of criminalization of Asian Americans and Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities. What we see is a cyclical pattern of targeting based on the perception of Asian American being “perpetual foreigners.” Whenever tensions rise abroad, we are treated as national security threats. This week, Asian Americans Advancing Justice | AAJC will be working with the Arab American Institute, lifting up issues that Muslim communities have faced. Many of this will sound familiar: surveillance, travel bans, xenophobic hate crimes, profiling, criminalization, and unjust prosecutions. This is a unique opportunity to draw these connections with the “China Initiative,” lend support to our brothers and sisters, and work together to end the “China Initiative” and more broadly to end the racial profiling that we are seeing across federal agencies against Asian American federal employees.

6. Q&A and Discussions

There were lively discussions during the Q&A session. Among the many topics were

1. Opportunity to review the FBI actions in their dual role of a law enforcement agency and a domestic intelligence agency at the Congressional level.
2. Indication of Attorney General Merrick Garland’s plan to terminate the “China Initiative.”
3. Use of xenophobic terms and labels that continues to project and enable the “Perpetual Foreigner” stereotype for Asian Americans.
5. Asian American Scholar Forum letter to Chancellor of the University of Tennessee and Judge Varlan and an upcoming webinar in October.
6. Support to Stanford University faculty member letter or writing own letters.
7. Military-industrial complex on U.S. foreign and domestic policies since WWII and rising international and domestic militarization since 9/11.
8. Is there any evidence that jeopardizing immigration status is being used as part of the prosecutorial strategy in China initiative cases, especially against academics?
10. Roles, responsibilities, and accountability of University of Tennessee Knoxville and FBI.
12. Layman’s explanation on the significance of Judge Varlan’s decision and importance for future cases.
13. Further development of tool kits.
14. Additional support of UTK faculty to Dr. Hu and education about his case.
15. Conditional immunity and consequences of wrongdoing by federal agents.
17. Department of Commerce rogue investigative unit and internal review report; whistleblowers.

7. Next Meeting
The next scheduled monthly meeting may be moved to Tuesday, October 5, 2021.