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### Breaking Report on The "China Initiative"

On September 15, 2021, The Washington Post published a comprehensive report [The China Initiative aims to stop economic espionage. Is targeting academics over grant fraud 'overkill'?](#) According to the report, to federal investigators, [Qing Wang](#) was an example of China's growing effort to co-opt scientists in the United States — part of a vast campaign to steal American secrets and technology. Over the past several years, the Justice Department has broadened its focus from company insiders, hackers and suspected Chinese agents to scrutinize researchers at universities and hospitals under a marquee law enforcement program called the "China Initiative."

But a string of dismissed cases has amplified concerns among some lawmakers and activists about whether prosecutors have been overzealous in pursuing researchers of Chinese descent. The issue goes beyond whether the government is bringing prosecutions it can win. Critics say the cases raise the question of whether a program designed to address a national security threat posed by the Chinese government has strayed, targeting researchers on lesser allegations of fraud without compelling evidence that they pose a danger to the United States.

Critics of the prosecutions say they have chilled scientific research and fueled the perception that Chinese American scientists are disloyal to the United States at a time of [rising anti-Asian sentiment](#). Congressional Democrats want Attorney General Merrick Garland to [investigate the initiative](#) for racial profiling. [Anming Hu](#), a professor of nanotechnology at the University of Tennessee, was the first grant fraud defendant charged under the China Initiative to stand trial. He was acquitted on September 9, 2021.

Read more: <https://wapo.st/3Cgg3QY>

### Phil Lomonaco, Ivy Yang, and Anming Hu Shared Their Thoughts

APA Justice held its monthly meeting on September 13, 2021. Attorney Phil Lomonaco, Professor Anming Hu, and his wife Ivy opened the meeting with their 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>

A summary of the meeting is being prepared at this time. It will be published at <https://bit.ly/3kxkqxP> upon release. More about the Anming Hu case at [https://bit.ly/APAJ\\_AnmingHu](https://bit.ly/APAJ_AnmingHu)

## **2021/09/13 Monthly Meeting - Congressman Andy Kim and Other Speakers**

During the Septmebr 13, 2021 APA Justice monthly meeting, Congressman Andy Kim shared his personal experience and 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. He also fielded and responded to questions in the meeting. Professor Mary McAlpin, President of the University of Tennessee Knoxville Chapter of the American Association of University Professors (AAUP/UTK) reported on the actions taken by (AAUP/UTK) and their undderstanding of the roles and current standing of the University of Tennessee, Knoxville. As the past Speaker of the American Physical Society (APS), Professor Andrea Liu of University of Pennsylvania explained the important role of professional societies such as APS in advocating and addressing important policies such as immigration and scientific and scientist issues, including an upcoming webinar and a tool kit for universities to support international collaboration.

A meeting summary is being prepared at this time and will be posted at <https://bit.ly/3kxkqxP> upon release.

Please spread the word and join the APS webinar titled "Effects of Federal Immigration Policy on US Science and All Scientists" on September 17, 2021: <https://bit.ly/2WJaUlj>

## **177 Stanford University Faculty Members Sent Letter to Attorney General Garland**

On September 8, 2021, a group of 177 Stanford University faculty members from more than 40 departments, sent [an open letter](#) to the U.S. Attorney General Merrick B. Garland, requesting that he terminate the Department of Justice's "China Initiative" and look seriously at alternative responses to the current challenges, particularly with China. The signatories include former Energy Secretary Steven Chu and 7 other Nobel laureates. On September 13, 2021, Reuters broke the story, which has also been picked up widely by other media. UC Berkeley, Princeton University, and other universities are reportedly working on similar letters.

Read more: <https://bit.ly/3Ccda3D>

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