

## In This Issue #96

- Administrative Complaint Filed by Hydrologist Sherry Chen Against the Departments of Commerce and Justice
- Kansas University Professor Franklin Tao's Trial Postponed Again
- Trial of Harvard University Professor Charles Lieber to Start on December 14, 2021
- Latest on Nationwide Campaign to End The "China Initiative"
- Events and Reports for the Asian American and Scientific Communities

### Administrative Complaint Filed by Hydrologist Sherry Chen Against the Departments of Commerce and Justice

On November 1, 2021, the legal team led by Cooley LLP, ACLU, and attorneys Michele Young and Peter Toren filed a 37-page [administrative complaint](#) on behalf of Sherry Chen against the Departments of Commerce and Justice.

The complaint asserts the following causes of action under the Federal Tort Claims Act ("FTCA"): intrusion into private affairs, negligent training and supervision, false arrest, intentional and/or negligent infliction of emotional distress, and civil conspiracy. All the claims arise under Ohio law.

The claims are based on the investigation, arrest, and prosecution of Ms. Chen; the July 13, 2021 United States Senate report titled "[Abuse and Misconduct at the Commerce Department](#)"; and the September 3, 2021 DOC report titled "[Report of the Programmatic Review of the Investigations and Threat Management Service](#)". In short, both the Senate Report and the Commerce Report establish that the DOC, through its Investigations and Threat Management Service ("ITMS") under Director George Lee, conducted illegal criminal investigations of DOC employees of Chinese descent, including Sherry Chen. ITMS operated without authority, adequate supervision, or training for 16 years and was only shut down by the DOC after ITMS's abuses were investigated by the Senate and made public. As a result of ITMS's discriminatory conduct, Ms. Chen was arrested on spurious charges and falsely accused of being a spy.

The complaint also puts the DOC and DOJ on notice to preserve all documents and records relating to the following subject matters:

- ITMS's surveillance and investigations of DOC employees, including employees of Chinese or Southeast Asian descent. This includes all whistleblower complaints and the departments' responses.
- Sherry Chen and the investigation, prosecution, and termination of Sherry Chen, including any public and private responses to questions regarding the handling of the

Sherry Chen investigation, prosecution and termination, and the DOC's decision to disallow Ms. Chen to return to work and to appeal the [Merit Systems Protection Board's order](#) to reinstate Ms. Chen.

- ITMS Director George Lee, including any whistleblower complaints.
- The hiring, training, supervision, and discipline of ITMS employees since ITMS's inception.
- The hiring, retention, supervision, and discipline of other DOC employees, including employees of Chinese or Southeast Asian descent.
- The records and documents referenced in or provided as the basis of the Senate Report or the Commerce Report.

Read more about the Sherry Chen story at [http://bit.ly/APAJ\\_Sherry\\_Chen](http://bit.ly/APAJ_Sherry_Chen)

## *Accused of Spying for China, Until She Wasn't*



Sherry Chen, a hydrologist for the federal government in Ohio, was arrested last October and accused of economic espionage. Afterward, she said, "I did nothing but cry for days." Maddie McGarvey for The New York Times

**By Nicole Perlroth**

May 9, 2015

## **Kansas University Professor Franklin Tao's Trial Postponed Again**

According to a [memorandum and order](#) filed on November 9, 2021, the Defendant (Franklin Tao) requests permission to take depositions of four prospective witnesses located in the People's Republic of China ("PRC") by remote means. The Court granted the Defendant's motion for Rule 15 Depositions under the condition that the Chinese government approves the pending MLAA request to conduct the remote depositions at least 30 days before trial.

The Court heard oral argument on Defendant's motion on July 23, 2021. The Court indicated during the hearing that it was inclined to grant Defendant's Rule 15 motion, as the anticipated testimony is material and the prospective witnesses are unavailable. However, the legal and logistical obstacles presented by Defendant's motion needed to be resolved before the Court could rule, so the Court held a follow-up conference on August 17, 2021 to address possible solutions. Based on the parties' representations at the conference, the Court concluded that having the witnesses travel to Hong Kong or Macau to sit for their depositions was not a viable solution. Despite its opposition to the motion, the Government offered as a solution to submit, on Defendant's behalf, a request to conduct the remote depositions to the Chinese government under the Mutual Legal Assistance Agreement ("MLAA") between the United States and the PRC. Defendant did not propose an alternative solution. The Court thus agreed that the Government should pursue the MLAA process. The Government submitted the MLAA request to the Chinese government on September 10, 2021, and it has since provided the Court with several updates on the status of the MLAA request, which remains pending.

On November 15, 2021, the Court ordered the designation of a Classified Information Security Officer and alternates in accordance with the Classified Information Procedures Act and the Security Procedures.

No date has been set for when the trial will start, but it is expected to be in 2022.

Professor Tao's case is part of the Department of Justice's "China Initiative." Read more: <https://bit.ly/3fZWJvK>

## **Trial of Harvard University Professor Charles Lieber to Start on December 14, 2021**

Federal authorities arrested Professor Charles M. Lieber in January 2020 on charges that he made false statements to officials investigating his funding sources. According to the government, Professor Lieber lied to the Defense Department and the National Institutes of Health about alleged ties to China's Thousand Talents Plan, a talent recruitment program. In June 2020, a federal grand jury indicted Professor Lieber on two counts of making false statements. Later that summer, he was additionally indicted on four related tax offenses for

allegedly failing to report income he received from Wuhan University of Technology.

Professor Lieber has maintained his innocence throughout the proceedings. He has also received backing from several prominent academics. In March 2021, 41 professors at American universities — including seven Nobel laureates — penned a letter arguing against the federal government’s prosecution of Professor Lieber. Separate from his criminal trial, Professor Lieber continues to pursue a civil suit against Harvard, alleging the University broke its contract by refusing to reimburse his criminal defense fees. Alongside the charges against him, Professor Lieber has also been battling an advanced form of lymphoma, and his attorneys have pushed for an expedient trial for the opportunity to clear his name. In an October 12 update to the court, Torrey K. Young, one of Lieber’s attorneys, wrote that “Professor Lieber’s health continues to be a paramount concern.”

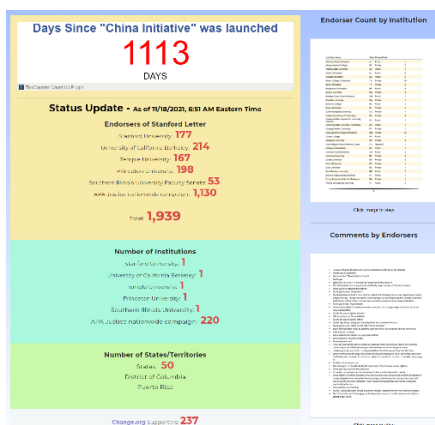
The final pretrial conference in the case is scheduled for December 8, with a jury trial beginning December 14, 2021.

Professor Lieber's case is part of the Department of Justice's "China Initiative." Read more: <https://bit.ly/328FTJP>

## Latest on Nationwide Campaign to End The "China Initiative"

On November 9, 2021, Professor Yueh-ting Lee, President of Southern Illinois University (SIU) Faculty Senate, sent [a letter](#) to Attorney General Merrick Garland endorsing the Stanford letter and urging AG Garland to "terminate the China Initiative and develop an alternative response to the challenges posed by our relations with the People’s Republic of China, one that avoids racial profiling and discouraging beneficial and important collaborations and influx of talented personnel." According to [its website](#), there are 53 members in the SIU Faculty Senate.

As of November 18, 2021, a total of 1,939 faculty members, scholars, and administrators from 220 universities and educational institutions across the nation have endorsed the Stanford letter. The nationwide campaign will continue until the "China Initiative" has ended. Check the latest counts and comments at <https://bit.ly/3wwrD8A>.



## Events and Reports for the Asian American and Scientific Communities

- On November 11, 2021, Professor Maggie Lewis of Seton Hall University explored the motivations behind the China Initiative and the concerns about bias in its framing and operation in a webinar titled Considering Criminal Law's Role in Research Security hosted by the University of Minnesota China Center. Watch YouTube video: <https://bit.ly/3wVYT9G> (58:41).
- On November 11, 2021, Neo.life published The Real Danger of A Biological Cold War With China. The reading time for the article is estimated to be 20-25 minutes. The comprehensive article attempts to address the question of "Can we thwart Beijing's drive for U.S. secrets without stifling science or harming American innovation?" Read the article here: <https://bit.ly/3qRhOBt>
- On November 3, 2021, Advancing Justice | AAJC and OCA-Asian Pacific American Advocates co-hosted a two-part webinar on Movement to Combat Racial Profiling of Asian Americans - Where Are We Now? The first panel provided a comprehensive overview of the anti-racial profiling movement and the current state of play, including the end of the U.S. Department of Commerce's security unit Investigations and Threat Management Service (ITMS) and the upcoming trial of Dr. Feng 'Franklin' Tao, the most recent case under the "China Initiative." The second panel looked into ways you can be involved with Advancing Justice | AAJC's and OCA's week of action. Speakers highlighted important policy and advocacy priorities, community-led grassroots organizing efforts, and outline how to build narratives with the media to lift up the voices of impacted people and increase public awareness. Watch YouTube video: <https://bit.ly/3qesGJq> (1:16:26)
- On November 17, 2021, Asian American Scholar Forum hosted a webinar titled Managing Academic Collaborations with Chinese Institutions at US Universities. The tensions in relations between China and the United States and a number of high-profile criminal cases under the China Initiative of the Department of Justice have put a spotlight on American universities' relations with research and educational institutions in China. The issues are extremely complicated and are fraught with the complexities of law, open science, foreign policy, and the status of Chinese American faculty members as both researchers and recent immigrants to the United States. Watch YouTube Video: <https://bit.ly/3FsBGip> (1:36:50)

# Asian American Scholar Forum

Managing Academic Collaborations with Chinese Institutions at US Universities

## Speakers



**Mark C Elliott**

Vice Provost for International Affairs and Mark Schwartz Professor of Chinese and Inner Asian History at Harvard University



**Randy H. Katz**

Vice Chancellor for Research and Professor of Computer Science at UC Berkeley



**Richard Lester**

Associate Provost and Japan Steel Industry Professor at the Massachusetts Institute of Technology



**Peter F Michelson**

Senior Associate Dean for the Natural Sciences and the Luke Blossom Professor in the School of Humanities and Sciences at Stanford University

## Moderator



**Yasheng Huang**

Epoch Foundation Professor of International Management and Professor, Global Economics and Management at MIT

November 17th (Wednesday) 8pm-9:30pm EST

Registration: [AASForum.org](https://www.aasforum.org)



## Subscribe to The APA Justice Newsletter

Complete this simple form at <https://bit.ly/2FJunJM> to subscribe. Please share it with those who wish to be informed and join the fight. View past newsletters here: [https://bit.ly/APAJ\\_Newsletters](https://bit.ly/APAJ_Newsletters).

*Copyright © 2021 APA Justice, All rights reserved.*

You are receiving this email because you opted in or have expressed interest.

### **Our mailing address is:**

APA Justice  
P.O. Box 257  
McLean, VA 22101-0257

[Add us to your address book](#)

Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe from this list](#).

We do not share, sell, rent or trade any of your information with third parties unless you provide explicit consent. [Read our Privacy Policy here](#).