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WEBINAR

"Spies" at School? Inside US Efforts to Curb China's Access and Influence in Higher Education

MAY 28, 2020



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Speakers



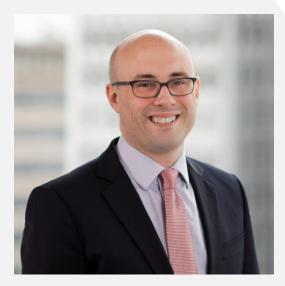
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Agenda

- The Targeting of U.S. Research
- The Enforcement Environment
- Government Enforcement: Relevant Statutes and Legal Theories
- Recent Prosecutions of Individual Researchers
- Recent Institutional Enforcement VARI
- Recommendations





Prior Conventional Wisdom

- Open collaboration was quintessential part of academic research
- Foreign collaboration was lauded
- Selection into foreign talent program was hallmark of professional achievement
- Safeguards were in place to protect any sensitive or national security-related research
 - Classification protections
 - Export controls
- Conflicts of interest and conflicts of commitment were adequately disclosed and managed



Current Landscape

- Federal government is skeptical of all foreign collaboration, but especially with China
 - Theft of taxpayer-funded intellectual property
 - Espionage "Nontraditional Collectors"
- Talent programs are viewed as means to achieve those ends
 - "A very carefully designed effort by the Chinese government to fill what it views as its own strategic gaps." – U.S. Attorney Lelling



Researchers' Undisclosed Foreign Affiliations

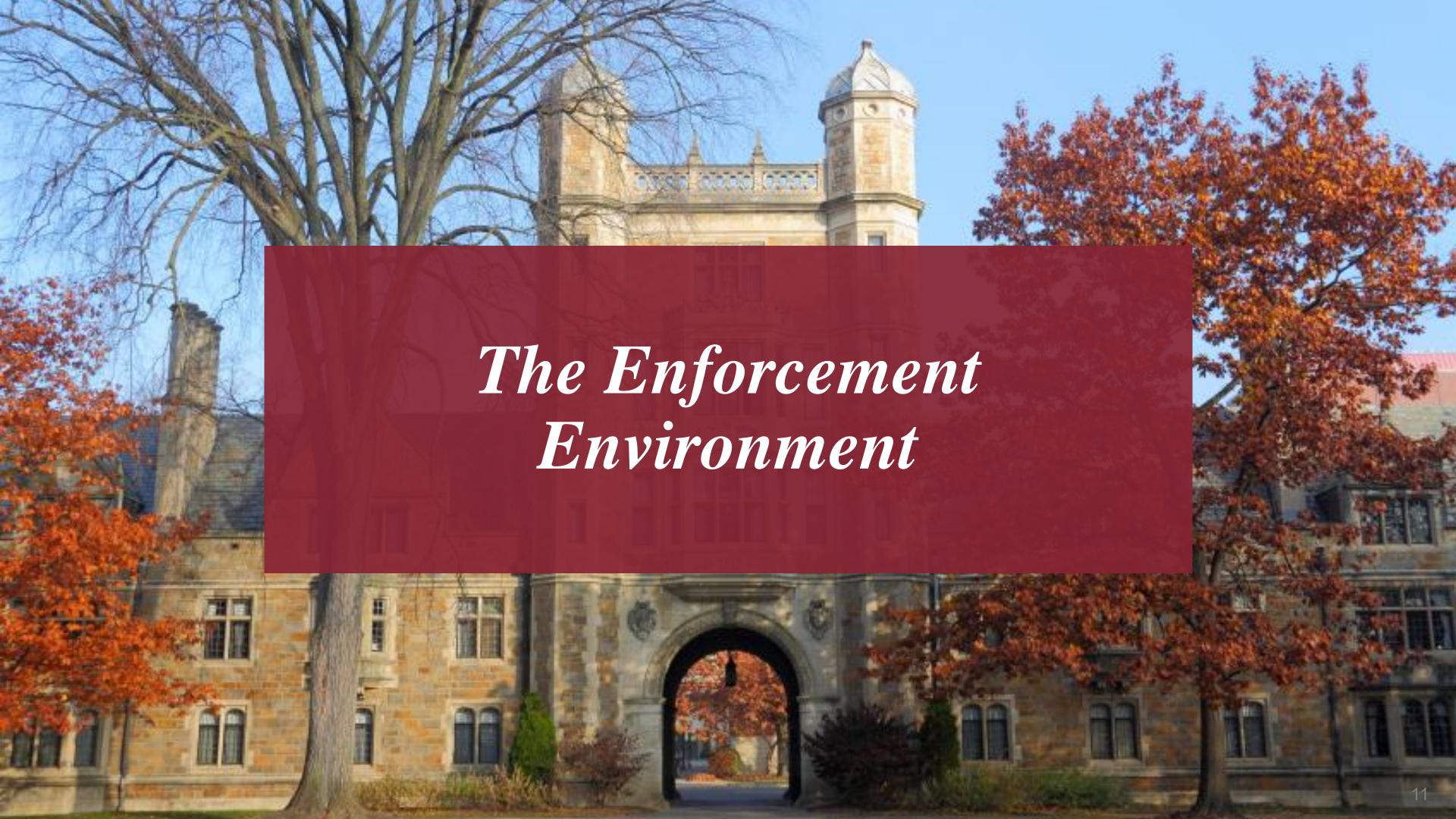
- Undisclosed links to foreign universities and research institutes
 - Appointments, salaries, research funding, lab facilities, staff
- Membership in Chinese talent recruitment programs
 - China has over 200 overseas recruitment programs
 - Thousand Talents Plan is the highest profile estimated to include 7,000 overseas experts in various fields of scientific research
- Other nations operate similar programs
 - Ex: Russia, North Korea, Qatar, Saudi Arabia



Other Potential Vulnerabilities

- Foreign scholars, such as visiting faculty, post-doctoral fellows
- Smuggling/export control failure allows research out of the U.S.
- Data and cybersecurity threatened by hackers who steal information
- Links to foreign companies (*e.g.*,
 Huawei)







The Federal Government's Response

- Federal Funding Agencies
- Department of Education
- Department of Justice
- Congress





Federal Funding Agencies







10,000+

Initial letters sent from NIH to U.S. institutions in 2018

180+

NIH investigative "Lauer Letters" to 60 institutions 70+

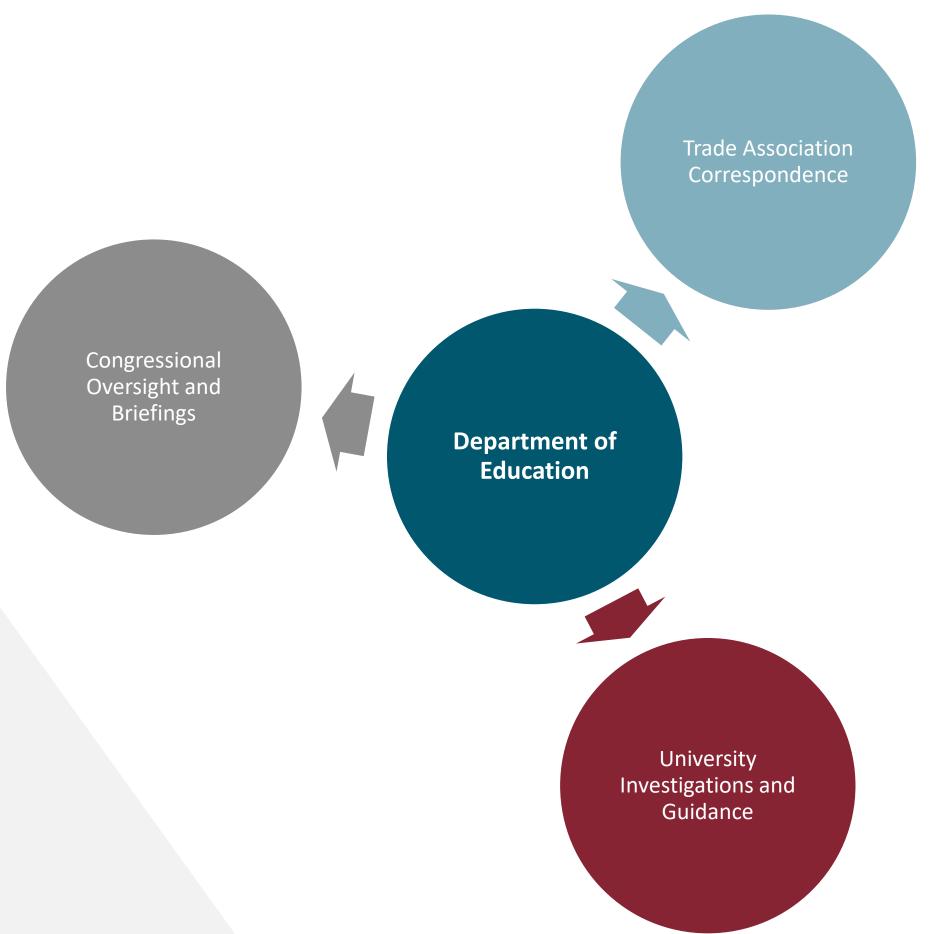
institutions conducting investigations 180+

individual investigations by institutions of potential intellectual property theft



Department of Education

- Section 117 of the Higher Education Act requires institutions to report contracts and gifts from a foreign source valued over \$250,000
- First investigation ever was in 2019
 - 9 now publicly noticed
- Uncovered \$6+ billion in unreported foreign gifts





Department of Justice - "The China Initiative"



"[T]he China threat is not just a whole-of-government threat but a whole-of-society threat on their end, and I think it's going to take a whole-of-society response by us."

FBI DIRECTOR CHRISTOPHER WRAY

40+

arrests under the China Initiative

~1000

total open investigations

~200

ongoing investigations into academic institutions



Department of Justice - "The China Initiative"



"China continues to use its national programs, like the 'Thousand Talents,' to solicit and reward the theft of our nation's trade secrets and intellectual property, but the Justice Department will continue to...ensure that China understands that this criminal conduct is not an acceptable business or economic development practice."





Congressional Investigations

Permanent Subcommittee on Investigations published two high-profile reports in 2019:

- China's Impact on the U.S. Education System
- Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans

PSI leadership, Sens. Portman (R) and Carper (D), expected to introduce related legislation this spring. Sen. Grassley (R) and others also active on these issues.

House Republicans encouraging Dep't of Ed. Sec. 117 investigations



"[T]he U.S. research community didn't fully understand the Thousand Talents plan and the threat it poses[. E]ven though this one program is more than a decade old...it wasn't until [2018] that the FBI began organizing a unified federal response to the threat...to our universities and research institutions."

SENATOR ROB PORTMAN (R-OH)



Public Interest and Scrutiny

- High-profile cases intended to generate media coverage and convey message
- Significant press interest in these issues will continue

The New York Times China's Lavish Funds Lured U.S. Scientists. What Did It Get in Return?



Feds charge NASA researcher for alleged undisclosed ties to China

THE WALL STREET JOURNAL.

China's Funding of U.S. Researchers Raises Red Flags

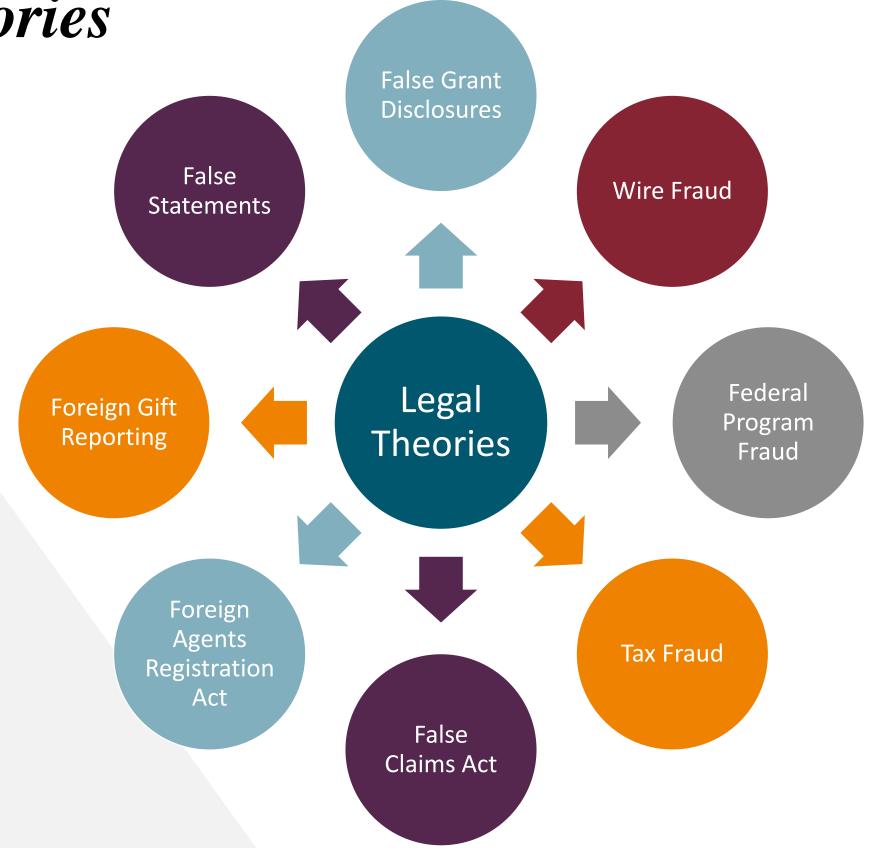
Academics don't always disclose the funding, adding to concerns about national security





Statutes and Legal Theories

- False Grant Disclosures
- False Claims Act
- Foreign Agents Registration Act
- Foreign Gift Reporting
- False Statements
- Federal Program Fraud
- Tax Fraud
- Wire Fraud



H False Grant Disclosures



- National Science Foundation (NSF) and National Institutes of Health (NIH)
 - Background/CV
 - All current and pending support
 - All projects and activities requiring a time commitment
- July 2019 NIH notice (NOT-OD-19-114)
- Sensitivity to foreign involvement (especially China)
 - "What has changed is the scope and sophistication of the activities threatening our research community, such as certain foreign-governmentsponsored talent recruitment programs."
 - NSF, July 11, 2019 "Dear Colleague" Letter
- Consequences of noncompliance:
 - Suspension of current and/or future payments and awards







False Claims Act

- Submission of false information in connection with claims for federal payment
- Scienter requirement satisfied where person:
 - Has actual knowledge of the information; or
 - Acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information
- Qui tam provisions allow suits by private whistleblowers
- DOJ authority to issue Civil Investigative Demands (CIDs)
- Liability includes treble damages, statutory penalties, potential for suspension and debarment

Foreign Agents Registration Act

- Requires "agents" of "foreign principals" to register with the DOJ
- Covers certain political or quasi-political activities undertaken at the request, direction or with substantial funding from – a foreign source
- Contains an exception for "any person engaging in or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or the fine arts."
- Sen. Grassley and Senate Permanent Subcommittee on Investigations have questioned whether certain activities — specifically, Confucius Institutes — are inherently political and should require registration under FARA
- DOJ has adopted a much more aggressive posture towards FARA enforcement since 2016 election



Foreign Gift Reporting





- Semi-annual reporting of:
 - Contracts with and gifts from a foreign source that, alone or combined, are valued at \$250,000 or more in a calendar year
 - Certain conditional gifts and contracts require more detailed reporting
- Limited prior guidance or attention from Education Department
- DOE letter to Congress (Nov. 27, 2019)
 - Clear focus on Chinese influence at U.S. colleges
- Example: Confucius Institutes
- Consequences of noncompliance:
 - Civil action to compel compliance
 - Associated costs of investigation and enforcement



Fraud and False Statements Charges

- Wire fraud
 - Fraud committed through use of any electronic communication (e.g., email)
- Federal program fraud
 - Fraud committed to obtain federal grants
 - Monetary threshold of \$5,000
- False statements
 - Materiality, scienter, and federal jurisdiction
 - Liability for causing institution to make false statement to government
- Tax Fraud
 - Failure to disclose foreign income



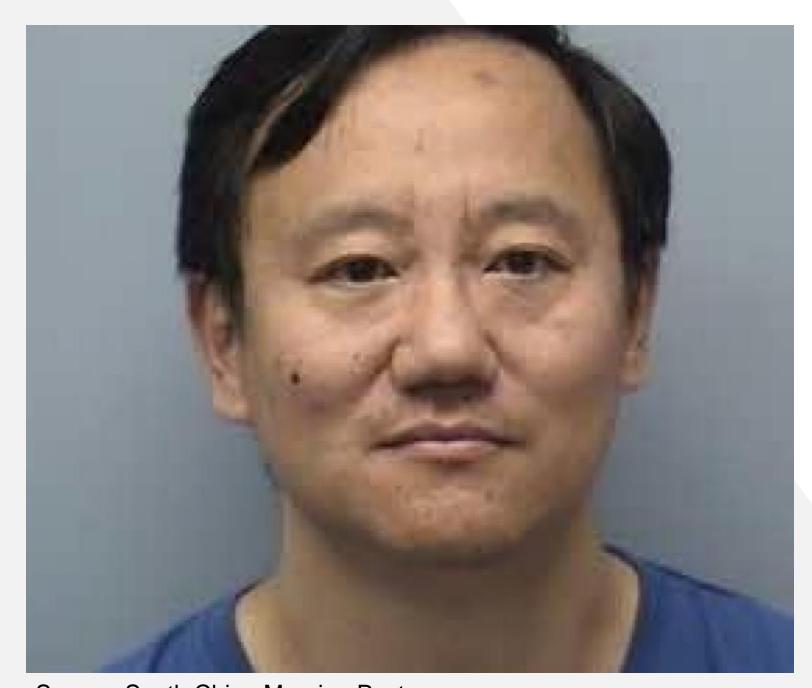


Recent Individual Prosecutions

Researcher	Charges
Yiheng Zhang	Grant Fraud, False Statements, Obstruction of Justice
Feng Tao	Wire Fraud and Program Fraud
Charles Lieber	False Statements
Anming Hu	Wire Fraud and False Statements
James Patrick Lewis	Federal Program Fraud
Xiao-Jiang Li	Tax Fraud
Simon Saw-Teong Ang	Wire Fraud
Qing Wang	False Claims and Wire Fraud



Key Recent Individual Prosecutions: Yiheng Percival Zhang



Source: South China Morning Post

- Funding from NSF
- Paid research at Tianjin Institute of Industrial Biotechnology, Chinese Academy of Sciences
- Convicted of one count of conspiracy to defraud the United States, three counts of making false statements, and one count of obstruction by falsification



Key Recent Individual Prosecutions: Franklin Feng Tao

- Funding from Dep't of Energy and NSF
- Simultaneously employed by Fuzhou University
- Changjiang Scholar
- Indicted on two counts of wire fraud and one count of program fraud



Source: University of Kansas School of Engineering



Key Recent Individual Prosecutions: Charles Lieber

- \$15+ million in funding from NIH and Department of Defense
- Alleged Thousand Talents Plan member
 - \$50K/month salary; \$158K living expenses; \$1.5M for Chinese lab
- One count of making false statements

"千人计划" 高层次外国专家工作合同书 EMPLOYMENT CONTRACT of "ONE THOUSAND TALENT" HIGH LEVEL FORTIGN EXPERT

Employer (Party A): Wuhan University of Technology

Employee (Party B)." One Thousand Talent" high level foreign expert, professor

Charles M Lieber from Harvard University, USA.

为保证"千人计划"高层次外国专家项目的顺利实施,保障甲乙 双方的合法权益,根据中华人民共和国的有关文件精神和政策规定, 经双方平等协商,订立本合同。 its



Source: Reuters/Katherine Taylor (Science Magazine)

Source: NPR / U.S. Attorney's Office



Key Recent Individual Prosecutions: Anming Hu



Source: WBIR 10News / Blount County Sheriff's Office

- Funding from NASA that precluded work with China or Chinese universities
- Held faculty appointment at Beijing University of Technology
- Indicted on three counts of wire fraud, three counts of making false statements



Key Recent Individual Prosecutions: James Lewis

- Global Experts 1000 Talents
 Plan
 - \$86K salary; \$143K living expenses; \$573K research subsidy
 - Research work at the Chinese Academy of Sciences
- Pleaded guilty to one count of federal program fraud



Source: WV News



Key Recent Individual Prosecutions: Xiao-Jiang Li

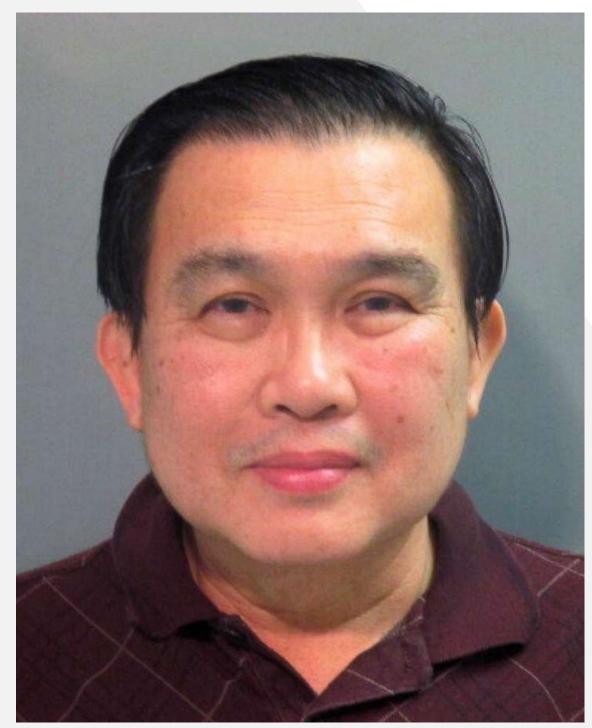


- Funding from NIH
- Alleged Thousand Talents Plan member
- Research work at Chinese Academy of Sciences and Jinan University
- Pleaded guilty to tax fraud for failing to disclose foreign income; sentenced to one-year probation and restitution

Source: South China Morning Post



Key Recent Individual Prosecutions: Simon Saw-Teong Ang



Source: Arkansas Times / Washington County Sheriff's Office

- Funding from NSF, Department of Energy, DOD, and NASA
- Alleged Thousand Talents Plan member; State Specially Recruited Experts
- Research work at Xidian University
- TTP membership disclosed to U.S. university, but other Chinese affiliations were not; no disclosures to NASA
- Charged with one count wire fraud



Key Recent Individual Prosecutions: Qing Wang

- More than \$3.6M in NIH funding
- Dean of the College of Life Sciences and Technology at the Huazhong University of Science and Technology (HUST)
- Funding from National Natural
 Science Foundation of China
- Faces false claims and wire fraud charges
- Fired after ties to China were discovered



Source: NBC4i.com / Cleveland Clinic





Van Andel Research Institute ("VARI")



Jan. 2012 – Dec. 2018

Nov. 30, 2018

Dec. 21, 2018

Dec. 19, 2019

- 2 VARI researchers received grants and research support from Chinese sources, including TTP
- Email from NIH citing concerns about VARI professors

- VARI replied it did not disclose the foreign grants because no overlap with NIH research
- VARI entered into \$5.5 million settlement with DOJ for violations of FCA

- VARI applied for NIH grants without disclosing Chinese funding sources
- VARI received NIH grants



Basis of Institutional Liability



- VARI was prosecuted under the FCA for making false statements to the government
- Central to government's theory of liability was VARI's knowledge of the researchers' Chinese affiliations
 - "VARI did not take adequate additional steps to investigate the researchers' foreign funding sources despite receiving specific information about Chinese affiliations."
- In applying for NIH funding, VARI knowingly omitted information about their researchers' funding sources
 - VARI "does not know whether that statement was, or is, accurate, and acted with deliberate or reckless disregard for the truth in making that representation to NIH."



Lessons from VARI Case

- Institutional policies are not enough to shield an institution from liability
- Institutions must proactively:
 - Investigate known conflicts of interest and funding sources
 - Knowledge is not limited to researchers' disclosures, but also what department heads and leadership know
 - Make disclosures of all known conflicts
 - Disclose failures once uncovered





Recommendations – Near-Term

Understand and Address Policymakers' Legitimate Concerns

- Government investigations arise from legitimate law enforcement, national security and economic concerns
- Actively engage with peer institutions, trade associations and law enforcement to identify solutions that preserve principles of open academic inquiry, culture of collaboration and commitment to publication of basic research

Recognize the Ramifications of Every Government Inquiry

- Initial inquiry may lead to others from different agencies
- NIH/NSF sharing information with DOJ/FBI
- Department of Education sharing information with Congress



Recommendations – Near-Term

Identify and Address Potential Issues

- Institutional knowledge not limited to researchers' disclosures
- Investigate known or potential conflicts, disclosure failures and other concerns
- Submit corrective disclosures if necessary

Adopt Guidelines Governing Foreign Affiliations

- Enhance disclosure requirements and rules governing foreign affiliations
- Thoroughly vet foreign affiliations including academic appointments and talent programs



Recommendations – Medium-Term

- Improve Disclosures, Grants Process, and Other Security Measures
 - Standardize grant process & audit grant submissions
 - Vet visiting scholars, post-doctoral students and lab personnel

Enhance Coordination and Organization

- Appoint director of research compliance
- Coordinate compliance across campus to prevent information silos
- Establish interdisciplinary campus working group



Recommendations – Medium-Term

- Communicate with and Educate University Community
 - Communicate priorities and posture to university community
 - Educate and train the university community



Questions

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