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"After the China Initiative: Seeking Accountability"

On September 21, 2022, [Inside Higher Ed reported](#) on the how two scholars - Professors **Xiaoxing Xi** and **Anming Hu** - were targeted by the Department of Justice's controversial anti-espionage program and had their lives upended fight back to hold the government accountable in their own ways.

Xiaoxing Xi, Laura H. Carnell Professor of Physics at Temple University, is suing the lead federal agent on his case, among other government entities. Anming Hu, associate professor of mechanical engineering at the University of Tennessee at Knoxville, is leading international opposition to the nomination of the lead prosecutor in his case for U.S. attorney for the Eastern District of Tennessee.

APA Justice, Asian American Scholar Forum, Tennessee Chinese American Alliance, United Chinese Americans, and other concerned organizations and individuals are supporting their efforts to hold the government accountable through existing and new policies, practices, and laws.

Professor Xiaoxing Xi's Oral Argument in Third Circuit of Appeals Court



On September 20, 2022, [NBC News reported](#) on how Professor Xiaoxing Xi is attempting to sue the government after being accused of spying for China — an ordeal that has immeasurably impacted his loved ones.

Professor Xi was arrested in the early morning of May 21, 2015, the same day the Congressional Asian Pacific American Caucus hosted a press conference on Capitol Hill to call for an investigation of the apparent racial profiling of Sherry Chen, a hydrologist with the National Weather Service. Armed FBI agents swarmed Xi's Philadelphia home before daybreak, shining flashlights in their eyes and rounding them up at gunpoint. Xi was arrested on a charge of economic espionage. He was threatened with up to 80 years in prison and a fine of up to \$1 million.

By September 2015, the Department of Justice's case fell apart. It was abruptly dropped. The motion to dismiss the case stated that “additional information came to the attention of the government.”

Xi, who initially sued the government in 2017, alleges that the prosecution wasn't just a misunderstanding in technology, but FBI agents had “made knowingly or recklessly false statements” to support their prosecution. His arrest, Xi claimed, was discriminatory. And he was targeted due to his ethnicity, much like many other scholars of Chinese descent.

While lower courts dismissed his case last year, Xi, who is among several other Chinese scientists to have been falsely accused of economic espionage, appeared before an appeals court on September 14, 2022, in hopes of moving forward with a suit. The oral arguments may be heard here: <https://bit.ly/3dbBD29> (audio 57:09)

“They've done wrong and they should be held accountable,” said Xi, who's backed in part by the American Civil Liberties Union. “It's also important for the community in general, because of all the Chinese scientists and scientists of Chinese descent — many of them are being falsely charged. And if we are not able to hold the government accountable, they're going to do more of this.”

Xi's lawsuit against the lead FBI agent in his case alleges that agents made knowingly or recklessly false statements about Xi to advance the inquiry. Xi also alleges that his arrest was at least in part racially motivated. The lawsuit, originally filed in 2017, was mostly dismissed last year. Xi and his legal team are now appealing that lower court's decision to the U.S. Court of Appeals for the Third Circuit.

The FBI “erroneously” determined that Xi had been discussing pocket heater technology with colleagues in China via email, when he'd really been discussing another technology entirely, David Rudovsky, one of Xi's lawyers and a senior fellow in law at the University of Pennsylvania said. And the inventor of the pocket heater told the FBI prior to Xi's indictment that none of the emails in question were about the heater—but investigators pushed forward anyway, Rudovsky added, “this is the key fact in the case.”

Read more about the Xiaoxing Xi story here: http://bit.ly/APAJ_Xiaoxing_Xi

Professor Anming Hu's Fight for Justice and Fairness



Professor Hu's case at the University of Tennessee Knoxville started in 2018, when an FBI agent accused him of being a spy based on an alleged tip of unknown origin and a Google translation.

Hu's first trial, in 2021, ended in a hung jury and a mistrial. His second trial later that year ended in his acquittal, with U.S. District Judge Tom Varlan writing his 52-page opinion that "even viewing all the evidence in the light most favorable to the government, no rational jury could conclude that defendant acted with a scheme to defraud NASA." Casey Arrowood was the lead prosecutor, not once but twice, against Hu.

On July 29, 2022, President Biden nominated three individuals to become U.S. Attorneys for the Eastern, Middle, and Western Districts of Tennessee respectively, including Arrowood for the Eastern District.

On September 20, 2022, [WPLN reported](#) "AAPI advocates are calling for Biden to withdraw his nomination for one of Tennessee's top prosecutors." "The judge wrote 52 pages in a memorandum opinion just about how flawed and flimsy the government's case was," says Nashville lawyer **Jing Geng**. She's one of over 1,700 people who signed their names in opposition to Arrowood's nomination. Geng calls Hu's case and others tried under the China Initiative "blatantly racial profiling." She says criminal law requires proof beyond a reasonable doubt. "It's a heightened standard over civil law because you're putting people under the strains of prosecution, and potentially taking away life or liberty," Geng says. "It doesn't serve anyone when there's a prosecution that is based on winning at all costs and not necessarily based on evidence." Arrowood did not respond to a request for comment, nor did the Biden administration. The office of Senator Marsha Blackburn, who is a member of the Senate Judiciary Committee (SJC) from Tennessee, also did not comment.

On September 15, 2022, SJC confirmed the nomination of US Attorney for the Western District of Tennessee. The nomination of Arrowood is not on the SJC calendar so far. We urge all

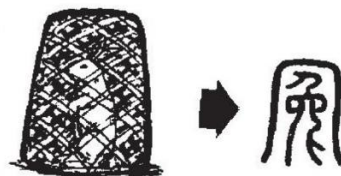
concerned organizations and individuals to contact and inform their congressional delegation about the opposition to Arrowood's nomination, especially for those states whose senators are on the SJC.

Read more about the opposition to the Arrowood nomination here: <https://bit.ly/3R6bP5w>

On Government Accountability

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Injustice



The cases of **Xiaoxing Xi** 郝小星, **Anming Hu** 胡安明, **Sherry Chen** 陈霞芬, **Gang Chen** 陈刚, **Qing Wang** 王擎, **Ning Xi** 席宁, **Franklin Tao** 陶丰, **Mingqing Xiao** 肖明庆, **Wen Ho Lee** 李文和, and other scientists and researchers of Chinese or Asian descent are not isolated incidents. They are allowed to repeat again and again because the government has not been held accountable.

In response to an inquiry by *Inside Higher Ed*, **Jeremy S. Wu**, co-organizer of the advocacy group APA Justice—which is part of a coalition calling for a thorough investigation of Hu's prosecution—said that Arrowood's "misconduct should certainly not be rewarded." Regarding Xi's case, Wu said he and colleagues hope that the appeal will lead to "discovery of the FBI agent misconduct in his case, a judicial review of federal immunity [for public officials] and possibly new legislation restricting immunity."

On the idea of accountability, Wu said it "starts with transparency." The FBI, DOJ and federal funding agencies involved in China Initiative cases "have not been transparent in disclosing the status, progress and outcome of their investigations ... There are no facts except rhetoric associated with the claim of threat or what happened to the thousands of investigations. Hundreds if not thousands of researchers and scientists of Chinese and Asian descent are subject to these unaccounted and endless investigations for years."

The FBI Director continues to claim that the FBI is opening a new Chinese counterintelligence case every 12 hours. But a precise accounting of these cases is not available. Although the China Initiative has officially ended, Wu said he and his colleagues are concerned that the DOJ and FBI continue to pursue existing prosecutions and investigations. The APA Justice task force

has requested that the DOJ release a copy of its review of the China Initiative, but it has not received a reply.

In sum, Wu said, “we seek accountability through existing and new policies, practices and laws.”

On a single positive note, Wu said that the DOJ updated its indictment [announcement](#) for Hu with the following statement, something Wu said he hadn’t seen before: “The defendant in this case, Anming Hu, was acquitted by the court of the charges alleged in the indictment described in the press release below.”

Read more about the *Inside Higher Ed* report here: <https://bit.ly/3Bxi5xk>

Mingqing Xiao - the Last Academic to be Indicted under the Now-Defunct "China Initiative"



On April 21, 2021, the Department of Justice (DOJ) announced the indictment of Professor **Mingqing Xiao**, a mathematics professor and researcher at Southern Illinois University (SIU) with two counts of wire fraud and one count of making a false statement. He was the last academic to be indicted under the reckless "China Initiative" that was ended by DOJ in February 2022.

Professor Xiao's jury trial started in Benton, Illinois, on April 25, 2022. He was acquitted of all charges of grant fraud and making false statement in the original indictment filed in April 2021. However, he was found guilty on four tax charges - three counts that he did not check the box on 3 years of his taxes indicating that he had a foreign bank account, and one count that he did not file a Foreign Bank Account Report - as part of a superseding indictment on October 5, 2021.

According to a [Science report](#), Professor Xiao was sentenced to 1 year of probation—and no prison time—on September 19, 2022. The U.S. government had asked District Judge **Staci Yandle** to impose a 1-year prison sentence. But Yandle said no purpose would be served by incarcerating Xiao and that he posed no threat of reoffending. She also fined him \$600, well below the tens of thousands of dollars suggested in the federal sentencing guidelines.

The government also doubled down and asked for reimbursement of the cost of prosecution and was awarded \$1,357.

This is yet another "China Initiative" case that wrecked the life of a beloved professor with outstanding character and dedication to his family and his students, wasted taxpayers dollars, did not protect economic or national security, and eroded public trust and confidence in the law enforcement and judicial system. SIU Professor **Ed Benyas**, who led and continues to lead the community support for Professor Xiao, described the entire ordeal as "a travesty of justice."

"We thank Judge Yandle for imposing a fair sentence, and one that clearly recognized the unfair circumstances surrounding this entire prosecution," said Xiao's lead attorney, **Ryan Poscablo** of Steptoe & Johnson, in a statement after the sentencing. "These tax charges were more worthy of civil remedies (if they were worthy of any enforcement action) and would never have been brought but for the charging of grant fraud for which Dr. Xiao was ultimately acquitted."

In a brief statement before being sentenced, Xiao thanked the judge, cited his love for his adopted country—he was born in China and became a U.S. citizen in 2006—and said that he hopes to return to teaching and research at SIU. Xiao has been on paid administrative leave since his indictment in April 2021.

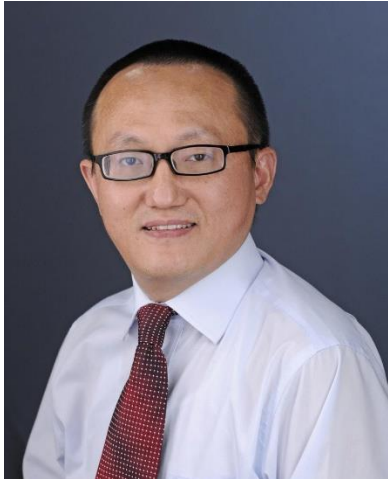
Prior to the sentencing, *The Daily Egyptian*, the student-led newspaper for SIU, [reported](#) that 59 people from SIU and the community at large signed a letter to the editor urging the university to take Xiao off administrative leave and allow him back on campus. Professor Benyas penned [a letter to the editor](#) of *The Daily Egyptian* on September 7, 2022. "He just wants to go back to work, he just wants to teach," said Professor Benyas, "We're just trying to show the community supports him and we want him back."

"Let's also not forget," Professor Benyas said in a subsequent message, "Ming still has an enormous legal bill to resolve. And he still has to fight to get his job back." His union attorney, union representative, the SIU Faculty Association, the SIU Faculty Senate, his Math department colleagues and many others will continue to work to get Ming back in the classroom doing what he does best.

The lead prosecutor of the Mingqing Xiao's case was Assistant U.S. Attorney **Peter T. Reed**.

Read more about the Mingqing Xiao story: https://bit.ly/APAJ_MingqingXiao

Judge Tosses Most Charges Against University of Kansas Professor Franklin Tao



According to [AP](#) on September 19, and [Reuters](#) on September 20, 2022, a federal judge threw out three of four convictions against a Kansas researcher accused of illegally concealing work he was doing at a Chinese university while working at the University of Kansas, leaving only a conviction for making a false statement on a form.

A jury convicted researcher **Feng “Franklin” Tao** in April on three counts of wire fraud and one count of false statements. He was accused of not disclosing that he was working for Fuzhou University in China while employed at the Kansas university. However, U.S. District Judge Julie Robinson ruled that federal prosecutors did not provide sufficient evidence to support the wire fraud convictions. She upheld the false statement conviction and denied Tao’s request for a new trial on that count.

Tao’s attorney, **Peter Zeidenberg**, said in a statement that the defense team was gratified that Robinson found Tao did not intend to defraud Kansas or the federal government, and that Tao was “an outstanding researcher and award-winning professor” at Kansas. “This will hopefully drive a final stake through the heart of these China Initiative cases, where the government has claimed that the failure to disclose a relationship to China constitutes federal grant fraud even when the researcher has completed all of the work on the grant to the government’s complete satisfaction,” Zeidenberg wrote.

Zeidenberg said the defense team is considering its next steps related to the filing a false statement conviction, which carries a possible sentence of up to five years.

The lead prosecutor of the Franklin Tao case was Assistant U.S. Attorney **Tony Mattivi**, who ran and lost the Republican primary for Attorney General of Kansas.

Read Professor Tao's story here: <https://bit.ly/3fZWJvK>

In Memoriam: Judge James Parker - A Judge of Decency



On September 16, 2022, the [Albuquerque Journal reported](#) that Senior U.S. District Judge **James A. Parker**, who served the District of New Mexico for more than three decades, died at the age of 85.

Judge Parker was one of the longest serving district judges in New Mexico's history, remaining on the bench for 35 years. In January, a sixth floor courtroom at the Historic Courthouse on Gold Avenue in Downtown Albuquerque was renamed in his honor. President Ronald Reagan nominated Parker to the U.S. District Court on July 10, 1987, and in 2000 he was elevated to chief judge before assuming senior status in 2003.

Judge Parker will be remembered for his decency and formal apology to Dr. **Wen Ho Lee** on September 13, 2000 when he sentenced Dr. Lee to time served for one count of downloading restricted data. ***"I have no authority to speak on behalf of the executive branch, the president, the vice president, the attorney general, or the secretary of the Department of Energy, as a member of the third branch of the United States Government, the judiciary, the United States courts, I sincerely apologize to you, Dr. Lee, for the unfair manner you were held in custody by the executive branch,"*** said Judge Parker.

What did the executive branch do to deserve the judge's admonition? In addition, does the apology still have meaning and relevance to Chinese Americans today? Read this 2018 post:

2018/03/12 LinkedIn: Revisiting Judge Parker's Apology to Dr. Wen Ho Lee 重温帕克法官对李文和博士的道歉 [English](#) | [简体](#) | [繁體](#)

When he was consulted about the post, Judge Parker said, "I do believe that ordering the Government to produce information requested by Dr. Lee's attorneys, including any related to racial profiling, was a significant turning point in the case. However, I never got to read the material that I ordered the Government to produce because the parties then quickly entered into plea agreement negotiations. I have not seen the January 2000 report by the DOE Task Force,

but I would be interested in reading it." The report has disappeared from all government websites, but [a copy preserved by the Federation of American Scientists](#) was sent to Judge Parker on March 1, 2018.

A reunion between Judge Parker and Dr. Lee was set for 2020 in California to commemorate the twentieth anniversary of his historic apology, but it could not take place because of the COVID-19 pandemic. It was a missed opportunity in American history. Judge Parker and Dr. Lee shared their interest as avid fishermen.

Read more about the Wen Ho Lee story: <https://bit.ly/3tDSLrg>

White House United We Stand Event



According to a [White House announcement](#), in recent years, our nation has endured a disturbing series of hate-motivated attacks. Oak Creek, Pittsburgh, El Paso, Poway, Orlando, Charleston, Atlanta, Buffalo, and more. Each one of these incidents has left communities shattered, our nation grieving and has torn at the soul of our Nation. When ordinary Americans cannot participate in the basic activities of everyday life—like shopping at the grocery store or praying at their house of worship—without the fear of being targeted and killed for who they are, our democracy – and the very fabric of our society – is at risk.

On September 15, 2022, President **Joe Biden** hosted the **United We Stand Summit** at the White House to counter the destructive effects of hate-fueled violence on our democracy and public safety, mobilize diverse sectors of society and communities across the country to these dangers, and put forward a shared, inclusive, bipartisan vision for a more united America. The Summit highlighted the resilience of communities and individuals who are healing from hateful attacks, including mass shootings, and put forward a shared vision for a more united America. There was a celebration of “Uniters” -- ordinary heroes from communities across the country who are working to prevent hate and violence.

The White House also announced a package of new actions the federal government, civic, faith, philanthropic, and business leaders will take to address hate-fueled violence and advance national unity.

Video of the event can be viewed here: <https://bit.ly/3QJFvox> (7:00:52)

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