

LEGAL RISKS IN ADVANCING TECHNOLOGY BETWEEN THE U.S. AND CHINA



SELF-EDUCATION FOR CHINESE AMERICAN SCIENTISTS, ENGINEERS, AND FEDERAL EMPLOYEES

CAUGHT IN THE CROSSFIRE OF NATIONAL SECURITY CONCERNS

CHINESE AMERICANS ARE A GREAT SOURCE OF INNOVATION IN AMERICA

- Over one million Chinese Americans work in the science, technology, engineering, and mathematics fields (STEM) and contribute significantly to the success and strength of the nation.
- Given the cutting-edge nature of work performed, many Chinese Americans are involved in handling valuable or sensitive technical information, including in industry, academia, and government.

RISING FEARS OF CHINESE THREAT

- The U.S. government has exhibited a heightened focus on the national security and economic challenges posed by the People's Republic of China; U.S. official reports state that the Chinese government and some Chinese companies employ illicit means to access proprietary information.
- Increasingly, ethnic Chinese (regardless of citizenship) who are scientists, technology professionals, and federal government employees in the United States are being subjected to criminal investigations and prosecutions involving national security, intellectual property theft, and corporate espionage in the United States.
- Government reports show high numbers of successful federal prosecutions of ethnic Chinese working in the U.S., including guilty pleas and convictions after trial.
- In addition, there has also been a past pattern of rushing to prosecute, as a number of Chinese Americans have been arrested, accused of serious crimes of economic or national espionage on behalf of China, only to have their cases dismissed after closer examination of the facts (e.g. Xiaoxing Xi, Sherry Chen, Guoqing Cao, Shuyu Li, et al.).
- America bears an unfortunate history and legacy of bias against Chinese in the U.S. (i.e. 1882 Chinese Exclusion Act, etc.). Despite the historical presence and contributions of Chinese peoples to the growth and success of this country, U.S. citizens of Chinese heritage are still often perceived as perpetual foreigners.
- These factors may create blind spots for government officials and employers, who may never intend to racially profile, but are unconsciously skeptical or suspicious of any person of Chinese heritage, resulting in undue scrutiny and hazards of bias, and possible misunderstanding of otherwise innocent conduct.

CRITICAL NEED FOR SELF-EDUCATION

- The U.S. legal system is complex and extremely costly. In order to avoid entanglement, it is imperative that Chinese American scientists and engineers with relationships in China are well informed of i) the laws and policies that regulate their work, ii) their unique legal risks within the larger geo-political context, and iii) the grave consequences of noncompliance.

BE AWARE



KNOW YOUR EMPLOYER'S TRADE SECRETS

- A trade secret is any valuable commercial information that provides a business with an advantage over competitors who do not have that information. Examples include proprietary drawings, software, blueprints, formulae, specifications, customer or supplier lists, test data, prototypes, etc.

UNDERSTAND ALL APPLICABLE U.S. LAWS, EMPLOYER, & GOVERNMENT FUNDING POLICIES

- Many U.S. government agencies have issued updated guidelines and directives related to international scientific or technology engagement and research security (i.e. OSTP, NIH, DOE, NSF, etc.)
- Participation in Chinese talent programs and joint appointments, even if encouraged or approved in the past, may now pose great risk and in some instances are prohibited outright
- Understand how your work is affected by applicable laws including but not limited to Espionage Act of 1916; Economic Espionage Act of 1996; Federal Export Control Laws; Computer Crime & Intellectual Property Laws; Employer or client non-disclosure agreements (NDAs) & IP protection policies
- Note that all documentation and electronic communication and hardware are potential forms of “evidence” and likely to be reviewed by prosecutors (i.e. emails, text messages, faxes, phones, tablets, laptops, flash drives, etc.); normal 4th Amendment protection against unreasonable search and seizure does not apply to border searches of luggage or carry-on items (this applies to all in-bound and outbound travelers)

BEWARE FOREIGN SOLICITATION ATTEMPTS & POTENTIAL OF OVER-ZEALOUS INVESTIGATORS

- You may be a target of Chinese solicitation efforts (private or official) to obtain U.S. technology illicitly. If you believe you have been approached, notify your company's security officer, law enforcement, or legal counsel
- You may also be dealing with over-zealous U.S. investigators with heightened fear and preconceived notions about the “Chinese threat,” who may thus target ethnic Chinese in their investigations

EXTREMELY HIGH STAKES FOR NON-COMPLIANCE

- Multi-million dollar fines; imprisonment of 15 years or more; loss of reputation and job, including permanent record of previous criminal activity; civil litigation and potential exposure for further damages; jeopardy to U.S. visa status or citizenship process; and collateral damages to colleagues, friends, and family.
- Intentional misconduct will likely be investigated and prosecuted to the maximum extent of the law.

BE PREPARED

SEEK PERSONAL LEGAL COUNSEL

- Note that company & university attorneys protect the business and are not independent or personal counsel.

KNOW YOUR RIGHTS

- If you are questioned by an FBI or law enforcement agent, you always have the right to remain silent and to ask for an attorney; this does not make you more suspicious.
- Always tell the truth, or remain silent. Providing inaccurate or false details can incriminate you.
- When in doubt, don't sign anything without consulting an attorney.

BE PART OF THE SOLUTION

EDUCATE OTHERS AND CONTINUE THE CONVERSATION

- Share this with your peers and educate them about the risks
- Work within the science and technology communities to strengthen best practices and deepen the conversation on the nuanced pursuit of scientific and academic advancement and exchanges between the U.S. and China; potentially issue new or improved guidelines.

COMMIT TO WHAT MATTERS

- The contributions of millions of law-abiding and loyal Chinese Americans to the United States are significant and far-reaching. Chinese Americans serve as leading scientists, researchers, and entrepreneurs across the nation. Because of their contributions and leadership in these fields, America continues its paramount position as an innovator for the world.

LEARN MORE: WWW.COMMITTEE100.ORG/RECOMMENDED-READING/