Foreign Influence and Sponsored Projects

March 2020

Charles Lieber – Chair, Dept. of Chemistry, Harvard University

- Arrested Jan. 28, 2020
- Allegations
  - False statements about involvement in Thousand Talents Program
  - False statements about Wuhan University of Tech
  - Lied to DOD investigators

Lieber Allegations (cont.)

- Strategic Scientist at WUT and contractual participant in Thousand Talents Plan – 2012-2017
    - Up to $50K per month salary
    - $158K annual living and personal expenses
- Did not disclose foreign collaboration, foreign sources of research support, and financial conflicts of interest
- Academic Cooperative Agreement between Harvard and Wuhan UT
    - Did not consult Harvard but signed on Harvard's behalf
    - Later falsely told Harvard that WUT was using Harvard's name without his knowledge or consent
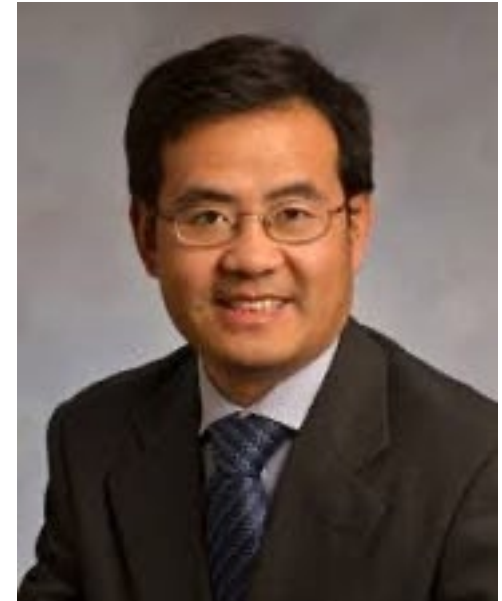
Lieber Allegations (cont.)

- DOD investigators interview Lieber about active grants and disclosure
  - Lieber said: never asked to participate in Thousand Talents program
  - Had signed contract in 2012
- Two days after DOD interview:
  - "*I lost a lot of sleep worrying about all of these things last night and want to start taking steps to correct sooner than later. I will be careful about what I discuss with Harvard University, and none of this will be shared with government investigators at this time.*"
- Caused Harvard to file false statements to NIH about Lieber
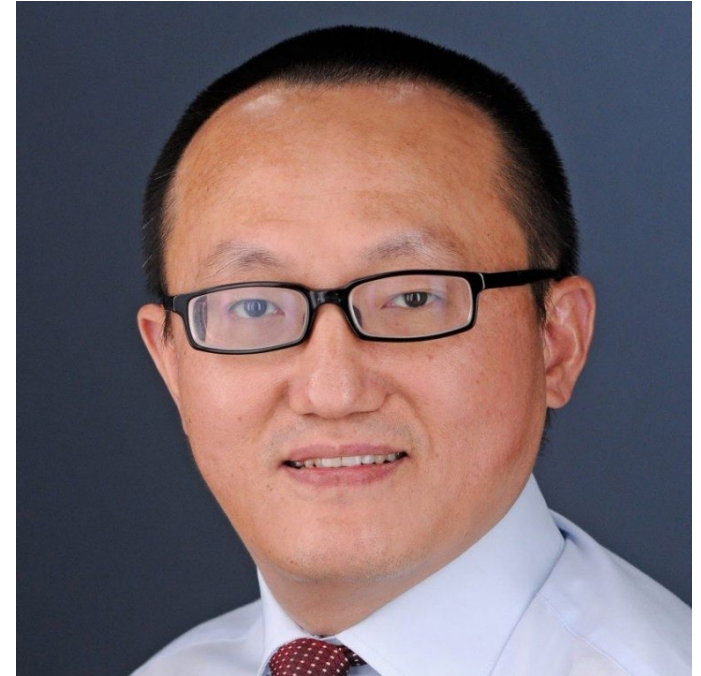
Anming Hu – University of Tennessee

- Arrested and indicted– Feb. 27, 2020
- False statement counts
  - NASA restriction on funding Chinese government or Chinese universities
  - Concealed affiliation with Beijing University of Technology
- Wire fraud counts

Franklin (Feng) Tao – University of Kansas

- Superseding indictment – Jan. 15, 2020
- Counts 1 and 2
  - Wire fraud – electronic filing of conflicts form
- Count 3
  - Program fraud – summer salary and COI forms

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MD Anderson Cases

- 5 scientists investigated: 3 resigned, 1 fired, and 1 cleared - 2019
- FBI investigation began in 2017
- Transfer of data to China

NIH Grant Application Requirements – Other Support

- NIH concern: PIs performing research at other institutions without full disclosure of those activities to home universities or federal sponsors
- "Other support"
  - *All* financial resources, *in direct support of an individual's research*, including research contracts and grants, institutional awards, and financial or non-financial support, *including any from foreign governments or entities*
  - Gifts still not included; must really be a gift
  - New focus on in-kind support (e.g. lab space)
  - Reported to NIH at JIT stage and in each annual report
    - NIH Grants Policy Statement, Section 1.2

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NIH Grant Application Requirements – Biosketch

- NIH Statement:
  - "List all positions and scientific appointments both domestic and foreign held by senior/key personnel that are relevant to an application *including affiliations* with foreign entities or governments. This includes titled academic, professional, or institutional appointments *whether or not remuneration is received, and whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary).*"

- Report defined affiliations or appointments – especially those likely to be cited in publications, particularly regarding research funded by and NIH award

NIH Grant Application Requirements – Foreign Component

- Definition
  - Performance of any significant scientific element or segment of a project outside of the US, either by the recipient or by a researcher employed by a foreign organization, *whether or not grant funds are expended*

- Examples
  - Extensive travel for data collection, surveying, sampling, and similar activities (would meet definition)
  - Even informal collaborations with investigators at a foreign site could meet definition.
  - Activity anticipated to result in co-authorship may be significant activity
    » Grants Policy Statement sections 8.1.2.10, 1.2

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NSF – Proposal and Award Policies and Procedures Guide

- Current and pending support
  - Senior personnel report in grant proposals
  - All sources of funding and payments, whether paid through the applicant institution or paid directly to the individual
  - FAQ: Thousand talents program participation should be disclosed at the time of proposal in the Current and Pending Support section. NSF has developed a procedure for dealing with after-the-fact notifications.

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Department of Defense

- Current and Pending Support Memorandum - March 20, 2019
    - Current and future projects regardless of source
    - Title and objectives of other projects
    - Percentage of year for other projects
    - Total amount of support received if proposals are awarded
    - Name and address of agencies or other parties supporting the other projects
    - Period of performance of other projects

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Department of Energy

- Order 486.1 – June 2019
  - DOE authorized to prohibit DOE contractors from participating in foreign government talent recruitment programs
    - Countries designed by DOE as countries of risk
  - Campus researchers with joint appointees disclose through LBNL outside activities program

Conflict of Interest

- https://researchcoi.berkeley.edu
- NIH
  - Area of interest in every inquiry
  - Disclose: significant financial interest related to institutional responsibilities
    - >$5,000 of income, royalties, travel reimbursement, stock in publicly traded company
    - > $0 of stock in non-publicly traded company
- NSF
  - All significant financial interests that would reasonably appear to be affected by NSF-funded project
  - $10,000 trigger

Conflict of Commitment

- Category I – prior approval required and count toward day limit
  - Teaching or research at another university
  - Assuming a managerial position at a company
  - Acting as a salaried employee outside the University
- Category II – disclosure required
  - Consulting
  - Providing a workshop for industry

Export Controls

- Basic compliance strategy – operate within the fundamental research exclusion
    - No publication restrictions
    - No citizenship restrictions
- Shipment of tangible items may still require a license
- Treasury sanctions and embargoes may apply to travel
- Consult with the campus Export Control Officer with any questions
    - https://vcresearch.berkeley.edu/export-controls

Huawei/Futurewei and ZTE

- Concerns from FBI and Congress in 2012
- NDAA restrictions
- New DOJ Indictment
  - Financial fraud
  - Theft of trade secrets
- Jan 30, 2019 and February 14, 2020 VCR letters on moratorium

Retroactive Disclosures - NSF

- NSF – Post-award Disclosure of Current Support and In-Kind Contribution Information
  - Active NSF – failure to disclose current support or in-kind contribution information
  - Submit required elements through "Other Request" in Notification and Request Module in Research.gov
- Gifts
  - not reported but gift is given "without expectation of anything in return."
  - Item or service given with the expectation of an associated time commitment is an in-kind contribution and must be reported to NSF

Retroactive Disclosures - NSF

- In-kind support
  - If in-kind with time commitment: Current and Pending Support
  - In-kind without time commitment intended for use on the project/proposal: Facilities, Equipment and Other Resources
  - In-kind contributions not intended for use on the project/proposal and have not associated time commitment: reporting not required
- FAQs on Current and Pending Support (Eff. 6-1-20)

Retroactive Disclosures - NIH

- Other Support
  - Don't have a form at this time
  - Expect to provide further FAQs for clarification
  - May revise terms in the Grants Policy Statement
- Reporting
  - Undisclosed support related to active awards
  - Research Performance Progress Report (RPPR)
  - Must promptly notify NIH if previously submitted JIT information is substantively changed prior to award or at the time of the progress report, which could lead to budgetary, scientific, or commitment overlap

Questions?

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