

IN BRIEF

Chinese Intelligence Sought To Infiltrate EDNY Prosecution Team in Huawei Case, DOJ Says

Two alleged Chinese intelligence officers have been charged with obstruction for allegedly attempting to infiltrate the prosecution team in the U.S. Justice Department's case against a major Chinese telecommunications company.

The intelligence officers attempted to recruit an employee at a U.S. law enforcement agency to obtain confidential information about witnesses, trial evidence and possible additional charges against the company tied to its ongoing prosecution in the Eastern District of New York. The government employee became a double agent and began working with the FBI.

Deputy Attorney General Lisa Monaco said at a news conference on Monday that the operatives sought to "steal the prosecutors' playbook, including who the prosecutors were meeting with and what they would argue in court all so that the company could unlawfully gain an edge and undermine the government's case."

Court documents do not name the company, but media reports indicate that it's Huawei. Information in the criminal complaint also aligns with the prosecution of Huawei, which is ongoing in EDNY.

The criminal complaint, unsealed Monday in Brooklyn federal court, charges Dong He and Zheng Wang with obstruction of an official proceeding. He was also charged with money laundering for allegedly bribing the employee with payments in bitcoin. Both defendants remain at large.

He and Wang initially sought to cultivate a relationship with the double agent in February 2017, but their efforts escalated after an indictment against Huawei was unsealed in January 2019, according to the criminal complaint.

The complaint alleges that He and Wang, while claiming to be in touch with company officials, communicated with the agent using an encrypted messaging system, seeking files and other non-public information from the prosecution team. The agent claimed to be in meetings with EDNY prosecu-

tors last fall focused on trial strategy, and at one point sent a document that appeared to be marked "secret" detailing DOJ's plans to charge and arrest two company employees living in China.

The documents did not relate to the government's actual case and were prepared by investigators probing He and Wang's activities, according to the complaint.

"This was an egregious attempt by PRC intelligence officers to shield a PRC-based company from accountability and to undermine the integrity of our judicial system," Attorney General Merrick Garland said at a news conference, using an acronym for the People's Republic of China.

Huawei and two of its subsidiaries have been indicted on a range of charges including racketeering, conspiracy to steal trade secrets and bank fraud. The company, represented by Sidley Austin and Jenner & Block, has pleaded not guilty and has called the allegations "political persecution."

U.S. officials have long expressed concern about Huawei's ties to the Chinese government and have pressed allies not to do business with the company. The case was one of three DOJ officials announced on Monday relating to alleged malign foreign influence by the Chinese government.

—Andrew Goudswaard

2000 Grad Gifts \$17.5M to Columbia Law, the Largest Single Commitment in the Law School's History

A 2000 graduate of Columbia Law School—whose grandfather and great-grandfather also graduated from the law school—gave \$17.5 million to the school, which is the largest single commitment in the history of Columbia Law.

Philanthropist Alia Tutor, president of the Alia Tutor Family Foundation, told the law school that Columbia and the surrounding neighborhood has always held special meaning for her since her grand-

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Getting Schooled: Big Law Sees 'Enormous Uptick' in Higher-Ed Work » 2

Deputy NY Senate Leader Renews Call for Progressive Chief Judge, Hits Back at Critics

BY BRIAN LEE

AS THE Nov. 25 deadline approaches for a judicial nominating commission to submit seven candidates for chief judge of New York, a blunt-talking voice for state Senate Democrats recently suggested that



Sen. Michael Gianaris, D-Queens

the panel "kind of already know what they're going to do, and where they're going to end up."

Senate deputy majority leader Michael Gianaris, D-Queens, made that assertion as part of a recent panel discussion during which he doubled down on his call for the commission to nominate progressive-minded attorneys with back-

grounds in civil rights, immigration, and public defense as the next chief judge of the state court system.

With all six of the current Court of Appeals judges either former prosecutors or corporate lawyers, Gianaris said he's hoping the pick won't be aligned with Acting Chief Judge Anthony Cannataro and Judges Michael Garcia and Madeline Singas, who have aligned as a moderate-conservative bloc on the high court.

Gianaris said the group—then four members strong—coalesced around retired Chief Judge Janet DiFiore, who left office at the end of August.

But legal observers note that the statute requires a minimum of eight of the 12 commissioners to vote in favor of a nominee, while it also calls for the governor and chief judge to each appoint four of the commission's members, with no more than two appointees from a political party.

Gianaris has only been in office long enough to appoint two of the four guber-

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NY Judge Says Absentee Ballots Issued Due to COVID Fear Should Be Preserved But Not Instantly Canvassed

BY BRIAN LEE

A NEW law that allows voters to cast ballots by absentee over fears of spreading the coronavirus was declared unconstitutional by an upstate New York trial court judge on Friday, ruling that those ballots should be preserved rather than canvassed as part of election night tallies on Nov. 8.

Saratoga County Supreme Court Justice Dianne Freestone's 2001 ruling—which has statewide effect—could shake up general election procedures.

It allows New York voters who fear the spread of COVID-19 to continue to cast absentee ballots—Freestone said she was bound in that holding by recent precedent—but those votes would not be counted immediately.

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The New York State Board of Elections Democratic commissioners' attorney argued that thousands of absentee ballots had already been returned.

DECISIONS OF INTEREST

Second Department

CRIMINAL LAW: CP160.59 does not require seal's denial where defendant later convicted in other state. *People v. Witherspoon*, App. Div.

CRIMINAL LAW: Although summation statement was error, defense objections were vague, untimely general. *People v. Adorno*, App. Div.

ADMINISTRATIVE LAW: Record establishes that denial of petitioner's pistol license application not arbitrary. *Nastasi v. Ryder*, Supreme Court, Nassau.

Third Department

REAL ESTATE: Complaint dismissed for failure to establish mistake in conveyance was mutual. *Williams v. Sovile*, Third Department, App. Div.

EMPLOYMENT LITIGATION: Third Department reverses order nullifying professors' terminations. *Kitter of Honsbrough v. College of St. Rose*, Third Department, App. Div.

Fourth Department

CRIMINAL LAW: Fourth Department vacates plea due to erroneous sup-

pression ruling. *People v. Corey*, Fourth Department, App. Div.

CRIMINAL LAW: Only properly preserved claims may serve as the basis to set aside a verdict. *People v. Kenney*, Fourth Department, App. Div.

REAL ESTATE: Plaintiff must assert interest in property to sustain cause of action to quiet title. *Rochester Gen. Long Term Care, Inc. v. Sipin*, Supreme Court, Monroe.

U.S. Courts

INSURANCE LITIGATION: Appellate legal fees fall within policy's exclusions; trial is adjudicated on conviction. *CUMIS Specialty Ins. Co. Inc. v. Kaufman*, SDNY.

CRIMINAL LAW: Court lacks jurisdiction to entertain motion to terminate \$300 million fine. *U.S. v. Weiss*, SDNY.

CREDITORS' AND DEBTORS' RIGHTS: Court grants garnishment of funds held in bank account by judgment debtors. *U.S. v. Asare*, SDNY.

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FULL-TEXT DECISIONS [nylj.com](#)

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Tom Barrack leaves Brooklyn federal court yesterday, after taking the witness stand at his federal trial to dispute charges he secretly fed confidential information about the Trump administration to the United Arab Emirates.

Trump 'Could Not Spell Middle East': Ex-Ally Testifies in Foreign Lobbying Trial

BY JANEWESTER

FORMER Trump inaugural committee chairman Thomas Barrack on Monday took the witness stand to discuss his ties to the ruling families of various Middle Eastern countries, while maintaining that he never agreed to act as an unregistered agent of the United Arab Emirates.

Barrack, 75, the founder and former CEO of the real estate investment firm Colony Capital, which later rebranded as DigitalBridge, has been charged with illegally

acting on behalf of the UAE during the Trump campaign and the beginning of former President Donald Trump's term in the White House, along with obstruction of justice and making false statements.

Barrack told his defense attorney, Willkie Farr & Gallagher partner Michael Schachter, that he met Trump in the 1980s while working on real estate deals in New York City. When Trump began his presidential campaign, Barrack said he thought it was "an amazing thing in America" that a businessman with no political experience could run for office.

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NY's Highest Court Upholds Financial Services Rule Prioritizing Consumer Needs

BY BRIAN LEE

NEW York's highest court has upheld as constitutional a financial services rule that prioritizes the insurance needs and financial objectives of consumers when entering into annuity contracts.

The unanimous decision, handed down Thursday, said New York City insurance lawyer Eric Dinnozenzo, brings New York in line with dozens of other states with a "well-reasoned decision regarding a much-needed rule change for life insurance and annuity sales persons."

Dinnozenzo, who practices in New York and New Jersey, said

the rule aims to prevent insurance agents and brokers from selling unsuitable products to consumers, even sometimes persuading them to cancel existing policies to purchase new products, while earning a commission.

The industry objected that the rule was unconstitutionally vague by requiring agents and brokers to act in the "best interests" of the consumer, but that argument was rejected by the Court of Appeals.

The amendment, which took effect in August 2019

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Online
The Court of Appeals decision is posted at [nylj.com](#).

Appeals Court: Legal Malpractice Action's Statute of Limitations Not Tolled Based on Outstanding Counterclaim in Underlying Suit

BY JASON GRANT

A STATE appeals court has dismissed a legal malpractice action on statute of limitations grounds, rejecting an argument that the limitations period had been tolled under New York's continuous representation doctrine because of an outstanding counterclaim and the lawyers' failure to ask the

court to be relieved as counsel.

"Contrary to plaintiff's contention, the outstanding counterclaim in the employment action and [the lawyer] defendants' failure to move to be relieved in that action did not show a mutual understanding of a need for further representation," wrote the Appellate Division, First Department court while citing the New York Court of Appeals decision in *McCoy v. Reitman*.

A five-justice First Department panel did write in its unanimous opinion that plaintiff John Ellison's legal malpractice claim against area attorneys Steven Seltzer and Joseph Roccanova and their related law firms that the accrual date of his alleged legal malpractice claim had been tolled from Sept. 23, 2016, to Dec. 8, 2016, meaning that under state law Ellison had three years from Dec.

8, 2016, to bring his malpractice lawsuit.

But he did not file the action until Dec. 19, 2019, the panel said, thereby pointing out that it was launched outside of the allowable statute of limitations period.

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Online
The First Department decision is posted at [nylj.com](#).