
A NATIONAL CRIME REPORTER

Calvin Chrustie, Sam Cooper & Scott McGregor

This scenario depicts the legal troubles met by a journalist, in conjunction with his investigative work on the Chinese Communist Party's involvement with transnational organized crime and the corruption of Western politicians.

It enables a focus on the concept of lawfare, defined as the misuse of the law and the judicial system against an opponent. In this case, Chinese operatives are suspected of using the American court system to silence critical voices: their assets sue a journalist based on frivolous defamation allegations, forcing him to invest resources to defend and protect himself. Such very public lawfare strategies also serve to deter future critics.

The case enables students to look at the weaponization of the law against one individual, but also to consider the systemic impact of loose regulations and permissive judicial institutions on creating "cover" for illegal activities by foreign actors.

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Keywords: Hybrid warfare – SLAPP lawsuit – Journalist – Weaponization of the law – Lawfare – Intimidation – Doxing

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Suggested references on lawfare:

- Chaudhury, D.R. (2021), View: how China misuses Interpol to settle domestic scores and stifle dissidence, the Economic times of India (<https://economictimes.indiatimes.com/news/defence/view-how-china-misuses-interpol-to-settle-domestic-scores-and-stifle-dissidence/articleshow/86160172.cms?from=mdr>)
- Goldenziel, J.I. (2021), Law as a battlefield: the U.S., China, and the Global Escalation of Lawfare, Cornell Law Review, 106, 1085.

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Disclaimer

This case is inspired by real events; however, the story, the protagonists' names, characters, and incidents portrayed in this document are fictitious. No identification with actual persons (living or deceased) and places is intended or should be inferred.

A brilliant career in investigative journalism

The main character in this story is Shane Williams, a former, highly talented officer in the US Armed Forces. Although specialized in intelligence, he was involved on various battlefields, where he incurred injuries severe enough for him to withdraw from active duty.

Upon return to civilian life, ten years ago, he was keen to apply his research, analytical and writing skills to journalism. He started his second career as a crime reporter with the San Francisco Daily newspaper. His main interest, as a journalist, was topics where he saw his fellow citizens and his country particularly vulnerable: threats from transnational organized crime networks, especially the Triads connected to China.

From eight to five years ago, Shane uncovered some concerning stories that included a network of Triads connected, through shell corporations, to several casinos in Northern California and in Las Vegas. It appeared that they had also bought large amounts of real estate in San Francisco and the Bay area.

This appears to be one of the world's most powerful transnational organized crime networks, believed to be laundering billions of dollars for the cartels, including profits from the sale of fentanyl and other drugs to mentally vulnerable people in the US and other Western democratic countries. Rumors have it that the Triads are in fact directly controlled by the Communist Party of China and have hundreds of billions of dollars of dirty money invested here and there, mostly in real estate.

What Shane uncovered, along with a network of trusted affiliate journalists are direct links between the Triads on the one hand, and California and Nevada State and local Government officials on the other. Such links take the form of campaign contributions, as well as donations in the billions, in support of schools, hospitals and other social causes. In other words, part of the money laundered is used to influence politicians, and more is used to buy a name for the Triads' unadmitted business associates in the eyes of the public.

Investigating the story led to mounting concerns relative to the relationships between local and national politicians, Triad leaders, and businesspeople suspected to be members of the Chinese Communist Party and its “United Front.”

The United Front

The United Front is a Chinese Communist Party effort aimed at building a network of key individuals that are loyal and useful, to advance its interests. It was first developed domestically (the “United Front Work Department”), before being expanded overseas through various United Front organizations.

Initially, the United Front’s foreign operations mostly aimed at controlling the Chinese diaspora. Some, if not most, of their activities are within the boundaries of the law. For example, it uses internet celebrities for influence campaigns on social media, or their assets to produce reports for Chinese intelligence services. It is also believed to carry outright professional espionage operations and to have strong ties with transnational organized crime structures.

This large and widespread network relies on carefully selected businesspeople, expatriates, and artists. Critics say Beijing’s United Front goes as far as influencing governmental policies of other nations by cultivating business and personal relationships with elite business leaders, who are in turn influential with elected politicians.¹

Although the association to the Chinese Communist Party is downplayed, the United Front is funded and supported by various areas of the Chinese government, including the People’s Liberation Army and the Ministry of State Security.

A stream of publications

Along with other reporters who followed his lead, Shane published some hard-hitting stories and exposés on crime, corruption, money laundering, fentanyl and links to US politicians, business leaders and Chinese suspected operatives, including people assumed of being either crime figures or Chinese Intelligence representatives – maybe both. Coincidental to his reporting, the FBI, DEA, and Homeland Security began sharing press releases connected to the Triads.

Over the course of the next several years, Shane and his network of journalists wrote several books on these criminal networks and their operations in the US, highlighting direct human and financial links between criminal networks, Chinese suspected government operatives and US politicians.

At the same time, the US government began sharing intelligence reports concerning the threat of China among its national security agencies, as well as those of fellow NATO countries’. An increasing number of reports identified several grave issues, including:

- Cyberattacks attributed to China.

¹ See for example this BBC report: Ewe K & Bicker L. (2024), United Front: China’s ‘magic weapon’ caught in a spy controversy (<https://www.bbc.com/news/articles/c878evdp758o>)

- Concerns regarding fentanyl being weaponized by China against the civilian population.
- Numerous cases of US politicians being compromised by China.
- Accusations of insufficient data protection and security compromises at global Chinese technology companies, such as TikTok,² Huawei,³ ZTE and others, leading to sanctions and restrictions of activity in various Western countries.⁴
- The unjustified detainment of Westerners, especially US citizens, on Chinese soil.

As a result of a series of national media stories from Shane and a dozen other journalists, coupled with Western Intelligence Agencies' enhanced reporting on the threats posed by China, newspapers and news channels started reporting on these issues daily. Recently, international tensions are increasing and so is the rhetoric between China and the US, including in the military and diplomatic arenas.

Social media posts regarding Shane's reporting on national security issues are either highly supportive, or highly negative. Support generally comes from concerned citizens, as well as security experts from all Western democracies. Criticisms seem to come from automated accounts that are relayed by "useful idiots", people who tend to systematically doubt the quality and ethics of mainstream journalistic work.

Shane has recently moved from San Francisco to Washington, DC, initially as the Lead Reporter for the Wall Street Times on their National Security Desk. Last week, he accepted a position at the Washington Mail as the Chief Editor for National Security and China.

Lawfare in action

In the past six months (i.e., since he started working for media with national markets), Shane has been served with several lawsuits accusing him of defamation and negligence related to a series of articles he wrote. The lawsuits focused on the following newspaper stories:

- An American-born Californian Senator (of Chinese extraction) accepting \$800,000 in cash from a Beijing businessman, then distributing it to various State and local politicians running for upcoming elections.
- The then-US Vice-President advising the CIA and FBI not to disclose warnings to several US and State Congresspeople that their lives may be under threat from both Chinese and Russian operatives.

² https://en.wikipedia.org/wiki/Censorship_of_TikTok

³ <https://foreignpolicy.com/2021/04/30/huawei-china-business-risk/>; <https://www.bbc.com/news/world-us-canada-63764450>

⁴ <https://www.euronews.com/next/2024/08/12/eleven-eu-countries-took-5g-security-measures-to-ban-huawei-zte>

- The portrait of an LA-based businessman (and legal “green card” US resident) who, in his earlier life, was a senior Chinese military officer. Among other career highlights, he is now believed to have run the Chinese Army aerial surveillance unit from 2002 to 2012 and to have been on their National Security Board for Arctic Warfare. In his article, Shane depicted him as an operative involved in the fentanyl (and other drugs) trade and money laundering. A close acquaintance to the LA Chinese Consul General, he appeared to socialize with many Californian politicians on the one hand, and with Triad leaders on the other hand. Many of this individual’s US political associates are coincidentally associated with business leaders in the Silicon Valley tech world.

Shane has recently heard rumors that his own life may be in danger.

Some details on Shane’s legal issues:

Shane has now been served with three civil suits, originating from various people named in those past stories. Several of the claimants appear to have ties with the United Front or direct relationships to members of the Chinese Communist Party. An element that puzzles Shane: all civil suits target him personally, but not the news organizations he worked for – and which published his stories. The timing of such suits also appears anything but coincidental.

These lawsuits may be characterized as SLAPP: Strategic Litigation Against Public Participation. In other words, intimidation lawsuits, intended to silence critics, who must bear the human and financial costs – as well as possible reputation effects – of having to defend themselves in court. The aim of such lawsuits is for defendants to censor themselves and quit their opposition or criticism of the plaintiff. It may also serve to deter others from voicing similar criticisms. Focusing on individuals and avoiding joining large publishers in the suits may be a means of keeping the publishers, with their deep pockets, from paying to defend the writers.

SLAPP lawsuits benefit from legal systems that are both expensive and permissive of frivolous claims (such as in most of the US States); such claims are rarely convincing and seldom backed by much evidence, the objective being not to win the argument so much as to harass and if possible, bankrupt the defendant. As they are an obstacle to freedom of speech, some jurisdictions have passed anti-SLAPP laws that make it easier to kill SLAPP lawsuits quickly and at little cost. So, the suits tend to be designed such that they can be filed in jurisdictions that have not done this.

To add insult to injury, the subject of the third news story announced his judicial claim by purchasing ad space in a national newspaper, thus appearing to place more effort into publicizing his claim than into pursuing a credible legal remedy.

Furthermore, with the help of online trolls and fake accounts, the same person spread posts widely relaying these ads on social media, adding personal information about Shane

(his personal address, his marital status, the age, and gender of his children). The act of publicly providing personal data about an individual without his consent is called “doxing.” In this case, it is blatantly used to further intimidate Shane. Few remedies exist in the US, because of weak laws of data privacy as well as the broad Constitutional protection for free speech.

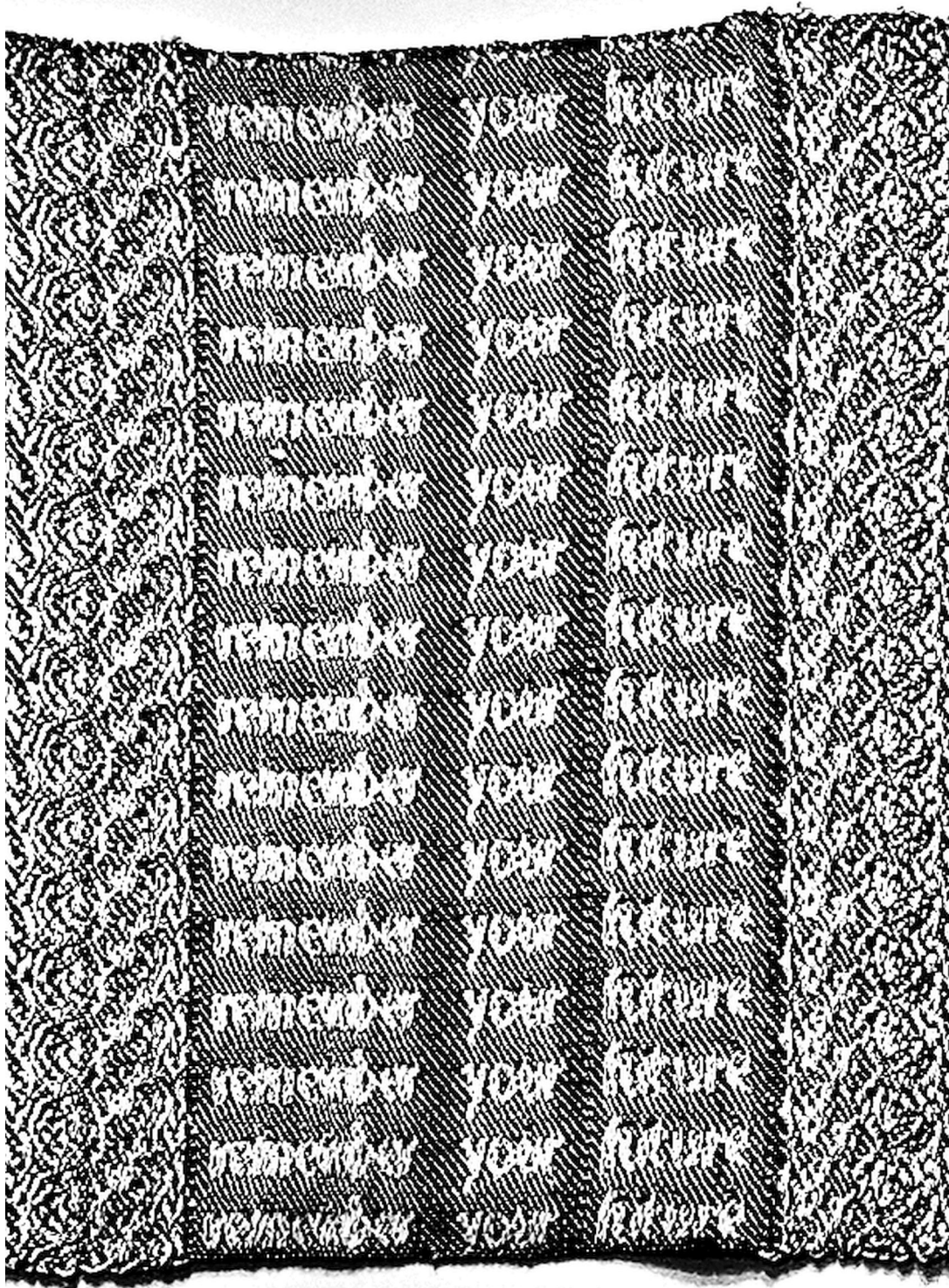
Possible questions for all audiences

- 1) This case shows a complex hybrid warfare situation. List all the hybrid warfare techniques depicted in the case.
- 2) Draw a comprehensive stakeholder map of the case. Who are the relevant people and institutions that should be considered in this situation, and how do they relate to one another? List and prioritize the interests of each of the main stakeholders of the case.
- 3) How much would you be concerned if you were in Shane's shoes? How would you react?
- 4) Shane is in a position where some of his needs could be met by negotiating "behind the table", i.e., with people on his own side. Whom should he contact (lawyers, public agencies, his bosses, former employers...)? What should he try to negotiate (protection, compensation, etc.)?
- 5) Are journalists protected well enough against such actions taken against them? What could be done to increase their protection? Do not hesitate to refer to the reports and website of the NGO Reporters Without Borders (<https://rsf.org/en>). Their Press Freedom Index may be a good starting point.
- 6) What international coordination would be needed to protect Western democracies from the activities uncovered by Shane's journalistic work?
- 7) How do you analyze the elements uncovered and published by Shane through his investigative efforts? Do you deem realistic the portrait he is drawing of the situation, especially the link between a foreign government and transnational organized crime?
- 8) How may a State, such as the USA in this scenario, react to such actions taken on their soil by a foreign government and its assets? Rate different types of reactions (diplomatic protest, economic retaliation, threat of military action, deportation of foreign assets, etc.) in terms of probability and political acceptability. What could be the long-term effects of such actions or inaction?
- 9) More and more, people's private information is being revealed on the internet, to cause harm to people and organizations, or in retaliation for otherwise unrelated actions. How should society deal with such a phenomenon? Do you feel that your country's laws on data protection are sufficient? Can anything be done by individuals to curb these practices?

Possible specific questions for lawyers and law students

As a lawyer, you are meeting with your associates to consider how best to advise your client. You should consider and prepare some initial conclusions/recommendations for each of the following:

- 1) If you were Shane's lawyer, what would you advise him to do in this situation?
- 2) If you were the lawyer for Shane's current employer, what course of action would you recommend to your client? Would you try to coordinate a response with Shane's lawyers?
- 3) If you were the designated judge in any of the lawsuits, how would you approach such a case? Discuss the different arguments that the legal representation for Shane (and/or his employer) may develop and how much merit they would have.
- 4) Would you advise negotiation or ADR mechanisms (esp. mediation) for Shane to try to solve the lawsuits he is involved in?
- 5) Shane's work has led to uncovering criminal activities, but also financial links between a political actor, local politicians, and a web of businesses, some legal, some clearly illegal. Are your country's laws efficient at preventing such criminal activities? Is your country's legal system well-equipped to prosecute people involved in such activities?
- 6) This case demonstrates the possible use of SLAPP lawsuits and doxing in hybrid warfare. Should the legislature (in your country) act against these phenomena? How?
- 7) The cases here are based in US law and judicial procedures. Are laws in other countries generally / your country in particular more or less protective against frivolous lawsuits and doxing? Are there any other kinds of statute that could affect these cases that might exist in your country, but not in the US?
- 8) The news media environment changes rapidly in the digital world. In corporate media, reporters describe a reduced capacity to undertake crucial investigations regarding hybrid warfare threats that combine illicit foreign and domestic business elites, organized crime, and hostile state actors or proxies, particularly as outsized defamation claims from these threat networks mount and have the effect of "chilling" reporting. At the same time, journalists who take advantage of modern technology to report independently describe an inability to secure legal threat coverage and insurance. Are your nation and related jurisdictions doing enough to protect the "Fourth Estate"? What legal solutions would you suggest?



“Remember your future.” From a series of weavings by Rachel Parish, with quotes from Qiao and Wang’s *Unrestricted Warfare* (People’s Liberation Army Publishing House, Beijing 1999.) In color at <https://rachelparish.com/projects/gentle-and-kind-things/>