

## In This Issue #153

- APA Justice Comments on Biographical Sketch and Current and Pending (Other) Support
- 2022/11/07 APA Justice Monthly Meeting
- *The National Law Journal*: The China Initiative May Have Finally Died—Killed Not by DOJ but the Courts
- *Chemistry World*: What next for scientific collaboration as stand-off between China and the west heats up?
- AAAS - A New Vision Statement and Webinar

### APA Justice Comments on Biographical Sketch and Current and Pending (Other) Support

#### Comments on Federal Register Notice 2022-18746

Agency Information Collection Activities: Request for Comment Regarding Common Disclosure Forms for the Biographical Sketch and Current and Pending (Other) Support

APA Justice  
October 31, 2022

APA Justice respectfully submits the following comments in response to [Federal Register Notice 2022-18746](#) regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

On October 31, 2022, APA Justice submitted comments on [Federal Register Notice 2022-18746](#).

We highly commend the White House Office of Science and Technology Policy (OSTP) for its [August 2021 announcement](#) that “[w]e have to assiduously avoid basing policies or processes on prejudice — including those that could fuel anti-Asian sentiments or xenophobia” and [the January 2022 requirement](#) that “[a]gencies must implement NSPM-33 provisions and related requirements in a nondiscriminatory manner that does not stigmatize or treat unfairly members of the research community, including members of ethnic or racial minority groups.”

However, it is important for Federal agencies to recognize that emphasis on compliance is far less productive and effective than building partnership. There has been a serious loss of public

trust and confidence in recent years due to both perceived and factual profiling and discrimination against scientists and researchers of Asian descent, especially those of Chinese origin.

While it is necessary to create consistency within the Federal government, fear and chilling effects will continue if there is no commitment and clarity to prevent misuse or abuse of power by law enforcement and grant-making agencies.

Evidence-based policymaking and transparency are critically important in our democracy, re-earn public trust, and heal the Asian American community. However, they are still significantly inadequate in the current implementation of NSPM-33.

In particular, we made six comments:

1. As much as a researcher will try to be accurate with a standardized form, it will never be complete. A researcher or a group of researchers will be vulnerable to selective or arbitrary allegations of violation when they become profiling targets, as some have in recent years.
2. There is no historical data or a measurable benchmark on the magnitude of past and existing cases, investigations, or allegations, as well as their current state and disposition at the agency and aggregate levels. It is unclear how the performance and effectiveness of the new policies and standards can be measured without a baseline.
3. On September 30, 2022, *Science Magazine* reported that the National Science Foundation (NSF) will "soon begin crunching several large databases to see whether there are scientists who failed to disclose ties to foreign institutions in their grant applications." Will some researchers be selectively blindsided without knowledge about how this process works with the incomplete standardized forms?
4. Given the increasingly important role of Big Data, Data Science, and Artificial Intelligence (AI) in the future of US science and technology, there has been little or no clarification about privacy, data quality, bias in algorithms, and unintended consequences that may have a disparate impact and serious civil rights ramifications.
5. There has been little or no clarification on the consequences of violations of disclosure requirements. They require uniformity, consistency, and transparency across Federal research agencies. There should be an agreed-upon appeal process and penalties for proven nondisclosure. Without such clarity, even with the end of the "China Initiative," there is still the potential for infringement on civil rights.
6. We request the Biden Administration to reaffirm NSDD-189, as NSF and the National Science Board called for in 2018 and was achieved in 2010 under the Obama Administration and in 2001 under the Bush Administration.

In summary, common disclosure forms for the biographical sketch is a positive step. However, without clarity on how it fits in a holistic approach, ambiguity remains that in our opinion will adversely impact its effectiveness.

Dr. **Rebecca Keiser** of the National Science Foundation has kindly agreed to address these issues at the November 7 APA Justice monthly meeting.

Read the APA Justice submitted comments here: <https://bit.ly/3TR5BbP>

## 2022/11/07 APA Justice Monthly Meeting

The next APA Justice monthly meeting will be held on Monday, November 7, 2022. Confirmed speakers are:

- **Nisha Ramachandran**, Executive Director, Congressional Asian Pacific American Caucus. Updates from CAPAC.
- **John Yang**, President and Executive Director, Advancing Justice | AAJC. Updates on Anti-Profilng, Civil Rights & National Security Program and more.
- **Gisela Kusakawa**, Executive Director, Asian American Scholar Forum. Gisela was appointed to be the inaugural Executive Director for AASF on October 13, 2022. Learn more about AASF and its activities.
- **Matt Jones**, Partner, WilmerHale. Updates from the lead attorney on Dr. Yanping Chen's Privacy Act case against the FBI, DOD, DHS, and DOJ.
- **Rebecca Keiser**, Chief of Research Security Strategy and Policy, National Science Foundation and Co-Chair of the National Science and Technology Council's Subcommittee on Research Security. On the implementation of NSPM-33, APA comments on Federal Register Notice, and more.

The virtual monthly meeting is by invitation only. If you wish to join, either one time or for future meetings, please contact one of the co-organizers of APA Justice - Steven Pei, Vincent Wang, and Jeremy Wu - or send a message to [contact@apajustice.org](mailto:contact@apajustice.org). Read past monthly meeting summaries here: <https://bit.ly/3kxkqxP>.

## The National Law Journal: The China Initiative May Have Finally Died—Killed Not by DOJ but the Courts

## **The China Initiative May Have Finally Died—Killed Not by DOJ but the Courts**

The courts have, for now, stepped in and put a halt to the most egregious of prosecutions under the China Initiative. By the time the courts acted, great damage has already been done—careers are lost, finances drained, and lives forever scarred.

BY PETER R. ZEIDENBERG AND MICHAEL F. DEARINGTON

According to the article published by the *National Law Journal* on September 29, 2022, the courts have, for now, stepped in and put a halt to the most egregious of prosecutions under the "China Initiative." By the time the courts acted, great damage has already been done—careers are lost, finances drained, and lives forever scarred.

Cases of economic espionage or theft of intellectual property were exceedingly rare, especially among university professors. However, instead of shelving it, the "China Initiative" morphed into a search for paperwork errors—reams of paper submitted in connection with federal grants was scrutinized in the hopes of finding an omission about a Chinese affiliation.

Aggressive prosecutors, with the blessings of the Department of Justice (DOJ), contended that any failure to report such an affiliation justified charges of wire fraud—an offense that carries a maximum 20-year prison sentence. But three district courts in a row to hear such a case rejected this theory, finding that mere nondisclosure of a foreign affiliation, where all of the academic or grant work is completed, is not enough to violate the wire fraud statute.

In what will hopefully prove to be the death knell for the "China Initiative," Kansas University (KU) Professor **Franklin Tao**, the first ethnically Chinese scientist prosecuted under the "China Initiative," had his remaining fraud charges thrown out in September. The trial judge, in granting the defense's motion for judgment of acquittal (MJOA), found that there was no evidence that the granting agencies would not have awarded the grants even if they had known about Tao's alleged undisclosed affiliation, and that the granting agencies and KU all received exactly what they bargained for: Tao carried out all of his research duties to the complete satisfaction of the government agencies, and KU even recognized Tao as one of the most accomplished researchers at the university at the same time that the alleged scheme was ongoing.

The only two other district courts that have considered MJOA in these circumstances likewise granted acquittals. In *United States v. Anming Hu*, a district court in the Eastern District of Tennessee acquitted Dr. Hu, who had been charged with defrauding NASA of grant funds by concealing a second position in China. In granting Dr. Anming Hu's MJOA, the court reasoned that even if Hu "intentionally deceived NASA about his affiliation" in China, there was "no evidence that NASA did not receive exactly the type of research that it bargained for [and] ... NASA was satisfied with defendant's work on their grants." The court concluded that there "is simply no evidence that NASA did not receive ... the benefit of its bargain."

Similarly, in *United States v. Mingqing Xiao*, a district court in the Southern District of Illinois granted the defense's motion for a university professor accused of wire fraud for allegedly causing his university to apply for a federal grant without disclosing an active Chinese grant or a second position at a Chinese university. Once again, the court reasoned that while there was evidence of deceit, "one can deceive without defrauding." Because the defendant did not deny the agency the benefit of its bargain, did not steal the grant funds, and did not otherwise cause harm through his deceit, there was insufficient evidence that he had an intent to defraud.

While Chinese American scientists can all be grateful that district court judges have curbed these runaway prosecutions, the question must be asked why the DOJ has persisted in bringing these cases despite there being no harm to the agencies.

If not for judges willing to overrule these jury verdicts, Tao, Hu and Xiao would be facing the prospect of years in prison for their paperwork errors. Rather than protect American intellectual property, the China Initiative has been counter-productive.

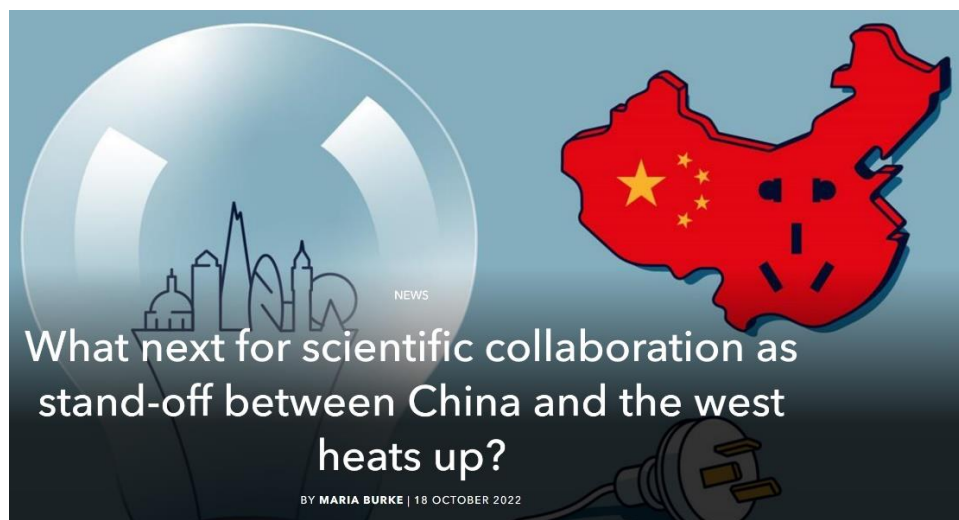
The DOJ targeted this country's academic community, rather than nation-state actors or intellectual property thieves, and fearful Chinese American scientists, harassed by aggressive investigators and threatened with the loss of research funding, have found no choice but to return, reluctantly, to China, a country they happily left decades ago and where they had no desire to return. The best and brightest scientists in China may also think twice before emigrating to the United States, given the risks and unwarranted scrutiny they will face upon arrival.

The putative shelving of the China Initiative was cheered by many of its critics, hopeful that the DOJ had finally recognized the harm it was causing. Yet, despite the promising words, the DOJ's actions speak much more loudly, and it is clear that, but for the courts, the initiative would live on, despite a name change.

Thankfully, the courts have, for now, stepped in and put a halt to the most egregious of these prosecutions. But, unfortunately, by the time the courts have an opportunity to act, great damage has already been done—careers are lost, finances drained, and lives forever scarred. The China Initiative may finally be over, but its devastating toll on academia and ethnically Chinese professors should not be forgotten, so that its mistakes are never repeated.

Read the National Law Journal article here: <https://bit.ly/3U9Uavt>

## **Chemistry World: What next for scientific collaboration as stand-off between China and the west heats up?**



According to an article published by the *Chemistry World* (based in London) on October 18, 2022, governments around the world – led by the US – are moving to restrict and control academic collaborations with China. What will this mean for research groups and universities on both sides?

The latest in the clampdown on links with China is the closure of two major research centres involving Imperial College London and Chinese companies linked to the nation's defence industry after the United Kingdom (UK) government denied permission for work to continue. The move follows warnings from the FBI and MI5 in July that China was involved in economic espionage and presented "the biggest long-term threat" to economic and national security.

How times have changed. Back in 2012, Chinese investment in UK universities was encouraged and welcomed. Now, academic partnerships particularly those involving "dual-use" technologies – which have civilian uses, but also potential military applications – have fallen from favour. The Avic Centre – a collaboration between Imperial and the Aviation Industry Corporation of China – was set up to advance aerospace structural design and manufacturing, while the second centre, involving Imperial and the Beijing Institute of Aeronautical Materials, focused on materials characterisation, processing and modeling.

A recent study by the research organisation Rand that shows UK academics largely speak in positive terms about their Chinese partners. Rand's report, which surveyed more than 80 researchers, notes the UK and Chinese research ecosystems have become increasingly integrated since the 2000s, particularly in technology-based disciplines, such as synthetic biology, advanced materials, energy and engineering. However, while it notes that transfer of dual-use technologies to the Chinese military "has dominated the media", only a minority of those surveyed experienced this issue.

The report finds clear indications of a decline in UK–China research collaboration starting in 2019, and describes the challenges UK academics face when conducting research in China, including difficulties securing funding and the shrinking research space in China. It also notes how UK research organisations have sought to mitigate potential risk but, in some cases, have had to disengage with China.

"China scepticism" is now growing dramatically in western countries – after being significant for some time in the US – and it will have major implications for scientific development and global higher education, The US has led the way, clearly setting out to "counter China" in the recently passed Chips Act.

For China, the impact of decoupling will also be significant. Even though the country boasts world class universities, innovation lags western institutions. China will start to lose the benefits of international collaboration as academic contacts are lost and fewer Chinese students study abroad. The future of western university campuses in China will become uncertain and fewer western academics will be willing to work there. In the years ahead, as China's isolation increases and academic freedom declines, R&D in China will face significant disadvantages from no longer fully participating in global knowledge networks.

Is it inevitable that science has become a matter of politics? "Science has long been based on collaboration across borders and has a perhaps unique ability to depoliticise international cooperation, at least to some degree," says one of the experts. "In the current geopolitical climate of competition, it has become harder to maintain these collaborative aspects."

Most importantly, the article concludes that we must avoid and counter xenophobia. Racial stereotypes have latched themselves onto geopolitical narratives in the past. It is critical to apply nuance when evaluating Chinese contributions to our research communities and to avoid simple generalisations and stereotypes.

Read the *Chemistry World* article here: <https://bit.ly/3DPBzzF>

## AAAS - A New Vision Statement and Webinar



The American Association for the Advancement of Science (AAAS) was formed in 1848 as it marked the emergence of a national scientific community in the United States.

On the eve of its 175th anniversary, the AAAS mission stays the same to advance science, engineering, and innovation throughout the world for the benefit of all – Advancing Science, Serving Society. It has a new vision statement that defines what success will look like to meet current and future challenges and opportunities head on: **A boldly inclusive, mobilized, and**

**global scientific community that ignites, enables, and celebrates scientific excellence and science-informed decisions and actions.**

There are four strategic goals to guide the AAAS work over the next 3-5 years:

- Advancing scientific excellence and achievement
- Fostering equity and inclusion for scientific excellence
- Building trust among scientists and communities
- Catalyzing progress where science meets policy

AAAS will host a webinar to discuss how its newly unveiled strategic vision will be implemented through concrete actions in the year ahead, as well as the state of science, reflecting on the past year and sharing highlights. Speakers include AAAS President **Gilda Barabino**, Science Editor-in-Chief **Holden Thorp**, and **Sudip S. Parikh**, AAAS Chief Executive Officer. The virtual event will be held on Monday, November 14, 2022, from 2:30 p.m.-3:30 p.m. ET.

Register to attend the AAAS webinar here: <https://bit.ly/3DoNm6j>

## **Subscribe to The APA Justice Newsletter**

Complete this simple form at <https://bit.ly/2FJunJM> to subscribe. Please share it with those who wish to be informed and join the fight. View past newsletters here: [https://bit.ly/APAJ\\_Newsletters](https://bit.ly/APAJ_Newsletters).

*Copyright © 2022 APA Justice, All rights reserved.*

You are receiving this email because you opted in or have expressed interest.

**Our mailing address is:**

APA Justice  
P.O. Box 257  
McLean, VA 22101-0257

[Add us to your address book](#)

We do not share, sell, rent or trade any of your information with third parties unless you provide explicit consent. [Read our Privacy Policy here.](#)