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03/17 Townhall: The End of the "China Initiative" - What This Means and Where We Go from Here

ADVANCING JUSTICE AACJ

AAFEN AMERICAN ASSOCIATION FOR FREEDOM OF INFORMATION ACT

ACLU AMERICAN CIVIL LIBERTIES UNION

AMNESTY INTERNATIONAL

APA Justice Service Justice Fairness

AASF AMERICAN ASSOCIATION OF STUDENT FELLOWS

BRENNAN CENTER FOR JUSTICE

The Leadership Conference

ADVOCATE

UCA UNIVERSITY OF CALIFORNIA

The End of the "China Initiative"

TOWN HALL

OPEN TO THE PUBLIC

SAVE THE DATE

● Thursday, March 17
3pm ET | 2pm CT | 12pm PT

● Q&A from the Community

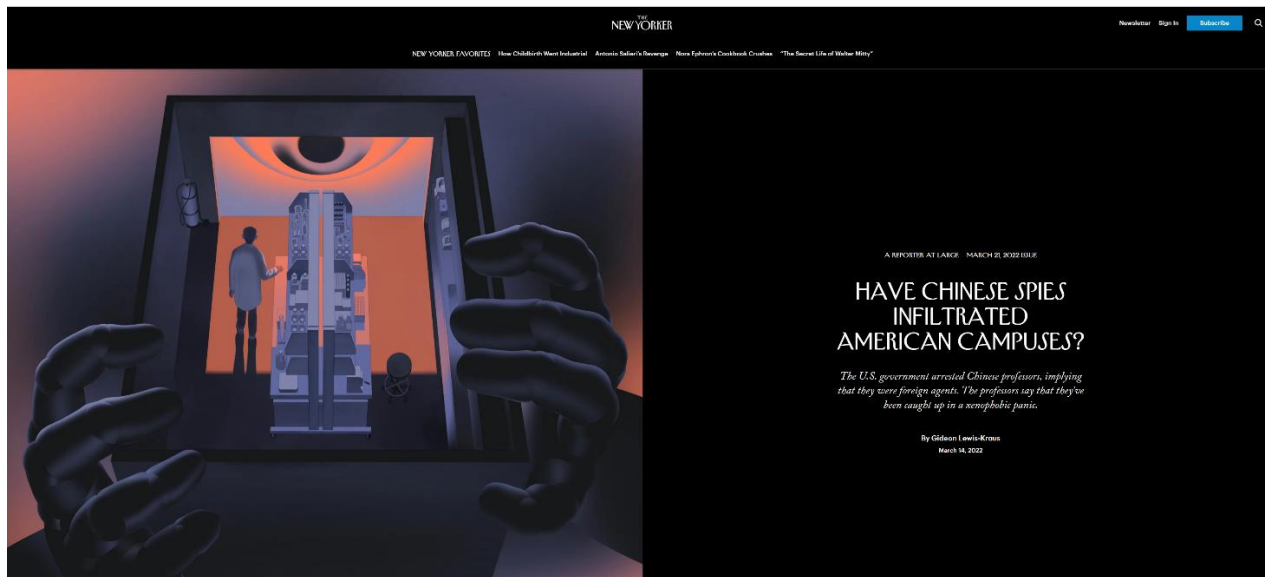
What this means and where we go from here.

REGISTER: bit.ly/0317townhall

On March 17, 2022, a coalition of organizations including APA Justice will host a town hall meeting titled "The End of the 'China Initiative.'" We will discuss what the end of the ill-conceived "China Initiative" means and where we go from here. The event is open to the public and includes Q&A from the community.

Register to attend the townhall here: <http://bit.ly/0317townhall>

Breaking New Yorker: Have Chinese Spies Infiltrated American Campuses? Including The Full Story of Franklin Tao



On March 14, 2022, the *New Yorker* published "**Have Chinese Spies Infiltrated American Campuses?**"

The must-read comprehensive report is more than 11,000 words long. The audio version will take 1:14:30 to listen, but it is well worth it.

The report leads off with University of Kansas Professor Franklin Tao, the first academic arrested under the "China Initiative." A significant portion of the report is devoted to the origin of his unjust case, his humble upbringing and personal background, his devotion to work and science, and his pain and suffering under the overzealous "China Initiative."

According to the report, "[t]he fundamental problem with the China Initiative is that the D.O.J. is in charge with the F.B.I., and they're looking at it entirely through a criminal lens, because that's the only tool they have. Most of the threats are not criminal in nature, so by definition the China Initiative has failed, and will fail."

Read the *New Yorker* report: <https://bit.ly/3CGwFCK>

To Help Professor Tao is To Help Ourselves 帮助陶教授就是帮助我们自己



Despite the identified flaws, new prosecution guidelines, and the end of the "China Initiative," the Department of Justice (DOJ) is proceeding with the prosecution of Professor **Franklin Tao** 陶丰. Professor Tao was the first academic indicted under the "China Initiative" and charged for wire fraud and making false statements, not economic espionage or trade secret theft. His trial is scheduled to start on March 21, 2022, in Kansas City, KS.

During the March 7, 2022, APA Justice meeting, **Haipei Shue** 薛海培, President of United Chinese Americans, was in the company of University of Tennessee Knoxville Professor **Anming Hu** 胡安明 and gave an update on the progress and preparation of community support for the trial of Professor Tao. The [GoFundMe](#) campaign for the legal defense of Professor Tao was restarted. At that time, about 3,500 donations had been made for a total of about \$450,000. [Note as of today, the total has exceeded \$553,000 with a goal of \$1 million.] In terms of local Chinese community support, Haipei is mobilizing and encouraging community members to attend the opening day of the trial and to help arrange an onsite news conference.

Peter Zeidenberg, defense attorney for Professor Tao, also spoke in the meeting and expressed his appreciation for the support of the Chinese American community. Peter explained that the declared demise of the "China initiative" is sort of the worst of both worlds for people like Franklin Tao. There is danger that many who have been holding the DOJ accountable will walk away and congratulate each other for a mission accomplished. However, DOJ is continuing with this prosecution after the Assistant Attorney General said that going forward, they will only be prosecuting cases with a national security nexus. Professor Tao's case is a pure research integrity case about checking the right box on a conflict-of-interest form. Peter and Professor Tao dispute the factual predicate that he took the job in China.

Peter made his point to the government in a lengthy letter asking them to reevaluate the case. Even if what they say is true, it has nothing to do with national security. Like virtually all of the other professors, the research that is done is all published and required to be published. It is not secret or confidential. Instead, the DOJ turned that into a felony where Professor Tao is facing many years in prison and deportation if he is convicted. Peter and Professor Tao have been fighting this case vigorously for the last two and a half years, but apparently the DOJ will not open their eyes to Peter's letter.

Chinese American Legal Defense Alliance (CALDA) and Professors Gang Chen and Anming Hu have made these statements in support of Professor Tao:

- **CALDA (华美维权同盟)**: "Professor Tao was prosecuted by the US government only because he is Chinese, if Professor Tao is not safe, all of us Chinese in the United States are not safe. To help Professor Tao is to help ourselves!" “陶教授被美国政府起诉只因为他是华人，如果陶教授不安全，我们所有在美华人都不安全。帮陶教授就是帮助我们自己!”
- **MIT Professor Gang Chen 陈刚**: “I have just gone through this worst nightmare of my life. It is utterly unjust and utterly un-American. We should support Professor Tao so that he can have a fighting chance in the upcoming court battle.”
- **UTK Professor Anming Hu 胡安明**: "My name is Hu Anming, and I was the first professor who was indicted in the 'China Initiative' to go through a trial, and I just regained my innocence and freedom in court. As Professor Gang Chen said, I have also become the luckiest one among the unfortunate people. I know how important everyone's help is to Professor Tao at this critical moment! Professor Tao's family and his team of lawyers have made arduous efforts in the past two and a half years of legal battles and court trials, and have exhausted all available resources. We desperately hope you can lend a helping hand during the toughest time for their family! To help Professor Tao is to help ourselves. Thank you so much for your solidarity and love!" “我叫胡安明，是“中国行动计划”被起诉教授中第一个经历了庭审的，刚刚在法庭上重获我的清白和自由。就像陈刚教授所说，我也成为不幸的人中最幸运的一位。我深知在这个关键时刻，大家的帮助对陶教授来说是多么的重要！陶教授一家及其律师团队在过去二年半的法律斗争及庭审等待中做出了艰苦卓绝的努力，已经耗尽一切可以利用的资源。在他们

一家最艰难的时刻，迫切希望您能伸出援助之手！帮助陶教授就是帮助我们自己。衷心感谢您的声援和爱心！”

Senators Wicker and Grassley Seek Information for Oversight of Department of Commerce

U.S. SENATE COMMITTEE ON
COMMERCE, SCIENCE, & TRANSPORTATION

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Wicker, Grassley Seek Information Regarding Potentially Illicit Methods ITMS Used to Gain Special Deputy Marshal Authority

March 8, 2022

WASHINGTON – U.S. Sen. Roger Wicker, R-Miss., ranking member of the Senate Committee on Commerce, Science, and Transportation, and Sen. Chuck Grassley, R-Iowa., ranking member of the Senate Committee on the Judiciary, today sent a letter to United States Marshals Service (USMS) Director Ronald Davis seeking additional information regarding the potentially illicit methods the Investigations and Threat Management Service (ITMS) office took to gain special deputy marshal status.

“The waste of millions of taxpayer dollars by ITMS’s unauthorized criminal investigations into Department employees, foreign nationals, and U.S. citizens requires additional congressional oversight of the Special Deputation program administered by USMS. Congress cannot allow similar behavior by other agencies utilizing the Special Deputation program,” **the Senators wrote.**

USMS gave ITMS limited additional authorities via its Special Deputation program to protect the Commerce Secretary and “critical assets” associated with protecting the Secretary. Wicker and Grassley previously sent letters to USMS asking about the meaning of “critical assets” and also further explanation of the Special Deputation program authorities granted to ITMS. In August 2021, the Commerce Committee released a report finding a significant lack of oversight of ITMS, which allowed the office to abuse its special deputy marshal authority.

The full letter can be found [here](#) and below.

Related Links

Press Releases

On March 7, 2022, U.S. **Senator Roger Wicker**, R-Miss., ranking member of the Senate Committee on Commerce, Science, and Transportation, and **Senator Chuck Grassley**, R-Iowa., ranking member of the Senate Committee on the Judiciary, sent a letter to United States Marshals Service (USMS) Director Ronald Davis seeking additional information regarding the potentially illicit methods the Investigations and Threat Management Service (ITMS) office took to gain special deputy marshal status.

“The waste of millions of taxpayer dollars by ITMS’s unauthorized criminal investigations into Department employees, foreign nationals, and U.S. citizens requires additional congressional oversight of the Special Deputation program administered by USMS. Congress cannot allow similar behavior by other agencies utilizing the Special Deputation program,” the Senators wrote.

They added, *“ITMS’s actions went beyond merely violating the parameters of their special deputation. They routinely engaged in activities that were illegal and violated the constitutional rights of multiple individuals. In one instance, ITMS investigated a Chinese-born scientist [Sherry Chen] employed at the Department on charges of espionage, interrogated her for hours, and drafted a criminal referral to federal prosecutors. Officials ultimately dropped the*

charges after her arrest because the untrained ITMS investigators failed to provide sufficient evidence of wrongdoing. Whistleblowers also claim that ITMS targeted U.S. citizens by regularly performing 'intelligence checks' on individuals associated with foreign visitors to the Department's building. This included querying U.S. persons in classified databases to determine whether they presented a threat to the Department, regardless if there was evidence indicating suspicious or malicious intentions. Whistleblowers have also informed us that ITMS employees routinely conducted clandestine style searches of the offices of Department employees, with little to no cause. ITMS employees also regularly searched Department servers and employee email accounts to scan for evidence of foreign influence. This was in addition to an investigation that ITMS conducted on a classroom of elementary school children who petitioned the Secretary to include a certain type of whale on the list of protected marine wildlife, established by the Marine Mammal Protection Act of 1972."

In addition to Senator Wicker's ongoing investigation of the Department of Commerce, Senator Chuck Grassley has also been active in his oversight role, including:

- 2021/10/13 Senator Chuck Grassley: [Grassley Presses TSA, FBI On Work With 'Rogue' Unauthorized Commerce Dept. Law Enforcement, Intelligence Unit](#)
- 2021/08/03 Senator Chuck Grassley: [Grassley Probes 'Rogue' Law Enforcement And Intelligence Activity At Commerce Dept. After Damning Senate Report](#)

During the March 7 APA Justice monthly meeting, Senator Wicker reported that Sherry Chen was not alone in the wrongful targeting by ITMS. His investigation has found more than enough evidence indicating ITMS acted outside the law on multiple occasions. He also revealed that at least two of the whistleblowers who brought ITMS's conduct to his attention have suffered retaliation by DOC. Both lost their jobs in January of this year. Senator Wicker is also pushing for the DOC Inspector General to be held accountable, given her failure to investigate ITMS properly for over 4 years.

Watch Senator Wicker on video and read more: <https://bit.ly/3J4jpKI>

FBI "Assessment" Faces Bipartisan Congressional Inquiry; Violations of Rules Revealed



EXCLUSIVE: Audit reveals FBI rule-breaking in probes involving politicians, religious groups, media



FBI "Assessment" Faces Bipartisan Congressional Inquiry. According to the [Cato Institute](#), Reps. **Nancy Mace** (R-SC) and **Jamie Raskin** (D-MD) sent [a letter](#) on March 7, 2022, to the Government Accountability Office (GAO) requesting the congressional watchdog agency to investigate the FBI's use (or perhaps more accurately, misuse) of an investigative authority known as Assessments:

"We write to you to request that the Government Accountability Office (GAO) conduct a comprehensive review of the Federal Bureau of Investigation's (FBI) practice of surveilling subjects through activities it classifies as 'assessments'. We are concerned that FBI assessments operate as de facto investigations that can be launched without a factual predicate of criminal wrongdoing. We ask that GAO examine whether assessments result in the improper monitoring of protected First Amendment activity—including by political, racial, or religious organizations—and whether the FBI has sufficient controls in place to ensure that they do not run afoul of constitutional protections."

According to the Mace-Raskin letter, the Department of Justice (DOJ) revised its Attorney General's Guidelines for Domestic FBI Operations in 2008 (2008 Guidelines) to include a separate category of proto-investigatory "assessments." According to the 2008 Guidelines, assessments "require an authorized purpose but not any particular factual predication." It allowed the FBI to use "intrusive investigative techniques," including the use of informants and unlimited physical surveillance, on targets that were not linked to criminal wrongdoing or national security threats. The guidelines also eliminated many procedural checks that required supervisory approval, curtailed the use of intrusive investigative techniques early in an inquiry, and set durational limits on assessment activities.

It is unclear how many of the more than 2,000 FBI China-related investigations, especially those against academic researchers, are opened by "assessments" with no factual predicate of criminal wrongdoing. In the case of Professor Anming Hu, the investigation was started by the FBI through Google in search of a spy for China in Tennessee. He and his son in college were surveilled by the FBI for more than a year.

Read more about the Mace-Raskin letter: <https://bit.ly/3laZiJg>.

FBI Violations of Rules Revealed. In a related exclusive report by the Washington Times on March 11, 2022, a 2019 FBI audit revealed that FBI agents violated their own rules at least 747 times in 18 months - a ratio of slightly more than two "compliance errors" per each sensitive investigative matter (SIM) reviewed by FBI auditors. SIM are actions that may impact constitutional rights because they involve people engaged in such things as politics, governance, religious expression and the news media. These errors involved things like agents failing to get approval from senior FBI officials to start an investigation, agents failing to document a necessary legal review occurring before they opened an investigation, and agents failing to tell prosecutors what they were doing, among other things.

Cato Institute senior fellow **Patrick Eddington** uncovered the audit in litigation his organization brought against the FBI for access to government records. He said the audit reveals how far "off-the-chain" FBI field offices have strayed. "When they open investigations without authorization, to me that's about as radical as it gets," Mr. Eddington said.

FBI investigations have come under intense scrutiny for allegedly cutting corners in recent years. Federal lawmakers are searching for answers about the FBI's work, such as Reps. Mace and Raskin's request for a new review of the FBI's conduct in domestic operations. Other lawmakers have tried with little success to get information about the FBI's domestic operations. In December 2021, the FBI told **Senator Chuck Grassley**, Iowa Republican, that it did not need to explain its 2016 probe of the conservative group Concerned Women for America and declined to answer questions about the bureau's reasoning. The FBI revealed last year that there was nothing to pursue at Concerned Women for America after conducting an assessment.

Read more about the Washington Times report: <https://bit.ly/35M6bUw>

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