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## 2022/04/04 APA Justice Monthly Meeting

The next APA Justice monthly meeting will be held on Monday, April 4, 2022. Featured speakers include **Rep. Grace Meng**, First Vice-Chair of Congressional Asian Pacific American Caucus (CAPAC); **Gary Locke**, Chair of Committee of 100, former U.S. Ambassador to China, former Secretary of Commerce, and former Governor of Washington; **Haipei Shue**, President, United Chinese Americans; and **Margaret Lewis**, Seton Hall University Law Professor. Updates from CAPAC and Advancing Justice | AAJC provided by Nisha Ramachandran and Gisela Kusakawa respectively.

The 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>.

**Note:** On September 28, 2018, former Ambassador, Governor, and Secretary Gary Locke received the Lifetime Achievement Award from United Chinese Americans (UCA) in Washington DC. He gave a rousing, inspirational acceptance speech in which he mentioned the ordeals of Sherry Chen, Professor Xiaoxing Xi, and anti-Asian bias.

The highly recommended excerpt is posted on YouTube and shared here: <https://bit.ly/3Lor47i> (video 3:45).

## Take One Minute of Your Time to End the 10 Years of Injustice for Sherry Chen



## Sign on the Letter to Commerce Secretary Raimondo - End the Ten Years of Injustice for Sherry Chen Now

Justice delayed is justice denied!

APA Justice Task Force urges all concerned U.S. organizations and individuals to co-sign the letter to Commerce Secretary Gina Raimondo below. We call for Secretary Raimondo's immediate action to

- End the TEN YEARS OF INJUSTICE for hydrologist Xiafen "Sherry" Chen, and
- Account for the abuse and misconduct at multiple levels of the Department of Commerce stemming from the rogue Investigations and Threat Management Service (ITMS).

It takes less than one minute to sign on to the letter to Commerce Secretary Gina Raimondo. We are calling on her to end the 10 years of injustice for Sherry Chen and to account for the abuse and misconduct at multiple levels of the Department of Commerce (DOC) stemming from the rogue Investigations and Threat Management Service (ITMS). Senator Roger Wicker confirmed in the [March APA Justice monthly meeting](#) ITMS's additional abuses of authority, mismanagement, and reprisal against DOC employees, including the unchecked race-based targeting disproportionately impacted employees of Chinese ancestry. There are over 5,800 dedicated and hardworking Asian American federal employees working in DOC. They deserve a respectful workplace free of systemic discrimination and suspicion based on their ethnicity and national origin.

More broadly, DOC should publicly adopt policy changes that will prevent profiling and unjustifiable scrutiny of Asian American employees at DOC going forward, including under the guise of "insider threat" investigations. DOC should provide a full accounting of the abuses and misconduct at ITMS and the role of any other components or agencies in enabling or failing

to stop that misconduct, including the Department's Office of Inspector General. Finally, protections for whistleblowers must be strengthened. Any retaliation against those who reported ITMS's abuses must be reversed. Their courage in coming forward must be publicly commended.

A simple sign-on form for concerned U.S. organizations and individuals is located here: <http://bit.ly/Letter2CommerceSec>

## **After the "China Initiative:" Little Relief to US Academics Caught in Net of Fear**

Although the end of the "China Initiative" was announced by Assistant Attorney General Matt Olsen in February, the trial of University of Kansas Professor Franklin Tao started less than a month later. He is not charged for economic or trade secret theft, but for issues that the Department of Justice (DOJ) now says civil or administrative remedies are more appropriate.

On March 22, 2022, *Just Security* published "**Amid New Trial, End of Chinese Espionage 'Initiative' Brings Little Relief to US Academics Caught in Net of Fear.**" According to the article, while the "China Initiative" has officially ended, many important issues remain unresolved, not least being how the DOJ justifies going forward with pending cases like Professor Tao. While Olsen acknowledged the "China Initiative" created a "harmful perception" of bias against people with "racial, ethnic, or familial ties to China," he said his review found the investigations and prosecutions were driven by "genuine national security concerns." The evidence that bias did play a role is overwhelming, however, and documented in the public record. The link is what DOJ officials called a "nexus to China," which often consisted of no more than ancestry or association with Chinese students and universities.

Anti-Asian bias in U.S. national security initiatives is, unfortunately, nothing new. The FBI has even viewed its own Chinese American agents with unjustified suspicion. The "othering" of Asians was clearly articulated in FBI counter-intelligence training materials obtained by the American Civil Liberties Union in 2011, which included a slide that [warned](#) agents to "Never attempt to shake hands with an Asian" and "Never stare at an Asian."

Being subjected to an FBI investigation can inflict lasting harms even if no criminal charge results. A professor may have their reputation ruined and their professional opportunities curtailed just by having FBI agents visit their institution to ask about them based on an innuendo of misconduct. There were reportedly only 77 "China Initiative" cases prosecuted over 3 years, meaning that only a tiny percentage of the thousands of investigations FBI Director Christopher Wray has referenced over the three years appear to result in criminal charges, and a still-smaller percentage involve alleged Chinese government agents. The disparity between investigations and prosecutions creates a challenge for DOJ officials at the National Security Division to conduct sufficient oversight to identify abuse, particularly given current FBI guidelines that allow agents to open investigations without evidence of wrongdoing.

For those already caught in the dragnet, like Professor Tao, the end of the "China Initiative" has

brought no relief. The government's investigation, based on admittedly fabricated allegations of economic espionage, did not uncover spying or intellectual property theft. The violations alleged in the indictment — lying to university administrators and failing to report a potential conflict of interest to federal grantors — are the type that would have been handled as an administrative matter before the "China Initiative," and would be today, according to Olsen's statement ending the program. The facts remain in dispute, but whatever the outcome of the trial, Tao's research career and his family's financial stability are ruined. His continued prosecution serves as a warning to other Asian and Asian American researchers and technologists who have increasingly come to view U.S. universities as a hostile place to work.

The diversity of the United States is its greatest asset. Maintaining the ability to attract foreign talent to work and study at U.S. universities is essential to scientific and technological advancements that strengthen national security. Law enforcement and intelligence agencies need to take protecting civil liberties as seriously as protecting against other threats to national security.

Read more: <https://bit.ly/3uQjoEj>

## After the "China Initiative:" What's Next

On March 23, 2022, *Lawfare* published "**After the China Initiative**," which cites the trial of Professor Franklin Tao as first public test of what scrapping the name "China Initiative" means. According to the report, the "China Initiative" fueled bias and spread a chilling effect among researchers in the STEM fields who have ties to China based on ethnicity and national origin.

Disproportionate effects alone do not prove discrimination, but the dramatically high percentage of ethnically Chinese defendants, the lack of a clear definition of what constitutes a "China Initiative" case, the emphasis on an expansive threat that includes some Chinese students and professors as "non-traditional collectors of intellectual property" and the crumbling of high-profile cases undermined the government's assurances.

Freed from the problematic "China Initiative" framing, the U.S. government can craft an approach to protecting intellectual property and research integrity that safeguards national security, mitigates bias and promotes a pro-innovation environment. Three things are essential in this endeavor: confidence, collaboration and cash.

Removing the "China Initiative" name signals the potential for deeper changes to government practices so that scientists can devote their energy to research with confidence that they will be judged based solely on their acts, not where they or their ancestors were born. But building real trust requires more than a name change. The Justice Department now must show that guardrails are in place to prevent repeats of cases like that of MIT professor Gang Chen.

Deepening coordination among law enforcement, the Office of Science and Technology Policy and grant-making agencies is critical as the government rolls out new guidance on research security. Streamlining and clarifying research disclosure requirements will better distinguish researchers who commit inadvertent errors from those engaged in nefarious

concealment. Increased collaboration outside the government is also needed. The decision that the "China Initiative" is "not the right approach" shows that the government can adjust course when it listens to well-founded criticism. Additionally, communities that pushed back on the Initiative can contribute valuable expertise on issues ranging from understanding scientific research to reducing bias to analyzing the governments of China, Russia, North Korea and other countries of concern.

Finally, maintaining the U.S.'s innovative edge also takes cash. Congress is considering legislation that includes substantial funding for research: a crucial measure to attract and retain talent that Beijing is wooing with big paychecks and fancy labs. China can offer hardware. What it lacks is soft power. As someone who studies human rights in China, it is striking that the forces exposing the China Initiative's flaws in the U.S. are precisely those missing in China: academic and press freedom, the right to a zealous defense, judicial independence and vibrant civil society. Ironically, it is the U.S.'s stated commitment to such civil and political rights that helped to attract China-born scientists, some of whom later found themselves wrongfully accused under this Initiative.

Three years of the "China Initiative" deteriorated an already shaky confidence that people of Chinese descent have access to equal justice. That the Justice Department's words convey an effort to reverse this trend is heartening. Yet only the government's actions in the remaining cases brought under the "China Initiative," such as Tao's, and in future cases can convince the public that its new strategy is in fact ensuring the rights of all people within the U.S.'s borders. Olsen began his remarks last month by affirming, "In everything we do at [the Justice Department], our first priority is to adhere to the Constitution and to pursue equal justice under the law. That mandate is the north star of our work." The Justice Department strayed from that north star during the "China Initiative." The government must now move back toward alignment by better protecting fundamental rights while also protecting national security.

Read more: <https://bit.ly/3uyxMR5>

## **Asian American History is American History; Connecticut joins growing list of states pushing for Asian American studies**

According to [NBC News](#) on March 24, 2022, Connecticut state legislature introduced a bill that would require public schools to implement a history curriculum that includes the cultural, political and social contributions of Asian American and Pacific Islander communities. Illinois became the first state to require Asian American studies in public schools, followed by New Jersey. Other states such as California, Maryland, New York, and Ohio are making similar pushes for mandatory Asian American history. However, a similar bill died in the Florida legislature.

Asian American history is American history. Educating tomorrow's leaders about the history and contributions of marginalized groups is a belated and necessary first step toward creating long-term change. APA Justice expressed support to Maryland Senate Bill 462 to develop and implement an expanded American history curriculum in Maryland public

schools. <https://bit.ly/36mAXTK>

Also on March 24, 2022, [Inside Higher Ed](#) reported that the American Association of University Professors (AAUP) issued [a statement](#) condemning legislative attempts to restrict the teaching of racism in the U.S. and the teaching of the history and policies of the state of Israel—namely, legislation that defines anti-Semitism to include political criticism of Israel. “There is a clear connection between recent laws on antisemitic speech and those on teaching about racism. New legislation on antisemitic speech amends civil rights laws to address antisemitism as a special form of discrimination,” the AAUP’s statement says. “But civil rights laws already include antisemitism among prohibited forms of discrimination. Thus, while the growth of antisemitism is a severe threat, it can and should be addressed under existing civil rights laws as religious or race discrimination. These new laws, however, expand the definition of antisemitism to encompass political speech, with several discriminatory effects.”

Read more: <https://bit.ly/3tAcxiB>

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P.O. Box 257  
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