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2022/10/03 Monthly Meeting Summary Posted



The October 3, 2022, APA Justice monthly meeting summary has been posted at <https://bit.ly/3eRN0qI>. We thank the following speakers for sharing their updates and thoughts with us:

Nisha Ramachandran, Executive Director, Congressional Asian Pacific American Caucus (CAPAC). Congress passed a continuing resolution to keep the government open post-election. CAPAC was able to keep problematic language out of the CHIPS and Science Act, but it is likely that they may return in various forms in other legislations. CAPAC will stay vigilant.

Report on Professor Xiaoxing Xi's Appeal Arguments

- **Patrick Toomey, Deputy Director, ACLU National Security Project.** Patrick reported on the oral argument by attorney David Rudovsky on the third circuit court in Philadelphia. The two key legal issues at the heart of the appeal: whether the Xi family's claims under the Federal Tort Claims Act (for money against the US based in court law) and the Bivens Doctrine (for constitutional violations by individual federal agents) should be allowed. The court understood that while government officials may have a range of options, the Constitution creates a strict set of rules. Here the allegations are about falsification of evidence and arrest without probable cause, which are clear constitutional violations. David cautioned at the gathering post-argument, we can never be fully sure

based on simply how it felt in the courtroom, but we are cautiously optimistic that at least some of the claims will be allowed to go forward.

- **Tsiwen Law, General Counsel for the OCA Greater Philadelphia Chapter.** Tsiwen noted the broad demographic and geographic representation that was in the courtroom, with over 50 people coming from as far as New York City, Washington DC, and California to attend the hearing. Professor Xi has been around the country to speak on his case for several years since his charges were dismissed, and clearly has made an impact based on the turnout. Intimidating and wrongly prosecuting Chinese Americans is not new, but very much tied to the variability in U.S. relations with the People's Republic of China. The OCA Asian Pacific American Advocates and other Asian American organizations are fighting back against racial profiling and supporting Professor Xi and others who want to hold the government accountable.
- **Gisela Kusakawa, Assistant Director, Advancing Justice | AAJC.** Gisela reported that this case is about accountability. Professor Xi's case clearly shows that racial bias and racial profiling has been a problem before the China Initiative, and continues to be a problem even after its end. What happened in Philadelphia shows the importance of physically showing up at the courthouse and also advocating for them so that it gains the national attention that it deserves. AAJC had submitted an amicus brief with over 70 organizations in support to amplify their concerns about broader racial bias and profiling to the judges, to ensure an understanding of what is experienced by Asian Americans across the country, and how that might affect Professor Xi.

Gisela Kusakawa, Assistant Director, Advancing Justice | AAJC. Gisela also stressed the importance of infrastructure building and noted that AAJC is compiling recommendations to update the Department of Justice's 2014 profiling guidance.

Ed Benyas, Professor of Music, Southern Illinois University (SIU). Ed has been the lead organizer to support fellow SIU Professor **Mingqing Xiao**, the last academic prosecuted under the "China Initiative." Professor Xiao, also amicably called Ming, has been a math professor at SIU for 20 years, and a resident of the US for 30 years. He was indicted in April of 2021 on a three-count indictment alleging grant fraud and making a false statement. On the eve of a trial in October 2021, the government added four new tax charges, three counts of failing to check a box on a tax form indicating that he had a Chinese bank account, and one count of failing to file [an FBAR](#). At a trial in April 2022 before an all-white-female-rural jury in deep southern Illinois, he was exonerated of the three initial grant-related counts but found guilty of the tax charges. Shortly after, his attorneys filed a motion for judgment notwithstanding the verdict.

At the sentencing on September 19, 2022, his attorneys presented a 43-page memorandum accompanied by 27 letters of support from community members. There were about two dozen supporters of Ming in the courtroom. The government asked for a prison sentence of one year and a \$55,000 fine. The government attorneys misrepresented case facts and characterized Ming as a repeat offender, which the judge did not agree with. The judge sentenced one year probation and a \$600 fine, plus some court costs.

Although the sentence is lenient, Ming is now a convicted felon. On average per year, there are only about 16 failure-to-file FBAR criminal cases per year. They involve typically millions of

dollars hidden in offshore accounts. Ming's simple problem was with a tax form, with no intention to mislead the government or evade taxes. He has to decide whether to file an appeal although his resources are at an end, having already spent his life's savings on attorneys who continue to bill him.

The other hurdle is getting Ming's job back. He has thankfully been on paid administrative leave, but SIU has not responded as to what they will do now. Ed wrote a column on Ming in the SIU student newspaper that was signed by 67 colleagues.

In good news, the Illinois governor recently signed an amendment to the Illinois Human Rights Act which says that an employer may not make an adverse employment decision based on a criminal conviction that is unrelated to the job, as long as the employee does not pose a threat. Ed met with the Provost of the SIU the prior week, urging her to do the right thing, support their colleague, bringing Ming back to work where he can resume supporting the university, and helping to recruit more Chinese students. There is a union attorney and union representative who are advocating on Ming's behalf as well.

There is an [active GoFundMe Page](#) for those who would like to support Ming.

Toby Smith, Senior Vice President for Science Policy & Global Affairs, Association of American Universities. Toby reported that the meeting with APA Justice representatives was part of a very important continuing dialogue that the Senior Research Officers (SROs) at AAU requested. The universities wanted to discuss how the China Initiative has affected their faculty and students and highlight some universities that believe they have handled the China Initiative cases in a productive and non-harmful way. The AAU is aware that there are universities where faculty are fearful to apply for federal grants because of past incidences of racial profiling associated with the China Initiative. There are also students and scholars who are avoiding coming to US universities out of fear that they might be targeted. According to a recent survey, some talented scholars are even leaving the country because they do not feel safe or welcome in the US. This is a great concern for the AAU and will continue to be part of the discussion going forward.

Toby recently moderated a panel discussion with representatives from OSTP, NSF and DOJ, where he raised a concern that not enough attention has been given by the OSTP and Federal Research agencies to addressing NSPM-33 Section 3. This section calls for establishing uniform, consistent, and transparent “consequences of violations of disclosure requirements” across federal research agencies. Toby said that further clarification from OSTP and the federal agencies is needed concerning the “consequences” and agreed-upon penalties for non-disclosure. Without such clarity, even with the end of the “China Initiative,” there is still the potential for infringement on civil rights. Toby suggested that AAU and APA Justice should work together to ensure that a clear and consistent process is developed as a part of NSPM-33 implementation to ensure that both individual faculty members and universities have appeals mechanisms in place should they disagree with proposed penalties recommended by federal research agencies.

Jessica Chen Weiss, Michael J. Zak Professor for China and Asia-Pacific Studies, Cornell University. Jessica spent the last year working as a Council on Foreign Relations fellow on the Policy Planning Staff of the State Department. Jessica opined that while the Biden administration has made an effort to make back lost progress after the Trump Administration, there is still a lot of work to do. The current trajectory will bring growing dangers of confrontation and crisis (possibly over Taiwan), and an increasingly eroded basis for global governance as both sides seek to work through smaller groupings of like-minded nations to counter the other. Ultimately this focus on out-competing each other will bring dangers for democracy, especially in the US, and will threaten our ability to remain a magnet for international talent, investment, and innovation.

Jessica's [Foreign Affairs essay](#) highlights the views of some scholars and scientists (many of whom are of Asian descent) who no longer feel that the US has a welcoming and safe environment for science and innovation. While the issue is not evenly understood across the administration, this is an important window to make rapid progress on these issues because there is a receptivity to these issues in the current administration, in the interest of not only protecting US citizens and residents but also those who contribute to US innovation.

It is important to include domestic issues up in discussions of foreign affairs in order to prevent geopolitical confrontation and harm to the vibrant, inclusive democracy that the US stands for but does not always live up to. None of this will happen overnight, but it is important to improve the way in which the government deals with this domestic issue as a key to competitive global success.

In [an interview](#) with *The Wire China* on October 9, 2022, Jessica further talked about creating a vision for the U.S. that is not defined by beating China; why the repudiation of engagement went too far; and the dangerous echo chamber in discussions about China.

Margaret Lewis, Professor of Law, Seton Hall University School of Law. Maggie commented that for years, her career and her work did not intersect with the AAPI community, but since the China Initiative, there has been an increasing overlap between those focused on US-China relations and in advocacy groups focused domestically on what happens with AAPI communities. She appreciates this new allyship, and she also applauds Jessica's advocacy for this issue, noting that it is easy for people to accuse opinions like hers of being "soft on China", which is a very strong rhetoric in Washington, D.C. right now. Maggie is cautiously optimistic about getting some scholars and think-tankers going back and forth to China as a means of improving communication (noting that this has been made difficult by the zero-COVID policy and travel restrictions in China).

On NSPM-33, Maggie found the last meeting with Dr. **Christina Ciocca Eller** to be very helpful. The new OSTP director is now confirmed so hopefully more progress will be made. OSTP is one player but cannot tell the DOJ or FBI what to do. So building coalitions and having productive messages go across the administration is very important, along with blocking nefarious legislation from congress.

We also thank **Rebecca Zavon**, Communication Manager, Asian American Coalition of Ohio,

for putting together the monthly summary, which is posted here: <https://bit.ly/3eRN0gl>. Read past APA Justice monthly meeting summaries: <https://bit.ly/3kxkqxP>

American Association of University Professors (AAUP) as a Resource



The AAUP is a nonprofit membership association of faculty and other academic professionals. Founded in 1915, the AAUP has helped to shape American higher education by developing the standards and procedures that maintain quality in education and academic freedom in this country's colleges and universities. AAUP defines fundamental professional values and standards for higher education, advances the rights of academics, particularly as those rights pertain to academic freedom and shared governance, and promotes the interests of higher education teaching and research.

Dr. **Anita Levy**, Senior Program Officer, Department of Academic Freedom, Tenure, and Governance at AAUP advises that two webpages, [Advancing Academic Freedom](#) and [Shared Governance](#), are the best places to refer faculty for information about the mission and activities of AAUP. Particularly helpful for explaining the mission of her department are the following paragraphs respectively:

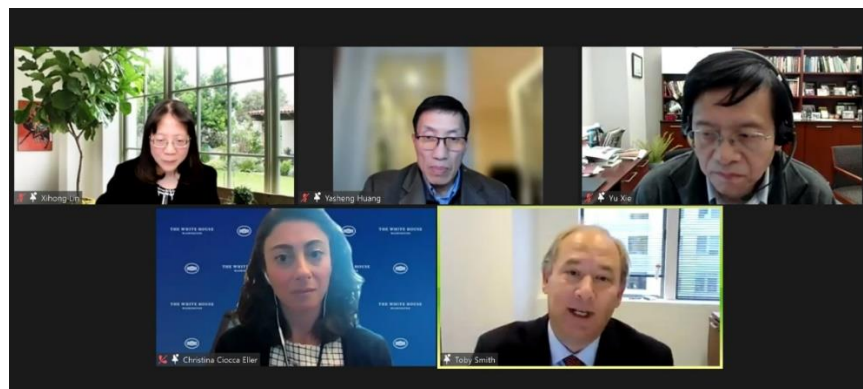
"Each year, the staff of the committee [Committee A on Academic Freedom and Tenure] receives thousands of questions about these standards and complaints of departures from them. The staff provides advice and assistance, including mediation. In serious cases, it may initiate a dialogue with the administration regarding apparent departures from AAUP-recommended standards. In a few extreme cases annually, it will recommend a formal investigation..."

"The AAUP staff provides advice and assistance to faculty members throughout the country on matters of academic governance. The staff also receives, on behalf of the [Committee on College and University Governance](#), complaints of departures from the Association's recommended standards in this area. In 1991, the Association's Council made it possible for an AAUP annual meeting to sanction an institution for 'substantial noncompliance with standards of academic governance.'"

Anita advises that her department should be the first point of contact for referrals from APA Justice. Faculty members who seek advice and assistance may email an account of their situation to AAUP at academicfreedom@aaup.org.

Anita spoke on the topic of "**AAUP Policy on Termination of Appointments and Severe Sanctions**" at the November 2021 APA Justice monthly meeting, a summary of which is posted here: <https://bit.ly/3wuyrUx>

Asian American Scholar Forum (AASF) Webinar and Staff Announcement



On October 20, 2022, the *South China Morning Post* [reported on the AASF webinar](#) titled "**The Chilling Effect & Fears of Chinese-American Scientists and the Implications to the US Science and Technology: A National Study.**" At least 1,400 US-based ethnic Chinese scientists switched their affiliation last year from American to Chinese institutions, according to a joint report by academics from Harvard, Princeton and the Massachusetts Institute of Technology. "We see an increase in that trend," said **Yu Xie**, a sociology professor at Princeton University as he presented the report at the webinar. He added that the US had been "losing talent to China for a while and particularly after the China Initiative".

The data collected by the authors indicated that 1,415 scientists of Chinese origin, as identified by their last names, had changed their professional affiliations. These changes were identified in addresses listed under the scientists' names in academic journals. They worked in engineering, computer science, mathematics, physical sciences and life sciences.

AASF also surveyed 1,300 "Chinese-origin scientists" employed by US universities in tenure or tenure-track positions between last December and March this year. Of these, 54.4% were naturalized American citizens and another 36.8% were US permanent residents. The report found that 61% of the scientists, especially young researchers, felt pressure to leave the US, and 65% expressed concern about their collaborations with China. About 45% of the respondents said they were avoiding applying for US federal grants.

Christina Ciocca Eller of the White House's Office of Science and Technology Policy said the US government's policies had a direct impact on well-being in the research ecosystem in both "beneficial" and "difficult" ways. Ciocca Eller said the Biden administration would keep striving to

protect research security and improve policies. “We have to take research security challenges with care ... especially if we want to facilitate the trust and openness that is at the heart of the American research enterprise,” she explained at the webinar.

Ciocca Eller said her office, which develops and implements research security policies for the Biden administration, was now trying to standardize and be more transparent when it came to research applications for federal funding. “If our policies to address the challenges posed in relation to research security diverge from our core values or fuel xenophobia or prejudice of any kind, then we will significantly diminish our ability to attract and retain scientific talent or to facilitate productive international collaboration,” she added.

The FBI said that in January some 2,000 investigations focused on the Chinese government stealing information and technology, but it did not specify how many of these came under the China Initiative.

Meanwhile, US universities appeared to have reacted differently when their employees were indicted, with some quickly firing professors and distancing themselves, while others openly supported their staff during the prosecutions. **Tobin Smith**, senior vice president for science policy and global affairs at the Association of American Universities, said some institutions were confused about rules on federal grants. He believed there needed to be an across-the-board collaboration between the government and different levels at universities ranging from the leadership to their faculties. “Let’s face it, there have certainly been government policies in the China Initiative which I think have created perhaps some of these challenges and concerns ... but as universities, we need to get it right too,” said Smith, whose organization represents 65 research universities in the US and Canada. He called for better collaboration between universities and government “when there are issues of concern about disclosure” to set punishment appropriate to the crime.

Gisela Perez Kusakawa Appointed Executive Director of AASF. On October 13, 2022, AASF [announced](#) the appointment of **Gisela Perez Kusakawa** to be its founding executive director to lead the organization. Gisela previously served as Director of the Anti-Profilng, Civil Rights & National Security program (formerly the Anti-Racial Profiling Project) at Asian Americans Advancing Justice | AAJC.

Symposium on “Racial Profiling and Discrimination against Chinese American Scientists and Engineers”



requested to use a special Japanese hanko (stamp/seal) to leave a mark for each person in the monument as a way to honor those incarcerated during World War II.

2. Anna May Wong 黄柳霜



On October 17, 2022, the [U.S. Mint](#) announced that the shipping of a new quarter that features **Anna May Wong 黄柳霜**—the first Asian American to be featured on a U.S. coin.

With a career that spanned motion pictures, television, and theater, Anna May Wong left a lasting legacy for Asian American women in the entertainment industry. She appeared in more than 60 movies, including silent films and one of the first made in Technicolor. She also appeared in productions on the London and New York stages. Born in Los Angeles to second-generation Chinese American parents, Anna May Wong was also the first Asian American woman to receive a star on the Hollywood Walk of Fame. She died in 1961.

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