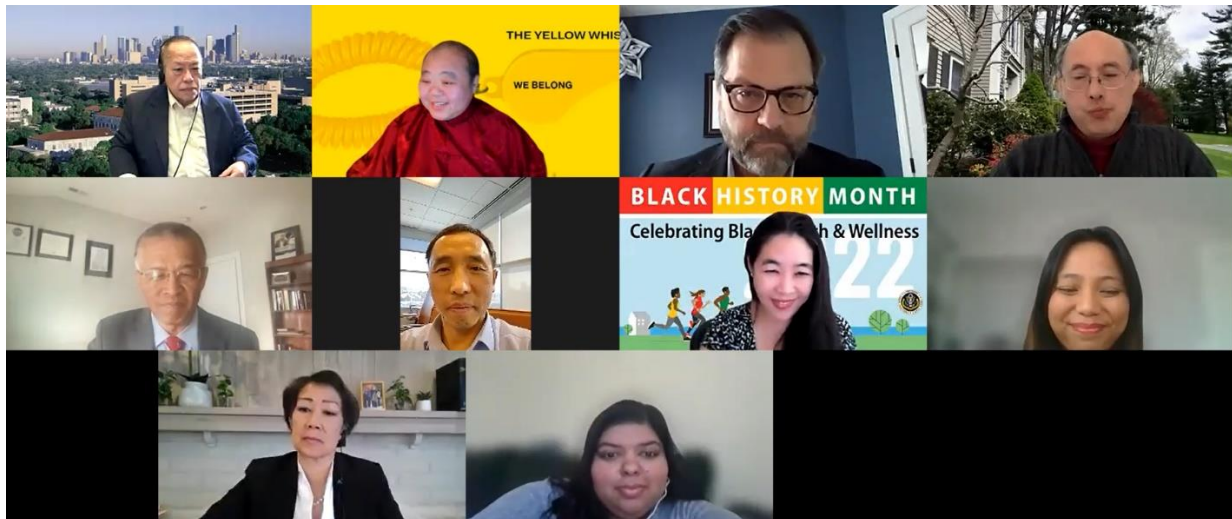


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### 2022/02/07 Monthly Meeting Summary Posted



The February 7, 2022, monthly meeting summary has been posted along with the video (1:26:07) at <https://bit.ly/3oHTK28>.

**Erika Moritsugu**, Deputy Assistant to the President and Asian American and Pacific Islander Senior Liaison at The White House, opened the meeting by wishing attendees a happy Lunar New Year of the Water Tiger and reflecting on the accomplishments of the last year. 2021 was a difficult year with the dual crises of the Covid-19 pandemic and the spike in anti-Asian hate. At the same time there are a number of victories worth celebrating. In his first year in office, President Biden was swift to speak out against anti-Asian hate. In May, Biden signed the Covid-19 Hate Crimes Act and the Jabara Heyer No Hate Act into law. The President made advancing equity, justice, and opportunity for Asian Americans, Native Hawaiians and Pacific Islanders (AANHPIs) a top priority by signing an executive order reinstating the White House Initiative on AANHPIs. The Vice President swore in the new President's Advisory Commission on AANHPIs which is co-chaired by Secretary Javier Becerra of Health and Human Services

and Ambassador Katherine Tai, US Trade Representative. <https://bit.ly/3GNmH2K>. The administration released a fact sheet detailing all of the steps the Biden-Harris administration has taken in its first year to advance equity and opportunity for AANHPIs. Erika encouraged attendees to take a look at the fact sheet. <https://bit.ly/3oHoEI6>. While Erika was proud of the accomplishments of the past year, she recognized that much work still needed to be done to ensure safety and equity for AANHPIs.

Erika addressed the issue of research security. She explained that the Biden-Harris administration is committed to ensuring that the US government avoids basing policies or processes on prejudice. The administration is committed to affirming the integral role of AANHPIs and people of all national origins in the US, and supporting collaboration with international partners when it is in the US' best interest. Since January 2021, the Office of Science and Technology Policy (OSTP) has been working on how to implement the national security presidential memorandum NSPM-33 across the federal government. The federal government has been collaborating with researchers and research institutions to develop implementation guidance for NSPM-33 that protects US security and openness, is clear to researchers, and does not fuel xenophobia. OSTP has had briefings with members of Congress, a special meeting with civil rights leaders, and an additional meeting with academic and research community members that are directly impacted. The Biden-Harris administration will continue to engage with America's remarkable and diverse community of researchers and institutions to ensure that the guidance surrounding NSPM-33 upholds its core values.

Erika also spoke about the "China Initiative." She was present at Matt Olsen's confirmation to be the assistant attorney general of the National Security Division (which has purview over the "China initiative"). She noted Olsen's extensive national security experience and background in civil rights. At his confirmation, Olsen committed that in describing espionage threats posed by China, he would strive to make clear that such threats originate from the Chinese government, not the Chinese citizens in general, and certainly not American citizens of Chinese origin or descent. Erika said that the Biden-Harris administration would continue to execute on its vision to empower AANHPIs, and that she looked forward to continuing to work with APA Justice.

**Nisha Ramachandran**, Executive Director of the Congressional Asian Pacific American Caucus (CAPAC), followed with an update on the work that CAPAC has been doing around the America COMPETES Act. As the America COMPETES Act passed in the House, Nisha pointed out that Congresswoman Chu, along with a number of CAPAC leadership members, Congressman Raskin, and others had an amendment that passed in the bill specifically reaffirming opposition to targeting Chinese and Chinese American researchers and scientists based on race alone. Additional amendments by Congresswomen Eshoo and Meng ensured that anything passed through the America COMPETES Act does not further harm Asian and Asian American individuals across the country based on discrimination or hate. CAPAC's next step is to express concerns about the Senate bill to House and Senate leadership and push for a bill that does not cause harm for Asian American communities.

**Gisela Kusakawa**, staff attorney at Advancing Justice | AAJC, reported on the need for the House and Senate to craft a bill capable of passing both chambers. She pointed out a number of differences between the House's America COMPETES Act and the Senate's US Innovation and Competitiveness Act, including immigration provisions, new classes of non-immigrant visa, exemptions from green card limits, and refugee status of residents from Hong Kong and Xinjiang.

The rest of the meeting was devoted to presentations and discussions of the case of MIT Professor **Gang Chen** 陈刚 and the "China Initiative." Speakers included Professor Chen, his defense attorney **Robert Fisher**, Defense Attorney for Professor Chen, Harvard Professor **Zhigang Suo** 锁志刚, and former U.S. Attorney **Carol Lam** 林剑华. Dr. **Stefan Maier** also joined from Germany.

Read the 2022/02/07 monthly meeting summary here: <https://bit.ly/3BBSd2H>. Watch the meeting video here: <https://youtu.be/UtJh7Vh5mls> (1:26:07). The APA Justice monthly meetings are by invitation only. If you wish to join future meetings, please send a message to [contact@apajustice.org](mailto:contact@apajustice.org). The next monthly meeting is scheduled for Monday, March 7, 2022.

## The Imminent End of the "China Initiative" As We Know It; Former U.S. Attorney Explains Futility and Unfairness of Criminal Prosecution Initiatives

The New York Times

### *Justice Dept. Is Set to Modify Trump-Era Program Aimed at Fighting Chinese Threats*

Critics said the China Initiative unfairly targeted Asian professors and contributed to a rising tide of anti-Asian sentiment.



On February 20, 2022, the New York Times published "[Justice Dept. Is Set to Modify Trump-Era Program Aimed at Fighting Chinese Threats](#)." According to the report, The Justice Department (DOJ) will soon announce changes to the "China Initiative." The likely changes, including retiring the "China Initiative" name, are the result of a three-month evaluation undertaken by Matthew G. Olsen, the head of the Justice Department's national security division. The modifications will most likely focus on the department's efforts to root out academics and researchers who allegedly lied to the government about Chinese affiliations.

Mr. Olsen is expected to say that DOJ will treat some grant fraud cases as civil matters going forward, reserving criminal prosecution for the most egregious instances of deception. He is expected to note that China is not the only foreign nation that has tried to secure financial and other ties to American researchers in the hopes of obtaining valuable information, so the problem is broader than the China Initiative name conveys. In addition, DOJ will have a revamped process for evaluating whether a researcher has adequately disclosed foreign affiliations, which will take into account recently released guidance from the White House that describes what researchers must disclose. It is unclear whether DOJ will rename the program, or whether it will investigate espionage and corporate fraud crimes committed by foreign nations

as it always has, but with no moniker. After his confirmation in October, Mr. Olsen held a series of listening sessions with congressional staff members, universities, civil rights groups and national security officials in an effort to address myriad concerns, including how the initiative might have contributed to racial profiling.

According to the report, after William Barr replaced Jeff Sessions as attorney general, officials debated whether DOJ should give universities and academics the opportunity to avoid federal prosecution by identifying issues with grant applications and sharing them with the government. But government agencies that provide grants pushed back on the idea of an amnesty program, as did some prosecutors who worried that such a program could undermine their pending prosecutions. The idea was also reported to be a nonstarter in the Biden administration.

**APA Justice, Advancing Justice | AAJC, Brennan Center for Justice**, and a group of community organizations, advocacy groups, science associations, and individuals wrote to then President-elect Biden and called for the end of the "China Initiative" on January 5, 2021: <https://bit.ly/2Z1pBha>.

Read more about the New York Times report: <https://nyti.ms/3l154ho>

During the February 7 APA Justice monthly meeting, Former U.S. Attorney Carol Lam remarked that a lack of introspection can lead to terrible decisions that result in experiences similar to Professor Gang Chen's arrest and the failed prosecution. Criminal prosecutions stand apart from other mechanisms that exist to try to achieve fairness and balance in communities. Criminal prosecution is the only mechanism that places an individual's life and liberty at risk of being taken away. There are protections for those who are charged with crimes: the right to counsel, the right not to incriminate oneself, the right to a unanimous jury of one's peers, the right to be found guilty beyond a reasonable doubt. However, Carol explained, virtually all of those protections are activated only after charges are brought. Before an individual is charged very few protections are in place, except for the good judgment of those conducting the investigations. Good judgment has been impaired by "a department of justice that has fallen in love with the idea of criminal prosecution initiatives – that is, a declaration of concentrated effort to focus criminal prosecutions on a particular type of crime. Unfortunately, when DOJ dangles that kind of incentive and reward structure in front of its agents and prosecutors, "good judgment goes right out the window."

Every criminal prosecution features unique facts and a unique defendant, and it is a prosecutor's obligation to consider each case on its own merits. But initiatives create perverse incentives. When a criminal prosecution is brought as part of an initiative – and therefore tagged as a statistic for a future press release – it allows errant motives, poor judgment, and/or incompetence to creep in. That is because a criminal prosecution "initiative" imposes an arbitrary goal, often with an arbitrary deadline, and as law enforcement scrambles to reach that goal, it disrupts the natural rhythm of criminal investigations.

Carol described a couple of criminal initiatives she experienced during almost 20 years of working at DOJ. She noted that this was also a problem in Dr. Chen's case and a number of other cases. She went on to describe the panic that occurred in financial fraud task forces when they did not produce as many cases as expected. Prosecutors and agents began looking for

cases that may have been of lower importance, but could be swept into the category of financial institution fraud cases. These included bank teller fraud cases (for example, tellers who might secretly write a check for \$2,000 to themselves and cash it in their position as a teller). While these cases were based on crimes, they were not based on the types of crimes that the original initiative and task forces had been designed for.

These examples show that the tragedy that happened to Professor Chen has happened and continues to happen to others in the United States. The “China Initiative” is another criminal prosecution initiative that is warping the good judgment needed to guard against wrongheaded investigations and prosecutions. “Criminal prosecutions are very individual efforts; you can’t create evidence, through chest thumping or waving around the banner of a criminal prosecution initiative. It is completely predictable, in fact, that criminal cases that are pursued in the name of an initiative are going to become smaller, they’re going to have thinner evidence, and they’re going to get further away from what was supposed to be the purpose of the initiative. DOJ should be mature enough to recognize and acknowledge today that initiatives do not give rise to good cases. In fact, quite the opposite. They give rise to poorly investigated, poorly conceived cases that are pursued for all the wrong reasons. If you have a good case, investigate that case well, bring a good case, and get a conviction. You can boast about it all you want at the end of the day. But what the DOJ is doing today is misguided. They know that. Now they should be taking steps to repair that. You can argue they’re taking some steps now, but it is very very late in the day.”

Carol is very concerned about some statements made by DOJ officials—for example, the Boston US attorney claimed “We (the DOJ) have done our job; the research community is terrified now.” Criminal prosecutions should not be brought simply for the purpose of terrifying a population. The DOJ is supposed to speak through its cases, not through innuendo and suspicion. Carol heard a statement by the same US attorney that there was nothing wrong with calling this a “China Initiative” because if it were the French government that was trying to steal our technology, this would be called the “French Initiative.” Carol called that statement “insulting” and said “We’re not writing on a clean slate here. This is a DOJ and a government that enforced the Chinese Exclusion Act and interned thousands of US citizens of Japanese descent. Carol compared the DOJ initiative to “as if we were in the Old West, and we simply said get out of Dodge by sundown.” The DOJ should not operate this way. Individuals are leaving the US because they are terrified. The government is treating people of Chinese descent unfairly.

Read the meeting summary including Carol's comments: <https://bit.ly/3BBSd2H>. Watch her video: <https://bit.ly/3HSuVrZ>

## **Professor Xiaoxing Xi Appeals for FBI Accountability; Supporting Amici Briefs**

According to [ACLU](#) on February 7, 2022, Temple University Professor Xiaoxing Xi and his family filed [the opening brief](#) in their appeal against the U.S. government and the FBI agent

involved in wrongly investigating and prosecuting him. Three amici briefs have followed in support to reinstate the damage claims and hold the FBI accountable.

- **Asian Americans Advancing Justice – AAJC and Asian Americans Advancing Justice – Asian Law Caucus** led a group of 72 education groups, scientific and academic associations, civil rights groups, and community organizations, including APA Justice, in an amici brief that addresses the widespread prevalence of racial discrimination and profiling against Asian Americans and immigrants, particularly scientists and academics of Chinese descent in the last decade, when Professor Xi was subjected to racially motivated actions alleged in his Complaint. That context reveals racial bias against persons of Chinese descent which has permeated federal agencies and influenced FBI training, investigations, and prosecutions, traumatizing families and undermining the credibility of our institutions. Read more: <https://bit.ly/3gTNIHo>
- **American Physical Society** led a group of nonprofit science, engineering, math, medical, and other professional membership societies and federations including American Association for the Advancement of Science, American Statistical Association, American Geophysical Union, and Gerontological Society of America in an amici brief that argues that (a) the wrongful arrest of prominent scientists like Mr. Xi harms the U.S.'s scientific leadership and economic competitiveness, and (b) government accountability is necessary to overcome the harms caused by wrongful arrests like Mr. Xi's. Read more: <https://bit.ly/3Bn7Uej>
- **The Institute for Justice** (IJ), a nonprofit legal center dedicated to defending the foundations of free society, opined in an amicus brief that "[b]ecause qualified immunity and related doctrines limit access to federal courts and drastically hinder enforcement of important constitutional rights, IJ litigates government immunity and accountability cases nationwide. The district court decision [on Professor Xi] marks a clear expansion of the qualified immunity doctrine into a new area: the Federal Tort Claims Act (FTCA). This expansion narrows one of the few avenues for individuals to receive compensation for injuries inflicted by federal employees. The expansion is unwarranted as qualified immunity is a judicially created doctrine based entirely on policy considerations—mainly the perceived unfairness of holding government officials personally liable for their constitutional violations—that are nonexistent in the FTCA context. IJ has a strong interest in advocating that this Court firmly reject the district court's attempt to expand qualified immunity analysis into the FTCA." Read more: <https://bit.ly/3LzmDax>

Read more about Professor Xi's story: [http://bit.ly/APAJ\\_Xiaoxing\\_Xi](http://bit.ly/APAJ_Xiaoxing_Xi)

## White House Announces Acting Roles for Drs. Alondra Nelson and Francis Collins

On February 16, 2022, the White House [announced](#) that Dr. **Alondra Nelson** will perform the duties of director of the White House Office of Science and Technology Policy (OSTP) and Dr. **Francis Collins** will perform the duties of Science Advisor to the President and Co-Chair of the President's Council of Advisors on Science and Technology until permanent leadership is

nominated and confirmed. Nelson currently serves as OSTP’s Deputy Director for Science and Society. Nelson has directed priority efforts to protect the integrity of science in the federal government, broaden participation in STEM fields, strengthen the U.S. research infrastructure, and ensure that all Americans have equitable access to the benefits of new and emerging technologies and scientific innovation. Collins recently stepped down as the director of the National Institutes of Health, after serving as its Director for more than 12 years.

Read more about activities and our interactions with OSTP: <https://bit.ly/3fT4Jko>.

## APA Justice Supports Maryland Senate Bill 462: Asian American History is American History



New Yorkers gathered at City Hall to protest anti-Asian hate, March 22, 2021. | Anadolu Agency via Getty Images

FIRST PERSON

**I didn't learn about Asian American history in high school. We can't fail another generation of students.**

*With little sense of the past, I grappled with my identity.*

By Kayla Huynh | Mar 31, 2021, 8:00am CDT

On February 16, 2022, APA Justice submitted a statement to the Maryland Senate in strong support of [SB 462](#) to develop and implement an expanded American history curriculum in Maryland public schools. In the statement, APA Justice expressed firm belief that studying history allows us to learn from the past and understand the present, from which we can strive to build a better future. Other than Native Americans, Native Hawaiians, and Pacific Islanders, we are a nation of immigrants. We came and continue to come from all corners of the world with different cultures and backgrounds. Some came earlier than others, and some came more willing than others. While some may seek to divide us, we must understand that our diversity is our strength, not our weakness. In fact, unique among the world’s nations, America’s strength comes from our diversity. While other countries are bound by ethnicity, Americans are bound together by a shared set of principles and ideals. In each of our own ways, we have contributed to the creation and the growth of this nation, fresh with purpose and ideals, as well as with fear and sacrifice. In order to empower our young people to be leaders in tomorrow's world, they must understand the history of all Americans.

Unfortunately, America has a long and complex history with race, and this includes racial discrimination and profiling people of Asian ethnicity. From the “Red Scare” after World War II to the modern-day “China Initiative,” Chinese American scientists, scholars, and students pose “whole-of-society” threats to fellow Americans. Today, the “China Initiative” has racially targeted Chinese Americans in overzealous prosecutions which have resulted in numerous dismissals. This history is important not only to law enforcement but for young future leaders of America that Maryland educates. Without an understanding of the history and contributions of groups such as Asian Americans and Pacific Islanders, our country is bound to make the same mistakes that have roots in racial discrimination.

While the United States is not a perfect nation, through our representative government we have the capacity to learn and improve from successes and mistakes. Our continuing success starts by educating our young people. We must ensure that like our government and our society, our history books are representative. They should represent the rich experiences of all Americans. We hope that as students learn this history, they create a kinder and more understanding classroom. We hope they see just how special it is that their classmates look different and have different backgrounds and are able to put this into historical context. This is where our better future lies.

The APA Justice statement concludes by quoting President Reagan in his last presidential speech, “[y]ou can go to live in France, but you cannot become a Frenchman. You can go to live in Germany or Turkey or Japan, but you cannot become a German, a Turk, or a Japanese. But anyone, from any corner of the Earth, can come to live in America and become an American.” Let us go forth and teach the history of all Americans and understand the richness of all of our American histories.

[Illinois](#) and [New Jersey](#) are the first two states to require teaching of Asian American history in public schools. Read the full APA Justice statement: <https://bit.ly/36mAXTK>

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