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### 2022/03/07 APA Justice Monthly Meeting

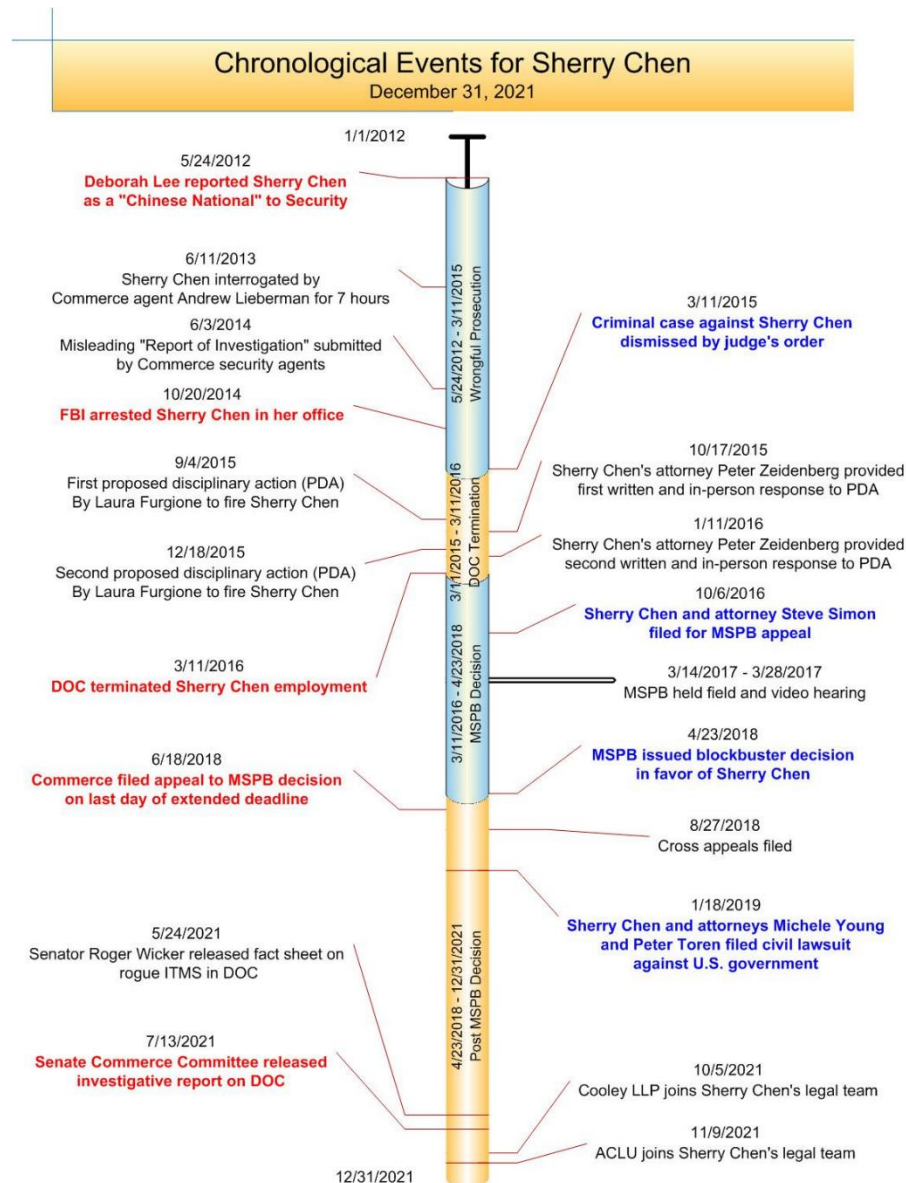


The next APA Justice monthly meeting will be held on Monday, March 7, 2022. Confirmed speakers are:

- **Senator Roger Wicker**, Ranking Member of the Senate Commerce, Science, and Transportation on the investigation of the Department of Commerce via pre-recorded video
- **Nisha Ramachandran**, Executive Director, Congressional Asian Pacific American Caucus
- **Dr. Rebecca Everly**, Executive Director, International Human Rights Network of Academies and Scholarly Societies on the pattern of investigations and prosecutions involving researchers of Asian descent in the United States
- **Haipei Shue**, President, United Chinese Americans, and **Peter Zeidenberg**, Partner, Arent Fox, on the upcoming trial of Professor Feng "Franklin" Tao after the end of the "China Initiative"
- **Patrick Toomey**, Senior Staff Attorney, ACLU on Professor Xiaoxing Xi's appeal to hold the FBI accountable
- **Adam Shelton**, Fellow, Institute for Justice; **Francis Slakey**, Chief External Affairs Officer, American Physical Society; and **Jiny Kim**, Vice President of Policy and Programs, Advancing Justice | AAJC on their respective amici briefs in support of Professor Xi's appeal. Jiny will also provide updates on the Anti-Racial Profiling Project and related activities

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>.

## Before "China Initiative," Anming Hu, and Gang Chen, There was Sherry Chen



The ordeal of **Sherry Chen** 陈霞芬, an award-winning hydrologist at the National Weather Service (NWS) and a naturalized U.S. citizen born in China, began 10 years ago. Deborah Lee reported Sherry Chen as a security risk to the Security Office at the Department of Commerce

(DOC) because she is a "Chinese National." Deborah Lee subsequently received a promotion in 2014.

Sherry Chen was investigated by DOC's Investigations and Threat Management Service (ITMS), which filed a misleading report of investigation and omitted exculpatory facts. The Federal Bureau of Investigations (FBI) failed to check the unreliable informant or the veracity of the ITMS report. Sherry was arrested and paraded publicly by the FBI in front of her office co-workers in 2014. ITMS subsequently received a DOC Gold Medal award for "identifying an unrecognized strategic threat to national security" in 2016.

On March 11, 2015, the Department of Justice (DOJ) dismissed all charges against Sherry Chen without apology or explanation. Instead of reviewing what went wrong with the ITMS investigation, Laura Furgione, NWS Deputy Director and fourth-level supervisor, filed her first proposal to fire Sherry Chen justified by the same failed accusations. The NWS Director declined to decide on the proposal. Furgione filed a second proposal to fire Sherry, which was approved by Deputy Under Secretary Michael S. Devany. Devany retired immediately after the decision.

Sherry Chen was fired on March 11, 2016.

On October 6, 2016, Sherry and her attorney filed an appeal with the Merit Systems Protection Board (MSPB). On April 23, 2018, the MSPB Chief Judge issued [a 135-page blockbuster decision](#) in favor of Sherry, agreeing that she is "a victim of gross injustice." The judge wrote, "[i]n short, Ms. Furgione and Admiral Devany seemed more concerned about being right than doing the right thing. Based on the unyielding nature of their testimony, I would not have been surprised if they rejected that  $2 + 2 = 4$ ."

Instead of complying with the MSPB ruling, DOC filed an appeal, which could not be processed due to the lack of a quorum in MSPB under the Trump administration. DOC did not review the misconduct and apparent bias of Furgione, and shielded her in the Census Bureau, an agency of DOC. Furgione has now resurfaced as the Chief Administrative Officer at the Census Bureau.

DOJ launched the "China Initiative" in November 2018. Sherry and her attorneys filed a civil lawsuit against the U.S. government for the malicious prosecution and false arrest of her on January 18, 2019.

On May 24, 2021, [the Washington Post](#) reported that DOC's ITMS unit evolved into a counterintelligence-like operation. The office "has been allowed to operate far outside the bounds of federal law enforcement norms and has created an environment of paranoia and retaliation at the Department." Senator Roger Wicker, Ranking Member of the Senate Commerce, Science and Transportation Committee, confirmed in a [press statement](#) and a [fact sheet](#) that "the ITMS has mutated into a rogue, unaccountable police force without a clear mission."

On July 13, 2021, the Senate Committee issued an investigative report, "[Abuse and Misconduct at the Commerce Department](#)." About two dozen whistleblowers contributed to the investigation

after the DOC Inspector General failed to address their complaints. Sherry Chen and Dr. Chunzai Wang were identified as victims of ITMS investigations.

On September 3, 2021, DOC [admitted](#) that ITMS operated without proper legal authority for over a decade and announced the elimination of ITMS and its criminal investigation function. DOC was silent on other concerns.

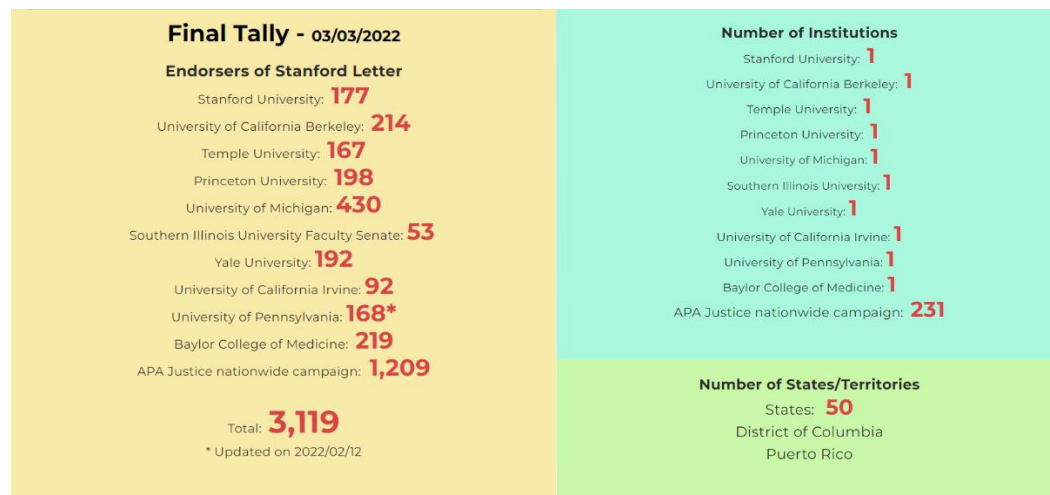
In a [press release](#), Senator Wicker said, "I am encouraged by the actions taken by Secretary Raimondo to correct the egregious misconduct within the Commerce Department. I will complete a thorough review of the Secretary's report and consider additional oversight to ensure compliance with these corrective actions. We will continue to investigate why the Department's Inspector General previously failed to address the allegations of abuse of power, ethnic targeting, and reprisal by ITMS staff."

Cooley LLP and ACLU joined Sherry's legal team and filed a new complaint against DOC and DOJ based on newly surfaced evidence on November 1, 2021.

Senator Roger Wicker will provide an update on his investigation via a video message in the March 7 APA Justice monthly meeting.

Read more about the Sherry Chen story here <http://bit.ly/SherryChenLDF> and here: [http://bit.ly/APAJ\\_Sherry\\_Chen](http://bit.ly/APAJ_Sherry_Chen).

## Nationwide Campaign Closes with Over 3,100 Sign-ons Including 219 from Baylor College of Medicine



On September 8, 2021, a group of 177 Stanford University faculty members from more than 40 departments, including 8 Nobel laureates, sent an open letter to U.S. Attorney General (AG) Merrick B. Garland, requesting that he terminate the Department of Justice's "China

Initiative." Since then, UC Berkeley (214), Temple (167), Princeton (198), Michigan (430), Southern Illinois (53), Yale (192), UC Irvine (92), Pennsylvania (168), and recently Baylor College of Medicine (219) faculty have sent in their own letters to AG Garland endorsing the Stanford letter.

APA Justice started a nationwide campaign to support the Stanford letter and pledged to keep the campaign going until the end of the "China Initiative." 1,210 days after the ill-conceived program was started, Assistant Attorney General Matt Olsen announced the end of the "China Initiative" on February 23, 2022. We therefore proudly announce the closing of this successful campaign with this final tally: the Stanford letter was endorsed by **3,119 faculty members, scholars, and administrators from over 230 institutions across all 50 states, District of Columbia, and Puerto Rico.** Dr. Les Wong, President Emeritus of San Francisco State University, was the first of 1,209 to sign on to the nationwide campaign. Check out the list of institutions: <https://bit.ly/372qB2v> and comments made by some of the endorsers: <https://bit.ly/3hxZHLb>.


The Stanford letter called for not only the termination of the "China Initiative," but also alternatives that encourage beneficial and important collaborations and influx of talented personnel. We must also remain vigilant to ensure that the end of the "China Initiative" is not just in name but also in policies and practices.

Read more about the efforts to end the "China Initiative" since APA Justice, Advancing Justice | AAJC, the Brennan Center for Justice, and a coalition of organizations and individuals wrote a [joint letter](#) to then President-elect Biden on January 5, 2021: <https://bit.ly/2ZC12up>

## APA Justice Calls for Release of DOJ Report on Review of "China Initiative"

The New York Times

### *After Missteps, U.S. Tightens Rules for Espionage Cases*



The Justice Department last year dropped all charges against Xiaoxing Xi, head of Temple University's physics department; he had been accused of sharing sensitive American-made technology with China. Mark Makela for The New York Times

**Actual Changes in Department of Justice Rule**  
Comparing Web Postings on 2015/09/14 and 2016/04/30

**9-90.010 - National Security**

**A. Introduction and Scope.**

Protecting our national security is the Department's top priority. National security encompasses the national defense, foreign intelligence and counterintelligence, international and internal security, and foreign relations. This includes countering terrorism; combating espionage and economic espionage conducted for the benefit of any foreign government, foreign instrumentality, or foreign agent; enforcing export controls and sanctions; and disrupting cyber threats that are perpetrated by nation states, terrorists, or their agents or proxies.

When national security issues arise during a criminal prosecution, they must be resolved through careful coordination by the Department of Justice (Department) with high level officials from the intelligence, military and foreign affairs communities. In addition, the Attorney General, or the Attorney General's designee, has certain statutory authority and obligations related to national security prosecutions. That authority and those obligations may be properly exercised and met only with appropriate coordination within the Department by the respective United States Attorneys' Offices (USAOs). A list of all prior approval, consultation and notification requirements related to national security can be found in USAM 9-90.020, below: The Counterintelligence and Export Control Section (CECS) of the National Security Division has supervisory authority over all offenses in this chapter.

**9-90.000 - National Security Matters - Prior Approval, Consultation, and Notification Requirements**

This chapter applies to national security matters other than counterterrorism matters; counterterrorism matters are covered principally by USAM 9-2.136 et seq. In addition, this chapter does not apply when a matter's sole nexus to national security is foreign relations (e.g., international extradition; indictment of a high ranking foreign official for a non-national security crime; and other treaty-related issues). Coordination of such matters will be handled by the Criminal Division, Office of International Affairs (OIA). See USAM 9-2-400 for circumstances requiring prior consultation with or approval from OIA.

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On February 23, 2022, Assistant Attorney General Matt Olsen announced the end of the "China Initiative" in [a speech](#) at the National Security Institute of the George Mason University in Northern Virginia. It is common in the government to produce a written report memorializing the review, including, for example, the defined scope, an accounting of the cases reviewed and resources expended, issues examined, process and methodology used, findings, recommended changes, decisions, and plans for implementation. The report may be subject to approval by higher officials.

The Department of Justice (DOJ) has not released such a report on the review, which creates ambiguity as to what changes are in fact being made besides dropping the name of the initiative. Critics have identified the lack of clarity and transparency to be major weaknesses of the "China Initiative."

For example, for the 1,210 days of operation under the "China Initiative," there is no official count of the number of investigations and prosecutions and the number of individuals involved.

Mr. Olsen announced in his speech that the National Security Division will take **an active supervisory role** in the investigations and prosecutions. However, on April 26, 2016, the [New York Times](#) reported that DOJ issued "new rules that give prosecutors in Washington greater oversight and control over national security cases after the collapse of several high-profile prosecutions [including Sherry Chen and Xiaoxing Xi] led to allegations that Chinese-Americans were being singled out as spies." Then Deputy Attorney General Sally Q. Yates under the Obama administration sent a letter to federal prosecutors nationwide, stating that "all cases affecting national security, even tangentially, now require coordination and oversight in Washington... The term 'national security issue' is meant to be a broad one."

Changes made to [Section 9-90.010 - National Security of DOJ's Justice Manual](#) were tracked and memorialized here: <https://bit.ly/3hDIJvS>. Mr. Olsen's speech did not clarify how the 2016 rule failed or what the difference between the new "active supervisory role" and the 2016 rule is.

Release of Mr. Olsen's written report on his review of the "China Initiative" promotes transparency and will help the public understand the changes being made to the "China Initiative" besides dropping of the name.

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