

2025/11/03 APA Justice Monthly Meeting

APA Justice Meeting – Monday, 2025/11/03

1:55 pm Eastern Time / 10:55 am Pacific Time

1. Updates from CAPAC

Speaker: Judith Teruya, Executive Director, Congressional Asian Pacific American Caucus (CAPAC), Judith.Teruya@mail.house.gov

[not on record]

2. Update from Asian Americans Advancing Justice | AAJC

Speaker: Joanna YangQing Derman, Director, Anti-Profilng, Civil Rights & National Security Program, Advancing Justice | AAJC, jderman@advancingjustice-aajc.org

- Advancing Justice | AAJC: [Anti-Profilng, Civil Rights & National Security Program](#)

Joanna reported that AAJC continues to monitor developments related to the China Initiative and the Commerce, Justice, Science, and Related Agencies (CJS) Appropriations Bill, though progress has been delayed by the government shutdown. In partnership with the Asian American Scholars Forum (AASF) and Gisela, AAJC is co-organizing an Advocacy 101 training on November 3, 2025, to help scholars and academics engage effectively with policymakers. Joanna will explain the federal appropriations process and how the CJS China Initiative language fits within it, joined by Gisela (AASF), Edgar Chen (NAPABA), Kelvin Lum (Stop AAPI Hate), and moderator Professor Xiaodong Zhang.

On the National Defense Authorization Act (NDAA), Derman noted that both chambers of Congress have passed their versions, and AAJC has submitted its annual NDAA letter to the Armed Services Committees as negotiations enter the pre-conference phase. AAJC is particularly concerned about Rounds Amendment No. 3810, which would broaden the Committee on Foreign Investment in the United States (CFIUS) authority to review foreign agricultural land purchases. While AAJC supports CFIUS oversight, it warns the amendment could transform the process from evidence-based review to broad, prohibitive action against entire categories of persons. Ongoing coordination with CAPAC, House Financial Services, and other congressional allies continues to ensure AAJC's priorities are reflected in the final legislation.

3. Update from Asian American Scholar Forum

Speaker: Gisela Perez Kusakawa, Executive Director, [Asian American Scholar Forum](#) (AASF), gpkusakawa@asforum.org

Gisela provided an update focused on the Safe Research Resource Act, an amendment in the National Defense Authorization Act (NDAA) that AASF finds deeply concerning. She summarized four major issues raised in ASF's October 17 letter to the Armed Services Committee:

- **Five-Year Lookback** – AASF warns this could lead to retroactive punishment for past research activities that were legal or even encouraged, urging fairness and a reasonable transition period for agencies, universities, and individuals.
- **Co-Authorship Barriers** – The provision could effectively bar co-authorship within the timeline provided, restricting international research collaboration and openness, undermining U.S. competitiveness.
- **Overly Broad Definitions** – Vague terms like “affiliation” could include almost any international engagement, making compliance impractical and potentially harmful to innovation and education. Both international students and American-born students benefit from international programs and collaborations.
- **Disparate Impact on Asian Americans** – Broad, ambiguous rules risk biased application and enforcement that could disproportionately harm Asian American scientists, especially those of Chinese descent.

To address these concerns, AASF worked with scholars such as Professors Peter Mickelson and Steven Kivelson and garnered support from over 750 faculty members across 210 universities in 41 states and the District of Columbia, including Nobel laureates and members of the National Academy of Sciences. Gisela emphasized that these issues transcend partisanship and encouraged participation in AASF's upcoming Advocacy 101 training to equip researchers with tools to advocate for fair and evidence-based policymaking.

4. Andy Phillips on the Case of Dr. Yanping Chen

Speaker: [Andy Phillips](#), Managing & Founding Partner, Meier Watkins Phillips Pusch LLP

- 2025/09/30 Courthouse News Services: [DC Circuit rejects Fox News reporter effort to duck subpoena over anonymous source](#)
- APA Justice: Impacted Person - [Dr. Yanping Chen](#)

Andy presented an in-depth briefing on Dr. Yanping Chen's Privacy Act case, which he has been litigating for several years.

Dr. Chen emigrated to the U.S. from China and has a medical degree as a cardiologist. She worked as a scientist and supervisor for China's astronaut program. She came to the U.S. to be a visiting scholar at George Washington University in Washington, DC, in the late 80s, became a permanent resident in 1993, and a naturalized U.S. citizen in 2001.

In the 1990s, she founded the University of Management and Technology (UMT) in Arlington, Virginia, focusing on post-secondary and graduate studies for working adults. A fairly large number of UMT's students are service members who seek degrees and receive assistance from the Department of Defense (DOD)'s Tuition Assistance Program, which UMT participates in along with many other schools. The program allows UMT to receive subsidized tuition payments for service members from the DOD.

Dr. Chen became the subject of a years-long Federal Bureau of Investigations (FBI) investigation beginning around 2010 concerning statements she made on her immigration forms related to her work for China's astronaut program. Despite FBI raids on her home and office and interviews with her family, the U.S. Attorney's Office closed the case in 2016 with no charges filed.

A year later, in 2017, Fox News and then reporter Catherine Herridge published a series of television and online reports accusing Dr. Chen of being a Chinese spy and suggesting that UMT was a front for gathering sensitive U.S. military information. These reports contained leaked FBI materials, including Dr. Chen's immigration forms, family photographs, and references to internal interview memoranda—clear signs of an unauthorized disclosure of Dr. Chen's private government records.

In response, Dr. Chen filed a Privacy Act lawsuit in 2019 against several federal agencies, including the FBI, Department of Justice (DOJ), DOD, and Department of Homeland Security (DHS), arguing that government officials had unlawfully leaked her protected records to the press.

Andy explained that the Privacy Act of 1974 was enacted to safeguard personal information collected by government agencies and to prevent such records from being used for unauthorized purposes.

Under the Privacy Act, a plaintiff must prove that a government official intentionally or willfully disclosed private information. However, identifying the individual responsible for the leak proved to be the central challenge in Dr. Chen's case. After two years of exhaustive discovery—including depositions, document requests, and interrogatories—Dr. Chen's legal team was unable to pinpoint the leaker within the government.

At that stage, Andy and his firm joined the case in 2022 (Dr. Chen was represented by co-counsel WilmerHale who handled initial stages of the case and discovery against the government) to focus on the media law issues, particularly journalist privilege, which they frequently encounter in First Amendment defamation litigation.

They issued a subpoena compelling Catherine Herridge to reveal her source for the leaked materials. Herridge, represented by counsel, moved to quash the subpoena, citing a qualified First Amendment privilege that allows reporters to protect the identities of confidential sources. The privilege is “qualified,” not absolute, meaning it can be overcome under certain circumstances—specifically if the requested information is **central** to the case and the plaintiff has **exhausted** all other means of obtaining it.

The U.S. District Court for the District of Columbia ruled in Dr. Chen’s favor, finding that both conditions were met: the identity of the leaker was essential to proving her Privacy Act claim, and Dr. Chen had already undertaken substantial efforts to discover the information elsewhere. Herridge’s arguments that national security, journalistic freedom, or Dr. Chen’s alleged misconduct should weigh against disclosure were rejected. The court stated firmly that the law must be applied equally and that courts should not make value judgments based on who the plaintiff is or what allegations have been made in the media.

When Herridge refused to comply with the court order during her September 2023 deposition, Andy sought a contempt ruling, which the court granted, imposing a fine of \$800 per day for noncompliance. The fine was stayed pending appeal as the case moved to the U.S. Court of Appeals for the D.C. Circuit, which was argued around November 2024. In September 2025, the D.C. Circuit issued a unanimous 3-0 decision affirming the District Court’s ruling, rejecting Herridge’s call for a broader balancing test and upholding Dr. Chen’s right to pursue her Privacy Act claim.

Andy emphasized the broader implications of the case, calling it a vital reaffirmation of the rule of law and government accountability. He explained that the case is not about restricting the press but about ensuring that government officials cannot weaponize confidential information to destroy reputations without consequence. “If this decision had gone the other way,” Andy said, “it would have sent the message that government agents could leak with impunity, as long as they laundered their misconduct through a journalist who would protect them.”

He drew parallels between Dr. Chen’s case and the case of Dr. Wen Ho Lee, where another Chinese American scientist was falsely accused of espionage based on leaked government information and media misrepresentation. Both cases, he noted, reflect how racial bias and national security fears can combine to harm innocent individuals. Andy praised the amicus brief filed in support of Dr. Chen, which traced a long history of anti-Asian discrimination in both media coverage and law enforcement, arguing that accountability and transparency are critical to restoring trust.

Concluding his remarks, Andy said the D.C. Circuit’s decision “reaffirmed 50 years of precedent” in the nation’s capital and represents a strong affirmation that every citizen—regardless of ethnicity or background—is entitled to equal protection under the law. He expects Herridge to request en banc (before the full court) review or possibly appeal to the U.S. Supreme Court, but remains confident that the case has set an enduring precedent for privacy rights and justice in the face of abuse of power.

5. Role of AALDEF and Community Organizations

Speaker: Jane Shim, Director, Stop Asian Hate Project, [Asian American Legal and Education Fund](#) (AALDEF)

- 2024/07/30 AALDEF: [AALDEF files amicus brief in Chinese American scientist's case against FBI over information leaked to media](#)

Jane discussed AALDEF's role in filing an amicus brief in *Dr. Yanping Chen v. FBI* that was joined by other civil rights groups. She explained that AALDEF intervened because the government and media narratives portraying Dr. Chen as working for the Chinese Communist Party—though false and defamatory—were being revived in legal filings despite being irrelevant to the legal issues at hand. Jane emphasized the importance of calling out these racialized national security tropes, which continue to shape public perception and legal arguments against Asian Americans.

She also noted the stark contrast between AALDEF's brief and one filed by Senator Ted Cruz, whose filing used "egregiously fear-mongering language," portraying Dr. Chen as "a most dangerous spy." Jane underscored that such rhetoric mirrors longstanding patterns of xenophobia and "national security threat narratives" historically weaponized against Asian and Muslim communities.

AALDEF's amicus brief examined the media's historical role in fueling anti-Asian and anti-immigrant sentiment, tracing examples from past periods like the Red Scare to illustrate how newspapers and pamphlets helped reinforce state-sponsored discrimination. Jane concluded by reaffirming AALDEF's ongoing commitment to confronting these systemic biases and welcomed continued collaboration with partners working on similar issues.

6. Paula Williams Madison Comments on Dr. Yanping Chen's Case

Speaker: [Paula Williams Madison](#), Chairman and CEO of Madison Media Management LLC and 88 Madison Media Works Inc.; Retired Executive, NBCUniversal

Paula expressed strong concern over the ethical lapses in the Fox News coverage of Dr. Yanping Chen, which she described as "deeply troubling on several levels." Drawing on her experience as an investigative journalist and media executive, Paula said she carefully reviewed the Fox reports and found that they relied on inflammatory imagery—such as showing Dr. Chen

in a military-style uniform with “red epaulets and stars”—to suggest ties to the Chinese Communist Party without substantiated evidence. “It felt like the story was designed to make viewers believe she was exactly what the anonymous source accused her of being,” Paula said.

She emphasized that proper investigative journalism requires at least two independent sources before publishing serious allegations, especially when the Justice Department had closed the case without charges. Paula questioned whether fundamental standards of verification, fairness, and editorial oversight had been ignored, perhaps because of racial bias or national security fearmongering. “Some of the basic commandments of investigative reporting seem to have been overlooked—possibly because she’s Chinese, and therefore ‘scary,’” she observed.

Paula also raised concerns about editorial accountability, explaining that in any newsroom she led, a reporter’s confidential sources must be known to the editor or news director; otherwise, the story would not run. “If I don’t know who the sources are, that story will never be published,” she said.

In referencing her own background, Paula noted that she is both a member of the National Association of Black Journalists (NABJ) and the Asian American Journalists Association (AAJA). Paula’s grandfather was Chinese. She is also a close friend of fellow journalist Helen Zia, founder of the Vincent Chin Institute, who shares deep concern about broader implications for racialized narratives in the media.

Paula suggested that journalism organizations like Investigative Reporters and Editors (IRE) and the Society of Professional Journalists (SPJ) should examine this case as a cautionary example of how bias and weak editorial controls can erode public trust. She also questioned whether Fox News or Catherine Herridge herself is now bearing the legal costs, implying that the network may have distanced itself from the controversy.

7. Brian Sun Comments on the Cases of Dr. Wen Ho Lee and Dr. Yanping Chen

Speaker: [Brian Sun](#), Partner, Norton Rose Fulbright US LLP

- 2006/06/03 Los Angeles Times: [Government, News Media Settle Suit by Wen Ho Lee](#)
- 2006/08/01 American Physical Society: [Viewpoint: Wen Ho Lee's Settlement](#)

Brian, who represented Dr. Wen Ho Lee in his landmark Privacy Act case, drew strong parallels between Dr. Lee’s experience two decades ago and Dr. Yanping Chen’s ongoing case. He emphasized that both involved government leaks of protected information to the media,

racialized national security narratives, and the challenge of holding officials accountable for violations of privacy and due process.

Brian recounted that Dr. Lee, a Los Alamos scientist falsely accused of espionage in the late 1990s, was subjected to highly publicized national coverage media coverage, intense surveillance, and charged with 59 counts of misconduct despite no evidence he shared secrets with China.

The case began with leaks to two Pulitzer Prize-winning journalists from the New York Times, Jeff Gerth and James Risen, that led to the government putting 40 agents on Dr. Lee under 24/7 surveillance between March and December 1999, when Dr. Lee was arrested and indicted.

Immediately after his release in September 2000, Brian asked Dr. Lee whether he would still pursue the Privacy Act lawsuit that had been stayed by the District Court judge during the pendency of the criminal proceedings. "Yes. I don't ever want this to happen again to someone else," Dr. Lee said.

The case became a five-year legal battle.

Brian described how his legal team deposed senior officials, including FBI Director Louis Freeh and Energy Secretary Bill Richardson, to prove they had exhausted all avenues before seeking to compel journalists including Jeff Gerth and James Risen to reveal their sources. The District Court granted their motion, and when the reporters refused to comply, they were held in contempt by Judge Thomas Penfield Jackson. The D.C. Circuit Court upheld that ruling, narrowly denying an en banc (before the full court) rehearing.

Dr. Lee also did not sue the reporters themselves. They simply sought information from them. But during settlement discussions and mediation, the journalists attended with their lawyers, along with government representatives, as the mediator tried to hammer out a deal.

A settlement was reached on the eve of the Supreme Court ruling on the journalists' petition for certiorari (review). The Supreme Court denied the reporters' petition anyway.

The ultimate settlement was \$1.645 million, with the government and journalists sharing the payment. Notably, CNN initially refused to pay, but other media organizations covered its share. Brian credited his then firm, Jones Day, for standing by him even after CNN threatened to sever ties.

Reflecting on the controversy, Brian underscored that the issue was not opposition to press freedom, but the need to balance journalist privilege with accountability when leaks destroy reputations. Brian's wife is a former journalist. He cautioned that blind protection of sources can empower rogue officials to leak information without consequence, harming innocent individuals.

Brian concluded that Dr. Chen's case echoes Wen Ho Lee's ordeal, calling it "history repeating itself." Both highlight the dangers of racial bias, media sensationalism, and unchecked leaks in

national security cases. He praised Andy and WilmerHale for pursuing justice on Dr. Chen's behalf, affirming that such cases are "a noble cause" that defend both the rule of law and the integrity of American justice.

8. Q&A and Discussions

9. Next Meeting

The next monthly meeting is scheduled for Monday, December 1, 2025, starting 1:55 pm ET/10:55 am PT