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OSTP - Dr. Prabhakar, Congressional Letter, Data Science and AI, and November APA Justice Meeting

1. Dr. Arati Prabhakar's Talk on October 21, 2022



On October 21, 2022, Dr. **Arati Prabhakar**, newly confirmed director of the White House Office of Science and Technology Policy (OSTP), spoke at the American Association for the Advancement of Science (AAAS) on the aims of U.S. science and technology. Citing the passage of three major bills - the Inflation Reduction Act, the Bipartisan Infrastructure Act, and the CHIPS and Science Act - and related appropriations, Dr. Prabhakar presented three "big shifts" for the role of science and technology in the US - national goals vs individual contributions, equity through education and data and behavioral sciences, and societal changes with innovation, technology, and commercialization that includes privacy and civil rights.

The Q&A session covered basic research, the rise of China and competition, protectionist policies, STEM workforce and talent, structural gap, research security, the "China Initiative," and more. In particular, Jeff Mervis of the *Science Magazine* asked, "the Justice Department recently retired the name 'China Initiative' of the Trump era campaign to counter economic espionage, but the government continues to prosecute several Chinese scientists and many of

those charges have been thrown out by district judges or rejected by juries. A study last year found that US scientists of Chinese heritage being subject to greater racial profiling and surveillance by the US government than non-Asian scientists. Do you think that these scientists are justified in feeling that they are under attack and given that you are now in the cabinet, is the White House planning on any initiative to demonstrate that they are not targeted and that their contributions are important to the health of the US science enterprise?" (1:13:58 mark of video)

Watch the AAAS event at: <https://bit.ly/3FqrWbw> (video 1:33:55).

2. Congressional Letter to OSTP on Equity Concerns

On October 15, 2022, Chairwoman **Eddie Bernice Johnson** (D-TX) and Ranking Member **Frank Lucas** of the House Committee on Science, Space, and Technology sent [a letter](#) to OSTP Director Dr. Arati Prabhakar regarding the policy guidance memo on "[Ensuring Free, Immediate, and Equitable Access to Federally Funded Research](#)." While supporting the overall goals of the OSTP guidance memo, the letter expressed concerns over how agencies would implement the new requirements without negative, unintended consequences. For example, the committee expressed concerns over continued equity to access, preventing the proliferation of multiple versions of peer-reviewed manuscripts, and the additional burden placed on researchers in meeting data repository requirements. Read more about the congressional letter at <https://bit.ly/3zkktHs>

3. Big Data, Data Science, and Artificial Intelligence (AI)

On September 30, 2022, [Science Magazine reported](#) that the National Science Foundation (NSF) will "soon begin crunching several large databases to see whether there are scientists who failed to disclose ties to foreign institutions in their grant applications. It is arguably the boldest of several steps federal research agencies are taking to comply with a new law [the CHIPS and Science Act] that aims to boost U.S. technological innovation—and prevent China and other foreign governments from pilfering federally funded research." NSF put out [a public notice](#) of its intention to create a new "system of records" known as NSF–77 Data Analytics Application Suite in November 2021. In her AAAS talk on October 21, Dr. Prabhakar cited the integrated use of data science and behavioral science to address inequity issues. On October 4, 2022, OSTP issued a "[Blueprint for an AI Bill of Rights](#)." Taken together, they signal the increasingly important role of Big Data, Data Science, and AI in the future of US science and technology. Privacy, data quality, bias in algorithms, and unintended consequences are among some of the concerns about this inevitable use of data and technology.

4. Dr. Rebecca Keiser to Speak at November 7 APA Justice Monthly Meeting

On October 14, OSTP hosted a virtual community briefing with Federal agency leaders and fellow members of the U.S. research community on the progress related to implementing the National Security Presidential Memorandum (NSPM)-33 and the CHIPS and Science Act. Dr. **Rebecca Keiser**, Chief of Research Security Strategy and Policy at NSF and Co-Chair

of the National Science and Technology Council's Subcommittee on Research Security, was not able to attend the briefing because she was on travel. She has kindly accepted our invitation to speak at the November 7 APA Justice monthly meeting.

At the conclusion of the October 14 community briefing, APA Justice submitted the following question to OSTP:

"As OSTP moves forward with the new draft policies and forms, will it and funding agencies put together an inventory of and continuing reports on past and existing cases, investigations, or allegations of violations, including their dispositions and current status, beginning from, say, 10 years ago. A data and analytic approach provides transparency, helps to understand the magnitude of the problem, and establishes benchmarks to measure the performance and effectiveness of the new policies and practices.

"For example, Dr. Lauer of NIH mentioned that only 20% of the annual 80,000 fund applications are approved for funding. Of the approved grants, how many and what percentage have been alleged or found to be in violation of each of the four categories described by Dr. Lauer - project overlap, budgetary overlap, commitment overlap, and personal financial bias - by year? Has the trend been growing, declining, or stabilizing?

"In summary, what has been and is the magnitude of the problem for each of the funding agencies? How will the effectiveness of the new OSTP policies and practices be measured? Will they be shared publicly?"

More information about the November monthly meeting will be coming soon. Past meeting summaries are posted at: <https://bit.ly/3kxkqxP>

Update on The Case of Dr. Yanping Chen 陈燕平



Dr. **Yanping Chen** 陈燕平 is a naturalized U.S. citizen born in China. She was a cardiologist and medical researcher with the Chinese astronaut program. She came to the U.S. in 1987 to study and earned a Master's degree and a Ph.D. in Public Policy from George Washington University. She married a U.S. citizen, became a lawful permanent resident in 1993, and a U.S. citizen in 2001.

In 1998, Dr. Chen founded the University of Management and Technology in Arlington, Virginia, to provide secondary and graduate education to working adults.

In 2010, Dr. Chen became the focus of a Federal Bureau of Investigations (FBI) investigation. After 6 years of investigation, Dr. Chen was told that no charges would be filed against her.

However, confidential information from the investigation was allegedly leaked to Fox News in or around 2017. On December 21, 2018, Dr. Chen filed a privacy lawsuit against the FBI, Department of Justice, Department of Defense, and Department of Homeland Security.

Dr. Chen's Privacy Act case against the FBI, DOD, DHS, and DOJ remains ongoing almost four years after she filed the complaint. The lawsuit seeks accountability from the federal government for selectively leaking to Fox News information about Dr. Chen gathered during an FBI investigation. Dr. Chen claims that, after the FBI investigation ended with no charges, Fox News reporter **Catherine Herridge** published a series of reports displaying materials from the investigation, including personal photographs of Dr. Chen and her family, memoranda from FBI interviews, and Dr. Chen's immigration and naturalization records.

The legal team led by **Matt Jones** from WilmerHale LLP representing Dr. Chen has been invited to speak at the November 7 APA Justice monthly meeting.

Read more about Dr. Chen's case at: http://bit.ly/APAJ_Yanping_Chen

Law360: 'Branded As Spies,' Chinese Academics Vindicated In Court

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'Branded As Spies,' Chinese Academics Vindicated In Court

By Ivan Moreno (October 25, 2022, 8:00 PM EDT) -- University of Kansas researcher Feng "Franklin" Tao had

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On October 25, 2022, Law360 published a report on "['Branded As Spies,' Chinese Academics Vindicated in Court.](#)" According to the report, following a string of unsuccessful prosecutions, the Department of Justice (DOJ) announced in February it would scrap the initiative's name to reflect a focus on a broader range of multinational threats instead of singling out one country. Pending cases have continued, however, and the government took two to trial this year — including **Anming Hu** and **Franklin Tao** — only to encounter the now familiar reality that sometimes the only evidence to support suspicions of espionage are omissions on research grant applications that may have been unintentional or harmless.

In both trials, judges have dismissed some charges while jurors have acquitted on others, a stinging rebuke of the government's theory that omissions on research grant applications were part of a scheme to defraud the government. Tao's sentencing for the false statement charge is set for January. In the meantime, the government has filed a notice of appeal to the Tenth Circuit to restore the wire fraud counts a federal district judge dismissed.

"What this notice of appeal shows is that the DOJ's declaration that the China Initiative is dead is all talk," said one of Tao's attorneys, **Peter Zeidenberg** of ArentFox Schiff LLP. "DOJ is still pursuing these cases, even when a federal judge has found that there was no harm caused to the granting agencies or the university."

Under the "China Initiative," the mandate to target espionage and trade secret theft quickly morphed to focus on research integrity cases at academic institutions. Those cases allege the defendant failed to disclose ties to foreign governments on grant applications and other documents.

In January, prosecutors abruptly dropped the case of MIT professor **Gang Chen**, 58, a naturalized U.S. citizen accused of not reporting his affiliation with Chinese government institutions on grant applications to the Department of Energy.

A week after jurors delivered a split verdict in Franklin Tao's case, Southern Illinois University math professor **MingQing Xiao**, 60, went on trial. Prosecutors alleged Xiao did not disclose his employment with Shenzhen University as well as a grant from China's Natural Science Foundation when he and SIU applied for a grant with the U.S. National Science Foundation. After the government presented its evidence over five days, Xiao's attorneys moved for acquittal, saying prosecutors fell "woefully short" of backing up their case. Prosecutors had no evidence and presented zero witnesses to support the claim that Xiao ever received the Chinese grant, according to Xiao's motion. Nor did they have evidence or witnesses to show the existence of a contract between Xiao and Shenzhen University, the motion said.

U.S. District Judge **Staci M. Yandle** dismissed two counts of wire fraud but let jurors decide the remaining charges. Jurors dismissed a false statement charge but convicted Xiao on four tax-related counts added in a superseding indictment — three for filing false income tax returns and one for failing to report a foreign bank account. He was sentenced to a year of probation in September. His attorneys are appealing to the Seventh Circuit to get the tax convictions overturned.

On Sept. 22, **Zhengdong Cheng**, 55, became the latest academic to plead guilty to charges in a China Initiative case. According to a plea agreement, the former professor of chemical engineering at Texas A&M University had spent years concealing his academic and business ties to China in disclosure forms while receiving a NASA-funded grant. For pleading guilty to violating NASA regulations and making false statements, prosecutors dropped the indictment, which included a charge for wire fraud, and he was sentenced to time served. Cheng, a naturalized U.S. citizen, had been free on bond since September 2021, but had already spent nearly two years in custody awaiting trial, his attorney said.

The prosecutions of recent years have created an atmosphere of fear among Chinese academics, according to a September report by MIT, Princeton and Harvard universities on behalf of the Asian American Scholar Forum for a report called, "Caught in the Crossfire: Fears of Chinese-American Scientists." In an online survey that included 1,304 Chinese-American academics employed at U.S. universities, 72% of respondents said they did not feel safe as researchers and 42% said they are fearful of conducting research. Six out of 10 said they have thought about leaving the U.S. and 45% say they want to avoid applying for federal grants. The survey was conducted from December 2021 to March 2022.

Read the full Law360 report here: <https://bit.ly/3fgmgWZ>

Media Reports on BIS Announcement on Chip Ban Against China

On October 7, 2022, the Bureau of Industry and Security (BIS) under the Department of Commerce [announced](#) the implementation of a series of targeted updates to its export controls, restricting the People's Republic of China's (PRC's) ability to both purchase and manufacture certain high-end chips. Among other prohibitions, the new rules restrict "the ability of U.S. persons to support the development, or production, of integrated circuits at certain PRC-located semiconductor fabrication 'facilities' without a license."

Here is a sampling of media reports on the "chip ban:"

- 2022/10/25 *Asia Times*: US chip ban most punitive move yet against China. <https://bit.ly/3TDYjrO>
- 2022/10/25 *Fox Business News*: Chinese chip maker fires all American workers: Report. <https://fxn.ws/3zHp86z>
- 2022/10/21 *Voice of America*: Companies Weigh Fallout From US Ban on Sending Chip Tech to China. <https://bit.ly/3qNrZUR>
- 2022/11/19 *IDTechEx*: Impact of Newly Added US Sanctions on the Chinese Semiconductor Sector. <https://bit.ly/3TJJ9kS>
- 2022/10/18 *The Guardian*: What do US curbs on selling microchips to China mean for the global economy? <https://bit.ly/3qMkbSZ>
- 2022/10/18 *Yahoo News*: Biden's new export curbs place many Chinese Americans at risk of losing their jobs or their citizenships. <https://yhoo.it/3TBLHRQ>
- 2022/10/17 *Reuters*: Restricting exports of sensitive technology to China. <https://reut.rs/3sRIJyd>

- 2022/10/16 *Wall Street Journal*: American Executives in Limbo at Chinese Chip Companies After U.S. Ban. <https://on.wsj.com/3zhwKMw>
- 2022/10.16 *Nikkei Asia*: U.S. companies caught in crossfire of China chip crackdown. <https://s.nikkei.com/3SDCKjh>
- 2022/10/13 *Fortune*: Biden's chip controls may force Chinese-Americans working in China's semiconductor firms to choose between their citizenship or their job. <https://bit.ly/3szegn9>
- 2022/10/12 *Foreign Policy*: Biden Is Now All-In on Taking Out China. <https://bit.ly/3N6ZTzX>
- 2022/10/11 *Nikkei Asia*: China's 'sea turtle' tech executives stranded by U.S. crackdown. <https://s.nikkei.com/3N7a8Ep>

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