

2021/11/01 APA Justice Meeting

APA Justice Meeting – Monday, 2021/11/01

11:55 am Eastern Time/8:55 am Pacific Time

Final Agenda

0. Introduction of New Speakers

- a. **Anita Levy**, Senior Program Officer, [American Association of University Professors](#)
- b. **Peter Michelson**, Senior Associate Dean for the Natural Sciences, Luke Blossom Professor in the School of Humanities and Sciences, Professor of Physics; Stanford University
- c. **Mark Elsesser**, Director of Government Affairs, [American Physical Society](#)
- d. **Ron Yang**, Professor of Mathematics and Statistics, University at Albany; Federation of Associations of Chinese Professors

1. CAPAC updates

- a. Speaker: Nisha Ramachandran, Executive Director, Congressional Asian Pacific American Caucus (CAPAC)

Nisha reported that last Friday (October 29, 2021) CAPAC members met with Attorney General Merrick Garland. While a number of issues were discussed during the meeting, CAPAC members did take time to address the China Initiative with Attorney General Garland. Several questions asked by CAPAC members focused on what the response to the China Initiative would be now that Matt Olsen had been confirmed as Assistant Attorney General for the National Security Division of the Department of Justice (Olsen had been confirmed on Thursday, October 28, 2021, the night before this meeting between CAPAC and AG Garland). Similar to AG Garland's responses in the Judiciary Committee's oversight hearing, the responses to these questions indicated that Assistant Attorney General Olsen would now be in a position to conduct an overview of

the China Initiative and determine next steps. CAPAC's outreach and communication with Attorney General Garland and his team remain ongoing.

Nisha also flagged an item that had appeared in the November 1 APA Justice Newsletter: on August 10, 2021, the White House Office of Science and Technology Policy (OSTP) called for suggestions on [Clear Rules for Research Security and Researcher Responsibility](#). The 90-day comment period was scheduled to end on Monday, November 8, 2021. Nisha noted that CAPAC is considering submitting a comment, and that she expected to be able to update on this at the next APA Justice monthly meeting.

2. Update on Professor Anming Hu's Situation

- a. Speaker: Phil Lomonaco, Attorney, Law Offices of A. Philip Lomonaco
 - APA Justice Impacted Person: [Anming Hu](#)
 - 2021/10/27 Knox News: [Former Tennessee professor Anming Hu urges university and lawmakers to speed up his rehiring](#)
 - 2021/10/27 Chronicle of Higher Education: [When a Scholar Is Accused of Being a Spy](#)

Phil opened by thanking attendees for their efforts, especially in support of Anming Hu, and saying that their input had a profound effect on the court, which had never before been involved with so much publicity. He praised Judge Varlan for keeping his eye on the ball when it came to the facts of this case.

October 9, 2021 marked 30 days after Anming Hu's acquittal. The government did not file any appeal during that time and Dr. Hu's case was finally fully resolved. Dr. Hu is now moving on and trying to get his job back. Right after Dr. Hu's acquittal was announced, the University of Tennessee began to formulate a plan to get Dr. Hu's job back; however, not much action has been taken on that plan so far. The University appears to be proceeding with caution. Phil believed that on November 1, 2021 Dr. Hu had a meeting with the supervisor of his department at the University of Tennessee to discuss the possibility of being re-hired into the department. Phil thought that Dr. Hu

would be able to regain employment with the University within a reasonable amount of time. Phil would continue to work with Dr. Hu to negotiate the terms of the job offer with the University.

In order to get his job back, Dr. Hu also needed to be reinstated with Immigration Services, enabling him to work in the United States again. While in home detention, Dr. Hu was unable to reinstate his work permit and therefore became ineligible to work in the US. Phil reported that he and Dr. Hu were asking the University of Tennessee to sponsor Dr. Hu in order to shorten this process from months to weeks. Phil and Dr. Hu were also in contact with some members of Congress who had expressed willingness to provide recommendations as Dr. Hu went through this process, so that he could regain his work permit as quickly as possible.

Phil expressed his gratitude and happiness with the efforts and results achieved by all involved in supporting Dr. Hu.

3. AAUP Policy on Termination of Appointments and Severe Sanctions

- a. Speaker: Anita Levy, Senior Program Officer, AAUP
 - 2019/10 AAUP: [Association Procedures in Academic Freedom and Tenure Cases](#)

Anita Levy has served as a senior program officer in the AAUP's Department of Academic Freedom, Tenure, and Governance since 2002. She has contributed to numerous AAUP reports and policy documents, including The History, Uses, and Abuses of Title IX, Campus Sexual Assault: Suggested Policies and Procedures, and Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions. She has been listed in the Fulbright Specialist Roster in higher education. Before joining the AAUP's national staff, she taught English literature and gender studies at Williams College and the University of Rochester.

The purpose of this brief presentation is to **identify the AAUP policy documents on the termination of appointments and the imposition of severe sanctions for incorporation** into a faculty handbook and to talk a little bit about what they mean and why it's necessary to have them in your handbook.

Anita discussed some policies that, in an ideal world, the University of Tennessee - Knoxville (UTK) and other institutions would have applied to Professor Anming Hu's case and similar cases. Everything in this talk can be found in the book *AAUP Policy Documents and Reports*, or what AAUP calls their "red book." It is available on the AAUP website at <https://www.aaup.org/reports-publications/publications/redbook>.

One of the most important documents AAUP recommends should be placed in faculty handbooks is "Recommended Institutional Regulations on Academic Freedom and Tenure." These regulations are designed to be incorporated verbatim into an institution's handbook. Within this document, Anita highlighted Regulation 5, "Dismissal Procedures" and Regulation 7, "Procedures for Imposition of Sanctions Other Than Dismissal."

Under AAUP standards, **there are only three legitimate bases for terminating a faculty appointment**: dismissal for cause, financial exigency, and program discontinuance. Regulation 5 prevents an administration from terminating appointments for bogus cause. Regulation 4c prevents termination for bogus financial reasons. Regulation 4d prevents termination for bogus educational reasons.

Regulation 5: Dismissal Procedures

These procedures should have been applied if UTK had moved to appropriately dismiss Professor Hu. The critical elements of these procedures are:

1. A hearing before an elected faculty body
2. An immediate harm standard used for suspension (in other words, the only reason to suspend a faculty member is for immediate harm)
3. The burden of proof is on the administration for demonstrating adequate cause

Regulation 4c: Financial Exigency

Financial exigency is defined as “a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means” than terminating appointments. 4c contains a list of representative “less drastic means” than terminating appointments.

Regulation 4d: Discontinuance of Program or Department for Educational Reasons

The third legitimate reason for termination of appointments is discontinuance of a program or department for educational reasons. The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, **as determined primarily by the faculty** as a whole or an appropriate committee thereof.

Anita emphasized that with all legitimate reasons for termination of appointments, the faculty needs to play a meaningful role.

Regulation 7: Procedures for Imposition of Sanctions Other Than Dismissal.

Anita explained that this regulation would have applied in Professor Hu’s case, if the administration had done the right thing. Regulation 7 reads: “If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify the imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 will govern such a proceeding.”

In other words, if a faculty member is going to be suspended (and suspension under AAUP standards is always with pay), there should be a faculty hearing to determine whether or not the administration has shown adequate cause for that suspension. If there is an immediate harm situation, that hearing could boil down to a consultation with a faculty senate president, but in every instance the faculty should be consulted.

Again, AAUP's [*Recommended Institutional Regulations on Academic Freedom and Tenure*](#) are available in the "red book," which is on AAUP's website.

- **Question: Is there any distinction between tenured faculty and non-tenured faculty in the handbook?** Answer: Not for dismissal for cause or for suspension. AAUP's policy applies to all faculty appointments--tenured, non-tenured, probationary for tenure, etc.

4. Campaign to Endorse Stanford Letter and End The "China Initiative"

- a. Speaker: Peter Michelson, Senior Associate Dean for the Natural Sciences, Stanford University

Peter explained that the Stanford Letter, which was mailed on September 10th, called for the termination of the China Initiative and gave three reasons. One was the apparent racial profiling occurring under the China Initiative. The other reasons had to do with the harm the China Initiative was doing to the United States' research enterprise. Peter believed that that harm would still need to be addressed even if the China Initiative were to be terminated. The China Initiative had the net effect of discouraging legitimate, open, and beneficial collaboration with institutions in China.

Peter's reason for signing the letter and helping to draft it was a growing realization that fear was influencing the actions and behavior of ethnically Chinese colleagues at Stanford. Peter believed that this was wrong and uncalled for, and thought that virtually everybody who signed the Stanford Letter would agree with that sentiment.

Peter expressed gratitude that other institutions--colleagues in Berkeley, Princeton Temple University, and other universities--had signed similar letters to the Stanford Letter. He mentioned a letter of endorsement created by APA

Justice that faculty at any university in the United States could sign. This letter echoed the Stanford Letter and made additional points about the harm of the China Initiative.

Peter commended the American Physical Society for their work as a professional society, to look at the US relationship in terms of research, and to proactively address concerns while promoting open research with China and other nations. He expressed that this work was very important and that discouraging open research was harmful to this country.

b. Speaker: Kai Li, Professor, Princeton University

Kai discussed another letter, drafted by six Princeton faculty members, in support of the Stanford Letter. The six faculty members were later assisted by several other faculty members who helped modify the draft to also comment on events that occurred after the Stanford Letter was sent. These events included the acquittal of Dr. Anming Hu and the dismissal of Dr. Qing Wang's case and five other cases. Princeton faculty pointed out the need for more university faculty members to be educated about the Department of Justice's targeting of scientists of Asian descent under the China Initiative. This federal initiative encourages unfounded prosecutions in a way that compromises American values of freedom and equality and that brings back memories of the McCarthy era.

Princeton held a Zoom panel discussion on the Stanford Letter and China Initiative. Prof. Rory Truex at Princeton Policy and International Affairs gave an overview of the China Initiative, Prof. Steven Kivelson from Stanford, spoke about their letter and why he joined other colleagues to draft it. Peter Zeidenberg spoke about some of the prosecutions under the China Initiative. Prof. Yiguang Ju spoke about the chilling effect among the Chinese American faculty members on campus. Kai thought that many participants thought that the panel was very informative.

After the panel, the letter drafted by Princeton faculty had 198 signatures. Kai explained that that was a significant number for Princeton University because that represented 20% of the faculty at Princeton--where the total number of faculty is below 1000. Kai thought that Princeton might serve as an example that if a lot of faculty members knew about the China initiative, and what the Department of Justice has been doing in terms of wrongly prosecuting people, they would support the letter from our Stanford colleagues and call for an end to the China Initiative.

- c. Speaker: Mark Elsesser, Director, Government Affairs, American Physical Society

Mark began by stating that the American Physical Society (APS) stands firmly against the unfair treatment of students and scientists based on national or ethnic origin. It is antithetical to the Society's values, and should not be tolerated. This particular principle was restated in an APS board statement that was released in the spring of 2020.

The APS agrees that the federal government should be concerned with attempts by foreign entities to illicitly acquire US-based research and technology (these are things like IP and trade secret theft, classified research, systematic efforts to develop covert, undisclosed relationships with US-based researchers). While the APS agrees that these are legitimate concerns, they believe that the current approach that the federal government is taking to address these concerns is not appropriate. It is actually weakening and not strengthening US scientific enterprise for a number of reasons that Peter laid out earlier.

The government may have a goal of "being tough on China." But they are destroying the lives of targeted scientists and academics. With that in mind, in early September APS President Jim Gates sent a letter to Attorney General

Merrick Garland and to OSTP director Eric Lander, expressing the Society's concerns with the DOJ China Initiative and outlining a series of recommendations to reformulate it to make it more effective (this letter did not call for termination of the China Initiative).

In this letter APS asked that the Initiative be refocused on cases where there are evident economic and national security risks, not on issues of administrative non-disclosure.

APS believes that the initiative should be rebranded or renamed. Threats can come from anywhere. Having the Initiative labeled as if to imply that threats come from a certain country is very problematic.

APS would like the DOJ to review past cases for instances of racial bias and mitigate profiling going forward.

APS would like to provide a time period for researchers to correct their disclosure record. Things have changed during the last couple of years; researchers should have a chance to make the records correct. A process should be established where breaches of scientific and research integrity--this is non-criminal activity--can be handled by funding agencies, by universities, and even by professional societies like APS.

After that letter was sent APS met with DOJ officials in the National Security Division to discuss these issues and give their perspective. APS were alerted that the National Security Division was waiting on their Assistant Attorney General to be confirmed by the Senate. Now that that has happened APS is looking to re-engage them.

In addition to meeting with the DOJ regarding this issue, APS is also involved in conversations around the implementation of NSPM-33 which was mentioned earlier.

The APS is also looking at how Presidential Proclamation 10043 is being implemented and the issues it is causing community members. Presidential Proclamation 10043 is the proclamation from the previous administration that bans a subset of Chinese students and scholars who are alleged to have ties to China's military-civil fusion strategy. Mark said that the APS had heard a number of cases where they had found that to be problematic with graduate students and postdocs trying to obtain a visa.

- **Question: Is the APS letter shareable?** Answer: The APS letter can be found here:
https://www.aps.org/policy/analysis/upload/APS_Letter_China_Initiative_Sept_2021.pdf

d. Speaker: Ron Yang, Professor, University at Albany, the State University of New York; Federation of Associations of Chinese Professors

- [Winds of Freedom](#): website by Stanford University faculty members
- APA Justice: [Stanford University Faculty Calls for End of "China Initiative" in Letter to AG](#)
- APA Justice: [Sign on to Endorse Stanford Letter to AG Garland to End DOJ's "China Initiative"](#)

Ron reported that 13 Asian American and Chinese American university organizations jointly drafted a letter that was sent to the White House the morning of November 1, 2021. He believed that these organizations were motivated by and under the leadership of the Michigan Association of Chinese Professors.

The beginning of this action was marked by fear and uncertainty, given the “forceful enforcement of law” on innocent scientists. When discussing what could be done, one idea was to have a direct dialogue with lawmakers, and the best way to move forward with this was to write a letter to lawmakers.

Representatives of the organizations focused on writing the letter to President Biden since the end of summer.

Many colleagues have contributed to the joint letter. A linguistics professor checked its wording and grammar, a law professor checked for legal issues, and many other professors contributed in one way or the other.

The letter was sent to the White House with the help of AAJC. Ron praised AAJC for being a great help, saying that it has opened a channel of direct dialogue between our academic community and lawmakers.

Next, Ron discussed specific points of the letter. The letter addressed the broader political environment in which the China initiative was created. Asian Americans and Chinese Americans have made significant contributions to this country. In the 21st century Chinese Americans and immigrant scholars and scientists also constitute a major driving force behind emerging fields, such as artificial intelligence, bioengineering, biomedical research, climate change, cybersecurity, data analysis, nanotechnology, and renewable energy. This was something the authors of the letter wanted lawmakers and the public to be aware of.

Then the letter went through a string of cases brought about by the DOJ on Asian American and Chinese American scholars. It included quite a few resources for President Biden to read through regarding the cases. It then called on the White House to take the following actions to remedy the harm caused by the chilling effects of these cases:

1. End the China Initiative. Targeting a specific racial group is not only unconstitutional, but it also risks leaving a gap for real perpetrators to harm our national security.
2. Under the umbrella of White House Initiatives on AAPI, create measures to safeguard Asian American and immigrant scholars' and scientists' human rights and academic freedom in the face of federal investigations.
3. Make necessary and timely compensations to individuals and families who have been traumatized by unjustified prosecutions.
4. To increase transparency, include current China Initiative cases in White House briefings on national security issues.
5. Increase oversight on law enforcement to prevent future selective prosecutions and human rights violations against scholars and scientists.

The letter ended with a message to policymakers: China's fast ascent into a global economic and technological power has created new geopolitical tensions with, challenges to, as well as opportunities for our country. However, policymakers shall always keep in mind that our greatest asset in this long race is the innovative power fueled by the world's most comprehensive higher education system and unparalleled academic freedom. The authors strongly believe that an academic climate promoting open international collaborations and an educational environment welcoming diversified and talented international students remain the pillars of success for maintaining our nation's global lead in science and technology.

The letter will be posted on the APA Justice website.

e. Speaker: Jeremy Wu, Co-organizer, APA Justice

Jeremy Wu noted that APA Justice also had a nationwide campaign to send a letter to the Attorney General endorsing the Stanford Letter. As of the beginning of this APA Justice monthly meeting, about 450 faculty members, scholars, and administrators, from about 160 universities and educational institutions across 40

states plus the District of Columbia, and Puerto Rico, had co-signed the APA Justice letter. APA Justice will be sending the letter to the Attorney General on Wednesday, November 3 with a list of the endorsers as of 11:59pm Pacific time on November 2.

Jeremy requested a final push to get all those who were qualified to sign on in the next day or so. The online sign on campaign remains active after November 2. Jeremy noted that APA Justice was committed to continue collecting sign ons until the China initiative ended.

5. Status Report on the Case of Kansas University Professor Feng "Franklin" Tao

a. Peter Zeidenberg, Attorney, Arent Fox LLP

- APA Justice Impacted Person: [Feng "Franklin" Tao](#)
- 2021/10/21 Mother Jones: [Has the DOJ's Campaign to Root Out Chinese Spies on College Campuses Gone Too Far?](#)

Kansas University Professor Franklin Tao was the first academic to be indicted under the "China Initiative" in August 2019. Professor Anming Hu was the first academic to go to trial under the "China Initiative."

Peter reported that Franklin Tao had a trial coming up December 6th. There were lengthy motion hearings a couple of weeks ago in Kansas, where Franklin Tao's legal team alleged a variety of serious government misconduct by the FBI in connection with Franklin's case. They did not believe the judge would provide relief as they requested, so Franklin and his team were preparing for trial.

Peter estimated that on October 28 or 29 (about three days after Franklin's trial was supposedly set to begin on October 25) Franklin and his legal team received a formal CIPA notice filed by the government, which indicates that there was classified material collected in connection with Dr. Tao's investigation. This is the type of information which is normally disclosed to the defense at the very outset of a case – not after 26 months

and just a few weeks before trial. They were set to have a hearing about this during the week of November 8. Peter predicted that the case would go forward in the beginning of December and would last several weeks.

6. Anti-Racial Profiling Project and Related Activities - Asian Americans

Advancing Justice | AAJC

- a. Speaker: Gisela Kusakawa, Staff Attorney, Advancing Justice | AAJC
 - Advancing Justice | AAJC: [Anti-Racial Profiling Project](#)
 - Legal Referral Service: Contact **202-935-6014** using the Signal app for attorney referrals. AAJC staff can assist you in Mandarin Chinese and English.

Gisela began her update by sharing a link to AAJC's social media toolkit, which provided the schedule for AAJC's week of action. The week of action started the date of this APA Justice monthly meeting, November 1, 2021. Gisela hoped that people could engage in the public facing aspects of the week of action, which would officially end on Friday, November 5. While there is a special emphasis on uplifting stories during the week of action, AAJC is treating all of November as a "month of action."

For Monday of the week of action, Advancing Justice | AAJC's top priority was to share the story of Dr. Tao. Gisela commented that it was due to great efforts from APA Justice, academic groups, and universities that Professor Hu's case amassed a high level of community support. Now AAJC called for community members to come together around Dr. Tao's case and to circulate information about what was happening--in particular, allegations of FBI misconduct. Gisela stressed that an important goal was for people to know the name of Dr. Feng Tao, even outside of the AAJC/APA Justice network.

For Tuesday of the week of action, AAJC planned a Twitter storm. They planned to use Twitter to uplift reports including those by Law360, C100's report, and a survey from

ASBMB. The goal was to give people a better understanding of the resources available in this work.

On Wednesday, AAJC planned a webinar on the movement to combat racial profiling. The panel was set to include John C. Yang (President and Executive Director of AAJC), Mara Hvistendahl (Reporter for the Intercept), Jinliang Cai (Board Chair of United Chinese Americans and Founder of Tennessee Chinese American Alliance), and Ron Yang (Professor, Department of Mathematics and Statistics, University at Albany, the State University of New York). Fighting racial profiling must be a holistic effort that includes policymakers, the media, community organizers, academics and scientists.

Gisela went on to say that AAJC also planned to lift up the work that Stanford and Princeton had done, as well as that of various other academic groups and civil rights organizations. Gisela expressed that AAJC was happy to help anyone who would like to participate in the week of action to combat racial profiling. Gisela stressed that although many of the letters in circulation at this time involved the China Initiative, the week of action was not just to end the China Initiative, but to end racial profiling broadly. She encouraged people to write to other federal agencies besides the DOJ and emphasized that now was the time to write to federal agencies addressing racial profiling, in order to focus their attention on the issue before the end of the year.

Returning to the schedule for the week of action, Gisela explained that Thursday's action was to lift up stories of impacted persons. AAJC reached out to each individual to make sure they were okay with being featured. They got permission from Professor Hu, Sherry Chen, and Dr. Wei Su to share again what happened to them.

Gisela emphasized that the goal of this week of action was to "get outside OCA's/AAJC's bubble." For example, the webinar planned for Wednesday had over 90 registrants, half of whom were representatives from a civil rights organization. This seemed to be evidence of more civil rights groups with their own areas of expertise joining broader efforts against racial profiling.

Gisela encouraged everyone to use and share the week of action materials to show that the movement against racial profiling is as important and as strong as other movements, such as the voting rights and immigration rights movements.

Gisela then announced that there would be legislative visits scheduled throughout November and encouraged people to join them. AAJC is able to arrange community organizing training for organizations that show interest. Anyone interested can reach out to Gisela or Vivian Qiang.

7. Q&A and Discussions

8. Next Meeting

- Monday, December 6, 2021