

**APA Justice Meeting – Monday, 2021/03/01  
11:55 am Eastern Time/8:55 am Pacific Time**

**Final Agenda**

**0. Introduction**

- a. [Faiza Patel](#), Director, Liberty & National Security Program, Brennan Center for Justice
- b. Ivy Yang, Wife of University of Tennessee Professor Anming Hu
- c. Peter J. Toren, Attorney at Law, <https://petertoren.com/>
- d. Harvard Professor Zhigang Suo (new)

We warmly welcome Faiza, Ivy, and Peter as new speakers to the meeting.

We thanked Harvard Professor Zhigang Suo for bringing us into the 21st century. APA Justice is now on Twitter @apa\_justice : [https://twitter.com/apa\\_justice](https://twitter.com/apa_justice). Please join and stay informed of the latest developments.

**1. CAPAC updates**

- a. Speaker: Krystal Ka'ai, Executive Director, CAPAC  
- Update from the Congressional Asian Pacific American Caucus (CAPAC)

Krystal reported that CAPAC Chair Rep. Judy Chu gave opening remarks in the February 24 webinar hosted by APA justice, Asian Americans Advancing Justice, and other organizations. Reps. Chu and Raskin sent separate letters to the NIH and to the FBI last year in which they asked several questions of both entities pertaining to their concern surrounding the profiling of Chinese American scientists and engineers. They received some response, but a lot of the questions went unanswered. CAPAC has been in conversations with the House Oversight Committee and is working to send an updated letter to NIH in hopes that the new Biden Administration will be able to provide answers to many of their previously unanswered questions.

CAPAC is also continuing to work with the Oversight Committee on the idea of potential hearing on this topic. However, in order to proceed with a public hearing, we must have compelling witnesses who are willing to go on record and testify before Congress. The Committee has heard from a few individuals who are willing to share their stories privately, but are not willing to testify publicly. CAPAC would appreciate any suggestions on witnesses who are willing to speak on record and meet the criteria that the committee is looking for. In order to proceed with the hearing, the Oversight Committee will also need more data to understand the broader scope of this issue. Without broader data around this issue, it is hard to make the case to Members of Congress that this is a widespread issue.

CAPAC wants to work with everyone to make this hearing a reality, bring greater attention to this issue, and ensure that there are adequate resources to address our concerns. The hearing is a priority for Rep. Raskin and his staff as well. However, they want to make sure that we have

compelling cases and data in order to make this a strong hearing. It would also be helpful to find Republican allies who are willing to speak on this issue as well.

CAPAC is hopeful that under the new Biden administration there will be some answers to a lot of questions that Members of Congress have raised over the past years. Krystal will keep us posted with further updates.

## **2. Debriefing on Third Webinar in a Series**

a. Speaker: Faiza Patel, Brennan Center for Justice

- APA Justice: [Third Webinar on Building Coalition Against “China Initiative” Discrimination](#)

More than 500 people registered for the webinar, exceeding its capacity. Thanks to Steven Pei, the event was also livestreamed through Facebook. Over 70 questions and comments were received during and after the webinar. Among the most notable was: "The webinar was outstanding. As an African American, most of my childhood has been spent living through this Black vs White lens, and it was not only insightful but moving to hear the numbers and stories of marginalized Asian Americans and the hatred that has become so normalized. Representative Chu and the president emeritus from SF State and others introduced points that will make it easier for me, an outsider to the Asian-American experience, to listen and make change."

Faiza reported that one of the goals for the webinar was to be intersectional, and to look at how different communities who have suffered the same kind of discrimination at the hands of the government, at the same time have seen rising levels of hate crimes. It is a very common dynamic. African Americans are portrayed as criminals; Latinos as illegal immigrants; Muslims as terrorists; and now with the Asian American community, spies, and the rhetoric of the last administration adding to the Coronavirus. On the terrorism issues, Faiza found incredible support to have the backing of the Asian American community, working closely with Asian Americans Advancing Justice and Rep. Chu for many years, as well as many others.

Having the Leadership Conference to speak in the webinar was really important in order to draw together the different threads of discrimination, and to understand how it is all part of the same picture. And to have the strength of allies to push back against the “China Initiative” is critical to success. Having a congressional representative obviously had a huge symbolic meaning. It also means that Rep. Chu could see the interest of the Asian American community with the extraordinary participation that we had at that webinar. It is a two-way street, she helps us and it will help her to take more action on these issues.

Having Dr. Karen Korematsu as part of the webinar drew the line between anti Japanese sentiment that led to the incarceration of so many Japanese Americans during World War II. It is important for all communities to understand that they don't stand alone.

What other kinds of allies can we bring to the table?

Having heard about what was happening in San Francisco State University and what's been happening at universities around the country, Faiza believes that there is definitely much more that academic institutions can do - not just treat them like isolated incidents, but to really focus

on looking at it holistically the way we did during the webinars. There is this ongoing pattern of how particular communities are picked on to be discriminated against at particular points in time, and hopefully having them take a sort of stronger stance on that and a more unified way.

In addition to the media, Faiza also suggested the business community. When the Muslim ban came down, there was a lot of support from the business community. She thanked all the groups coming together - Asian Americans Advancing Justice, UCA, APAPA, and APA Justice – and the incredible technical support by Steven Pei, pulling together in the background to facilitate and going forward.

For those who have not seen the webinar, it is available at YouTube:

<https://www.youtube.com/watch?v=4bG7Ck67ypY>. Faiza encourages you to watch it and not just rely on her descriptions. Keep up with the APA justice website and the new Twitter account. Let us continue to build more and more momentum around this particular issue.

### **3. The Story of University of Tennessee Professor Anming Hu**

a. Speaker: Ivy Yang, Wife of Professor Anming Hu

- 2021/02/16 Tennessean opinion: [Accused Chinese academics in Tennessee and elsewhere should not be unfairly punished](#)

- APA Justice: [Anming Hu](#)

While insinuations of national security are made, none of the known cases involving U.S. university professors and researchers under the "China Initiative" involve economic espionage or passing trade secrets. However, they have a devastating impact on their reputations, careers, and families. Ivy Yang, Professor Anming Hu's wife, shared her miserable experience of the past year.

They are fighting with the government's first test of the absurd NASA China restriction related prosecution. Professor Hu was a former tenured associate professor at the University of Tennessee at Knoxville (UTK) and like many others has fallen victim to this aggressive overreach in prosecution based on the "China initiative."

Around 4:20 pm on February 27, 2020, Ivy was about to leave office for home in Canada. It was a heavy snow day. She was informed of the unbelievable arrest of Professor Hu by their son, also a UTK student.

Professor Hu was obsessed with his devotion to his work and research. He called Ivy from prison and didn't even understand for what reason he was arrested.

Professor Hu was born in a rural village in China. To pursue his dream of science, he obtained his first PhD from the Institute of Physics in the Chinese Academy of Sciences. After that, he started his postdoctoral research in Spain and then in Germany for about two years. In 2000, he joined a research center at Tokyo with a Japanese government scholarship. In 2004, he came to Canada and pursued his second PhD in physics at the University of Waterloo. Their family immigrated to Canada in 2005. And in 2009, they became naturalized Canadians. He did

his postdoctoral research and taught in the University of Waterloo in 2011. He became an assistant professor at UTK in 2013.

He worked in the US with an H1B visa. His research focuses on the fundamental science of nanomaterials. He reported his connections and collaborations with universities in China to his department beforehand and has invited nine Chinese students. Professor Hu was investigated by the FBI beginning in 2018. They suspected him to be a member of the Thousand Talent Program. Professor Hu clearly told them that he was not. The FBI continued the surveillance for almost two years. One reason Ivy can think of this continuous surveillance is that he's a Chinese born professor. His academic record is open. The FBI can easily find, track and collect them and use them for their purpose.

Professor Hu was indicted of wire fraud in applying for the NASA grant, according to the FBI. Not only did he not pursue his personal interest in applying to this grant, he also selflessly contributed his vacation time as a matching fund. The NASA project totally funded the PhD students in UTK. One student graduated in 2019 and is serving in a naval base.

The indictment of Professor Hu has severely damaged his professional career and his family. Their son has seen a counselor concerning his mental health. Their visa status and application for U.S. permanent residence are now in doubt. They are constantly haunted by nightmares. Ivy is now back in Canada to work to support the family including three children and Ivy's mother.

Professor Hu's reputation and career built up through years of extraordinary efforts have been destroyed. UTK abandoned him after he was arrested. His tenured position was terminated without due process while he's still fighting for his innocence. He is in home detention and faces health issues. The local community at Knoxville has been a blessing for the family in these difficult times. They are like their brothers and sisters and above all offer hope. With their and your strong support and belief in justice, Professor Hu will be able to fight to the end.

#### **4. Peter J. Toren, Co-Counsel for Sherry Chen**

a. Peter J. Toren, Attorney at Law

- Author, [Intellectual Property and Computer Crimes](#), Full Court Press, 2021
- 2015/05/09 New York Times: [Accused of Spying for China, Until She Wasn't](#)
- 2021/01/03 Peter Toren: [Department of Justice's "China Initiative:" Two Year Recap](#)
- [Sherry Chen Legal Defense Fund](#)
- APA Justice: [Sherry Chen](#)

The APA Justice Task Force was formed in 2015 after Sherry Chen's criminal case was dismissed and reported by the New York Times. Peter, a former federal prosecutor who specialized in computer crimes and industrial espionage, was quoted in the article. He is a practicing attorney at <https://petertoren.com/> and recently published a book on [Intellectual Property and Computer Crimes](#). At the beginning of this year, Peter also wrote a recap about the "China Initiative," including a section on Distinguishing Between Racial Profiling and Espionage. He represents Sherry as co-counsel with Michele Young in her case against the government for false arrest, among other counts.

Peter opened his talk by stating that Sherry Chen would be a strong witness and she is available to testify before Congress. It has been nine years since she was first investigated. She is cleared of all charges. Peter went through the record, shared some lessons learned, and talked about distinguishing between racial profiling and espionage and his recommendations to the Biden administration regarding the "China Initiative."

Sherry was a hydrologist in Ohio working at the National Weather Service. In May 2012, she visited her parents in China. She met a former classmate who asked her to get some public information about the dam system in the U.S. She tried to get public information after she returned to the U.S. Unbeknownst to her, an informant reported Sherry to the Office of Security at the Department of Commerce, which opened a full investigation. The DOC agents did not really look at the facts of the case. Her Chinese origin probably led them to assume that she was in China for a nefarious purpose and came to the conclusion with the FBI that she broke a number of criminal laws on October 16, 2014.

Sherry was charged by the government for computer crimes and making false statements to the investigators. It is noteworthy that she agreed to be interviewed by the two DOC investigators, believing that she did nothing wrong. The first thing to take away from Sherry's case is don't talk to federal agents, get a lawyer, get somebody to find out what is going on. No matter how friendly they are, how you think that they're on your side, they're not on your side, and you should treat them as such.

The government didn't even have the courtesy to arrest Sherry at home, they arrested her at work in front of all of her co-workers. Sherry was an outstanding hydrologist with two master's degrees in hydrology. She won numerous awards and was a model employee for the government. Despite that type of background, the government still went ahead and charged her with some very, very serious crimes.

The government filed a superseding indictment and doubled the charges against Sherry in January 2015. On March 9, 2015, just two weeks before trial was to start, the government moved to dismiss the case. They probably realized that they were going to lose the case. There was no case against her at all. Her case was dismissed without prejudice, meaning the government had the right to try Sherry again within five years under the statute of limitations for federal crimes. This will become an important factor later.

Despite the fact that the government had dismissed all criminal charges against Sherry and she is totally innocent, DOC terminated her job at the National Weather Service. Sherry challenged that ruling. On April 28, 2018, the Merit System Protection Board (MSPB) issued a 135-page judgment that ordered Sherry's reinstatement and noted that Sherry was a victim of gross injustice. The chief administrative judge also questioned the legitimacy and motives behind the DOC actions.

DOC appealed the ruling even though very few appeals are successful. The MSPB has nearly 2,000 cases pending review and another 1,600 cases awaiting action. There is no certainty that the board will hear Sherry's case this year or next year.

Sherry has been waiting three years after the MAPB judgement in her favor. There is no decision yet whether she is entitled to damages. She has been in limbo with her job. She was a highly regarded hydrologist who studied floods on the Ohio River, obviously a very important job. If she is lucky, MSPB will hear the case this year. She may have to wait a couple more years before she would have her job fully reinstated.

On January 18, 2019, Sherry Chen and her attorneys filed a complaint in the Southern District of Ohio, alleging malicious prosecution, abusive process and false arrests against the government and against the two agents who investigated her. One of the agents who investigated her also investigated another similar situation, suggesting possible improper racial motive.

On April 26, 2019, the government filed a motion to dismiss on the grounds that the five-year statute of limitation had run. Peter took the position that the statute of limitation did not run from the time the government dismissed the charges against her without prejudice, but from the time that the case could not be brought because of the five-year statute of limitations that began to run when she was indicted. Until the statute of limitations had run from the date that she was indicted and since the government dismissed the case without prejudice the government still had the right to bring charges against her within the five-year statute of limitations period.

The judge has so far not issued any order on whether the complaint should be dismissed. So again, Sherry has been waiting two years for another decision with no further progress.

Sherry is waiting for two decisions - one for monetary relief, which was filed in the Southern District of Ohio, and the other before the MSPB. It has now been nine years since this whole nightmare started for Sherry Chen. She lost her job; she can't get her job back; she can't get any damages after going through these abusive processes, false arrest, and everything else.

Again a key takeaway from Sherry's case is don't speak to an investigator. Sherry considers herself innocent, and she was innocent of any charges the government brought. Sherry said she had nothing to hide and talked to the two investigators a number of times. Then she was charged with making false statements to the investigators. The investigators are not your friend, don't talk to the investigators, you have a right not to talk to the investigators without an attorney present.

On January 3, 2021, Peter's article titled "Department of Justice's China initiative - Two Year Recap" was published in IP watchdog, which is one of the leading blogs on intellectual property.

Peter ended the article with a section on distinguishing between racial profiling and espionage. He called for the Biden administration to review the "China initiative" to determine whether prosecutions and investigations are based on race, ethnicity, or ancestry of the targeted individual. And if so to take remedial action to prevent such profiling in the future. Federal resources should be devoted to economic espionage prosecution, and should focus on cases in which the evidence indicates that foreign governments directed the illegal activity under investigation, regardless of what nation is involved. The government should also implement sound policies to bridge the gap between academia, the US government agencies about how to best protect interests in fundamental research, while maintaining openness and successfully

competing in the global marketplace for international scientific talent. The continued economic success of the United States depends on making these important distinctions.

If anybody has questions, such as the FBI knocking on your door, Peter is available at 646-623-4654. He can talk through your problem and also discuss any situation through and through his email at [ptoren@petertoren.com](mailto:ptoren@petertoren.com).

In closing, Peter reiterated that Sherry Chen is available to testify before Congress on this particular issue. He believes that she would be a good person to do so because she has a saga and nightmare of nine years to describe to Congress. Although the case has been published widely in various newspapers and in various other media, Sherry has not received justice. She is still in limbo.

## 5. Anti-Racial Profiling

- a. Speaker: Vivin Qiang, Program Manager, Asian Americans Advancing Justice | AAJC
  - Advancing Justice | AAJC: [Anti-Racial Profiling Project \(Donate\)](#)
  - 2021/01/05 [Letter to President-Elect Joe Biden](#)

Vivian is program coordinator for the Anti-Racial Profiling Project at Asian Americans Advancing Justice | AAJC. She reported on an upcoming webinar on Federal Grant Applications in the Era of the “China Initiative:” How to Avoid Trouble, which would be held on March 4, 2021. It focused on helping scientists and researchers navigate current guidelines from federal grant making agencies in view of the Department of Justice’s “China Initiative,” including updated guidelines from several years ago to now. The speakers would cover topics such as the disclosure of foreign activities, as well as tax and foreign bank account reporting obligations associated with foreign income received by us researchers. The video recording of the webinar is now available at <https://www.youtube.com/watch?v=061jjNbN6IM>

Vivin also reported that Advancing Justice | AAJC has been working with impacted persons in launching a petition and a letter writing campaign to President Biden to call for a stop to the racial profiling of Asian Americans of immigrants and to call for an end to the “China Initiative.” And the letter campaign will ask people to write to their members of Congress to raise awareness on the issue. A template will be provided, but she encouraged folks to personalize the letter.

The petition and the letter writing campaign have gone live since the meeting at <http://bit.ly/EndChinaInitiative> and <http://bit.ly/EndChinaInitiative-Letter> respectively.

If you are being targeted or profiled by the government and if you think it is based on your ethnicity, please call **202-935-6014** for legal referral service, preferably using the Signal app. Additional information such as Know Your Rights and related information about the Anti-Racial Profiling Project is available at <https://bit.ly/36TA8Aa>.

## 6. Status of Requested Congressional Hearing

- a. Speaker: Senator Susan Lee, Maryland Senate Majority Whip

- APA Justice: [The Human and Scientific Costs of Racial Profiling Must be Heard](#)

Maryland State Senator Susan Lee provided an update on the request for a congressional hearing.

On February 1, 2021, Maryland State Senator Susan Lee and Terry Lierman led a coalition of prominent scientific and civil rights leaders and organizations nationwide and sent a letter to Rep. Jamie Raskin, Chair of the House Subcommittee on Civil Rights and Civil Liberties and the subcommittee staff, with copies to Rep. Carolyn Maloney, Chair of the full House Committee on Oversight and Reform; Rep. Zoe Lofgren, Chair of the House Committee on Administration; and Rep. Judy Chu, Chair of the Congressional Asian Pacific American Caucus; and representatives from Maryland.

While Senator Lee and others support efforts to protect America's interests and punish wrongdoers, it is a grave injustice to target and stereotype an entire ethnic group and place them under suspicion. To date congressional hearings have always focused on the espionage threat but not addressed any of the civil rights violations of the scientists, especially those who have been proven innocent. Their whole lives have been ruined; their careers have been devastated; and their families destroyed.

The letter was co-signed by organizations who represent thousands of individuals between the time when Rep. Raskin unfortunately lost his son Tommy; the January 6 insurrection of the US Capitol by extremists and white supremacists; the impeachment trial; and the debate on COVID-19. Rep. Raskin and members of Congress have been really busy; they have had a lot on their plate. This is one of the most challenging and trying times in the history of our nation.

The House Committee on Oversight and Reform is now focusing their attention and taking a very hard look at the joint letter and the work that has been done by the alliance. There was a meeting with staff leaders the week of March 1. Senator Lee was very hopeful for a good meeting and that we can move forward.

As Krystal indicated, the subcommittee is very interested in identifying specific and compelling witnesses who actually experienced injustices and are willing to share their account of what actually happened to them. We have to get the very best, strongest case in order for us to move forward. Nothing is yet confirmed, but Senator Lee is hopeful that she will hear something by mid-March and she will give you an update very shortly.

This is one of the most important civil rights issues impacting our AAPI community and the future of America's ability to advance groundbreaking medical and technological breakthroughs, especially during this pandemic. Senator Lee believes a hearing will provide an opportunity to shine light on any unfair and discriminatory policies or practices or civil rights violations employed by those agencies and institutions. And that she wants them to take immediate action to stop any kind of discriminatory policy or practices to ensure there is true fairness, transparency and accountability.



## **7. Catch-up on all developments**

- Twitter: @apa\_justice [https://twitter.com/apa\\_justice](https://twitter.com/apa_justice)
- Website: <https://www.apajustice.org/>
- LinkedIn: <https://www.linkedin.com/groups/12395028/>
- Facebook: <https://www.facebook.com/groups/386238778398753/>

## **8. Next Meeting**

- a. Next Call: 2021/04/05

Email Jeremy Wu at [Jeremy.S.Wu@gmail.com](mailto:Jeremy.S.Wu@gmail.com) or Vincent Wang at [wang177@gmail.com](mailto:wang177@gmail.com) to submit agenda items. Thank you.