2021/08/02 APA Justice Meeting

APA Justice Meeting – Monday, 2021/08/02
11:55 am Eastern Time/8:55 am Pacific Time

Final Agenda

0. Introduction of New Speakers
   a. **Nisha Ramachandran**, Executive Director, CAPAC.
   b. **Rep. Ted Lieu**, Member, **U.S. Congress (CA-33)**
   c. **Kai Li**, Vice President, **Asian American Scholar Forum**; Professor of Computer Science, Princeton University

1. CAPAC updates
   a. Speaker: Nisha Ramachandran, Executive Director, Congressional Asian Pacific American Caucus
      - 2021/07/21 **CAPAC Announces Nisha Ramachandran as Executive Director**
      - 2018/05/23 APA Justice: **Capitol Hill Press Conference**

Nisha was named Executive Director for CAPAC on July 21. She most recently managed her own consulting business that focused on AAPI advocacy. Prior to that, she served as Policy Director for the National Council of Asian Pacific Americans (NCAPA) and as an APAICS fellow in the office of Congressman Ami Bera. Nisha was the principal organizer for the very successful Capitol Hill press event on Sherry Chen on May 23, 2018. We thank Anisah Assim for providing the CAPAC updates in the July 7 monthly meeting.


Rep. Judy Chu and CAPAC members met with Commerce Secretary Raimondo the previous week and conveyed that this is a priority issue. Secretary Raimondo responded that she has put a pause on everything happening in that unit. DOC is doing its own investigation, looking into every case that ITMS has opened. The Secretary made clear that she inherited the problem, but DOC is addressing the issue swiftly. CAPAC expects to have follow-ups.

Many of the CAPAC members felt very strongly about this issue, Secretary Raimondo said she felt the same. At the end of this investigation, if the unit is not disbanded, the unit will be much more narrowly focused with a lot more oversight. While we do not know what the exact outcome will be, it is promising to see the steps being taken.

On the case of Dr. Anming Hu, CAPAC sent a letter the previous Thursday to the DOJ Inspector General, asking for an investigation of the FBI. CAPAC is aware of the statement by the DOJ to retry Dr. Hu’s case and will continue to work on this and other issues with the members as well.
   a. Speaker: Rep. Ted Lieu, Member, U.S. Congress (CA-33)

   - 2021/07/30 Rep. Lieu and 90 Members of Congress Urge DOJ Probe into Alleged Racial Profiling of Asians
   - 2021/07/30 Axios: Nearly 100 members of Congress call for probe into DOJ’s alleged racial profiling of Asians

Rep. Ted Lieu has represented California’s 33rd congressional district in the U.S. House of Representatives since 2015. He currently sits on the House Judiciary Committee and the House Foreign Affairs Committee. Rep. Lieu serves as an Air Force Reserve Command colonel. He has been a strong advocate for the Asian American community. On July 30, 2021, he sent a bicameral coalition letter to Attorney General Merrick Garland requesting an investigation of the issue of racial profiling of Asian Americans.

Congressman Lieu started with the good news that Asian Pacific Americans continue to be the fastest increasing ethnic group in America. Since 2000, the Asian American and Pacific Islander population has more than doubled in America.

According to Pew Research, Asian Americans will be the largest immigrant group in America by 2055 and Asian Americans are settling all over the United States, not just in places like New York and California but also places like Georgia, a presidential swing state, where President Biden won Georgia by 0.3%. The Asian American electorate is 4.7%. Quoting Rep. Judy Chu, Asian Americans went from being marginalized to now the margin of victory.

At the same time, we saw the tremendous response from Americans to the rise of Asian American hate crimes. We saw a number of rallies across America. Some of those appeared in towns you never heard of. These rallies were not huge, but they were not small either, and they were occurring in big cities and small towns and everywhere in between.

We also had Congress passed bipartisan legislation to address hate crimes. We had the president and vice president of the United States visit Asian American leaders in Georgia.

If all this had happened in World War II, Rep. Lieu us is not sure that Japanese Americans would have been interned. There is a different political environment. The Asian American community is more active and raises our voices more; we are also seeing non-Asian Americans acknowledge the rising importance of the AAPI community.

We have right now the highest number of Asian Americans in U.S. history in Congress.

What is not so good is that we continue to see the same pattern of defendants being charged or accused of spying for foreign country, such as China, and then having either all of their charges dropped, or when they go to trial, none of those spy-like charges are actually brought.

And the only thing that is the same among all these various cases is the defendants happen to look like you and me, they happen to look like Asian Americans.
We saw a few years ago the cases of Sherry Chen and Professor Xi, as well as other cases. This was clearly not a mistake because it kept happening over and over again.

That is why CAPAC many of the groups here today, and many of you worked together. We did press conferences; we did op-eds; we did a pressure campaign; we met with Attorney General Lynch, and two things happened.

DOJ towards the end of the Obama administration made a change, saying that basically for future cases regarding espionage in these kinds of spy cases, they would have another layer of review in Washington DC, so that a US Attorney could not just go off and do it by themselves.

They also ordered implicit bias training for every member of DOJ.

Under the Trump Administration, unfortunately they did not carry that training out. Rep. Lieu recently led a bicameral letter with 90 members of Congress and Senators that asked Attorney General Garland to reinstitute the implicit bias training. The letter also asked him to investigate whether the China Initiative was putting too much undue pressure on DOJ officials to engage in racial/ethnic profiling. We will see how the Attorney General Garland responds.

Rep. Lieu also had previously written another letter to the DOJ Inspector General. He also signed on to a CAPAC letter to the DOJ Inspector General. Different civil rights groups have also made their views known to DOJ.

All this is good to highlight the importance of this issue to DOJ and make sure that they understand that when they look at a certain fact pattern, they cannot increase suspicion on someone just because they happen to be Asian.

Rep. Lieu believes that such targeting is wrong, prohibited, and illegal. Elected officials, grassroots, and civil rights groups need to make sure that it does not happen again, and continue to apply pressure.

3. Remarks on the DOJ decision on the Retrial of Professor Anming Hu
   a. Speaker: Jeremy Wu, APA Justice Task Force

   - APA Justice Impacted Person: Anming Hu

Defense attorney Phil Lomonaco for Professor Anming Hu was not available to speak as scheduled because he was tied up in court.

Jeremy Wu reported that on July 30, 2021, the U.S. government announced that it intends to retry the case against Professor Hu. The first trial resulted in a hung jury, and the judge declared a mistrial on June 16.

Professor Hu was the first academic to go to trial under the “China Initiative.” The government’s case essentially fell apart when the FBI agent admitted to falsifying information and fabricating facts in its failure to find a non-existent spy in Tennessee.

After the declaration of a mistrial, a juror commented about the FBI that “It was the most ridiculous case. If this is who is protecting America, we’ve got problems.”
A local newspaper, Knox News, also published several reports that detailed the highly questionable practices of the FBI and university officials.

We are outraged that the government decide to retry the case despite this background. Besides CAPAC as Nisha has reported, OCA and Advancing Justice have also issued public statements condemning the DOJ decision.

After the government's announcement, Mr. Lomonaco filed a renewed motion for judgment of acquittal, which was originally filed on June 11, 2021. The motion for acquittal was made because "the evidence was insufficient to sustain a conviction. There is no evidence that Professor Hu willfully intended to deceive NASA... Without the intent to deceive there can be no wire fraud conviction. Without the convictions for wire fraud, the remaining counts would fail as well... In the alternative, Defendant would rely on previous briefings to the Court regarding the lack of intent to harm NASA as being a defense to wire fraud as well."

4. Asian American Scholar Forum
   a. Speaker: Kai Li, Vice President, AASF; Professor, Princeton University

   Professor Li is Paul Wythes and Marcia Wythes Professor, Department of Computer Science, at Princeton University. He spoke in the capacity as Vice President of the Asian American Scholar Forum (AASF). He sent regret from MIT Professor Yasheng Huang, President of AASF, who had a schedule conflict.

   The mission of AASF is to promote academic belonging, openness, freedom, and equality for all.

   AASF is a new non-profit, non-political organization working with the new community of Asian American scholars united in their commitments to promote scientific belongings, open freedom, and equality for all.

   AASF was started in February 2021. It organizes educational webinars and facilitates dialogues between speakers and raise awareness and issues that matter to the academic community. The webinars are co-sponsored by 11 Chinese American scholar associations, representing over 7,000 Asian American scientists and two Asian American organizations in AAJC and UCA.

   There are currently close to 50 members who are prominent scientists in different fields, about one third are elected to National Academies of Science, Engineering and Medicine.

   AASF views an academic research environment to be extremely important because that is the beacon for our country, and probably for the rest of the world. It is a magnet to attract the best and brightest from the world to this country.
Many of us are first generation Americans. We are fortunate to have developed our career here. And we value the research environment. We love this country. We would like to continue for many years to come.

For many years, even at the height of the Cold War, America has championed the ideas of open science and environment, and through our contribution to knowledge, we make America better and humanity better. This is one of the most important component for the talent ecosystem.

We feel very strongly and concerned by the current racial profiling, the China Initiative, and the chilling effect of the China initiative. That has been our current focus.

In terms of racial profiling. We all know about the history. Even currently in the academia, we are not free from implicit bias, and the subtle discrimination and inequities. They have a chilling effect on our community. One of the founding members said China virus creates racial profiling on American streets, and China initiative creates racial profiling for the American scientific labs.

The chilling effect has been so significant that we know quite a few top Chinese American scientists, or Asian American scientists in general, have left the U.S. because of the climate. Some are considering leaving. When we talk to PhD students or postdocs of Chinese descent, they are considering applying for positions outside the U.S. as their first preference.

That is unprecedented and very concerning because these young scientists are the future of science and America. Losing them to China and other countries is not good for us. They are not prosecuted. They do not have the incomplete disclosure problem. They do not do collaborative work with China or other countries.

They are leaving because they no longer believe that the U.S. has a safe research environment for them. That is a big problem.

In terms of activities, one that AASF is focusing on is data collection. Our community is very data and fact driven. We are collecting data about the chilling effect. We plan to collect data about the contributions about Asian Americans, especially Asian American scholars in science, technology, and economy.

Additionally, AASF is working with various organizations to do media outreach, education, and have dialogues with the policymakers and university leaders.

Besides the statement we submitted to the recent congressional roundtable a few weeks ago, we also have an open letter to the Chancellor of the University of Tennessee asking her to reinstate the tenure of Dr. Anming Hu.

We are also currently contacting university presidents and ask them to send letters to the Attorney General to review and halt the China initiative. We are also collecting data for an upcoming meeting with the Office of Science and Technology Policy. With this run of activities, we hope to have more to tell everyone in a few weeks.

Since this is our beginning, AASF is also trying to do some fundraising, recruit an executive director and staff member to run the organization well.

Lastly in a webinar that was organized by John Yang, Gisela Kusakawa, and Vivin Qiang of AAJC, Rep. Judy Chu was the keynote speaker and gave a powerful speech. She gave a great overview, explained why this is typical racial profiling, and informed the community what we
could and should do. It was very inspiring. John Yang followed with a very thoughtful speech and responded to many questions. About nine presidents of the Asian American scholar associations showed up that represented an estimated 7,200 members of their organizations in total. The YouTube recording of the webinar is available at https://bit.ly/3DbXyhC.

5. Anti-Racial Profiling Project - Asian Americans Advancing Justice | AAJC
   a. Speaker: Gisela Kusakawa, NAPABA Law Foundation Community Law Fellow
      - 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.
      - 2021/07/16 Advancing Justice | AAJC: Civil Rights Organizations Appeal FBI’s Refusal to Disclose Government Records on the “China Initiative”

Gisela reported that last month the ACLU and Asian Americans Advancing Justice had filed an administrative appeal to the FBI decision to close our joint FOIA request.

The original request sought records broadly pertaining to the government’s efforts to scrutinize, investigate, prosecute, and take other measures against US-based scientists and researchers believed to have connections with China.

We asked the FBI to make these records promptly available and highlighted their inadequate initial response, purportedly the FBI central record system, CRS, is not arranged in a manner that allows for them to retrieve the requested information, which is not accurate. CRS does contain records responsive to our request and can also search for records outside CRS. So we are working with ACLU to pursue any litigation efforts we might need to make sure that the FBI fulfills the responsibility to respond to our FOIA request.

In terms of educational efforts, we have worked with CAPAC and Professor Hu and a much broader educational campaign on the China initiative.

That is a follow up to our last CAPAC briefing as a group, and we are doing one-on-one briefings with the House and the Senate. We have had great educational efforts with the House and have been able to reach many individuals.

We have also worked with other civil rights organizations like APA justice and local Tennessee groups to advocate for Rep. Lieu’s letter asking for a DOJ investigation. As Congressman Lieu mentioned, we were able to have 86 House members and four senators support, which for an issue as complicated as this is just an outstanding result.

Gisela also highlighted that it was a victory that we were able to include Tennessee representatives, thanks to the local organizations. Christine, Jen-Jong and Jinliang have been instrumental in organizing those efforts.

If you are a constituent and you are upset about what is going on, we very much want you to reach out to us. We can lend support and provide materials or resources on these issues. It is so much more powerful when you reach out to your local representative, rather than have national organizations reaching out to your local representative.
We can certainly provide a lot of the educational efforts, but in terms of the local impact, whether it is the chilling effect that Kai had mentioned, or just what is going on locally, how you all feel about a case, or if there is a local case impacting you, that is something your representative wants to hear, and certainly they are hearing from the universities so it is important that they hear from you as well.

Last month there were five DOJ China initiative cases dropped. Those cases predominantly dealt with visa fraud. We felt that it was a positive step in the right direction.

But last Friday we received very disappointing news that the federal government decided to retry Professor Hu’s case. Essentially when the federal government filed a notice for an intent to retry, there is no further steps needed.

At this moment they can go straight ahead to scheduling. There is no motion for retrial that is needed, at least in criminal court in Tennessee. So that is unfortunate. We are waiting on the judge’s decision. The defense attorney has a busy schedule and so scheduling is something that will take time.

Gisela noted and emphasized that even as this case moves forward, there is no charge of economic espionage. The FBI agents followed Professor Hu and his son for a year and a half. There was no evidence of economic espionage or criminal activity. As you see the news, or any framing as this moves forward, that is important to emphasize this is a wire fraud case, but it is rooted in allegations of failure to disclose, but Professor Hu was just following UTK policy.

It is very important that you make sure that we keep the focus very clear.

This is a China Initiative case started out as an economic espionage case. It is still on the DOJ website. It is still touted as a China initiative case. But this is not actually an economic espionage case. There is no such charge brought forward.

We thank the co-signers, Nisha on her leadership as she transitions in, and Rep. Lieu’s letters pushing for oversight and an investigation on these alleged FBI investigations and misconduct.

We encourage you to keep pushing in your own individual capacity. We see ourselves as a resource, so we can lend you the materials that you need and advocate in your local community.

Gisela can be reached at gkusakawa@advancingjustice-aajc.org. Vivin Qiang, Program Coordinator, Anti-Racial Profiling Project, can be reached at vqiang@advancingjustice-aajc.org

6. Q&A and Discussions

There were lively discussions about the roles and responsibilities of the University of Tennessee Knoxville (UTK) and university administrations in general. The FBI/DOJ and university administrations are two powerful institutions.

Discussion topics include university handling of FBI pressure and investigations, personnel documents, due process, Faculty Senate, disclosure forms, loss of tenure and reinstatement, American Association of University Professors, comparisons of handling by other universities.
There were also discussions about on-the-ground feedback from students leaving the U.S. for other options, recent dismissals of former Cleveland Clinic researcher Dr. Qing Wang and the five visa fraud cases, failure of the government to respond responsibly to FOIA requests, options to obtain information including litigation, discovery in court, and informing local Congressional members, fear of FBI tactics and the courage to stand up to it.

7. Next Meeting

The first Monday, September 6, is Labor Day, a federal holiday.

The next monthly meeting is scheduled for September 13, 2021.