

2021/10/05 APA Justice Meeting

APA Justice Meeting – Tuesday, 2021/10/05
11:55 am Eastern Time/8:55 am Pacific Time

Final Agenda

0. Introduction of New Speakers

- a. [Rep. Jamie Raskin](#), Member, U.S. Congress (MD-08)
- b. [John Hemann](#), Partner, Cooley LLP
- c. [Louis Gross](#), President, University of Tennessee Knoxville Faculty Senate

1. Remarks by Rep. Jamie Raskin

- a. Speaker: Rep. Jamie Raskin, Member, U.S. Congress (MD-08)
 - APA Justice: [2021/06/30 Congressional Roundtable - "Researching While Chinese American"](#)
 - APA Justice: [Congressional Probe into NIH and FBI](#)

Maryland State Senator Susan Lee introduced her former colleague in the Maryland State Senate and current U.S. Congressman Jamie Raskin. State Senator Lee described her experience with Rep. Raskin as a consensus and coalition builder who served the state of Maryland with distinction on matters such as civil rights, voting rights, and uplift of women, children, and families. He was also a beloved professor of constitutional law at American University College of Law.

As Chair of the House Subcommittee on Civil Rights and Civil Liberties, Rep. Raskin and Rep. Judy Chu, Chair of the Congressional Asian Pacific American Caucus, led the Congressional Roundtable on June 30, 2021. It was the first congressional proceeding conducted to shine light on the profiling and egregious civil rights violations that have caused enormous damage to the careers, reputations and lives of many innocent scientists of Asian and Chinese descent, as well as America's ability to advance medical and scientific breakthroughs, especially during the pandemic. The Roundtable would not have happened but for Congressman Raskin.

Congressman Jamie Raskin also serves on the House Judiciary Committee, the Committee on Oversight and Reform, the Committee on House Administration, and the Select Committee on the January 6 Attack. He was a lead impeachment manager for the Senate trial during the second impeachment of former President Donald Trump.

Rep. Raskin thanked State Senator Lee for the introduction and her leadership in bringing the unjust attacks on Chinese American scientists to his attention and assembling the facts and clues of a serious nationwide problem for the Roundtable.

Rep. Raskin opened his remarks by recalling **the first big principle** from one of his law school professors: **due process**. Due process is all about incorporating basic intuitions and conceptions about fairness and justice into the law enforcement and judicial process, and due process precludes racial and ethnic profiling.

We do not assume that because a person is of a particular racial, ethnic, gender, geographic group, or any particular kind of group that they therefore are likely to be guilty of committing a crime. We do not use that as the basis for prosecution, investigation, government, profiling, or depiction of a person's criminal propensities.

It is a very serious problem when the government simply sets out to say, let us look for Chinese American scientists and assume that they are somehow guilty of betraying their contracts, their oaths of office, their country, or other wrongdoings.

This is the fight we have been having in many different social domains such as the driving while black public discussion and controversies. When there are objectively determined patterns of law enforcement stopping African American motorists to double or triple the rates of other motorists, there is the insinuation or the assumption, conscious or unconscious, that because they are black, that somehow they are guilty of some kind of crime.

That assumption is insidious and destructive to the lives of particular people but also helps to reproduce racism and racially loaded mechanisms of law enforcement.

Drawing on George Orwell's book 1984, Rep. Raskin discussed **the second big problem** of national and cultural psychologies developing where we **attribute the actions of particular governments or particular governmental leaders to the entire people of a country**. We then attribute those imagined qualities or actions of a whole country or whole people to other people who might live in other countries, because they are of a particular ethnic or racial descent, or extraction.

Orwell basically predicted the whole world could be mobilized into worrying in a totalitarian way about racial, ethnic blocks against an enemy abroad and then also searching for the enemy within who somehow is aligned with the enemy abroad.

That is a really dangerous phenomenon that intersects with fundamental violations of due process and liberty for the citizens of a particular country. It is a form of thinking that we must resist.

We are better to resist it in America, which was created by our founders as a nation of immigrants, as Tom Paine put it, a refuge for humanity and an asylum for people seeking freedom from oppression, authoritarianism, and religious, political, and economic discrimination. That is who we are. All of us are descendants of immigrants except for the descendants of slaves or Native American Indians. That is who everyone is in our country.

Rep. Raskin does not think any of us wants to have to take responsibility for what the current incumbent governmental regimes governing landmass where our ancestors once lived are doing. You do not impute the actions of governments, even to their own people, much less to other people living around the world.

Rep. Raskin was very happy that everybody who came in to testify in his Roundtable briefing and talked about their experience to point out what it means for America, in terms of a brain drain and losing our scientists, not just making people's lives and their families miserable but what it means in terms of our ability to be the best multi-cultural, multi-racial, multi-ethnic immigrant society on Earth.

Rep. Raskin emphasized that nothing he said is meant in any way to excuse people who are committing crimes of whatever ethnicity and race. We do not demonize and vilify people simply according to their ethnic and racial ancestry or consider them to be immediate suspects.

Rep. Raskin responded to several questions in the Q&A session, including

- **Question on the China Initiative of the Department of Justice:** 177 Stanford University faculty members co-signed a letter to Attorney General Garland calling for the termination of the China Initiative. There are issues with respect to intellectual property theft with China, but the focus particularly on academic researchers seems utterly misguided and harmful to the country. What is your insight on FBI Director Christopher Wray's characterization and justification of the whole-of-society approach, which seems to be exaggerated?
- **Question on oversight and accountability:** there are many processes within government to hold people accountable like the inspectors general, but they seem to be missing in action. How can we hold enforcement agencies more accountable to our democracy?
- **Question on National Institutes of Health (NIH) Director:** NIH Director Dr. Francis Collins announced his resignation today. Do you have any reaction? And what are your thoughts on what the next director of NIH should bring?
- **Question on decriminalization of research integrity violations:** Do you think that most of the China Initiative cases against academics should be decriminalized, that is dealt with as potential violations of research integrity, rather than as criminal cases that could result in prison sentences and heavy financial penalties if people are found guilty?

2. CAPAC updates

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

Nisha reported that Congressman Raskin is an active member of CAPAC and works closely with CAPAC Chair Rep. Judy Chu, as do their staffs. Nisha expressed appreciation for the high priority Rep. Raskin and his office have taken to address the racial profiling issue.

Nisha reported on a joint hearing conducted by the House Subcommittee on Investigations and Oversight & the House Subcommittee Research and Technology on Balancing Open Science and Security in the US Research Enterprise. Dr. Xiaoxing Xi was one of four witnesses in the hearing, which covered foreign interest in research and the need for balancing those concerns with open science and the concerns of the China Initiative. A link to the hearing is available here: <https://bit.ly/3CZXq43>.

Nisha also reported on the recent interaction with the staff at the Department of Commerce (DOC) regarding the review of their rogue investigative unit, which has been abolished. She has heard about a number of community concerns. On one concern that records are being destroyed in the process, the DOC staff has conveyed that no one is destroying records and in fact they are preserving them. CAPAC will maintain continuing dialogue with DOC staff.

CAPAC is also working on a member-level meeting with Attorney General Garland, which will certainly cover a number of questions related to the China Initiative and cases.

3. Remarks

- a. Speaker: John Hemann, Partner, Cooley LLP
 - 2021/09/28 Law360: ['Overheated': How A Chinese-Spy Hunt At DOJ Went Too Far](#)
 - Cooley LLP: [Our Fight for Racial Justice](#)
 - APA Justice: [Chen Song](#)
 - [Sherry Chen Legal Defense Fund](#)

John Hemann is a prominent trial lawyer with more than 25 years of experience overseeing high-profile white collar, criminal, anti-corruption, Foreign Corrupt Practices Act, national security, trade secret, cybersecurity and antitrust cases and prosecutions in the public and private sectors. Most recently, John served as chief of the special prosecutions and national security unit and deputy chief of the criminal division at the US Attorney's Office for the Northern District of California. When the "China Initiative" began at the Department of Justice (DOJ) in 2018, John was literally in the room.

John made a big announcement that his firm Cooley will be representing Sherry Chen along with the ACLU National Security Project, and attorneys Michelle Young and Peter Toren. He commented that Michele and Peter have done a fabulous job in carrying Sherry's torch through what must have been very dark and lonely days when it was just Sherry and them against the world. When Senator Wicker's report came out, it became obvious that the torch that Sherry was carrying illuminated a problem that was far bigger than her case alone revealed, which brought Cooley and ACLU into the case.

John's team has just begun representation of Sherry and is looking forward to a lot of success in the weeks and months ahead. Cooley is very committed to this work as it recognizes that we all share the responsibility to affect change in the fight for justice. Sherry Chen's case falls right at the intersection of two issues that the Cooley cares a great deal about, which are due process, and racial justice, as Rep. Raskin spoke about a few minutes ago.

Cooley and John also recently represented Dr. Chen Song, who is an accomplished Chinese neurologist who came to the United States in 2018 with her young daughter to work in a prestigious lab at Stanford University studying brain disease.

Dr. Song was motivated by one thing which was to become a better doctor, and to save people and save lives. In July 2020, she was arrested and charged with a claimed visa violation. That should never have been approached by the US government as a criminal matter, echoing an earlier remark by Rep. Raskin.

Worse yet, she was charged at the same time as four other Chinese doctors in an example of what can only be described as rounding up the usual suspects to fight in this case was clearly an imagined problem. None of the five were charged with trade secret violations or espionage. And there was never any evidence of any of those sorts of things.

John and Cooley vigorously pursued information discovery in Dr. Song's case. The government claimed it was classified and information began to come out, as it was in Sherry's case, that

even within the government, there was discomfort about the way the FBI and DOJ were handling the matter and serious questions about whether it should ever have been charged in the first place.

Under the weight of these increasing disclosures, the government dismissed all the charges against Dr. Song and the other four doctors in July of this year. As a lawyer, John has never been so happy to report that Dr. Song was able to immediately return to China where she has been reunited with her young daughter, her husband, and her family, and back to practicing medicine.

John echoed Rep. Raskin's comments about due process and national security. There are valid concerns about national security. But those concerns cannot be manifested into targeting or profiling people of a race or national origin because it does not work in the first case. As a prosecutor who spent a lot of time working on national security matters, John told us that it is not going to solve the national security problems that it is meant or allegedly motivated to solve.

In John's view, it makes us less safe because it undermines exactly what makes us strongest, which is a constitutional commitment to due process. That is what makes us different. That is what makes us as a country better and more hopeful than any other country. And it all comes down to due process. And while national security, information security, and trade secret thefts are real concerns and real problems, they are not problems that can be identified by first looking at suspects and then looking for crimes.

John was doing national security cases and trade secret cases long before the China initiative. The case that launched the China Initiative was a trade secret case that was identified the old-fashioned way by first seeing evidence of an actual trade secret theft and then figuring out who committed the crime. John and DOJ worked very closely with the Taiwanese government. The company that employed the individuals who stole the trade secrets was a Taiwanese company. It was worked out that the Taiwanese government would prosecute the individuals and the US government would focus on the companies. One of the companies pled guilty, and the case against the Chinese company they were working with moved forward.

That case did not need a China initiative. That case moved forward on the evidence, and it continues to move forward on the evidence with John's successors in DOJ.

In conclusion, Cooley and John's colleagues - the ACLU and Michelle and Peter - are committed to seeking justice for Sherry like they did with Dr. Song. Sherry has the support of literally thousands, probably tens of thousands, of people who know about her case and will greatly benefit from that support.

4. White Paper on Racial Disparities in Economic Espionage Act Prosecutions

a. Speaker: Andy Chongseh Kim, Attorney, Greenberg Traurig; Visiting Scholar, South Texas College of Law

- Committee of 100: [Racial Disparities in Economic Espionage Act Prosecutions: A Window Into The New Red Scare](#)

- 2021/09/21 YouTube: [Racial Disparities in Economic Espionage Act Prosecutions: A Window into the New Red Scare](#) (1:30:24)

Andy Kim reported his plan to update his 2017 white paper in the January 2021 APA Justice monthly meeting. He has completed his work and the updated paper was released by the Committee of 100 on September 21, 2021.

Andy reported that this new update was officially supported by the Committee of 100, and it included insights from Carol Lam, Margaret Lewis, leading scholars from ACLU, Randy Katz, and Jeremy Wu. It is focused only on the Economic Espionage Act (EEA), which is a narrow statute not used in all China Initiative cases.

Andy's update covers all EEA cases since its enactment in 1996. A very large percentage of these cases have involved China, but there was almost an equal number involved the US. There are spies and people stealing trade secrets everywhere. The threats are not just from overseas or from China. They come from our own backyards such as Mississippi and Texas. Most criminals do not care about national borders; they are mostly for their own interests.

The China Initiative has focused heavily on federal grant recipients - mostly people at universities. However, most alleged trade secret thefts come from places that have trade secrets. Academia is about open sharing of knowledge. Only 3% of the EEA cases that allege trade secrets theft involved a university. So why is the government so focused on universities when we know for a fact that most of these grant recipients are doing public research?

Andy opined that the answer is that the government is looking for crimes that have something to do with China, rather than identifying problems and trying to figure out who did it.

Before 2009, only 16% of defendants charged with stealing trade secrets were Chinese. Starting with the Obama administration and continuing to the Trump administration, the majority of people accused of spying have been people with Chinese descent. About half of the people with Chinese descent are Chinese nationals.

When Andy looked at the innocence issue, one in four people of Asian or Chinese descent who are accused of spying or trying to steal trade secrets are never proven guilty. They may have been convicted of false statements or some other process crimes, but they were never proven guilty of stealing trade secrets.

After filtering out the Chinese nationals, one of the most fascinating findings according to Andy is that one in three Asian American citizens or Chinese American citizens who were accused of being a spy is never proven guilty. They have not been proven innocent, but it looks like they could have been falsely accused.

For the people who are guilty of committing some kind of crime, those with Asian names get punished twice as hard. They go to prison twice as often, and they get sentences twice as long.

Rather than be woken up by the FBI with guns drawn like Dr. Xiaoxing Xi and his family or being arrested at her office and marched out in front of her colleagues and friends in handcuffs as Sherry Chen did, most people with Western names who are charged under the EEA are not arrested. They received a polite formal letter asking hem to show up in court because they have been charged for a crime.

There are many far more preferred ways, but that is a courtesy that the vast majority of Asian and Chinese defendants did not receive. Most of them charged under EEA are handcuffed.

The vast majority of the people who are charged with these white collar offenses are granted bail and almost all people with Western names starting with the EEA are granted bail, but people with Asian names are five times as likely to be denied bail.

This is a factor that comes into play with many cases. Dr. Zhendong Cheng, a Texas A&M University professor with a NASA grant who was arrested in Houston, was just released from lockup after about a year of pre-trial detention. He was not convicted of any crime, but he was still held and locked up like a common criminal for a year.

Lastly, Andy reported that DOJ publicizes charges of accusations that a person with a Western name commits espionage half the time. In other words, spying by people with Western names is only newsworthy half the time, but alleged spying by people with Asian, Chinese, or foreign names is pretty much always newsworthy. Andy closed his talk with a slide labeled "New Red Scare."

5. Reinstatement of Professor Anming Hu and Moving Forward

- a. Speaker: Louis Gross, President, University of Tennessee Knoxville (UTK) Faculty Senate
 - UTK Faculty Senate President Web Page: [Faculty Member Suspension Issue](#)
 - APA Justice: [Anming Hu](#)

Professor Louis Gross is also Chancellor's Professor and Alvin and Sally Beaman; Distinguished Professor of Ecology and Evolutionary Biology and Mathematics; Director, The Institute for Environmental Modeling. According to the UTK website, "The Faculty Senate is a volunteer organization made up of faculty leaders who advocate for the faculty. Members are elected by tenure-track and non-tenure-track faculty members in their caucuses. In these times, shared governance and academic freedom are more important than ever for all faculty members, tenure-track and non-tenure track."

Lou followed Andy's presentation by telling a Red Scare family history that he was followed by the FBI when he was two to five years old because of allegations against his father who was Jewish.

First, Lou made it clear that any remarks he made are his as an individual UTK faculty member. He does not have authority to speak for the university. That function is assigned to the administration by the Board of Trustees.

Second, Lou expressed his personal chagrin and horror that any of his faculty colleagues would have to go through the horrendous challenges that Dr. Hu and his family faced. Over the past years, it is difficult for Lou to comprehend the magnitude of impact to Dr. Hu and his family caused by the actions of an agency of our federal government. And this has been a common sentiment expressed to him by many of his faculty colleagues who have been in contact about this issue.

Third, a long set of questions were posed to him by APA justice in [the invitation letter](#) for the meeting, and Lou started by providing some framing of his response.

Lou maintains a Senate Faculty President web page at <https://bit.ly/3Cr67F1>. His prepared statement for the APA Justice meeting is posted at <https://bit.ly/3lgW3b0>.

In summary, Lou's talk covered

- The processes of shared governance that operate at UTK and in a similar manner at most all other higher education institutions in the US.
- The roles and responsibilities of the UTK Faculty Senate including the development and recommendation of policies regarding the educational objectives of UTK and input from a faculty perspective to the campus administration.
- There are two components to the Faculty Senate responses arising from the circumstances associated with Dr. Hu's suspension and subsequent loss of faculty position.
 - Whether the protections afforded to faculty as stated in the UTK Faculty Handbook were upheld
 - Whether there are suggestions to potentially change University policies that come to light from the situation.
- The Faculty Handbook states that the Chief Academic Officer should consult with the Faculty Senate leadership when suspension or termination of a tenured faculty members is being considered. In Dr. Hu's situation, then President of the Faculty Senate was informed, but not consulted.
- The UTK policy is clear that there shall be no expectation of privacy for any information transmitted using University information technology resources. However, a two-fold issue that has been raised is:
 - Under what circumstances is information released and to whom,
 - Under what circumstances is a University employee notified that certain information (personnel information or other information stored or transmitted through University resources) is being released.
- Dr. Hu's case has led the Faculty Senate to consider issues of data release, notification, and consultation, and has suggested a need for greater clarity on these matters in ways that could lead to modifications of the Faculty Handbook. Lou fully expects that the full Senate will proceed, in collaboration with the appropriate University leadership, to suggest modifications. Any such modifications require approval by the Board of Trustees.

6. Anti-Racial Profiling Project - 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 highlighted several key action items on what you can do and what role you can play in combatting racial profiling. Gisela can be reached by email at gkusakawa@advancingjustice-aaajc.org to respond to your questions or discuss how you can join the efforts.

The month of October is an important month for the anti-racial profiling movement as we prepare for legislative visits the first week of November. Gisela and Advancing Justice | AAJC cannot do it alone and need all your help. They also recognize that time is of the essence and perfection is not always ideal. Gisela and Advancing Justice | AAJC reached out to over 70

different offices in their advocacy work with Dr. Hu. When groups were able to join, they had groups joined. But if it was only possible for a very small meeting to provide them with a case background about Dr. Hu's case, that was always the priority. Gisela and Advancing Justice | AAJC are going to have the same sort of perspective in October and November.

The Senate is not as educated on this issue as the House is. That is a key problem, including both Republican and Democratic offices. Gisela and Advancing Justice | AAJC have identified around 40 different key Senate offices, such as the Senate Judiciary Committee and the Senate Commerce, Science and Transportation Committee. Many offices are involved in multiple committees.

Gisela and Advancing Justice | AAJC are reaching out to schedule meetings for the first week of November, and will be conducting two trainings in October. They are looking for people who feel that they are impacted, or local organizations that may not have as much work in this area but are scared or feeling fearful or see that there is an impact on the community. This is a lot for local groups to suddenly become experts. Gisela and Advancing Justice | AAJC are here to provide every resource that you would need in order to have these meetings; they can make the connection and provide all the packets, documents, and case analyses.

If you feel your community is impacted, you can share what your fears are, what your hopes are for your senators. That is all you need to do. You do not have to suddenly become experts. Gisela and Advancing Justice | AAJC will reach out to other organizations who are experts as well on this issue. So you will not be alone in these meetings.

Gisela also clarified what it means to be an impacted person. It is not limited only to people who have pending litigation. It could be a professor who sees his/her friends and colleagues being targeted, or it could be a student who has heard about a classmate who could not continue with their classes in the fall semester. Gisela can provide further clarification.

The Capitol Hill meetings and educational efforts are the top priority for Gisela and Advancing Justice | AAJC. The second priority is Professor Feng "Franklin" Tao, another impacted person under the "China Initiative" who is in need of our help. His original trial was scheduled to start on October 25, 2021, but that has been delayed. Advancing Justice | AAJC will keep you posted on his new trial date.

Additionally, Gisela updated participants that the new Guidelines for the Enforcement of Civil Immigration Law now includes any non-citizens who the Department of Homeland Security considers poses a national security threat, and part of that is espionage and espionage related activities. Advancing Justice | AAJC is still reviewing to see how this might impact our specific communities.

7. Q&A and Discussions

8. Next Meeting

- Monday, November 1, 2021