Final Agenda

0. Introduction of New Speakers

a. Gang Chen. Carl Richard Soderberg Professor of Power Engineering, Massachusetts Institute of Technology
b. Robert Fisher. Defense Attorney for Professor Chen; Partner, Nixon Peabody LLP
c. Zhigang Suo. Allen E. and Marilyn M. Puckett Professor of Mechanics and Materials, Harvard University
d. Carol Lam. Former U.S. Attorney for Southern District of California

1. White House updates

a. Erika Moritsugu. Deputy Assistant to the President and Asian American and Pacific Islander Senior Liaison, The White House

Erika opened up by wishing attendees a happy Lunar New Year and reflecting on the accomplishments of the last year. 2021 was a difficult year with the dual crises of the Covid-19 pandemic and the spike in anti-Asian hate. At the same time there are a number of victories worth celebrating. In his first year in office, President Biden was swift to speak out against anti-Asian hate including issuing a presidential memorandum condemning racism, xenophobia, and intolerance against Asian American and Pacific Islander communities. In May, Biden signed the Covid-19 Hate Crimes Act and the Jabara Heyer No Hate Act into law.

The president’s office also oversaw the provision of $21 million in funding for state and local justice programs to investigate and prosecute hate crimes and for the translation of Department of Justice information about hate crimes reporting.

The president made advancing equity, justice, and opportunity for Asian Americans, Native Hawaiians and Pacific Islanders (AANHPIs) a top priority by signing an executive order reinstating the White House Initiative on AANHPIs. Last week the vice president swore in the new President’s Advisory Commission on AANHPIs which is co-chaired by Secretary Javier Becerra of Health and Human Services and Ambassador Katherine Tai, US Trade Representative. [https://bit.ly/3GNmH2K](https://bit.ly/3GNmH2K)

The commission had two full days of meetings, featuring speakers like Ambassador Susan Rice, Assistant Attorney General Kristen Clark, commissioned officers from the Gender Policy
Council, the National Economic Council, and the Office of Science and Technology Policy, senior officials from HHS, and outside experts to help them launch their work.

Under the president’s and vice president’s leadership the administration has already increased representation of AANHPIs in the federal government. This administration is one of the most diverse in history. 17% of White House staff self-identify as Asian American, Native Hawaiian, or Pacific Islander. Across the agencies, 15% are AANHPI, including leaders of key agencies. The administration has increased AANHPI access to federal services like affordable housing and provided immediate relief to AANHPI families through the American Rescue Plan. These efforts have reduced poverty in AANHPI communities by nearly 22% and reduced AANHPI child poverty by nearly 30%. Additionally, the administration has provided $206.3 million worth of loans to AANHPI-owned small businesses and supported students by providing more than $36 billion to higher education institutions that primarily serve AANHPIs.

Last month the administration released a fact sheet detailing all of the steps the Biden-Harris administration has taken in its first year to advance equity and opportunity for AANHPIs. Erika encouraged attendees to take a look at the fact sheet. [https://bit.ly/3oHoEl6](https://bit.ly/3oHoEl6)

While Erika was proud of the accomplishments of the past year, she recognized that much work still needed to be done to ensure safety and equity for AANHPIs. In 2022, the administration will continue to strive for progress by lowering costs for American families, fixing supply chains, and advancing the president’s Build Back Better plan.

Erika went on to address the issue of research security. She explained that the Biden-Harris administration is committed to ensuring that the US government avoids basing policies or processes on prejudice. The administration is committed to affirming the integral role of AANHPIs and people of all national origins in the US, and supporting collaboration with international partners when it is in the US’ best interest. Since January 2021, the Office of Science and Technology Policy (OSTP) has been working on how to implement the national security presidential memorandum NSPM-33 across the federal government. The federal government has been collaborating with researchers and research institutions to develop implementation guidance for NSPM-33 that protects US security and openness, is clear to researchers, and does not fuel xenophobia. OSTP has had briefings with members of Congress, a special meeting with civil rights leaders, and an additional meeting with academic and research community members that are directly impacted. The Biden-Harris administration will continue to engage with America’s remarkable and diverse community of researchers and institutions to ensure that the guidance surrounding NSPM-33 upholds its core values.

Next Erika spoke about the “China Initiative.” She was not able to speak about individual cases, but stated that racial profiling has no place in American society, not by private companies, institutions, or law enforcement. She affirmed that the Department of Justice at the highest levels fully embraces its mission to combat discrimination and is deeply committed to enhancing trust and rebuilding trust with the AANHPI communities. The Department of Justice has been engaged in initiatives to combat anti-Asian hate, including by holding listening sessions with AANHPI community groups and meeting with US attorneys across the country to request feedback on hate crimes, community outreach efforts, and data collection. The DOJ is committed to protecting Americans—no matter their race or national origin—from exploitative and coercive contact by the PRC government, including targeting dissidents and others who criticize the PRC for their human rights abuses.
Erika was present at Matt Olsen’s confirmation to be the assistant attorney general of the National Security Division (which has purview over the “China initiative”). She noted Olsen’s extensive national security experience and background in civil rights. She explained that at his confirmation, Olsen committed that in describing espionage threats posed by China, he would strive to make clear [that] such threats originate from the Chinese government, not the Chinese citizens in general, and certainly not American citizens of Chinese origin or descent. Since Olsen’s confirmation, Erika has personally observed the intentionality with which Olsen has been reviewing the “China Initiative,” including meetings with leaders in the affected community as well as the Congress.

Erika concluded by stating her belief that the president and vice president truly see, hear, and value the AANHPI community and that they are committed to providing AANHPIs with the safety and opportunities that they should expect. She said that the Biden-Harris administration would continue to execute on its vision to empower AANHPIs, and that she looked forward to continuing to work with APA Justice.

Jeremy asked Erika if she knew when the review of the “China Initiative” would be completed. Erika was not certain about the timeline. She said that the press reported a couple of weeks ago that the review was due within a month or a couple of weeks beyond that.

### 2. CAPAC updates

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

- 2022/01/19 CAPAC: CAPAC Members Meet with Department of Justice Assistant Attorney General Matt Olsen on China Initiative Concerns
- The America COMPETES Act of 2022 with a section-by-section summary

Nisha began with an update on the work that CAPAC has been doing around the America COMPETES Act. She referenced conversations in past APA Justice meetings about concerns related to provisions in the Senate’s US Innovation and Competition Act (USICA) targeting Asian and Chinese Americans.

CAPAC conducted a review of the America COMPETES Act (the House’s version of USICA) and found that particular sections of the House version of the bill were much more acceptable for protecting civil rights and civil liberties of Asian Americans compared to USICA. CAPAC has been closely tracking the differences between the two bills.

As the America COMPETES Act passed in the House last week, Nisha wanted to point out that Congresswoman Chu, along with a number of CAPAC leadership members, Congressman Raskin, and others had an amendment that passed in the bill specifically reaffirming opposition to targeting Chinese and Chinese American researchers and scientists based on race alone. Additional amendments by Congresswoman Eshoo and Congresswoman Meng ensured that anything passed through the America COMPETES Act does not further harm Asian and Asian American individuals across the country based on discrimination or hate.
CAPAC’s concern with the America COMPETES Act has been around heightened anti-China rhetoric on the House floor and debate from a number of individuals who have been pushing to make the focus of this bill on China rather than on American competitiveness and innovation. Nisha commended the Biden administration’s statement on administering the policy in the America COMPETES Act, and commended Speaker Pelosi for her statement that did not mention China as a focus of this bill, but rather focused on what this legislation would do to help American competitiveness and innovation and to help members and constituents across the country.

CAPAC has been focused on how to speak about China without fanning the flames of hate against Asian American communities. CAPAC’s next step is to express concerns about the Senate bill to House and Senate leadership and push for a bill that does not cause harm for Asian American communities.

3. Lessons Learned from Professor Gang Chen’s Case

a. Speaker: Robert Fisher, Defense Attorney for Professor Gang Chen
b. Speaker: Gang Chen, Professor, Massachusetts Institute of Technology

- APA Justice: Gang Chen
- 2022/01/30 Webinar: Reflecting on Professor Gang Chen’s Case and Looking Ahead to the Future of the China Initiative (video 1:29:33)
- 2022/01/28 WBUR/NPR: Prof. Gang Chen: China Initiative had a 'chilling effect' that 'terrified the science community'
- 2022/01/26 Wall Street Journal: MIT Professor Gang Chen Says Misunderstanding Lay at Root of U.S. Case
- 2022/01/25 New York Times (dual language/中英双语): “我们在残害我们自己”：华裔教授陈刚案背后的愤怒与幻灭/'In the End, You’re Treated Like a Spy,' Says M.I.T. Scientist
- 2022/01/25 Science: U.S. prosecutors said an MIT scientist hid his China ties. Here's why their case collapsed
- 2022/01/21 Boston Globe opinion by Gang Chen: I was arrested under the DOJ’s China Initiative. Congress must investigate the program.
- 2022/01/21 Reactions by Andrew Chen
- 2022/01/21 Statement by Gang Chen

On the last full day of the Trump administration, then U.S. Attorney Andrew Lelling held a press conference to announce the indictment of MIT Professor Gang Chen and openly questioned Professor Chen's loyalty to the United States. Like many other academics, Professor Chen was not charged for economic espionage or trade secret thefts. For more than one year, Professor Chen and his family went through "a living hell." A year later, the case was dismissed "in the interests of justice." What are the lessons learned from yet another debacle called the "China Initiative?"
Rob Fisher began with an overview of how he and Gang Chen’s legal team handled Gang’s case. Rob met Gang in January of 2020. Although the press states that Gang’s investigation has been going on for one year, it actually began two years ago in January 2020 when Gang was stopped by federal officials at Logan Airport. Gang’s electronic devices were seized, and he was questioned for hours. Gang did not say much to the feds at that time. Rob noted that this was beneficial to Gang and stressed the importance of ensuring that a lawyer is retained before and during a conversation with federal agents. When stopped by federal agents, an innocent individual’s gut reaction is often to cooperate with the agents. However, without the presence of a lawyer, individuals are vulnerable to having misinterpretations of facts used against them.

After Gang retained Rob as a lawyer, they underwent a year-long process of trying to get information from the government about what the government was looking for and whether Gang was a target. Rob and Gang offered to speak to the federal government because traditionally, if an individual is a target, the government invites the individual and their attorney to give an attorney proffer, after which the government provides a reverse proffer. In Gang’s case, that never happened. Rob believed that it would have happened if not for the Trump administration rushing the process of charging and arresting Gang.

Both Rob and Wilmer Hale LLP conducted investigations of Gang. Rob and his team met with Gang many times and went through Gang’s emails and grant documents. Neither investigation resulted in the discovery of any issues. However, Rob did not get to discuss these findings with the government.

Gang was charged by complaint, arrested, and indicted five days later, which indicated to Rob that the government had rushed Gang’s prosecution with his indictment. Rob believed that they rushed so that the US Attorney, who was on the DOJ task force for the “China Initiative,” could get a press release.

Gang’s indictment began a year-long litigation process, in which Gang’s legal team was victorious by “going on the offensive right away.” Gang’s team filed a sanctions motion against the US Attorney because the public statements he made were inaccurate and incendiary. The team then tried to get Brady documentation and information from the DOE regarding why they had changed their grant forms in 2020. The grant forms that Gang was charged with were from 2017 and 2019 before the language had changed to encompass overseas or international collaboration. Brady disclosures came out in late 2021. Rob believed the “final nail in the coffin” was the interview that DOJ had with DOE to confirm that DOE would not have considered the collaboration material for the 2017 and 2019 forms. This information was critical and very material to Gang’s case.

All of this information led to Gang’s dismissal. However, Gang and his family never should have had to go through the difficult two-year investigation and litigation process. Rob believed this would not have happened if this case had not been rushed. In fact, some of the evidence that the US Attorney’s Office uncovered that led to Gang’s dismissal should have been gathered by them in the grand jury process prior to the indictment.

Rob gave the floor to Gang to speak about his own experience.

Gang thanked Rob for his talk and thanked attendees, the community, and MIT for their support, which played a crucial role in Gang winning his legal battle.
Gang then recounted his experience. In January 2020 Gang was at the airport with his family. He was detained there for three hours. Federal agents interrogated him and took all of his electronics away. Gang reported this incident to MIT, and MIT arranged for Gang to have a lawyer and agreed to pay his legal fees.

MIT also hired an external law firm to complete a one-year investigation, which resulted in them finding nothing wrong. Yet Gang was arrested on January 14, 2021, after the government said there was no imminent indictment. Gang affirmed that the case was rushed, resulting in a difficult year for him and his family. According to Gang, the prosecution was full of misconduct, from the indictment to search affidavits to the criminal complaint. Gang went on to describe seven examples of misconduct.

1. The first example of misconduct Gang described was that the government altered the facts. This was evident in their criminal complaint. For example, in February 2016, during a meeting with a Chinese official who was being hosted by MIT, Gang used his phone to take notes, which he then sent to himself as an email. In the prosecution’s criminal complaint, they copied every word of the email except the last sentence, and they said that this email was Gang’s promotion of the PRC’s strategic goals. The last sentence read “Mr. X, let us work together,” and would have made it clear that the email contained notes, not Gang’s own thoughts. (Mr. X was the name of the MIT official who hosted the meeting.) Gang described it as “scary” that in court, the prosecutor said, “This could be his notes, but it also could be his state of mind.” Gang later learned that this was her way of building up Gang’s criminal intent.

2. Gang described a second example of misconduct: the government’s interpretation of normal scientific activity as crime. When Gang was arrested, the prosecutor, Stephanie Siegmann, told Rob that among all the evidence listed, she was most angry that Gang was listed as an expert reviewer for the Chinese National Science Foundation. Many academics routinely review proposals for other countries. In fact, Gang had previously seen that the US Department of Energy used reviewers from abroad, having been in the same room with those reviewers. Gang explained that reviewing proposals and writing papers and recommendation letters are part of an academic’s job. Yet the prosecutors interpreted doing a review as a service to the Chinese government. For this reason, many professors and scientists were scared when they found out about the charges placed on Gang. The same charges could apply to many academics.

3. In some instances, the prosecution used emails Gang did not reply to as criminal evidence against him. Despite the fact that Gang reviewed many proposals from many countries, he had never reviewed a proposal for the Chinese National Science Foundation. Gang was considered an “expert reviewer” who was serving the PRC government simply because his name was in the database of the Chinese National Science Foundation.

4. The prosecution accused Gang of not doing the right thing even when he had done the right thing. Gang was an academician of Academia Sinica in Taiwan. He got an email from an officer in Taiwan’s Boston office who explained he wanted to pay Gang a visit. Gang vaguely remembered a restriction related to foreign officials visiting campus, and explained to the officer that he could not accept him as a visitor. The officer said Taiwan
was not on the list of countries whose officials were restricted from visiting campus. Out of courtesy Gang met the officer outside of MIT’s campus. That meeting was cited in a search affidavit as evidence that Gang was hiding something.

5. The prosecution rushed Gang’s case and did not properly carry out a proper investigation or interview critical witnesses in the year allotted to the investigation. Gang stated that the case was rushed because US Attorney Andrew Lelling was to leave office soon.

6. The prosecution hid the truth. On the day of Gang’s arrest, they interviewed a few people, all of whom told the truth. One specific witness clarified to them that Gang was not part of the Wuhan talent program they accused him of being part of. In March 2021 the prosecutors interviewed an MIT grant administrator specializing in DOE grants. The administrator explained that there was no requirement to report the information they accused Gang of not reporting at the time when he applied for the DOE grants. The prosecutors should have provided such exculpatory information to Rob and Gang’s lawyers, but never provided it to them. Rob had to demand the information that the government was withholding. The exculpatory information withheld turned out to be more than Rob and Gang had originally thought.

7. The prosecution did not admit mistakes. They did not officially apologize to Gang despite knowing that they were wrong. They tried to save face by offering a deferred prosecution agreement. Knowing that the offer was the prosecution’s attempt to save face and was not about Gang’s innocence, Gang turned it down. In their dismissal, the prosecution cited new evidence because on January 4, 2022, Prosecutor Stephanie Siegmann called the US Department of Energy, and they said that Gang had done nothing wrong. The prosecution’s indictment mentioned the DOE 16 times. They could have called DOE before to clarify, but they did not.

Gang shared a few takeaways from his experience:

1. The US loses when we lose the talent of scientists due to discrimination.

   Andrew Lelling said he wanted to create a “chilling effect.” With wrongful prosecutions this effect was achieved. The terror drives Asian American talent away from the US. An MIT colleague told Gang a few hours after his case was dismissed that he was leaving the country. The colleague also said that three of his academic friends had already left. The loss to the US is incalculable.

2. Universities need to protect their faculty.

   University leadership, professional society, and industrial leadership should stand up against discrimination. The MIT president and leadership set a great example by defending Gang, and financially and morally supporting him.

3. Funding agencies need to do the right thing.

   Funding agencies must educate the managers and defend researchers. In Gang’s case, Dr. Chris Fall, Director of the DOE Office of Science, said a few weeks ago that Gang
did not do anything wrong. However, DOE could have taken a stand earlier considering that DOE was mentioned 16 times in Gang’s indictment.

4. Everyone needs to learn their rights.

Gang stated that people like him must know their rights. People should not speak to federal agents without legal representation.

5. We need to speak up.

Gang was a scientist and never thought he would be involved in political activism. Politics impacts everyone. As Martin Luther King said, “Injustice anywhere is a threat to justice everywhere.”

Gang closed by mentioning the heavy personal toll that the investigation took on his family, himself, and his research career. He said that this toll was difficult to describe. He thanked everyone for listening.

4. Remarks by a Colleague and a Friend

a. Speaker: Zhigang Suo, Professor, Harvard University

Power corrupts. Absolute power corrupts absolutely. Yet the government does not have absolute power.

Zhigang shared his perspective on Gang’s case, beginning by recounting that on the day Gang was arrested the government displayed overwhelming power. They jailed, handcuffed, and shackled Gang, and put out a press release full of misinformation, including accusing Gang of defrauding $19 million in federal grants, receiving $29 million in foreign funding to promote China’s development. Zhigang told the audience that these were all documented lies that the government fed to the public to incite fear. This misinformation quickly traveled all over the world.

On the day of Gang’s arrest, the President of MIT issued a statement: “For all of us who know Gang, this news is surprising, deeply distressing, and hard to understand.” The statement was widely quoted in the news. Gang’s attorney, Rob Fisher, was also quoted: “Gang’s life has been the epitome of the American dream. He loves the United States and looks forward to vigorously defending against these allegations.” However, according to Zhigang, the significance of these statements was lost on him at the time. All Zhigang saw were talking heads on the screens—he felt bewilderment, anger, sadness, and fear.

The same day, Zhigang’s friend, Professor John Doble tweeted, “So sorry to hear the news about Gang Chen at MIT. I hope that it is a big misunderstanding, and that he is acquitted of all charges on this.” The following day, Zhigang retweeted John and wrote: “Gang has been my best friend. Gang has a beautiful mind as a scholar, and a kind heart as a human being. He is devoted to his family, friends, colleagues, and MIT. He was born in China and found his dream in America. The news made me want to cry.”

Ellen responded, “Newspapers report news. The arrest of a professor is news, which the government provides. We report the news with whatever we have on that day. Subsequently, we investigate more and report further. I’m talking to you now.” Zhigang was grateful to Ellen for this “illumination on a day of darkness.”

That weekend, Zhigang saw the criminal complaint against Gang on Twitter and several aspects of the complaint stood out to him. The complaint, written by an author named McCarthy, made absurd allegations. Zhigang had the idea to review the document as if it were a technical paper. He reviewed the complaint point by point in a long Twitter thread. To open the thread, Zhigang wrote: “The McCarthy document is the basis for the arrest of professor Gang Chen. This arrest is an act of a government against an individual. The power asymmetry between a government and an individual is enormous. We the People should do everything to ensure no abuse of power.”

Zhigang described the public attention to Gang’s case as “stunning, swept, and sustained.” On the day of Gang’s arrest, Professor Yoel Fink started to organize MIT faculty in support of Gang, which led to the We Are All Gang Chen letter. Many individuals spoke out. Civil rights groups, including APA Justice, organized a congressional roundtable. Professors Kai Li, Yasheng Huang, and others launched the Asian American Scholars Forum. Newspapers interviewed many people and published substantive findings.

Zhigang reflected that after the government made its allegations against Gang, they were scrutinized by the public, causing the tide of public discourse to turn quickly after Gang’s arrest. Zhigang concluded by commenting that these events teach a fundamental lesson in civics: Power corrupts; absolute power corrupts absolutely. Yet by design, the US government does not have absolute power. We the People are the countervailing power.

5. The Views of a Former U.S. Attorney on Professor Gang Chen's Case and "China Initiative"

a. Speaker: Carol Lam, Former U.S. Attorney


Every criminal prosecution features unique facts and a unique defendant, and it is a prosecutor’s obligation to consider each case on its own merits. But initiatives create – perhaps inadvertently – perverse incentives. When a criminal prosecution is brought as part of an initiative – and therefore tagged as a statistic for a future press release – it allows errant motives, poor judgment, and/or incompetence to creep in. That’s because a criminal prosecution “initiative” imposes an arbitrary goal, often with an arbitrary deadline, and as law enforcement scrambles to reach that goal, it disrupts the natural rhythm of criminal investigations.

Carol began by thanking the audience for giving her the opportunity to offer her perspective on the criminal justice system. She remarked that a lack of introspection can lead to terrible
decisions that result in experiences similar to Professor Gang Chen’s arrest and the failed prosecution. Criminal prosecutions stand apart from other mechanisms that exist to try to achieve fairness and balance in communities. Criminal prosecution is the only mechanism that places an individual’s life and liberty at risk of being taken away. There are protections for those who are charged with crimes: the right to counsel, the right not to incriminate oneself, the right to a unanimous jury of one’s peers, the right to be found guilty beyond a reasonable doubt. However, Carol explained, virtually all of those protections are activated only after charges are brought. Before an individual is charged very few protections are in place, except for—hopefully—the good judgment of those conducting the investigations.

Carol brought up the concern that good judgment has been impaired by “a department of justice that has fallen in love with the idea of criminal prosecution initiatives—that is, a declaration of concentrated effort to focus criminal prosecutions on a particular type of crime. Unfortunately, when DOJ dangles that kind of incentive and reward structure in front of its agents and prosecutors… good judgment goes right out the window.”

Carol then described a couple of criminal initiatives she experienced during almost 20 years of working at the Department of Justice. For example, in the savings and loan scandals of the 1980s, the Department of Justice got funding from Congress to create financial institution fraud initiatives—groups of specialized prosecutors and agents tasked with pursuing fraud cases involving large financial institutions. One problem with this initiative was that there was a lack of experienced prosecutors and agents specialized in large financial institutions’ fraud. The DOJ needed to recruit people with limited knowledge of these fraud cases in order to fill the new specialized units. Another problem was the difficulty of acquiring enough evidence to prove fraud in these cases. Fraud cases are different in nature from violent crimes or drug cases, in which a crime has clearly been committed and the culprit and motive may be unknown. In fraud cases, sometimes it is unknown whether a crime has actually been committed.

Carol noted that this was also a problem in Dr. Chen’s case and a number of other cases. She went on to describe the panic that occurred in financial fraud task forces when they did not produce as many cases as expected. Prosecutors and agents began looking for cases that may have been of lower importance, but could be swept into the category of financial institution fraud cases. These included bank teller fraud cases (for example, tellers who might secretly write a check for $2,000 to themselves and cash it in their position as a teller). While these cases were based on crimes, they were not based on the types of crimes that the original initiative and task forces had been designed for.

As another example, Carol described that about 15 years ago, amid debates around immigration, the Department of Justice decided on a zero-tolerance initiative against anybody who presented false documents at the Mexican border. On the surface, presenting false documents sounds like a sophisticated crime. However, the initiative resulted in hundreds of cases against nannies who worked in the United States went home to be with their families over the weekend, presenting false driver’s licenses at the border. Again, these were crimes, but certainly not at the level that justified the pouring of resources into this particular initiative. The result: the nannies would be arrested and brought into court, where they would plead guilty to a misdemeanor, get time served, and be released. There was no criminal prosecution impact on the district.
Carol shared these examples to show that the tragedy that happened to Professor Chen has happened and continues to happen to others in the United States. The “China Initiative” is another criminal prosecution initiative that is warping the good judgment needed to guard against wrongheaded investigations and prosecutions.

Carol’s next remarks were directed at Professor Chen: “I’m sure that you’re never more proud than when a student of yours does a great job with fantastic research, and I’m sure you’re never more disappointed than when you find out a student has not done a good job and has not done the level of research that they should be doing. And I feel the same way about poorly done investigations and prosecutions at the Department of Justice.” She continued to say, “Criminal prosecutions are very individual efforts; you can’t create evidence, through chest thumping or waving around the banner of a criminal prosecution initiative. It is completely predictable, in fact, that criminal cases that are pursued in the name of an initiative are going to become smaller, they’re going to have thinner evidence, and they’re going to get further away from what was supposed to be the purpose of the initiative. DOJ should be mature enough to recognize and acknowledge today that initiatives do not give rise to good cases. In fact, quite the opposite. They give rise to poorly investigated, poorly conceived cases that are pursued for all the wrong reasons. If you have a good case, investigate that case well, bring a good case, and get a conviction. You can boast about it all you want at the end of the day. But what the DOJ is doing today is misguided. They know that. Now they should be taking steps to repair that. You can argue they’re taking some steps now, but it is very very late in the day.”

Carol noted that she does not like to come out and criticize the Department of Justice, even though she herself has suffered at the hands of the DOJ in the past. She considers herself a believer in the important institution that is the DOJ and believes that most of those who work in the DOJ are good public servants. However, she has been compelled to speak out by indications that “the train is running off the tracks.”

Carol said that she was very concerned about some statements made by DOJ officials—for example, the Boston US attorney claimed “We (the DOJ) have done our job; the research community is terrified now.” Criminal prosecutions should not be brought simply for the purpose of terrifying a population. The DOJ is supposed to speak through its cases, not through innuendo and suspicion. Carol heard a statement by the same US attorney that there was nothing wrong with calling this a “China Initiative” because if it were the French government that was trying to steal our technology, this would be called the “French Initiative.” Carol called that statement “insulting” and said “We’re not writing on a clean slate here. This is a DOJ and a government that enforced the Chinese Exclusion Act and interned thousands of US citizens of Japanese descent…This is not a “French Initiative.” Perhaps the most disturbing statement, Carol said, was a statement by the former national security director that seemed an attempt to justify the dismissal of four visa fraud cases that led to 1000 researchers returning to China in their wake. Carol compared this to “as if we were in the Old West, and we simply said get out of Dodge by sundown.” The DOJ should not operate this way. Individuals are leaving the US because they are terrified. The government is treating people of Chinese descent unfairly.

Carol was glad about efforts to hold the DOJ accountable, but disappointed that it has been taking the DOJ so long to rectify its actions. She closed by saying that she has not been a federal prosecutor for about 15 years now, but in the interim she has been deputy general counsel at Qualcomm. While she understands threats to the nation’s IP, the DOJ must acknowledge the difference between corporate concerns about espionage and the academic
research community, they are different worlds. The FBI and prosecutors have learned to deal with corporations and corporate concerns about IP theft, and seem to be applying the same methodology to academic settings, which are completely different, and which value open research. The FBI must do better at understanding the difference, rather than bring in criminal cases against academia.

6. Anti-Racial Profiling Project and Related Activities - Asian Americans Advancing Justice | AAJC

a. Speaker: Gisela Kusakawa, Staff Attorney, Advancing Justice | AAJC

- Sign-On Interest Form: Amicus Brief in Support of Professor Xiaoxing Xi
- 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 by sharing the link to the sign-on interest form for the amicus brief in support of Professor Xi. She then gave information about the America COMPETES Act, the House counterpart to the Senate-passed US Innovation and Competitiveness act. It was agreed on February 1 with around 250 amendments. There will be an upcoming conference in which the House and Senate will need to craft a bill capable of passing both chambers.

Gisela pointed out a number of differences between the America COMPETES Act and the US Innovation and Competitiveness Act. One difference is that the House’s America COMPETES Act includes immigration provisions that would be beneficial to non-citizens in STEM, as well as to Hong Kong and Uighur refugees. These provisions, along with CAPAC Chair Chu’s amendment, are not included in the Senate counterpart. CAPAC would like these amendments included if the bill moves forward.

Going into further detail, Gisela explained that the bill will establish a new class of non-immigrant visa. The new class of visa will apply to entrepreneurs with an ownership interest in a startup entity, essential employees of a startup entity, and their spouses and children. The bill will also exempt individuals with PhDs in STEM fields from green card limits, and non-citizens could gain permanent residency without being placed in the green card backlog or being subjected to per country limits. This is especially important for Asian immigrants, whose communities suffer the most from backlogs.

Amendments to the America COMPETES Act extended cap exemptions to health professionals and other fields that are critical to US interests. A special visa pathway was created for a limited number of scientists and engineers identified as contributing to the national security innovation base.

The America Competes Act will also provide PPS and refugee status for qualifying Hong Kong residents. It will designate a pathway to the US for refugees from Xinjiang, with a firm resettlement requirement.
Lastly, the bill will establish a Directorate for Science and Engineering Solutions within the National Science Foundation and will increase the NSF’s budget. Part of the Directorate’s role will be to address competitiveness, cybersecurity, and national security.

Some are concerned that this bill is focusing just on China, so CAPAC will work with congressional staffers on language and messaging.

7. Q&A and Discussions

8. Next Meeting
   - Next Meeting: Monday, March 7, 2022