Final Agenda

0. Introduction of New Speakers
   a. Jessica Chen Weiss, Michael J. Zak Professor for China and Asia-Pacific Studies, Cornell University
   b. Ed Benyas, Professor of Music, Southern Illinois University
   c. Tsiwen Law, Civil Rights Activist; Attorney at Law, Law & Associates LLP

1. CAPAC updates
   Speaker: Nisha Ramachandran, Executive Director, Congressional Asian Pacific American Caucus

   Updates on latest activities and developments at CAPAC:
   Last week, congress (House and Senate) passed a continuing resolution to keep the government open post-election. Both chambers are moving into “Midterm Mode”, so many house members and CAPAC members are out of Washington, D.C. and in their districts at this time.

   Regarding a couple of pieces that CAPAC was able to keep out of the CHIPS and Science Act that were problematic for our community, it is likely that these may return in various forms in other legislations. It will be a continuous effort to keep threats to civil rights out of legislation.

   Although they are currently in recess, CAPAC is receiving a lot of questions, and they are happy to continually be a resource!

2. Report Out: Professor Xiaoxing Xi Appeal Arguments
   Speakers:
   a. Patrick Toomey, Deputy Director, ACLU National Security Project
   b. Tsiwen Law, Civil Rights Activist; Attorney at Law, Law & Associates LLP
   c. Gisela Kusakawa, Assistant Director, Advancing Justice | AAJC
Report on Professor Xiaoxing Xi’s appeal arguments to the Third Circuit Court of Appeals in Philadelphia on September 14:

Patrick Toomey
Patrick began with a summary from a recent argument regarding Professor Xi and his family, who he helps represent alongside David Rudovsky’s civil rights firm in Philadelphia. On the 14th of September, David Rudovsky did the oral argument in front of the third circuit court. Such appeal arguments occur in front of a panel of three judges who decide together. The judges asked hard questions of both sides, going over the originally allotted time for arguments, which is typically a sign of the court's interest in the issues. The presiding judge noted that the courtroom was very full during the argument, thanks to many supporting organizations in attendance.

The two key legal issues at the heart of the appeal: whether the Xi family’s claims under the Federal Tort Claims Act (for money against the US based in court law) and the Bivens Doctrine (for constitutional violations by individual federal agents) should be allowed, or whether the District Court was correct in dismissing these 9 claims.

The court clearly understood the issues and what is at stake in the case. The Bivens line of cases has been made very difficult for plaintiffs due to Supreme Court precedents. The district court originally dismissed the FTCA claims under the Discretionary Function Doctrine, which allows the government to avoid liability when its agents are involved in discretionary acts or policymaking functions.

The court clearly understood that while government officials may have a range of options, the Constitution creates a strict set of rules. Here the allegations are about falsification of evidence and arrest without probable cause, which are clear constitutional violations.

David cautioned at the gathering post-argument, we can never be fully sure based on simply how it felt in the courtroom, but we are cautiously optimistic that at least some of the claims will be allowed to go forward.

Tsiwen Law
Tsiwen is the General Counsel for the OCA Greater Philadelphia Chapter.

He began by noting the broad demographic and geographic representation that was in the courtroom, with people coming from as far as New York City and Washington DC, and California, to attend the hearing.
Tsiwen has been heavily involved in promoting Professor Xi’s case. Professor Xi has been around the country to speak on his case for several years since his charges were dismissed, and clearly has made an impact as over 50 people showed up to support him.

During the debriefing, Tsiwen spoke about historic acts of civil rights violations on Chinese Americans, specifically when the government used the 1917 Act to go after Chinese laundry workers and a professor at CalTech without documentation, forcing him to leave the US. This shows that the practice of intimidating and wrongly prosecuting Chinese Americans is not new, but very much tied to the variability in U.S. relations with the Peoples Republic of China.

The OCA Asian Pacific American Advocates and other Asian American organizations are fighting back against the unjustifiable racial profiling and supporting Prof. Xi and others who want to hold the government accountable.

**Gisela Kusakawa**

Gisela began by saying that they were very fortunate in this case because Tsiwen was already very informed on the details of the case and was very helpful. She added thanks to ACLU’s work with Professor Xi.

On the community side, this case, which has been years in the making, is really about accountability. Professor Xi is doing the Asian American community a great service by going to trial and trying to hold the government accountable. His case clearly shows that racial bias and racial profiling has been a problem before the China Initiative, and continues to be a problem even after it has been removed.

What happened in Philadelphia is a really important model of supporting local communities and groups by showing up physically at the courthouse and also advocating for them so that it gains the national attention that it deserves.

Some notable attendees to the argument included the President from C100 who came all the way from California, and the VP and founder of Asian American Scholar Forum. Gisela herself and many of her colleagues traveled from Washington DC.

AAJC had submitted an amicus brief with over 70 organizations in support to amplify their concerns about broader racial bias and profiling to the judges, to ensure an understanding of what is experienced by Asian Americans across the country and how that might affect Professor Xi.
3. Anti-Racial Profiling Project and Related Activities - Asian Americans Advancing Justice | AAJC

Speaker: Gisela Kusakawa, Assistant Director, 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

As Asian American Civil Rights organizations, it is important that we work on infrastructure building. We need this infrastructure to be able to flag amendments to legislation that are harmful to the community, to work with national security organizations as well as immigration groups to keep track of these harmful provisions.

Lastly, a note on the DOJ profiling guidance, whose last version was published in 2014. AAJC is working to compile different updated recommendations from various organizations and they encourage all to look at the current guidelines and reach out to AAJC with any comments or concerns that may help build the updated recommendations.

4. Report Out: Outcome and Next Phase for Professor Mingqing Xiao

Speaker: Ed Benyas, Professor of Music, Southern Illinois University

- 2022/09/26 Science: Federal fraud charges crumble in cases against scientists with China ties
- 2022/09/19 Science: U.S. math professor gets probation, not prison, in China Initiative case
- 2022/09/07 The Daily Egyptian: “He just wants to teach:” Supporters urge SIU to return Mingqing Xiao to campus
- 2022/09/07 The Daily Egyptian: Letter to the editor: Bring back Professor Xiao

Professor Benyas and his wife Kara have been the lead community organizers to support fellow SIU Professor Mingqing Xiao. Professor Benyas was originally scheduled to give us an on-the-ground report during the trial of Professor Xiao in May of this year, but was unable to do so at that time. We welcome Ed back to report on the outcome and the next phase for SIU Professor Mingqing Xiao.
Review of Professor Xiao's case:
Professor Mingqing Xiao has been a math professor at Southern Illinois University for 20 years, and has been a resident of the US for 30 years. He was indicted in April of 2021 on a three-count indictment alleging grant fraud: two counts of wire fraud, and one count of making a false statement. On the eve of a trial in October 2021, when Ming and his team were ready to go to trial, they added four new tax charges, three counts of failing to check a box on a tax form indicating that he had a Chinese bank account, and one count of failing to file an F-bar. At a trial in April 2022 before an all-white-female-rural jury in deep southern Illinois, he was exonerated of the three initial grant-related counts and found guilty of the tax charges. Shortly after, his attorneys filed a motion for judgment notwithstanding the verdict.

Sentencing:
Right before sentencing, the judge in the case denied the motion, basically saying that he signed the tax forms and therefore he is federally criminally liable for the charges. At the sentencing on September 19, 2022, his attorneys presented a 43-page well-written memorandum accompanied by 27 letters of support from community members. There were about two dozen supporters of Professor Xiao in the courtroom. The government asked for a prison sentence of one year, $55,000 fine. The government attorneys misrepresented case facts, and characterized him as a repeat offender, which the judge did not agree with. The judge sentenced one year probation and a $600 fine, plus some court costs.

Implications:
The professor's team has until tomorrow (10/4) to decide whether to file an appeal, keeping in mind that although the sentence is lenient, he is now a convicted felon.

There are on average annually about 16 failure-to-file F-bar cases which bring criminal charges in the US. By contrast, there are about 25,000 failure-to-file F-bar cases that are resolved civilly. This is a simple problem with a tax form, with no intention to mislead the government or evade taxes. Those criminal cases that are filed involve typically millions of dollars hidden in offshore accounts. Therefore, one of the tax advisers suggested that the judge applied an incorrect standard of scrutiny to the case. So the Professor must decide whether to file the appeal, although his resources are at an end, having already spent his life’s savings on attorneys who continue to bill him.

The other hurdle is to get the Professor’s job back. He has thankfully been on paid administrative leave, but Southern Illinois University has not responded as to what they will do now that a criminal charge has been brought. Professor Benyas wrote a column
on Professor Xiao in the SIU student newspaper that was signed by 67 colleagues. In other good news, the Illinois governor recently signed an amendment to the Illinois Human Rights Act which says that an employer may not make an adverse employment decision based on a criminal conviction that is unrelated to the job, as long as the employee does not pose a threat. Ed met with the Provost of the SIU last week, urging her to do the right thing, support their colleague, bringing Professor Xiao back to work where he can resume supporting the university and helping to recruit more Chinese students. There is a union attorney and union representative who are advocating on Professor Xiao’s behalf as well.

There is an active GoFundMe Page HERE for those who would like to support the Professor.

5. Report Out: Meeting with Senior Research Officers at AAU

Speakers: Toby Smith, Senior Vice President for Science Policy & Global Affairs, Association of American Universities

- 2022/09/09 APA Justice: Academic Freedom and Engaging Faculty on Campus - The Asian American Perspective
- 2022/09/09 APA Justice: Academic Freedom and Engaging Faculty on Campus - The Asian American Perspective (Additional Background and References)

Toby gave us a read out from the meeting with Senior Research Officers at AAU.

The Association of American Universities represents 65 leading research universities (public and private in the US, and 2 Canadian). The meeting with APA Justice Task Force representatives was part of a very important continuing dialogue that the SROs requested. The universities wanted to discuss how the China Initiative has affected their faculty and students and highlight some universities that believe they have handled cases of the China Initiative in a productive and non-harmful way. Part of the purpose of the discussion is to share who feels they are communicating well and creating a productive dialogue, and to share those practices and information with other universities. The AAU is aware that there are universities where faculty are fearful to apply for federal grants because of past incidences of racial profiling associated with the China Initiative. There are also students and scholars who are avoiding coming to US universities out of fear that they might be targeted. According to a recent survey, some talented scholars are even leaving the country because they do not feel safe or
welcome in the US. This is a great concern for the AAU and will continue to be part of
the discussion going forward.

Toby recently moderated a panel discussion with representatives from OSTP, NSF and
DOJ, where he raised a concern that not enough attention has been given by the OSTP
and Federal Research agencies to addressing NSPM-33 Section 3. This section calls
for establishing uniform, consistent, and transparent “consequences of violations of
disclosure requirements” across federal research agencies. Toby said that further
clarification from OSTP and the federal agencies is needed concerning the
“consequences” and agreed upon penalties for non-disclosure. Without such clarity,
even with the end of the “China Initiative,” there is still the potential for infringement on
civil rights. Toby suggested that AAU and APA Justice should work together to ensure
that a clear and consistent process is developed as a part of NSPM-33 implementation
to ensure that both individual faculty members and universities have appeals
mechanisms in place should they disagree with proposed penalties recommended by
federal research agencies.

6. The China Trap: U.S. Foreign Policy and the Perilous Logic of
Zero-sum Competition

Speaker: Jessica Chen Weiss, Michael J. Zak, Professor for China and Asia-Pacific
Studies, Cornell University

- "The China trap: U.S. foreign policy and the perilous logic of zero-sum
  competition," Foreign Affairs (September/October 2022).

Professor Weiss spent the last year working as a Council on Foreign Relations fellow on
the Policy Planning Staff of the State Department. The following reflects her opinion:

While the administration has made an effort to make back lost progress after the Trump
Administration, there is still a lot of work to do. The current trajectory will bring growing
dangers of confrontation and crisis (possibly over Taiwan), and an increasingly eroded
basis for global governance as both sides seek to work through smaller groupings of
like-minded nations to counter the other. Ultimately this focus on outcompeting each
other will bring dangers for democracy, especially in the US, and will threaten our ability
to remain a magnet for international talent, investment, and innovation.

Credit is due to organizations like APA Justice and the Asian American Scholar Forum
who have worked to shed light on the stories of those who suffered as a result of the
China Initiative and other types of racial profiling with concrete data that shows the
broader chilling effect on innovation in the US. The essay highlights some of that work,
which reflects the views of some scholars and scientists (many of whom are of Asian
descent) who no longer feel that the US has a welcoming and safe environment for
science and innovation. While the issue is not evenly understood across the
administration, this is an important window to make rapid progress on these issues
because there is a receptivity to these issues in the current administration, in the
interest of not only protecting US citizens and residents but also those who contribute to
US innovation.

It is important to lift these issues up in discussions of foreign affairs, which tend to not
pay much attention to domestic issues, in order to prevent geopolitical confrontation and
harm to the vibrant, inclusive democracy that the US stands for but does not always live
up to. None of this will happen overnight, but it is important to improve the way in which
the government deals with this domestic issue as a key to competitive global success.

Commentator: Margaret Lewis, Professor of Law, Seton Hall University School of

Law

Professor Lewis began by thanking Professor Weiss for spending her sabbatical
working toward improving this civil rights issue. She noted that for years, her career and
her work did not intersect with the AAPI community, but since the China Initiative, there
has been an increasing overlap between those focused on US-China relations and in
advocacy groups focused domestically on what happens with AAPI communities. She
really appreciates this new allyship, and she also applauds Professor Weiss’s advocacy
for this issue, noting that it is easy for people to accuse opinions like hers of being “soft
on China”, which is a very strong rhetoric in Washington, D.C. right now.

She is cautiously optimistic about getting some scholars and think-tankers going back
and forth to China as a means of improving communication (noting that this has been
made difficult by the zero-COVID policy and travel restrictions in China). Fulbright has
also been an important program to facilitate collaboration and innovation.

On NSPM-33:
Professor Lewis found the last meeting very helpful in understanding what is happening
at OSTP. The new director is now confirmed so hopefully more progress will be made.
OSTP is one player but cannot tell the DOJ or FBI what to do. So building coalitions and
having productive messages go across the administration is very important, along with
blockng nefarious legislation from congress.

Professor Lewis will be speaking in the Asia Society event coming up which is open to
the public, which will take place in person at Berkeley law, but will also be streamed
online on October 19, 2022.
7. Q&A and Discussions

8. Next Meeting
   - Monday, November 7, 2022