Final Agenda

0. Introduction of New Speakers
   a. **Rebecca Keiser**, Chief of Research Security Strategy and Policy, National Science Foundation
   b. **Matt Jones**, Partner, WilmerHale LLP
   c. **Gisela Kusakawa**, Executive Director, Asian American Scholar Forum

1. CAPAC updates

   Speaker: Nisha Ramachandran, Executive Director, [Congressional Asian Pacific American Caucus](https://www.congressionalcaucus.org)

   Nisha sent her regret that she was out of town and unable to join the call.


   Speaker: John Yang, President and Executive Director, Advancing Justice | AAJC
Advancing Justice | AAJC: Anti-Profiling, Civil Rights & National Security Program

Legal Referral Service: Contact 202-935-6014 using the Signal app for attorney referrals. AAJC staff can assist you in Mandarin Chinese and English.

From the Anti-Racial Profiling Project to the Anti-Profiling, Civil Rights & National Security Program - "We work to combat profiling and protect the rights of Asian Americans and immigrants through policy advocacy, legal referrals, coalition building, and education for policymakers, the media and the general public."

For the past two years, AAJC has been giving us regular updates on the Anti-Racial Profiling Project and related activities. John gave us an update on moving from a project to a program in the meeting.

AAJC has been working with many of the meeting attendees for the past few years on the China Initiative, as well as the Anti Racial Profiling Project, designed to advocate and to provide legal representation for AAPI academics and scientists targeted by racial profiling. Now that the China Initiative is defunct, at least in name, in order to put a broader frame on the continuing work, AAJC has renamed the program: Anti Profiling Civil Rights and National Security Program for Advancing Justice AAJC. Below some components of the program are discussed.

- **Legal referral program:** if someone in the scientific community is being targeted by the DOJ or FBI, and needs legal representation, they can reach out at 202-935-6014. AAJC will help them find an appropriate attorney. This service is provided in English, Mandarin, Uyghur, and Turkish, and they are hoping to expand language access soon. Recently there has been an increase in people calling and looking for representation, and they notice that this correlates with increased news coverage of racial profiling cases.

- **Advocacy:** AAJC wants to broaden their advocacy beyond the China Initiative. For example, legislation such as the National Defense Authorization Act, CHIPS
and Science Act, the America Competes Act, could potentially cause harm to the AAPI community. AAJC recognizes that the Chinese government does present a threat to the US at times, but while we do need to address that threat, we need to ensure that the legislation does not harm the communities here in the US.

- **Helping Build Infrastructure for Community**: AAJC is invested in thinking about how to create better community infrastructure to enable all civil rights organizations to play a proactive role in addressing potential racial profiling and other harms to the AAPI community.

- **Specific Cases**: AAJC is actively thinking about how to act if the Franklin Tao case goes for appeal. They are also looking at other cases to potentially get involved in as an amicus curiae (friend of the court) to make sure the court understands the broader perspective of the individual cases and how these events impact the community throughout the country.

3. **Asian American Scholar Forum**

Speaker: Gisela Kusakawa, Executive Director, [Asian American Scholar Forum (AASF)](https://www.aasf.org)

Gisela was appointed to be the inaugural Executive Director for AASF on October 13, 2022. "AASF was founded last year when MIT professor Dr. Gang Chen was among a number of Chinese American scientists and scholars in U.S. universities who were subjected to heightened scrutiny or targeted by the federal government. These injustices ushered in historic efforts to bring a unified voice to the many Asian American and immigrant scientists, researchers, and scholars impacted. AASF was established to combat these injustices against Asian Americans and immigrants, particularly at a time of increasing anti-Asian sentiment and targeting of scientists, researchers, and scholars of Asian descent." Moving forward, AASF will work to: (1) promote Asian American and immigrant scientists, researchers, and scholars as crucial leaders in our democracy; (2) provide expertise and educate the media, the general public, and federal government;
and (3) protect and advance the rights of all communities, particularly in areas of science and research security policy.

Gisela started by sharing her regrets about leaving AAJC but that she is excited for her new role at AASF, who she says is a critical organization for this time. When Wen Ho Lee’s attorney, Brian Sun, said that he had wished there had been an organization like AASF during the case, to provide the community support and scientific perspective to support his case. The communities that are being subjected to scrutiny are the very communities that the US government depends on the most for support and expertise. The AASF membership includes some of the brightest Asian American and immigrant scientists and scholars in the US, national academy members, past and current university professors, department chairs. There are 7,000 scientists, researchers, and scholars represented throughout their 11 partnership organizations. One of AASF’s key goals is to lift up the AAPI scientific/academic community and give them a seat at the table, since they are the ones most impacted by many of these upcoming policies and legislation. They want to bridge between scientific, Asian American, legal, and civil rights advocacy groups. They have been meeting with federal agencies and national academies to share their findings. Continuing to work with other legal organizations like AAJC and APAPA, but the priority is really the science and research policy work.

Recently AASF submitted a comment in response to a request for public comment on common disclosure forms. They invite other organizations to support the recommendations and to be involved in this continuous cycle of comment and reform, because after receiving input from many scholars and scientists, they concluded that the form was difficult to complete and therefore the scholars did not feel they would be able to sign the fine print.

AASF is partnering with NYU Law’s US-Asia Law Institute in expanding their science and research security work. AASF looks forward to a great capacity building and hopefully long-term partnership.

AASF has an upcoming webinar on the implications of export controls and new restrictions to US persons. There are two components: compliance to the policy, and whether the policy makes sense. They hope to inform scientists and researchers about the policy and its impact and potential harms and unforeseen effects.

AASF recently hosted a panel at the National Asian Pacific American Bar Association Convention with AAJC, with a record-breaking 2,800 Asian American attorneys in attendance, and hosted a reenactment of Wen Ho Lee’s case.

Lastly, AASF considers education to be a long term solution on their end, aside from their defense and advocacy work. Educating the general public on Asian American contributions to US history and the present, such as the creation of Zoom (work of an Asian American scientist), is critical in stopping the perpetuation of the "foreigner narrative". So AASF is partnering with Friends of National Asian Pacific American
Museum, to lift up the contributions of Asian American researchers and scholars in science, medicine, and technology.

4. Update on the Case of Dr. Yanping Chen

Speaker: Matt Jones, Partner, WilmerHale (legal team: Jessica Lutkenhaus)

Dr. Yanping Chen’s Privacy Act case against the FBI, DOD, DHS, and DOJ remains ongoing almost four years after she filed the complaint. The lawsuit seeks accountability from the federal government for selectively leaking to Fox News information about Dr. Chen gathered during an FBI investigation. The legal team led by Matt Jones from WilmerHale LLP updated us with the latest on Dr. Chen’s case.

Dr. Chen is 69 years old. She was born and raised in China, where she received her training as a medical doctor, and ultimately went to work as a researcher in the Chinese astronaut program. In the 1980s she came to Washington D.C. to study space policy at George Washington University, where she received her Ph.D. During her time studying, she met and married David Frame, a U.S. citizen. Dr. Chen first became a permanent resident, then ultimately became a U.S. citizen. Together in 1998, Dr. Chen and her husband Dr. Frame launched the University of Management and Technology in Arlington, VA, to cater to working adults looking to improve their skills by going back to school. They became involved early on in building an online platform to offer classes remotely and flexibly, becoming one of the first universities to do so, leading to success and growth for the school, which has now educated over 25,000 students in a variety of academic disciplines.

Around 2009, the FBI began to investigate Dr. Chen, and over a 7-year period they touched every aspect of her personal and professional life. Most significantly, in December 2012, the FBI, along with other federal law enforcement agencies and local police, conducted simultaneous raids of Dr. Chen’s home and office, with armed men holding her at gunpoint, seizing dozens of boxes of personal materials including family photos, documents, and letters.
After 7 years of investigation and leaving no stone unturned, the DOJ decided not to bring any charges against Dr. Chen. However, a federal agent or agents decided to bring a case against her in the court of public opinion, meaning they began to leak information about her to the media to cast her in a negative light. In February 2017, Fox News aired an exclusive, prime-time broadcast insinuating that Dr. Chen was sending information about the US military to China through her university. This story was based on selective leaks from the FBI’s prior investigation, and they showed her immigration records, family photos, and included an interview with a Department of Defense employee who claimed he had been an FBI informant on the case.

These leaks were devastating to Dr. Chen’s reputation and the university. Fox News continued to air more stories about these leaked materials over the next few months. The Department of Defense then cut Dr. Chen’s university from their benefit program, which discouraged many students from attending and caused great financial and reputational damage.

It was at this point that Dr. Chen came to WilmerHale to seek accountability for the abuse of power by the federal government. To achieve some accountability for these harms, the legal team is currently suing the federal government on behalf of Dr. Chen in federal court in Washington, D.C.

They first sent information about these illegal leaks to the inspectors general at the DOJ, DHS, DOD, and the FBI, but all these departments refused to even open an investigation. The Privacy Act, which was passed after Watergate in order to protect private citizens, recognizes that the government collects a huge amount of information about private citizens and sets up specific rules for situations in which the government can use this information. In December of 2018, WilmerHale filed a lawsuit against the DOJ, DHS, DOD, and the FBI, for violation of the Privacy Act. The government tried to get the court to dismiss the suit but the judge refused, so for about 2.5 years now they have been in the discovery phase of the lawsuit, collecting evidence and testimony. The government has made it very difficult by asserting special privileges to try to cover up and keep secret what has happened. The FBI informant has been fighting to keep his information secret and refusing to answer questions, but the court has ruled against him. Most recently, Dr. Chen has asked Fox News and the reporter on Dr. Chen’s story to turn over information about the leak, and they are fighting in court over this also. Matt thanks APA Justice for bringing forward information about AAPI Americans who have similar stories to Dr. Chen’s and continually fighting for justice.

5. **Latest from The National Science Foundation on NSPM-33 and More**

Speaker: Rebecca Keiser, Chief of Research Security Strategy and Policy, National Science Foundation
Dr. Rebecca Keiser is also Co-Chair of the National Science and Technology Council’s Subcommittee on Research Security. She was not able to speak at the OSTP community briefing on October 14, but gave us the NSF perspective on the implementation of NSPM-33, the CHIPS and Science Act, and related issues in the monthly meeting.

Rebecca began by thanking APA Justice for their efforts with Capitol Hill. The Subcommittee on Research Security at the National Science and Technology Council interfaces with Capitol Hill often. The Safeguarding American Innovation Act as part of the CHIPS and Science and America Competes Act was very concerning for them. One of its concerning aspects was to criminalize nondisclosure in proposals, and they argued strongly against it. However it has been proposed again as part of the National Defense Authorization Act, and they continue to advocate against it.

**NSPM-33 implementation**: There is a clause saying "we shall pursue research security efforts without prejudice and xenophobia". Rebecca is at the agency that has to implement a lot of the provisions. They have a JASON Study out right now (group of scientists in the academic community who perform studies for the federal government on the intersection between science and security) looking for thoughts and recommendations on establishing a research security program conscious of prejudice and xenophobia.
Using Data to their Advantage: Secondly, they still don’t really understand the scale and scope of issues caused by foreign government interference in research. So they will be using big data to analyze and categorize these issues better. They will be blindly comparing NSF information with that of other large databases to see if they find issues or discrepancies concerning research security. To use these tools, they issued a systems of record notice under the Privacy Act. Going beyond that, they will publicly issue what the process will be to use these tools. They would also be providing this process to APA Justice, AAJC and AASF for input before public release.

NSF requires the information disclosure to resolve conflicts of interest and to make sound funding decisions. As much as a researcher tries to be accurate, a standardized form will never be complete. So if there is an omission of a $500 grant from a company, someone should not be punished because of that. They hope the analytics will be able to find the unintentional omissions and be able to discuss it with the researcher.

Public Experts Meeting: NSDD-189 is a presidential directive from the 1980s that says fundamental research should remain open. Recently an article suggested that NSF would be funding a workshop on potential classification of research in particular areas. However, Rebecca wanted to clarify that NSF believes that fundamental research should absolutely remain open, and that the U.S. needs to make efforts to attract international talent to the country. The public experts meeting will be exploring both of these points in more detail, as well as a more precise and less harmful approach to research security.

Malign Foreign Talent Recruitment Programs: Lastly, the CHIPS and Science Act has a prohibition on malign foreign talent recruitment programs, and includes a definition for such programs. A definition rather than a list is a positive step forward, but the challenge is how to implement this prohibition, meaning that one may not receive federal funding if they are part of such a program. The research subcommittee is focusing on implementing this carefully and avoiding prejudice, and will be sending out additional policy for public comment.

Q&A and Discussions

Question: Throughout the China Initiative process for four years, there have been unclear roles among law enforcement agencies and federal grant agencies. For grant application discrepancies, the resolution process should begin with federal grant agencies. However, in many of the China Initiative cases, law enforcement took action upfront, which eliminated the administrative process and began a criminal investigation, putting scientists in defensive positions, adding up quickly large legal costs. How are the roles and responsibilities of law enforcement and federal grant agencies separated? And will there be a consistent protocol for dealing with these application discrepancies?

Rebecca: There needs to be more clarity on roles and responsibilities, as well as due process. Rebecca has heard often that it is not clear what is the role of the NSF Office
of the Inspector General, and when and how they might choose to pursue an investigation. It is also not clear what are the interactions between NSF, their Office of the Inspector General and the DOJ. Rebecca has talked to her Inspector General about starting an outreach campaign to clarify the roles of the OIG and the role of the agency itself. The challenge is that every case is different so it is hard to have a standard approach to each case, but they can include more transparency about the process itself.

The DOJ tells NSF when they will pursue an investigation when they feel there is something criminal to pursue. However, there is increasing effort for DOJ to collaborate with the OIG and NSF to do negotiated settlements with the awardee institution to put into place a corrective action plan to address what sometimes are more systemic issues. For example, a number of researchers might have disclosed information to the university but it may not make it to NSF, indicating a need for systemic improvement. This is a positive move because NSF and the institution can work together to fix the problem in a non-punitive way.

**Question:** Is NSF working with the State Department on the implementation of NSPM-33 and the CHIPS and Science Act?

**Rebecca:** Yes, in a variety of ways. Overall there is a strong effort to collaborate with the Department of State to make sure that the national interest waiver, which now includes STEM, is implemented, to improve efforts to attract international talent. Secondly, they are working together with other governments including the EU and Nordic countries to coordinate more internationally on these issues.

**Question:** Will the transparency about the processes be implemented by other federal agencies? Will OSTP have a role in assuring that other agencies funding research at universities are better aligned in this regard?

**Rebecca:** OSTP does plan to improve transparency through the interagency process. Initial discussions have met with some concern that it is hard to be consistent across each different agency. Rebecca is optimistic about improvements however.

**Question:** Is there any data to set up a benchmark to measure the effectiveness of policies as they are created and compare them over time?

**Rebecca:** They do have individual agency information on violations on the NSF website, kept anonymous because of the privacy act, however, this data is not grouped in terms of type of violation that caused the consequence, and this is something they need to work on. Rebecca is committed to coordinate this among the inner agency.

As time expired for the meeting, Jeremy Wu made a final comment: It is inevitable that big data, data science, and AI will play an increasing if not dominant part of future
science and technology, but there are privacy, data quality, algorithm, and implicit bias issues that come along with this approach.

6. **Next Meeting**
   - Recess in December
   - Happy Holiday Season and New Year!!
   - Next meeting - Monday, January 9, 2023