2023/01/09 APA Justice Monthly Meeting
APA Justice Meeting – Monday, 2023/01/09
11:55 am Eastern Time / 8:55 am Pacific Time

Final Agenda

1. CAPAC updates

a. Speaker: Rep. Judy Chu, Chair, Congressional Asian Pacific American Caucus (invited)

b. Speaker: Nisha Ramachandran, Executive Director, CAPAC

Congresswoman Judy Chu was invited to kick off the New Year with us again by reviewing 2022 and looking to what is ahead in 2023. She was unable to join the meeting but she did leave recorded remarks to be played at the meeting. Her message is as follows:

“Thank you so much for inviting me here today to kick off the New Year with you. Back in 2015, when we were hearing reports of racial bias and profiling of Asian Americans, often specifically Chinese scientists, researchers, and engineers, I put out a call for the community to mobilize and to organize around this issue, and I am proud to see that the result of that call for community support is the APA Justice task force, and there has never been a more important time for you to be in existence.

When this community began to form in 2015, back when Sherry Chen and Dr. Xiaoxing Xi’s cases became public, we never knew how large of a problem targeting our communities would become and what new struggles we would face, but thanks to your leadership, the Asian American scientific and academic community’s voices are louder
than ever before, and more people are aware of the blatant racial profiling that our communities have faced at the hands of our own government.

I want to thank each of you for your engagement on such important issues like this, because together we have accomplished some major wins in the last year. So today it is my honor to join you and share what we have been able to do, thanks to your dedicated advocacy and to the work of APA justices, leaders, including Jeremy Wu, Steven Pei, and Vincent Wang.

One of our most critical accomplishments last year was successfully advocating to end the China Initiative, the harmful Department of Justice programs started by President Trump that was profiling Chinese researchers, which the US Government officially terminated last February.

From Dr. Anming Hu to Dr. Gang Chen, and so many others, we saw time and time again how baseless accusations were hurled at renowned scientists turning into protracted legal battles that upended lives and careers. Not only did we see a full acquittal in both those cases but the Department of Justice listened to our concerns and ended the China Initiative.

We in CAPAC will continue to work with all of you to ensure that we are monitoring the implementation of their new policies, and to get answers to the outstanding questions on the remaining China Initiative cases that were still pending at the time of the program’s termination.

I also want to thank all of you for your efforts as we worked on legislation to bolster American competitiveness like the Chips and Science Act, that Congress passed, and President Biden signed into law last year. Your support was critical in helping CAPAC ensure that none of the harmful amendments that targeted our communities, especially Chinese American academics, were included in the final bill.

This happened because a coalition of the API organizations like you, academic institutions and organizations and scientific groups came together to make your voices heard with your representatives. CAPAC was able to use this advocacy to make its case to House and Senate leaders like Speaker Pelosi and Leader Schumer, to ensure that all provisions that would have caused harm to Asian Americans were excluded from the final bill.

Finally, I wanted to highlight the work of so many folks on this call to bring long overdue justice to Sherry Chen. When I first heard Sherry’s story in 2015, I was shocked. An award-winning hydrologist at the National Weather Service at the Department of Commerce, Sherry was saving American lives and cities by developing river forecast models. Despite all of her contributions and incredible work, she was wrongfully
accused of economic espionage by the Department of Justice. She was put on administrative leave after being targeted by the Department of Commerce's Investigations and Threat Management Service Unit or ITMS, which had engaged in widespread profiling and surveillance of Asian-American researchers.

Though the Justice Department dropped all charges against Sherry less than a year after her arrest, she was still prevented from returning to the job that she loved, and was forced to endure many years of tremendous emotional and financial hardship.

That's why we and CAPAC immediately stepped in for Sherry, and have had her back every step of the way. We sent letters, held Congressional press conferences, hearings, and roundtables with Sherry, Professor Xiaoxing Xi, and Asian American civil rights groups, and met with then Attorney General, Loretta Lynch, and current Attorney General Merritt Garland, to discuss the pattern and practice of federal law enforcement and prosecutors singling out our community members. We spokes with Commerce Secretary Gina Raimondo to call for the disbanding of ITMS and provide appropriate redress for Sherry. In part due to CAPAC's advocacy, the Department of Commerce finally disbanded the rogue ITMS unit. I am so overjoyed that now, after so many years of injustice, she’s won a significant long overdue settlement of $1.8 million for her wrongful prosecution and termination. It is a symbol of justice restored to Sherry, and I want to thank APA justice for all your work to help make this happen.

I want to personally commend Sherry's successful efforts in winning this historic settlement. Much of the efforts by CAPAC and the current movement to combat anti-Asian racial profiling were only made possible because 10 years ago she spoke out about the discrimination she faced and sought fairness for herself and the broader community. Sherry's unrelenting pursuit of justice will inspire us all to continue defending the civil rights and liberties of AAPIs.

I want to underscore how important groups like APA justice are, and making all of these major achievements happen over the past year. Despite all of these wins we know the work continues to ensure that we are engaging with our partners in the administration, across federal agencies and with my own colleagues in Congress to ensure that our communities are not facing anti-Asian discrimination and racial profiling.

To that end, CAPAC will continue to prioritize calling out blatantly xenophobic, anti-China rhetoric, and pushing back policies that unfairly target Chinese American communities, which we unfortunately are expecting to see much more of in the year ahead. So thank you again for inviting me today to join your monthly call. I appreciate the leadership this group has taken when the need arose for our community to mobilize years ago.
While it is unfortunate that those needs have continued to grow, I am heartened to know that a group like APA Justice Task Force is leading the way in bringing our community together to stand up for our civil rights. I appreciate that CAPAC is included in your monthly calls through Nisha's updates, and I'm thrilled to start this year by congratulating you all on the hard work that you've done on behalf our community, and by encouraging you to stay strong on the road ahead as we work together this year speaking out for those being racially profiled and targeted just for being Chinese, and to continue building this diverse coalition of leaders across the country who are focusing on such an important issue.

I look forward to working with you to ensure this continues to be a country inclusive of all people where no one feels unsafe or un-American because of their faith or ethnicity, and an America where everybody is treated equally.”

Rep. Chu’s video is posted at https://www.youtube.com/watch?v=FLxSG7jNbcO (8:59)

2. Remarks on Historic Settlement and Justice

Speaker: Sherry Chen, Hydrologist, U.S. Department of Commerce

- APA Justice: Sherry Chen
- 2022/12/16 ACLU: Sherry Chen v United States
Sherry Chen spoke about her historic settlement and 10-year fight for justice.

Sherry began by thanking APA Justice for the invitation to speak and a special thanks to Jeremy Wu, who, after learning about her case in 2015, has supported her with advice and experienced wisdom every step of the way.

Exactly 2 months ago, a historical settlement was reached with the Commerce Department and Justice Department for Sherry's employment case, and her lawsuit against both departments, ending the decade-long legal battle of three lawsuits, including the criminal case against Sherry Chen.

The odds of winning were very low for all three cases, so Sherry is extremely grateful to say that she has finally won. She has many people to thank including her lawyers and the support of community organizations and members of Congress.

Sherry’s life was turned upside down by the government’s illegal investigation. She was treated as a spy and arrested in front of her coworkers despite no evidence whatsoever. Despite being offered many plea deals, Sherry decided to maintain her innocence and reject these deals, ready to fight for justice at trial.

When the jury selection was underway, and just a few days before the trial was scheduled to begin, the government suddenly moved to drop all charges against Sherry with no explanation. Despite this, the Commerce Department still terminated her employment largely based on those charges that had been dropped.

She was advised by friends to not waste her time at an agency that treated her unfairly, however she could not walk away from this injustice. Instead, she challenged the termination decision with the Merit System Protection Board (MSPB). At the time, Jeremy Wu did an analysis finding that the winning rate for Federal employees against their agencies was only 1-2%. However, after a years-long fight, a judge finally concluded that Sherry had been the victim of a gross injustice.

In filing her lawsuits against the Commerce Department and the Justice Department, legal experts warned that it would be a long, uphill battle. After years of fighting, both cases have been settled with what is now the largest settlement payment of its kind to an individual in history.

Besides the monetary relief, Sherry was granted some forms of non-monetary relief important to her, including a letter of accomplishment from the Department of Commerce, acknowledging her skills and dedication to the department during her tenure, which was presented by Benjamin Friedman, the Deputy Under Secretary for Operations for Sherry’s agency in the Department of Commerce. This letter can be found on the APA Justice website at https://bit.ly/3Xak0AW

Sherry discussed her meeting with Benjamin Friedman where she brought up several issues and concerns with the agency’s recent changes, especially the lack of
accountability and employee protections for privacy and civil rights. Mr. Friedman promised that he would bring her suggestions and concerns to the relevant offices such as the Office of Inspector General, and to the meeting of the Commerce Department’s newly established governing body that oversees departmental changes. Finally, he said that he had known about Sherry’s case for a long time, but was very glad to meet her in person, and he wished Sherry “the best luck in the world”.

Sherry hopes that her case can be an example to others fighting for justice and civil rights. Though there is no amount of money or reparations that can undo the wrongful damages and harms Sherry Chen has experienced, the settlement does achieve her goal for this fight, to hold the government accountable and to bring positive impact to prevent this type of situation from happening to other individuals in the future. In closing Sherry expressed extreme gratitude for all those who supported her during her battle for justice.

3. Recap of Congressional Reception

Speakers:
   a. Haipei Shue, President, United Chinese Americans
   b. Vincent Wang, Co-organizer, APA Justice; Chair, Ohio Chinese American Association

On December 13th, 2022, with the help of Congresswoman Judy Chu’s office, Asian American organizations led by United Chinese Americans, Ohio Chinese American Association, and APA Justice hosted a reception to celebrate and congratulate Sherry Chen and her victories.

Congresswoman Judy Chu and Congressman Ted Lieu gave remarks to congratulate her. There was a roundtable with meaningful discussion surrounding her case. Leaders from other community organizations were also present, as well as Sherry Chen herself.
In total there were twelve civil rights and social justice groups in attendance, as well as the New York Times and other members of the press. Vincent thanked everyone for their support and participation.

There was a similar event held in California hosted by Sherry’s legal team, and an event hosted by Asian American Coalition of Ohio, which took place in early January, with notable local figures in attendance, including the mayor of Cincinnati.


Haipei Shue added that he believes Sherry Chen will continue to write, speak, and advocate for others in her position.

4. ACLU 2022 Review and 2023 Plans

Speakers:

Patrick Toomey, Deputy Director, National Security Project, American Civil Liberties Union (ACLU)

Ashley Gorski, Senior Staff Attorney, National Security Project, ACLU

- 2022/12/16 ACLU: Sherry Chen v United States
- 2022/02/07 ACLU: Chinese American Professor, Falsely Painted as a Spy for China, Moves Forward with Appeal Against FBI
- 2021/04/01 ACLU: Xi v. United States – Challenge to Warrantless Surveillance
- ACLU: Know Your Rights - Enforcement at The Airport
- ACLU: Warrantless Surveillance under Section 702 OF FISA
- APA Justice: The Foreign Intelligence Surveillance Act (FISA)
The alliance between ACLU and the Asian American community continues to grow after the historic settlement of Sherry Chen marked one of the ACLU's Top 4 accomplishments in 2022. In 2023, the ACLU is looking ahead to the Third Circuit Court of Appeals decision on Professor Xiaoxing Xi's case; work to address the questioning of Asian American scientists at the border; the upcoming debate in Congress about whether to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA), which may increasingly sweep up people communicating with family, friends, and business contacts in China; and efforts to strengthen protections against profiling and discrimination by the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the Department of Homeland Security (DHS).

Areas of focus going into 2023:

**Xiaoxing Xi’s case**: the appeal was argued in the Third Circuit Court of Appeals in September in Philadelphia. They are hopeful that the court will issue a positive ruling for the Xi family but are awaiting a decision.

**Surveillance reform**: Expiration of Surveillance Law Section 702 of the Foreign Intelligence Surveillance Act. This is a form of surveillance used to conduct mass surveillance of international communications involving one person in the US and one person overseas without a warrant. The ACLU has continuously fought against this law in court. Sunset date is set for the end of 2023.

**Border questioning**: The ACLU has been hearing second-hand reports about Chinese American academics being detained for questioning by CBP when returning to the US following international travel. The ACLU intends to look into this in 2023, and Gisela from the Asian American Scholar Forum is organizing a “Know Your Rights” webinar in the near future.

**DOJ/DHS policies against discrimination**: Finally, the ACLU has been engaged in advocacy alongside the Leadership Conference, Brennan Center for Justice, and many others to strengthen DOJ and DHS rules concerning the use of race in law enforcement activity. Certain DOJ rules have long contained a loophole that effectively permits racial and ethnic profiling in the national security context, and the ACLU has been advocating to close that loophole.

5. Update on Nomination for U.S. Attorney of Eastern District of Tennessee
The 117th Congress ended on January 3, 2023, without action by the Senate on the nomination of Mr. Casey Arrowood to become the U.S. Attorney for the Eastern District of Tennessee. As a new Congress began, the nomination was returned to the White House. What is next?

John began by thanking everyone for making their opposition heard. As a result, the Senate Judiciary Committee did not approve the Casey Arrowood nomination for US Attorney for the Eastern District of Tennessee.

Now that the nomination has been returned to The White House, there are three possible outcomes:

(1) Mr. Arrowood could be renominated. (2) The current interim US attorney, Trey Hamilton, could remain without any nomination being made. (3) Congressman Steve Cohen of Memphis, the only Tennessee Congressional representative of the president’s party, could start the process again to recommend a U.S. Attorney nominee to the Biden Administration.
APA organizations and leaders nationally opposed the Arrowood nomination and largely deferred to local Tennessee APA leaders on what path to take. As the various scenarios develop, organizations will continue to learn from and collaborate with the local Tennessee leaders on next steps. Currently, the feedback from Tennessee is opposition to anyone responsible for the wrongful prosecution of Professor Anming Hu. This stance would presumably include the current interim U.S. Attorney. We will continue to monitor and communicate on the situation.

6. Anti-Profiling, Civil Rights & National Security Program and Related Activities

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

Updates on the Anti-profiling, Civil Rights & National Security Program and related activities at Advancing Justice | AAJC.

Under new house leadership, one of the first things that Speaker McCarthy did was to create a new select committee on China. Obviously AAJC has concerns surrounding this. However, McCarthy has been nuanced in his speech and formation of the committee, specifically naming it the committee on Strategic Competition with the US and the Chinese Communist Party. AAJC may lead a coalition showing bipartisan concerns with this committee, encouraging them to distinguish further between the Chinese government and Chinese society as a whole.
AAJC will also follow up with the DOJ since one year has passed since the end of the China Initiative. Lastly, any time there is legislation going through the Senate, there is concern about language which would essentially reinstate the China Initiative. Luckily, this suggestion was never introduced in the most recent piece of legislation, the National Defense Reauthorization Act. Vigilance is continually required on this topic to continue protecting the legislation from this unproductive and discriminatory language.

7. Q&A and Discussions

8. Next Meeting
   - January 22, 2023, is Lunar New Year Day; it will be the Year of the Rabbit
   - Next meeting - Monday, February 6, 2023