

## Notes for Congressional Briefing

Frank H. Wu<sup>1</sup>

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At the outset, I emphasize as a native-born U.S citizen that I support without hesitation the enforcement of both American legal norms and scientific community understandings about research integrity.<sup>2</sup> That includes criminal prosecution as appropriate. My point is simple: protection of American interests is not only compatible with American ideals of due process, equal protection, and civil liberties, but also impossible without respect for such standards. In addition to convictions and guilty pleas are numerous cases of innocent people accused, whose careers have been wrecked, as well as those compelled to agree to charges that are neither espionage in any sense nor likely to have been brought against persons of different identities.<sup>3</sup> High-ranking government officials have declared explicitly that all or almost all Chinese students studying here are “spies” and pursued allegations that turn out to be baseless against even naturalized U.S. citizens.<sup>4</sup> Activities in China that were encouraged until recently became very suddenly frowned up and then prohibited to the point of criminal, with law enforcement priorities being newly announced with retroactive effect. Meanwhile, science itself is collateral damage; the openness crucial for progress is being systematically eliminated.

Asian Americans, who number approximately 23 million and include those whose ancestors fought in the Civil War, built the transcontinental railroad, or arrived generations ago, are overrepresented in the scientific workforce.<sup>5</sup> Among the leading researchers in academe and private industry, winning the Nobel Prize and credited with major discoveries, are those of Chinese background. Many are native born, others naturalized citizens (some refugees or dissidents), and some recent arrivals. For much of history, Asian Americans have been “perpetual foreigners.” That has changed only through activism.

In this context, there are too many instances of “false positives” or disproportionate punishment being meted out for collaborative efforts not long ago being wholeheartedly promoted by the federal government through funding agencies. Even if there is no express intent that would be deemed racist, the effect nonetheless is racial. The phenomenon is the same as it is with the violence directed at Asian Americans during the pandemic, including in the dismissal of Asian American protests.

Until the attack in Atlanta two months ago, with the confessed killer taking the lives of six Asian American women and eight victims, few other than Asian Americans themselves were attentive to the pattern of racial discrimination which is pervasive. The viral videos of other brutal attacks confirm that pattern, with individuals inspired to shout racial slurs in a toxic environment of blaming Asian Americans — and even those who appear Asian but are not — for the COVID-19 virus.

The cumulative effect is chilling. There has been a public policy message that the United States and China should “decouple.” Within academic institutions, that implies any contact with China is problematic. By extension, interaction with persons of Chinese background is to be avoided unless those persons demonstrate their political loyalty to the United States in a manner not imposed on others similarly situated. This can happen very easily without any invidious intent. Due to the complexity of the rules, the constant change in details, the burden of compliance, the risks, and the penalties, the safest course is to stay away from anything that could attract suspicion no matter how worthwhile. Even the universities with the most research funding and faculty who have brought in such grants cannot afford to lose these moneys and the ability to compete in the future. (Federal employees of Chinese national origin also have made credible reports of racial discrimination.)

There have even been multiple attempts to rationalize racial profiling.<sup>6</sup> The claims include the suggestion that because individuals of Chinese descent committed violations of the law, other individuals who have nothing in common other than their heritage also should be regarded as suspect; or that the Chinese government recruits agents and “non traditional collectors” of intelligence based on ethnic affinity. The same logic was applied with Japan and Japanese Americans during World War II, resulting in the internment camps later repudiated unanimously by a blue-ribbon federal commission as unjustified – and subsequently the subject of 1988 redress legislation.<sup>7</sup> If accepted now, such arguments would allow stereotyping if it had the modicum of plausibility despite the negative consequences and would allow a foreign government’s supposed actions to compromise a U.S. citizen’s civil rights. It would be akin to the assertion that if a gang was made up of members of a certain background and attempted to enlist others familiar to them, investigation of persons solely because of that attribute would be proper. Yet efforts by Asian Americans and others to insist on transparency and consideration of these concerns have been met with denial rather than sympathy. There has not been interest until convenings such as this to address the problem or to involve Asian Americans.

The JASON report and the NSF approach (in contrast to the NIH approach) are both models for protection of national security without destroying the values of scientific research and principles of equal protection. I offer three recommendations which would enhance legitimate enforcement efforts.

- 1) Promote clarity and communication of rules, especially those that have changed either in the text itself or in the level of enforcement priority, including by holding Congressional hearings;
- 2) Ensure consistency in enforcement and assure minority communities (U.S. citizens and lawful permanent residents) they are not being targeted unfairly based on assumptions, including by ending the “China Initiative;” and
- 3) Increase compliance training, including with culturally sensitive messaging, without enlisting academic institutions for enforcement of criminal law; this could include an “amnesty” period for correcting minor errors not warranting prosecution.

The true American interest is in welcoming talent that contributes to our nation. Reckless prosecutions, verging on racial persecution, have created a self-fulfilling prophecy of individuals with potential to make significant contributions to our economy being deterred from coming at all or being driven back despite their interest in staying here. Ironically, some of the proposals will have an effect the opposite of what is intended. They will strengthen China and weaken the United States.

We can do better.

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<sup>1</sup> President, Queens College, City University of New York (title for identification purposes only; opinions presented here are the author’s and do not represent official policy of any institution)

<sup>2</sup> I have written about these issues for [Inside Higher Education](#).

<sup>3</sup> The cases of Xiaoxing Xi and Sherry Chen have been covered by [Sixty Minutes](#) and the New York Times [here](#) and [here](#), respectively.

<sup>4</sup> [The claim that “almost every student” from China is a spy was made by former President Donald Trump. Basic data about Asian Americans is regularly compiled by Pew Research, a reputable non-profit.](#)

<sup>6</sup> [Prosecutors have said they are looking for Chinese people because the Chinese government is the bad actor, as they would look for French people if it were the French government.](#)

<sup>7</sup> [The full report of the CWRIC is available here.](#)