Addressing Immediate and Systemic Issues
Implementation of NSPM-33

Presentation to
Office of Science and Technology Policy
Subcommittee on Research Security, National Science and Technology Council

Engagement Hour
March 28, 2022
Outline of Presentation

Part 1
Dr. Jeremy Wu
• Participating Organizations and Individuals
• Chronological Milestones
• APA Justice messages
• Values and Principles
• Kickoff topics

Part 2
Professor Xiaoxing Xi
• Policies that diminish US power of attracting talent and fuel xenophobia against Asian Americans

Part 3
Professor Steven Pei
• NSPM-33 Implementation Guidance Specific Recommendations to OSTP
Participating Organizations and Individuals

- Asian Pacific American (APA) Justice - Steven Pei, Vincent Wang, Jeremy Wu
- United Chinese Americans (UCA) - Jinliang Cai, Haipei Shue, Hua Wang
- Society of Chinese Bioscientists in America – Shan-Lu Liu, Kunxin Luo

- Rebecca Everly, National Academies of Sciences, Engineering, and Medicine;* Director, Committee on Human Rights
- Patty Evers, National Academies of Sciences, Engineering, and Medicine;* Deputy Director, Committee on Human Rights
- Michael German, Brennan Center for Justice;* former FBI agent; author
- Mike Honda, former U.S. Congressman*
- Andrea Liu, University of Pennsylvania;* former Speaker of American Physical Society
- Peter Michelson, Stanford University;* Co-Chair, Challenges for International Scientific Partnerships Project, American Academy of Arts and Sciences
- Marinda Wu, Board Chair, Chinese American Chemical Society;* Past President, American Chemical Society
- Xiaoxing Xi, Temple University;* impacted scientist; recipient of 2020 Andrei Sakharov Prize

* Individuals do not represent or speak on behalf of the institutions in official capacity
Chronological Milestones

- **2021/08/10** OSTP on Clear Rules for Research Security and Researcher Responsibility
- **2021/11/08** APA Justice Comment on Research Security, Open Science, and Racial Profiling (Message A)
- **2022/01/04** OSTP blog and Guidance for Implementing NSPM-33
- **2022/01/18** OSTP hosted community briefing
- **2022/01/21** APA Justice statement/background/questions to OSTP (Message B)
- **2022/02/08** APA Justice request on role of the FBI and Columbia-FBI Forum (Message C)
- **2022/02/22** APA Justice request briefing and dialogue with FBI under OSTP (Message D)
- **2022/03/09** OSTP Engagement Hours announced
- **2022/03/28** First Engagement Hour starts
- **2022/04/04** 90-day Comment period ends (?)
- **2022/05/04** 120-day Standardization Development period ends (?)
- **2022/05/30** Engagement Hours ends
2021/11/08 Message A
Harmonize, keep it simple, check law enforcement, repair damage

1. Harmonize disclosure policy across funding agencies
2. Set the requirement of disclosure at a reasonable level
3. Leave the oversight and enforcement functions of the universities to funding agencies, not law enforcement.
4. Support the call to end the “China Initiative” to remove the oversight and enforcement roles and responsibilities from the Department of Justice.
5. Lead an independent review of the ongoing investigations and practices by federal agencies to repair the damage that the “China Initiative” has done.
The creation of a centralized website including the current non-classified disclosure policies, oversight and enforcement practices, and research security programs, as well as revisions and new products that will be rolling out.

2. The establishment of a transparent and consultative process for the research and civil rights communities to identify, report, and track issues and problems.

3. The continuing engagement of the AANHPI research and civil rights organizations with scheduled meetings to address key issues that have consequential impact on the implementation of NSPM-33.

Law enforcement and national intelligence were noticeably missing in the briefing.
2022/02/08 Message C

COLUMBIA | The Forum

Dear Guest,

Save the date, February 1, 2022, 9 a.m.–12 noon, for a symposium on Academic Research Security hosted by Columbia University in partnership with the Federal Bureau of Investigation New York Office. Join this virtual event for updates on how universities and the U.S. federal government are working together to protect and secure the American research enterprise.

• Is OSTP aware of this Columbia-FBI academic research security symposium?
• If so, was it coordinated with OSTP to ensure that it will not fuel xenophobia against Asian Americans?
• Is the statement accurate that this is an effort of the U.S. government which includes OSTP and other federal agencies? Or is it more accurate that this is an FBI effort?
• Will the record and content of the February 1 symposium be shared with the AANHPI and scientific communities under the coordination of OSTP?
• Will the AANHPI and scientific communities be engaged in future similar activities conducted by the FBI under the coordination of OSTP?
2022/02/22 Message D
Request briefing and continuing dialog with FBI under auspices of OSTP

OSTP response
• OSTP was aware but did not endorse Columbia-FBI forum
• An FBI effort, not an OSTP-coordinated government-wide effort

Our concerns
• Exclusionary, one-sided, and lack transparency
• These secretive forums spread xenophobic messages, misinformation, and fearmongering

Track record
• 2018/08/09 secret meeting held in Houston instigated broad community fear and concerns
• 2018/12/07 community leaders visit to FBI HQ failed to create dialogue

Statement and Questions
• The tragic outcomes of “China Initiative” were preventable
• Will the secretive forums continue? What is role of law enforcement including FBI?
NSTC Guidance Values and Principles

“... core values behind America’s scientific leadership, including openness, transparency, honesty, equity, fair competition, objectivity, and democratic values.”

“... to protect America’s security and openness, to be clear so that well-intentioned researchers can easily and properly comply, and to ensure that policies do not fuel xenophobia or prejudice.”

“The following point is a requirement authorized by NSPM-33:

Agencies must implement NSPM-33 provisions and related requirements in a nondiscriminatory manner that does not stigmatize or treat unfairly members of the research community, including members of ethnic or racial minority groups.”
APA Justice Values and Principles

• We need our government and our university administrations to be in fact transparent, accountable, and operate with fairness and integrity, not just in words

• The roles, responsibilities, and practices should be balanced in the implementation of NSPM-33, not just limited to scientists and researchers, but also include
  • Law enforcement agencies including the FBI and intelligence agencies including the ODNI
  • Federal funding agencies
  • University administrations
• The NSPM-33 implementation guidance must ensure:

  – that individuals subjected to research security investigations receive due process, including clarity in grant requirements, notice of alleged violation, advice of rights, access to counsel, opportunity to correct, and a fair hearing before any administrative or civil penalty is imposed;

  – that federal research agencies may only provide personally identifying information regarding grant recipients to law enforcement entities based upon receipt of proper legal process;

  – that federal research agencies making law enforcement referrals or providing derogatory information to law enforcement agencies follow a clearly established, detailed, and transparent process, based upon evidence establishing a reasonable indication that the subject has violated, is violating, or will violate a specific criminal law, and that all data regarding such referrals or information provisions to law enforcement is properly documented to allow for audits and public accountability;

  – that all research security investigations, audits, and criminal referrals are free from profiling based on race, ethnicity, gender, religion, national origin, sexual orientation, or gender identity;

  – that all government statements regarding the nature and scope of threats to national security and research integrity are factual, supported by publicly available data, and do not promote, reinforce, or inflame racist or xenophobic sentiments within government or among the public.
Additional Participant Values and Principles

• “Protect open fundamental research at U.S. universities”
• “Preserve academic exchanges and scientific collaborations that advance the U.S. fundamental research enterprise”
• “In the aftermath of the ‘China Initiative’, restore the reputation of the United States as a welcoming destination for international students and scholars, particularly in STEM fields”
• “Maintain forum for discussions between OSTP and university researchers at many levels, not just with leadership but with faculty, staff, and graduate students.”
• “Require periodic and comprehensive reporting by federal research funding agencies to OSTP and to the U.S. research community to facilitate an objective and transparent assessment of compliance and research integrity challenges and support evidence-based policymaking.”
• “Diversity, Equity, Inclusion and Respect”
Kickoff Topics

• Asian American History and Perspective
  • Dr. Wen Ho Lee and Department of Energy Report
  • Before “China Initiative,” there were Sherry Chen, Xiaoxing Xi, and others
  • Section 5712 of FY20 NDAA as Part of OSTP Process

• Information, Misinformation, Communications
  • Status of centralized website
  • Stop spreading unsupported, false, or misleading information
  • Standardize posting of investigative results and publish statistical summaries
  • Responsiveness to FOIA requests

• Resolving Existing Investigations

• Reaffirm or Change Existing Rules and Laws
Asian American History and Perspective
Dr. Wen Ho Lee and Department of Energy Report

• “Those who cannot learn from history are doomed to repeat it”
• The Department of Energy Task Force Against Racial Profiling final report and related posts have disappeared from government websites. Remedial and preventive actions are needed
• We submit an electronic copy preserved by the Federation of American Scientists as part of the OSTP process.
Asian American History and Perspective
Before “China Initiative,” there were Sherry Chen, Xiaoxing Xi, and others

- APA Justice was formed in the Fall of 2015 after a series of wrongful prosecutions
- Sherry Chen’s 10 years of injustice at the Department of Commerce
- Promised changes by the Department of Justice failed in the “China Initiative”
- We need real, systemic reforms
Asian American History and Perspective
Section 5712 of FY20 NDAA as Part of OSTP Process

• Section 5712 of the FY20 National Defense Authorization Act (NDAA) required ODNI to produce an unclassified report (pages 989-990 https://bit.ly/3eVEHgY)
• This report was due in June 2020, but has not been released by ODNI
• ODNI is a member of the Subcommittee on Research Security
• We request the release and inclusion of this report as part of the OSTP process

• The report requires
  a. a review of how the policies, procedures, and practices of the intelligence community that govern the intelligence activities and operations targeting the People’s Republic of China affect policies, procedures, and practices relating to the privacy and civil liberties of Americans of Chinese descent who may be targets of espionage and influence operations by China
  b. recommendations to ensure that the privacy and civil liberties of Americans of Chinese descent are sufficiently protected.
Information, Misinformation, Communications

Status of centralized website

- Evidence-based policymaking
- One-stop websites are common and effective practices
- Make use of technology to provide clarity, transparency, and consistency
- Non-classified forms, disclosure policies, oversight and enforcement practices, and research security programs should already be available
- Is there agreement about this need?
- Will it be implemented in a timely manner?
- If not, will OSTP collect and supply the links to us for tracking and monitoring?
Information, Misinformation, Communications

Stop spreading unsupported, false, or misleading information

• The $225-$600 billion figure has been debunked by the American Physical Society when it first came out in 2019, but it continues to be used by government agencies.

• Irreconcilable, incoherent number of FBI investigations opening at one new case per 10 or 12 hours

• Government agencies have obligations to disclose methods, produce high-quality information, and are accountable for spreading unsupported, false, or misleading information
The Freedom of Information Act (FOIA) is a well-known law, but it is frequently ignored by federal agencies.

How can federal agencies be more responsive?

Why are many of the agencies not on https://foiaonline.gov/?
Information, Misinformation, Communications

Consistent Posting of Investigative Results and Publish Statistical Summaries

• The NSF OIG publishes Case Closeout Memoranda to summarize their investigations and categorize them by outcomes and issues.

• It is a transparent and accountable practice; it should be used consistently across federal agencies.

• Adding and publishing statistical summaries by time, issues, and outcomes for both closed and ongoing investigations (including FBI cases involving Research Security) is a natural extension.
Resolving Existing Investigations
The “China Initiative” is dead, long live the “China Initiative”?

• Hundreds of academics like Yale University Professor Haifen Lin are still subject to potentially never-ending investigations by DOJ and funding agencies

• DOJ announced in ending the “China Initiative” that law enforcement will assess “evidence of intent and materiality” in their investigations

• Will federal funding agencies such as NIH, NSF, DOE, and NASA adopt and apply the same principles?

• Will federal funding agencies discontinue their existing investigations in a timely manner when existing investigations lack “evidence of intent and materiality?”
Reaffirm or Change Existing Rules and Laws
Reaffirm NSDD-189

• What barriers exist in rules and laws for OSTP to implement NSPM-33?
• What reaffirmation or change in rules and laws does OTSP need to implement NSPM-33?
• Will OSTP support and issue a statement to reaffirm the definition of Fundamental Research in NSDD-189 as in 2001 and again in 2010?
Part 2 – Presentation by Professor Xi

Professor Xiaoxing Xi

• Laura H. Carnell Professor of Physics, Temple University
• Professor Xi was wrongfully arrested and prosecuted in May 2015. His case was dropped in September 2015
• Recipient of 2020 Andrei Sakharov Prize by the American Physical Society for “articulate and steadfast advocacy in support of the US scientific community and open scientific exchange, and especially his efforts to clarify the nature of international scientific collaboration in cases involving allegations of scientific espionage.”
Policies that diminish US power of attracting talent and fuel xenophobia against Asian Americans

China’s “use of nontraditional collectors, especially in the academic setting, whether it is professors, scientists, students, we see in almost every field office the FBI has around the country.”


“One way that we measure success . . . There have been over a hundred scientists who have been removed from the NIH ecosystem . . .”

Part 3 – Presentation by Professor Pei

Professor Steven Pei

• Co-organizer, APA Justice Task Force
• Professor of Electrical and Computer Engineering; Former Associate Dean of Engineering for Research, University of Houston; Former Department Head, Bell Labs
• Inaugural Chair of the Board, United Chinese Americans
• Member, Asian American Scholars Forum
R&D (p.23): Basic, Applied Research and Experimental Development

Basic and Applied Research

R&D (p.23): Basic, Applied Research and Experimental Development

Classified, Export-Controlled or Otherwise Legally Protected Research

Research agencies (p.18)

Recommendation 1

R&D in critical and emerging technology areas with implications for United States national and economic security (p.18)

Recommendation 2

Violations should be investigated by the cognizant IGs and referred to the agency (and institutions) if administrative action is deemed appropriate & referred to DoJ, when warranted. (P.11)

Recommendation 3

Agencies should not require that research organizations apply the more stringent security protocols appropriate to classified information or CUI to the conduct of fundamental research (p.19)

(b) Variation (p.2): Required more stringent protections

(c) Variation (p.2): Required for other compelling reasons consistent with individual agency authorities and as coordinated through the NSTC

Subject to already-established security protocols in addition to the more broadly applicable standards associated with the NSPM-33 research security program requirement (P.19)
Recommendation 1

For R&D projects with implications for national and economic, funding agencies shall clearly define and communicate disclosure requirements to the institution and scientists. In addition, the office of Vice President of Research of the institution should assume the responsibilities of reviewing all proposals for compliance instead of putting all the burden on scientists.
Recommendation 2

IGs shall refer to both the agency (and institution) if administrative action is deemed appropriate. Both the agency and institution have the needed scientific knowledge. However, the institution also has regular professional and personal interaction with the offender to provide a more holistic view of the violations by taking the factors on p. 12 of the Guidance into considerations.
Recommendation 3

When required for other compelling reasons consistent with individual agency authorities, not only the additional disclosure requirements, but also the investigations should be coordinated through the NSTC if investigations are not conducted by the cognizant IGs. Investigations shall follow clearly defined and publicized guidelines and procedures.
Recommendation 4

If no national or economic security breach is involved, then the grace period of correcting incomplete or inaccurate information should be extended to previous disclosures with no questions asked for agency documents. This would encourage individuals to come forward and correct past omissions would help the federal government to regain the trust of Asian and scientific community.
Thank You!