

Companion Notes

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

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## Part 1 Presentation by Dr. Jeremy Wu

### Slide 1. Issues and Suggestions on Implementation of NSPM-33

Good afternoon. My name is Jeremy Wu. It is good to be back and see many of you again. I retired from the federal government. I am a co-organizer for APA Justice.

We thank OSTP and the Subcommittee on Research Security for the opportunity to join this Inaugural Engagement Hour, and in particular Dr. Eller and Dr. Schwab for their incredible patience working with us.

We are here to present and discuss immediate and systemic issues as the NSPM-33 is being implemented. We hope to be able to participate in this process on a continuing basis.

A package was sent to you last Thursday. We apologize for two slight changes and a few minor edits. We replaced slide #17 because it was a duplicate. We added one flowchart to explain the recommendations in inference to the Guidance. An amended final version of the package will be sent after the Hour.

We will keep our presentation under 20 minutes in total so that the rest of the time can be used to clarify, listen, and discuss.

## Slide 2. Outline of Presentation

I will start today's presentation. Professor Xiaoxing Xi will follow. Professor Steven Pei will close.

## Slide 3. Participating Organizations and Individuals

This is a list of our organizational and individual participants today. We are all separate entities but in the same ecosystem bonded by the shared interest of combating racial profiling and discrimination. We strive for justice and fairness in the best interest of science and the United States of America.

Participating individuals today do not represent or speak on behalf of the institutions in an official capacity.

**Asian Pacific American (APA) Justice.** A non-partisan platform formed in 2015 to build a sustainable ecosystem that addresses racial profiling concerns and to facilitate, inform, and advocate on selected issues related to justice and fairness for the Asian Pacific American community. <https://www.apajustice.org/>

- Steven Pei, Co-organizer; Professor, University of Houston. <https://bit.ly/3ub0EPh>
- Vincent Wang, Co-organizer; Chair, Ohio Chinese American Association. <https://bit.ly/3ub18VB>
- Jeremy Wu, Co-organizer; Retired, U.S. Federal Government. <https://bit.ly/3xzKUpD>

**United Chinese Americans (UCA).** A nationwide, nonpartisan nonprofit coalition, empowering Chinese Americans, protecting civil rights, engaging and serving the next generation. <https://ucausa.org/>.

- Jinliang Cai, Chair. <https://bit.ly/3jsKFWL>
- Haipei Shue, President. <https://bit.ly/3jsKFWL>
- Hua Wang, Chair, Public Policy Committee. <https://bit.ly/3jsKFWL>

**Society of Chinese Bioscientists in America (SCBA).** A non-profit organization founded by a few prominent and enthusiastic bioscientists in 1984. Currently, SCBA has approximately 2,000 members from various universities, academies, medical institutions, industrial and biotechnology companies. <http://bit.ly/2TI4QHT>

- Shan-Lu Liu, President. <https://bit.ly/3isScoY>
- Kunxin Luo, Secretary. <https://bit.ly/3isScoY>

**Rebecca Everly**, Director, Committee on Human Rights, National Academies of Sciences, Engineering, and Medicine. <https://bit.ly/3qjKy4O>

**Patty Evers**, Deputy Director, Committee on Human Rights, National Academies of Sciences, Engineering, and Medicine. <https://bit.ly/3qjKy4O>

**Michael German**, Fellow, Liberty & National Security, Brennan Center for Justice at NYU Law School. Mr. German is a former special agent with the FBI. He is also author of the book *Disrupt, Discredit, and Divide: How the New FBI Damages Democracy*. <http://bit.ly/357f3i9>

**Mike Honda**, Former U.S. Congressman

**Andrea Liu**, Hepburn Professor of Physics, University of Pennsylvania. Professor Liu is former Speaker, American Physical Society. <https://bit.ly/3KWHbbP>

**Peter Michelson**, Senior Associate Dean for the Natural Sciences and Professor and The Luke Blossom Professor in The School of Humanities and Sciences, Stanford University. <https://stanford.io/2FGNHr2>. Professor Michelson is Co-Chair of the Challenges for International Scientific Partnerships Project at the American Academy of Arts and Sciences <https://bit.ly/3HGrtA5>. He is a co-lead of the Stanford letter that started a nationwide faculty campaign to call for the end of the "China Initiative" and make systemic reforms. It resulted in more than 3,100 faculty members from more than 230 institutions across all 50 states, District of Columbia, and Puerto Rico co-signing <https://bit.ly/319qbxn>. The Stanford faculty members also created this Winds of Freedom website <https://bit.ly/38ZxKre> that covers additional faculty from other universities that either endorsed the Stanford letter or submitted their own letters to the Attorney General.

**Marinda Wu**, Board Chair of the Chinese American Chemical Society and Past President of the American Chemical Society. <https://bit.ly/3woLSai>

**Xiaoxing Xi**, Laura H. Carnell Professor of Physics, Temple University. <http://bit.ly/38RTse6>. Professor Xi was wrongfully arrested and prosecuted in 2015. His case was dismissed. <http://nyti.ms/2zK4O7s>. He was awarded the 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." <https://bit.ly/3s1QeyC>

#### **Slide 4. Chronological Milestones**

These are the chronological milestones from the APA Justice perspective, starting with the announcement last August. We hope to hear some clarification on when the 90-day Comment period and the 120-day Standardization Development period started and how they fit in at this moment.

The next 4 slides show our exchange with OSTP between November 2021 and February 2022.

Links to OSTP announcements and NSTC guidance:

2021/08/10 OSTP: Clear Rules for Research Security and Research Responsibility. <https://bit.ly/37UiOKo>

2022/01/04 National Science and Technology Council: Guidance for Implementing National Security Presidential Memorandum 33 (NSPM-33). <https://bit.ly/3F3iG9N>

2022/01/04 White House OSTP: Guidance for U.S. Scientific Research Security That Preserves International Collaboration. <https://bit.ly/3zsw4D4>

### **Slide 5. 2021/11/08 Message A**

Harmonize, keep it simple, check law enforcement, repair damage

This is our feedback suggesting actions to harmonize, keep it simple, check law enforcement, and repair damage. DOJ has announced the end of the “China Initiative.”

Link: 2021/11/08 APA Justice message <https://bit.ly/31P9DLL>

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.

On March 8, APA Justice sent a letter to Assistant Attorney General Matt Olsen calling for the release of a report memorializing his review after he announced the end of the “China Initiative” on February 23, 2022: <https://bit.ly/3hMIMpi>

### **Slide 6. 2022/01/21 Message B**

website, process, and engagement

These are our suggestions to create a centralized website, a transparent and consultative process, and continuing engagement after the OSTP briefing in January.

Link: Full APA Justice message <https://bit.ly/33Ei9CG>

1. 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 January 18 community briefing.

#### **Slide 7. 2022/02/08 Message C**

Columbia-FBI Forum

This is a message expressing our concerns about the Columbia-FBI Forum in February.

Link: Full APA Justice message <https://bit.ly/3J7ylHk>

On February 17, 2022, OSTP provided partial answers to these questions:

1. Is OSTP aware of this Columbia-FBI academic research security symposium?
2. If so, was it coordinated with OSTP to ensure that it will not fuel xenophobia against Asian Americans?
3. 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?

#### **Slide 8. 2022/02/22 Message D**

Request briefing and continuing dialog with FBI under auspices of OSTP

After receiving the OSTP response, we expressed our relief that the forum was not coordinated by OSTP and explained why we were concerned. These secretive forums have been exclusionary, one-sided, and lacked transparency, and they are a major source of xenophobia, fear, and chilling effects for the Asian American and scientific communities.

There is a track record of these meetings and two of us went to the FBI headquarters to try to persuade the officials about the dire consequences when the “China Initiative” was formally launched, but the visit failed to establish a dialogue.

From our perspective, the tragic outcomes of the “China Initiative” were preventable. We have continuing concerns about the future role of the FBI.

Links:

- Full APA Justice message <https://bit.ly/3hbHltO>
- 2018/08/08 Houston Chronicle: FBI warns Texas academic and medical leaders of 'classified' security threats. <http://bit.ly/2P3Y1JU>
- 2018/08/27 Science: NIH investigating whether U.S. scientists are sharing ideas with foreign governments. <https://bit.ly/3N9xysg>
- 2018/09/13 FBI: FBI Warns Texas Leaders of Foreign Threats to Research and Academic Institutions. <http://bit.ly/2SLhd0o>
- 2018/09/22 Houston Chronicle: Houstonians respond to Asian-Americans being increasingly targeted in economic espionage cases. <http://bit.ly/2ObIZp2>
- APA Justice: 2018/12/07 FBI Meeting. <https://bit.ly/3shDOmp>

APA Justice was relieved to learn that OSTP did not endorse or coordinate the Columbia-FBI Forum on February 1, 2022.

There is a long track record that these secretive forums have been exclusionary, one-sided, and lack transparency. They spread xenophobic messages, misinformation, and fearmongering. They conflict with the core values and principles now stated in the NSTC guidance.

Prior to the official launch of the “China Initiative,” Houston was an early target of the FBI and portrayed as “an epicenter” of Chinese spies in exclusionary and secretive forums. Combined with a letter sent by the NIH to 10,000 institutions, they led to a purge of Chinese American researchers from institutions such as MD Anderson but yielded no academic spies.

After the official launch of the “China Initiative,” a group of community leaders, including Dr. Jeremy Wu and Professor Steven Pei, visited the FBI Headquarters and presented facts and evidence about the flaws and potential damage of the FBI actions. However, it failed to establish a dialogue.

From our perspective, the tragic consequences of the “China Initiative” in the past three years were inevitable and preventable.

APA Justice replied to OSTP and accepted the offer to inquire with the FBI about holding a briefing for AANHPI organizations and a continuing dialogue under the auspices of OSTP.

## Slide 9. NSTC Guidance Values and Principles

Link: NSTC Guidance <https://bit.ly/3F3iG9N>

We applaud the OSTP message and the release of the NSTC Guidance, especially in memorializing the core values, assurance that policies do not fuel xenophobia or prejudice, and the specific requirement that 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.”

- “... 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.”

## Slide 10. APA Justice Values and Principles

Links:

2022/01/04 NSTC Guidance. <https://bit.ly/3F3iG9N>

2022/01/04 OSTP blog: <https://bit.ly/3zsw4D4>

2022/03/17 APA Justice: Statement on The End of The “China Initiative.”  
<https://bit.ly/3qgYWe6>

The words of the Guidance are powerful. We also need powerful actions to ensure transparency, accountability, fairness, and integrity. Responsibilities should not be placed only on researchers but balanced to include government agencies and university administrations.

- 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

**Slide 11. Statement of Michael German, fellow, Brennan Center for Justice at NYU Law School**

Mr. Michael German is a fellow of the Brennan Center. He is a former FBI agent. He also wrote the book *Disrupt, Discredit, and Divide: How the New FBI Damages Democracy*. This is his statement for today. He regrets that he is on travel today, but he is committed to our continuing engagement.

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.

**Slide 12. Additional Participant Values and Principles**

These are the additional quotes from some of the other participants.

- “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”

### Slide 13. Kickoff Topics

There is obviously a lot of topics and issues to cover. We shall present some of the higher priority topics here to help kick off today’s discussions. We anticipate that this is the beginning of a consultative and iterative process.

- 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

### Slide 14. Asian American History and Perspective

Dr. Wen Ho Lee and Department of Energy Report

Link: Federation of American Scientists: Department of Energy Task Force against Racial Profiling Final Report, January 2000. <http://bit.ly/2T8UGvJ>

As the saying goes, “Those who cannot learn from history are doomed to repeat it.” Racial profiling against Asian Americans has a long history. We urge OSTP to consider and act on the historical lessons, starting with this DOE Task Force against Racial Profiling report. It has disappeared from government websites. We submit a copy preserved by FAS and urge remedial and preventive actions.

A Task Force against Racial Profiling was formed by the Department of Energy, and a final report was produced 22 years ago. This report and related activities have disappeared from the government websites.

We do not know why it was removed. We need to locate and restore this report and similar historical records and institute policies and practices against future removals.

The Federation of American Scientists preserved an electronic version of the DOE report. We submit it as part of the ongoing implementation process.

- “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.

### **Slide 15. Asian American History and Perspective**

Before “China Initiative,” there were Sherry Chen, Xiaoxing Xi, and others

Links:

Sherry Chen Legal Defense Fund: <https://www.sherrychendefensefund.org/>

APA Justice: Sherry Chen [http://bit.ly/APAJ\\_Sherry\\_Chen](http://bit.ly/APAJ_Sherry_Chen)

2016/0426 New York Times: After Missteps, U.S. Tightens Rules for Espionage Cases  
<https://nyti.ms/31nPts0>

Racial profiling has devastating and lasting consequences. The injustice of Sherry Chen is now 10 years old and running. The DOJ changes in 2016 failed miserably under the “China Initiative.”

Please do not use just band-aids or kick the can down the road. We need real systemic reforms.

- 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

### **Slide 16. Asian American History and Perspective**

Section 5712 of FY20 NDAA as Part of OSTP Process

Link: FY20 NDAA <https://bit.ly/3eVEHgY>, pages 989-990

**Federal agencies are not above the law. We ask ODNI to produce this report and include it as part of the implementation process.**

While OSTP strives to remind and ensure that scientists and researchers have responsibilities to follow fair and consistent rules and laws, ODNI has not complied with Section 5712 of FY20 NDAA to release a legally required unclassified report for almost two years.

We urge OSTP to obtain the unclassified report from ODNI, which is a member of the Subcommittee on Research Security, and include it as part of the current OSTP implementation 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.

### **Slide 17. Information, Misinformation, Communications**

Status of Centralized Website

Link: 2022/01/21 APA Justice Message B <https://bit.ly/33Ej9CG>

**We liked slide #16 so much that we sent in a duplicate slide last week. This is the slide we intended.**

Evidence-based policymaking is the process of using high-quality information to inform decisions that are made about government policies. We request OSTP and NSTC to adopt this principle if it has not already.

The next few slides relate to information and communications, starting with expressed interest in a centralized website. If it cannot be created in time, may we receive the current links for tracking and monitoring?

- 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?

We suggested in January about the benefits of a centralized website. If there is no disagreement about the need, it is important to stand up such a website as soon as possible.

In the interim, is it possible for federal agencies to share their links to the current forms, disclosure policies, oversight and enforcement practices, and research security programs so that we may put them in a repository. They should already be available and do not require much additional work.

### **Slide 18. Information, Misinformation, Communications**

Stop spreading unsupported, false, or misleading information

Links: FBI: China: The Risk to Academia <http://bit.ly/2PgflXi>  
2019 APS News <https://bit.ly/3bxuVwJ>, page 8

Here are two examples of the FBI using unsupported or misleading information that fuel xenophobia and prejudice. We explain why the FBI reported numbers of investigations are incoherent and cannot be reconciled in the companion notes.

On January 31, 2022, FBI Director Christopher Wray said in a speech at the Ronald Reagan Presidential Library, "When we tally up what we see in our investigations, over 2,000 of which are focused on the Chinese government trying to steal our information or technology." He also said, "[t]he bureau is opening new cases to counter Chinese intelligence operations every 12 hours or so." <https://bit.ly/34u9BtH>

Only July 7, 2020, Wray said in a speech to the Hudson Institute, "We've now reached the point where the FBI is opening a new China-related counterintelligence case about every 10 hours. Of the nearly 5,000 active FBI counterintelligence cases currently underway across the country, almost half are related to China." <https://bit.ly/3mwonHi>

There were more than 13,700 hours between the two dates in 2020 and 2022. According to Wray's own rate of increase, FBI should have added at least another 1,100 investigations for a total of over 3,600 by now. The numbers do not add up, and there is no explanation about this significant gap.

- 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

### **Slide 19. Information, Misinformation, Communications**

Responsiveness to FOIA requests

Links:

2021/08/02 APA Justice: FOIA Request 245561 to the National Institutes of Health

<https://bit.ly/3mLdG3W>

FOIAOnline.gov website: <https://foiaonline.gov/>

FOIA is a well-known law that gives the public the right to make requests for federal agency records. FOIAOnline.gov provides online filing, tracks progress, offers search capabilities, and provides real-time tracking reports. It is a positive one-stop example. Why are many of the funding agencies not using it?

- 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/>?

APA Justice submitted a FOIA request to NIH last August. A tracking number 245561 was assigned. For more than 220 days, NIH has been silent.

NIH is not alone. Some agencies are more responsive than others. However, many funding agencies have no channel for the public to make inquiries or to receive timely responses.

### **Slide 20. Information, Misinformation, Communications**

Consistent Posting of Investigative Results and Publish Statistical Summaries

Link: NSF OIG website <https://bit.ly/3KYEKFP>

Another positive example is the NSF Office of Inspector General providing clear closure of their investigations. We recommend applying the practice consistently across all agencies and go one step further to publish statistical summaries.

We also recommend adding and publishing statistical summaries by category such as time, issues, and outcomes.

- 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 standardized and used 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.

### **Slide 21. Resolving existing investigations**

The “China Initiative” is dead, long live the “China Initiative”?

Link: 2022/03/16 Yale Daily News; Yale School of Medicine Professor Haifan Lin investigated by Department of Justice <https://bit.ly/3u9RhiV>

Hundreds of academics are caught up in seemingly never-ending investigations. Timely actions are needed to address the existing cases. The accused deserves speedy resolutions. Will agencies make “evidence of intent and materiality” a consistent criterion to resolve existing cases?

When the DOJ announced the end of the “China Initiative,” 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 standardize the same principles?

Will federal funding agencies discontinue their existing investigations in a timely manner when existing investigations lack “evidence of intent and materiality?” Will there be an open period for academics under investigation to correct their records?

- 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 standardize the same principles?
- Will federal funding agencies discontinue their existing investigations in a timely manner when existing investigations lack “evidence of intent and materiality?”

## **Slide 22. Reaffirm or Change Rules or Laws**

Reaffirm NSDD-189

Links:

National Archives: NSDD 189 National Policy on Transfer of Scientific, Technical and Engineering Information <https://bit.ly/3hi2BDE>

JASON Report <https://bit.ly/32lzHVr>

Are there barriers in rules and laws that do not allow OSTP to implement NSPM-33 according to its stated core values, principles, and requirements? Will OSTP support and issue a statement to reaffirm the definition of Fundamental Research in NSDD-189 as it was done in 2001 and again in 2010?

- What barriers exist in rules and laws for OSTP to implement NSPM-33?
- What reaffirmation or change in rules and laws does OSTP 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?

## **Slide 23. Part 2 – Presentation by Professor Xi**

At this point, Jeremy Wu turns the presentation to Professor Xiaoxing Xi.

# **Part 2 Presentation by Professor Xiaoxing Xi**

## **Slide 24. Part 2 – Policies that diminish US power of attracting talent and fuel xenophobia against Asian Americans**

I am very encouraged to read Dr. Lander’s blog post, which says “if our policies ... significantly diminish our superpower of attracting global scientific talent — or if they fuel

xenophobia against Asian Americans — we will have done more damage to ourselves than any competitor or adversary could.”

In fact, damage has already been done as you have learned from the surveys by AASF and University of Michigan. OSTP should repudiate the policies that caused the damage.

In specific, the FBI and DOJ consider Chinese professors, scientists, and students nontraditional spies for China. Based on alleged nondisclosures of China ties, the NIH has aggressively removed over a hundred scientists from its ecosystem and considers it a success.

We all agree that transparency is essential for scientific research. However, taking disclosure seriously is one thing; aiding the DOJ to paint Chinese scientists as spies for China is a totally different matter.

By aiding the DOJ in weaponizing nondisclosure to disrupt and damage Chinese scientists, the NIH bears the same responsibility in diminishing our power of attracting talent and fueling xenophobia against Asian Americans, and in doing so damaging American science and technology.

My questions are, Does OSTP agree that Chinese professors, scientists, and students are nontraditional collectors for China? What does the NIH plan to do to repair the damage caused by its aggressive actions to remove Chinese scientists from its ecosystem? How does the OSTP guideline prevent future actions like those taken by the NIH?

### **Slide 25. Part 3 – Presentation by Professor Pei**

Professor Xi turns over to Professor Pei

## **Part 3 Presentation by Professor Steven Pei**

Link: 2022/01/04 NSTC Guidance. <https://bit.ly/3F3iG9N>

### **Slide 26-29. Flowchart and Recommendations 1-3**

I am Steven Pei, Professor of Electrical of Computer Engineering at the University of Houston. I grew up in Taiwan and came to the U.S. for graduate school. After receiving my Ph.D. degree, I joined AT&T Bell Labs at Murray Hill, NJ. In the 80's, I led an AT&T, Hughes Aircraft and McDonnell Douglas team to transfer technology from Bell Labs to a DARPA pilot production facility at the AT&T Microelectronics in Reading, PA.

I was recruited to Houston to join a NASA project, which was the major payload on three Space Shuttle flights in the 90's. After 9.11, I received a Congressional earmark from the DoJ to start a Public Safety Technology Center and serve as its Executive Director. I worked extensively with DOD, NASA, DOJ, and DHS over my career. I served administrative positions at both industrial and academics. In those days, the line between the fundamental research and classified research was very clear. I do not know when we created a new class called "R&D in critical and emerging technology areas." I fully support that research agencies are given the responsibilities and authorities to decide whether they have implications for national and economic security.

Funding agencies have the knowledge and insights to make the determination of the required disclosure and shall clearly identify and communicate to both the research institutions and scientists what level of disclosure is required for each funded research. In addition, the institution, for example, the office of VP of Research, should assume the responsibilities of reviewing the proposals for compliance instead of putting all the burden on scientists.

Secondly, if discrepancies are identified, then the IG shall conduct the investigation and refer to both the agency and institution if administrative action is deemed appropriate. The institution has regular professional and personal interaction with the scientist. By working together, they would have the holistic view of the offense to decide the appropriate administrative action. Institutions should assume the responsibilities to provide scientists the protection of due process. So far, most institutions threw their scientists under the bus when under pressure. I am sorry to say that the recent testimonies of administrators of the University of Tennessee and the University of Kansas at the courts are embarrassing.

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 it is not conducted by the cognizant IGs. Investigations shall follow clearly defined and publicized guidelines and procedures and under the oversight of the Congress.

Finally, 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 and help the federal government to regain the trust of Asian and scientific communities.

### **Recommendation 1:**

For R&D projects with implications for national and economic, funding agencies shall be clearly defined and communicated 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.

- Harm or potential harm to the agency, the Federal Government, U.S. taxpayers, and other National interests;
- Intent of the offender;
- The offender's knowledge of requirements;
- Pattern of violation versus isolated incident;
- Existing and timing of self-disclosure;
- Policies, procedures, and training available to the offender; and
- Any other mitigating factors

The institution should assume the responsibility of assuring their scientists are protected by the due process. Instead, most institutions threw their scientists under the bus when under pressure.

### **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 it is not conducted by the cognizant IGs. Investigations shall follow clearly defined and publicized guidelines and procedures.

The FBI is authorized to open an "Assessment" to investigate persons and organizations without having any evidence that the subject has or is about to commit an actual federal crime. Without proper oversight, FBI can conduct domestic surveillance "fishing expeditions" on people or groups engaged in constitutionally protected speech and advocacy. If these aggressive investigations do not stop, then in spite of efforts of OSTP, NSD and funding agencies, the chilling effect and Red Scare will not go away. <https://www.cato.org/blog/fbi-assessments-cato-foia-lawsuit-edition>

### **Slide 30. Recommendation 4**

### **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 and help the federal government to regain the trust of Asian and scientific communities.

**Slide 31. Thank You!**

Professor Pei turns to participants for brief remarks, if any.