

Update on Racial Profiling and Related Issues

Briefing Statement for Senator Mark Warner
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[APA Justice Task Force](#)

August 5, 2020

1. **Houston Chinese American Community Appeals to Congress.** During the August 3 APA Justice meeting, several community leaders led by H.C. Chang, a litigation attorney and President of the OCA-Greater Houston Chapter, and Jessica Chen, an immigration lawyer in Houston, provided on-the-ground reports on "Houston: After the closure of Chinese Consulate General."

China's Consulate in Houston was shut down on July 24, after being accused of a "spy center" to conduct spying activities with local medical centers or universities. Within the past week, FBI agents have begun to knock on doors to demand interviews with persons of Chinese descent, creating fear and anguish. Community leaders expressed concerns about a "witch hunt for spies" by the FBI to use Chinese Americans as "scapegoat" to justify the political claim, for which the U.S. government has provided few supporting evidences.

On July 26, the Intercept published this article: [Was The Chinese Consulate in Houston Really a Hotbed of Economic Espionage?](#) According to the article, "people close to China-related investigations in Houston say the decision to close the consulate may be more about politics than spy threats."

During the APA Justice meeting, the local community leaders appealed to Congress to de-escalate the situation, rein in the rhetoric and irresponsible actions, and provide oversight to protect the civil rights of Chinese Americans.

Following the APA Justice meeting, rapid community response was discussed and resulted in several organizations, including OCA, UCA, and the Asian American Justice Center, co-hosting a "Know Your Rights" webinar on August 6 to address the urgent question, "What to do if you are questioned by the FBI or police?" ADL also participated in the discussion and provided strong support.

2. **"Criminalizing China" and Recommendations.** In the [July APA Justice meeting](#), Seton Hall University Law Professor Margaret Lewis discussed her upcoming paper titled "[Criminalizing China](#)" and made 5 recommendations that resonate well within the APA Justice network:
 - a. A necessary but insufficient step is to remove the label "China" and adopt a country neutral framework for non-discrimination reasons as well as to ensure the U.S. protection of certain interests from threats wherever they may come from. Using federal law and prosecution on peer review violations is too severe. The Department of Justice (DOJ) and the scientific community should discuss drawing lines keeping fundamental research open science from IP protection to a real national security threat.

- b. Curtail further criminalization of academic misconduct. The DOJ justice manual itself that non-criminal alternatives should be considered before pursuit of prosecution and punishment. Alternatives exists and can be strengthened such as improved auditing, grant oversight, and better education. Over-criminalization is a concern.
 - c. Expand from a negative agenda into a positive one. Consider this to be a Sputnik moment. There are threats from China, but instead of create barriers, stop research, and protect existing IP, consider putting the U.S. in a more competitive space by investing more in our own research and come up with new and better IP. Get more country expertise, linguistic expertise, and other aspects to give counterintelligence a more rounded view.
 - d. Push back on the ongoing prosecutions and those in the pipeline. Prosecutors are notoriously opaque even without national security concerns. Seeking more data and information is necessary but keep expectations realistic. Information is always asymmetric. Selective prosecutions are extremely difficult to overcome.
 - e. There is a need for diversity, equity, and inclusiveness initiatives in DOJ. Implicit bias training, as an example, is necessary but not sufficient. "When officials talk about the China Initiative, they tend to say that they love the Chinese people, they welcome the Chinese people, and they are not being racist." That is good but not good enough. It is not an antidote to all the training and all the other language put out there. They need to recognize that how their deeds are perceived and how their messages are heard. History has repeatedly showed how national security overwhelmed other values. A better path is to discard the "China Initiative" framing, focus on cases' individual characteristics, and enhance the Department of Justice's interactions with non-governmental experts.
3. **China Initiative Statistics.** Among the 44 cases identified as "China Initiative" cases by DOJ through May 2020, about 32% are based on Economic Espionage Act charges; 48% on conspiracy to defraud, program fraud, false statement, and mail/wire/computer fraud; about 18% on other charges; and 2% on a general announcement.

For an initiative that is supposed to target and protect the nation from economic espionage, it is a concern to the Asian American community that only one third of the cases are based on actual economic espionage charges, some of which remain to be proven. Without transparency and oversight, there are serious concerns that the China Initiative cases, as well as the over 2,000 investigations by the FBI, may be subject to profiling or pretextual reasons.

4. **History of China's Talent Programs and Policy Recommendations.** [David Stephen Zweig](#) (Ph.D., University of Michigan, 1983) is professor emeritus at the Hong Kong University of Science and Technology from Canada. Since 1991, he has travelled all over China surveying and interviewing returned academics, scientists, entrepreneurs, and employees, as well as Chinese studying and working in the West.

Professor Zweig published a paper titled “[America Challenges China’s National Talent Programs](#)” in May 2020. According to an [online summary of the paper](#) and talks given by Professor Zweig, the Thousand Talents Plan was created by the Chinese Communist Party in 2008 to overcome the brain drain of Chinese talent that has seen many of the best Chinese scholars and researchers take up residency in Canada, the United Kingdom, and particularly the United States. Over the years, the program, which is estimated to have had approximately 7,000 participants, has become extremely controversial, generating deep concern within the U.S. government about China’s IP theft. The paper reviews the history of China’s overseas talent programs, analyzes why they have generated diplomatic discord, and offers policy recommendations for China and the United States. If adopted, such steps will protect collaborative research and publishing. His paper includes substantial amounts of statistics and quantitative analyses.

Professor Zweig has been invited to speak in the next APA Justice monthly meeting or a separate special meeting, pending on his schedule.