

# The American Conservative

## The China Initiative Wasn't Racist

*Woke lobbying made the DOJ end a successful program aimed at our biggest counterintelligence threat.*

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The Biden administration's Justice Department pulled the plug on the China Initiative this February, ending a fairly successful program aimed at countering the transfer of scientific research and intellectual property to China, the first time a country has been singled out in this way. Until the move to end it, the China Initiative had been a notable point of continuity between the Biden administration and its predecessor.

There was a lot happening in 2018 when the China Initiative was announced by Jeff Sessions, less than a week before he was forced out as attorney general. Sessions pointedly noted that the DOJ had charged nobody with spying for China from 2013 to 2016.

In April, the *New York Times* reported that deputy finance chairman of the RNC Elliott Broidy had worked on a convoluted scheme to force the exit from the United States of the Chinese dissident billionaire Guo Wengui via the United Arab Emirates. Broidy eventually pled guilty to acting as an unregistered foreign agent for China. In June, Reuters ran a story about several Silicon Valley venture capital firms that were backed by Chinese money, singling out Danhua Capital in particular. Danhua showed up in a report by the U.S. Trade Representative in November as a potential avenue for technology transfer to China. A few weeks later, the firm's founder Shoucheng Zhang was found dead in an apparent suicide.

Trump also signed into law in August 2018 a reform of the Committee on Foreign Investment in the United States (CFIUS), known as the Foreign Investment Risk Review Modernization Act, which is described by the DOJ as part of the China Initiative. The new law expanded the circumstances that would trigger review by CFIUS. If reporting from Recode is to be believed, it has had a significant effect in Silicon Valley. (The Recode article's subtitle: "A tough, new enforcement regime is becoming a geopolitical minefield for venture capitalists and startups.")

Earlier in 2018, FBI Director Christopher Wray famously told a Senate committee that China represented a "whole-of-society threat," specifically singling out the "use of non-traditional collectors, especially in the academic setting," an issue that would become key to the controversies surrounding the China Initiative.

What generated the most headlines from the China Initiative in the following years was a handful of investigations of Chinese and Chinese-American academics. It was criticized by the ACLU and Brennan Center for being racially discriminatory, and the Congressional Asian Pacific

American Caucus took the lead in quashing it. They met with Merrick Garland in October of last year, and the attorney general seems to have acceded to their demands.

For all the talk about racial profiling, the highest-profile victory of the China Initiative didn't involve a Chinese person. Harvard chemist Charles Lieber was convicted in a jury trial for failing to disclose his funding from a Chinese university. It also had one big failure: the collapse of the prosecution of Gang Chen at MIT, which helped fuel the critics' argument that the DOJ was bringing reckless prosecutions against Chinese and Chinese-American researchers. One of the prosecutors working on China Initiative cases, Andrew Lelling, now in private practice, took to [LinkedIn](#) to say the DOJ had "lost its focus," and called for the initiative to be shut down.

In January, United Chinese Americans held a protest outside the DOJ, featuring Congressmen Judy Chu and Ted Lieu, where they called for an end to the program. Chinese foreign ministry spokesman Zhao Lijian said on January 18 that the China Initiative "is nothing but a clumsy tool used by anti-China forces in the US to abuse the national security concept to suppress and contain China."

Chinese state actors have even tried to link the China Initiative to anti-Asian hate crimes. At a December press conference, a reporter for state-run CGTN put the following question to Lijian: "Advocacy groups say the prosecutions under the 'China Initiative,' a scheme launched by the U.S. Department of Justice, the Federal Bureau of Investigation and other federal agencies, reflect racial bias that contributed to a 71 percent rise in incidents of violence against Asian Americans from 2019 to 2020. The U.S. government has 'turned the China Initiative into an instrument for racial profiling,' says Judy Chu, a Democratic representative from California. Do you have any comment?"

The whole situation has given the Chinese foreign ministry a chance to lean into wokeness. Lijian responded by calling for the U.S. to "address its serious racial discrimination and safeguard the legitimate rights and interests of ethnic minorities." Links between American radicals and Chinese communists go back a long time, from Huey Newton's meeting with Zhou Enlai right up to the Chinese Progressive Association's fiscal sponsorship of BLM groups. After boosting American radicals for decades, the Chinese could count on their support to put the DOJ on the back foot when it came to the China Initiative.

Cato Institute fellow Patrick Eddington also made a connection—completely spuriously—between anti-Asian hate crimes and the China Initiative. "If the Biden administration is truly serious about stopping hate crimes against Asian Americans—and bogus DOJ prosecutions of Chinese American scientists and researchers are clearly hateful acts—a good place to start would be ending DOJ's racist 'China Initiative,'" he wrote in *Defending Rights and Dissent*.

"I want to emphasize my belief that the department's actions have been driven by genuine national security concerns," [said](#) Assistant Attorney General Matthew Olsen in his speech announcing an end to the program. "But by grouping cases under the China Initiative rubric, we helped give rise to a harmful perception that the department applies a lower standard to investigate and prosecute criminal conduct related to that country or that we in some way view people with racial, ethnic or familial ties to China differently."

Republicans immediately criticized the DOJ's decision. Donald Trump called it a "big mistake" at CPAC. Sen. Tom Cotton called it an "instance of weakness from an administration more

concerned with being politically correct than protecting Americans.” “They cite kind of this woke politics, political correctness argument for shutting it down,” Rep. Mike McCaul, ranking member of the Foreign Affairs Committee, told *Fox News Sunday*.

“You concede that China remains the top threat and is deserving of focus,” wrote Sen. Chuck Grassley in a letter to Olsen. “You concede that all criticisms of the China Initiative, including accusations of racism, are ill-founded. You state that at no time was a Chinese espionage case ever inappropriately undertaken, and that all cases done under the China Initiative reflect the seriousness of the threat from the Chinese state rather than the ancestry of any defendant charged. Notwithstanding that defense, the Initiative is being cancelled in order to accommodate unfounded perceptions.”

“Attorney General Merrick Garland and senior leaders at the DOJ appear to have been unable to look past the synchronized criticism of activists and journalists to evaluate the China Initiative based on its merits,” wrote former NSA general counsel Michael Ellis, in a white paper for the Heritage Foundation. “The continued outsized national security threat from China, the initiative’s significant achievements to date, and the need for a long-term reorientation of U.S. national security policy around the unique challenges posed by China all justify maintaining the initiative—if not invigorating it.”

What proved so controversial was the Justice Department enforcing the principle that academics shouldn’t lie about their work for Chinese universities while working on publicly funded research here. Even more than alleged racial profiling, the pushback on the China Initiative seemed to center around the idea that we simply don’t treat academics like that. Olsen, in his speech ending the China initiative, suggested that the DOJ would consider “whether civil or administrative remedies are more appropriate” than criminal prosecution for research integrity cases.

Critics of the China Initiative have a point that the vast majority of these cases did not involve espionage, strictly speaking. “Neither Lieber nor other professors being prosecuted pursuant to the initiative were accused of stealing any intellectual property or improperly sharing anything with anyone in China,” wrote Arent Fox attorney Peter Zeidenberg, who has represented Chinese-Americans in some of these cases. It’s true, but trivial. Espionage cases are notoriously hard to prosecute because of the need to protect sources and methods: Alger Hiss wasn’t charged with espionage either, just lying about it. That doesn’t mean he wasn’t a spy.

Even if one of the purposes of the China Initiative was to discourage undisclosed cooperation between Chinese universities and American ones, rather than policing outright intellectual property theft, it’s still a worthwhile goal. Just because technology transfer was occurring using university appointments and no-show jobs, rather than something sexier, like loading blueprints onto a thumb drive before fleeing the country, doesn’t mean it’s not a problem.

One notable feature of the China Initiative was its attempt to combat the work of these “nontraditional collectors,” mostly students, academics, or researchers, who are sometimes coerced, sometimes not, into spying for China. “China’s most systematic channel for identifying foreign-based nontraditional collectors,” wrote Larry Diamond and Orville Schell in 2018, is the Thousand Talents program, which connects top intellectual talent with Chinese universities. There are 19 China Initiative cases connected to the Thousand Talents program, and not all of

the subjects were Chinese either: The one who worked at Los Alamos wasn't. Danhua's Shoucheng Zhang was a Thousand Talents participant as well.

A full accounting of the China Initiative is somewhat difficult because the Department of Justice hasn't been clear about what constitutes a China Initiative case. When the *MIT Technology Review* requested comment from the DOJ for an influential piece about the China Initiative, the DOJ deleted a number of cases from their list online. The *Review* put together a database of 77. Only 19 of those involved economic espionage charges, and over time the focus shifted toward more "research integrity" cases, which were often dropped. By 2020, half of the China Initiative's cases, according to the *MIT Technology Review*'s count, were research integrity cases.

It's true most of the defendants are Chinese—90 percent—but most of them also had a "nexus to China" much more substantial than their race. There are also a fair number of non-Chinese, such as intelligence agents Kevin Mallory and Ron Hansen.

This is relevant because critics of the China Initiative have claimed that the "nexus to China" the DOJ was looking for was nothing more than Chinese ancestry, a plainly untrue claim. A January letter to the Biden administration from the Brennan Center and several Asian-American groups claimed "these investigations target individuals with any 'nexus to China,' which often is merely ancestral, leading to profiling by race, ethnicity, and national origin."

This is nonsense. The "nexus to China" relevant to most of these cases is the professors' employment at Chinese universities. It has nothing to do with their ancestry and everything to do with their affiliation with a PRC-controlled institution.

Even in the cases that have fallen apart, it's hard to argue racial profiling. The ACLU took on Xiaoxing Xi, a physicist at Temple who was accused of passing schematics to Chinese scientists, and said: "The FBI's conduct in Xi's case and others suggests that the government has been targeting Chinese-Americans because of their race or ethnicity." The DOJ got it wrong in this case—he wasn't sharing what they thought he was sharing—but he was communicating with PRC-based scientists about superconductors while working on DOD-funded research. That's probably what put him in the DOJ's crosshairs, not his race.

What remains to be seen is whether the official end of the China Initiative changes much at all. "It is absolutely unclear to me what the China Initiative being 'over' means," wrote Axios reporter Bethany Allen-Ebrahimian when the change was announced. "I think it's primarily a name change and a publicly stated commitment to not bring criminal charges against academics for filing poor paperwork."

It's not even clear that these picayune investigations of lying professors are going to stop now that the China Initiative has been officially axed. This March, it was reported that Yale biologist Haifan Lin was under investigation over discrepancies in reporting between NIH and his university. And the DOJ hasn't dropped the prosecution of Franklin Tao at the University of Kansas, whose case is going to trial. Other significant parts of the China Initiative remain in place as well, like FIRRMA. By most accounts, the stronger scrutiny of China-related business transactions is continuing under Biden. CFIUS blocked a deal for South Korean semiconductor company Magnachip last year.

All the same, it's a pity that today the DOJ finds itself unable to put a name to what everyone agrees is the nation's number one counterintelligence threat. It's hard to have much sympathy for the accused professors either. There may be something a bit tragic in being caught in the middle of two great powers pulling apart, with one foot on each side, in a profession that prides itself on free inquiry unencumbered by petty national concerns, but most of them also seem to have behaved duplicitously toward their American universities or the U.S. government. That the DOJ is forced to back off from these prosecutions speaks to the extraordinary privileges our society accords to academics, and the woke priorities of the Biden administration.