



Is DoJ's 'China Initiative' Going Away? Don't Bet on It

Patrick Eddington
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February 2022 marks the 50th anniversary of then-President Richard Nixon's historic trip to the People's Republic of China (PRC), the initial step on the path to the normalization of relations between the two countries after decades of animosity, and even military conflict during the Korean War.

In the decades that followed, the amount of trade and travel between the two global powers increased by orders of magnitude, as did the number of US-China collaborations in the fields of clean energy research, space operations and exploration, and other areas. But by the middle of President Obama's second term, tensions between the US and China were rising sharply.

US officials charged the PRC with unfair or discriminatory trade and investment practices, as well as PRC intelligence service culpability in several high-profile hacking incidents against US entities.

The conflict escalated to a new level in November 2018, with the Trump administration's Department of Justice launching the "China Initiative," an investigative and prosecution program ostensibly aimed at blunting alleged or actual PRC or PRC-affiliated intellectual property (IP) theft and the PRC's use of allegedly co-opted so-called "non-traditional collectors" (i.e., university researchers and scientists, often of Chinese heritage) for tech transfers to China deemed by DoJ to be "contrary to U.S. interests."

Just over a year ago, my Cato Institute colleague Alex Nowrasteh published a first-of-its-kind analysis of espionage and espionage-related crimes in connection with immigration status. His findings? Of the 192 ethnic Chinese spies prosecuted between 1990 and 2019, exactly five were Chinese Americans—meaning that the remaining "97.4 percent of ethnic Chinese spies were *not* born in the United States."

Those findings should have been a warning sign for DoJ officials that the "China Initiative" was, contrary to their public denials, effectively a racial profiling program. Instead, DoJ and the FBI went full steam ahead with the "China Initiative." A prominent D.C. think tank gave them a platform to do so.

In February 2020, the Center for Security and International Studies (CSIS) gave then-Attorney General William Barr, FBI Director Chris Wray, and four US Attorneys a platform to present a decidedly one-sided, threat-oriented picture of the US-PRC relationship, and the culpability of US institutions of higher education and American businesses in being less than aggressive in confronting the PRC IP and tech theft threat. Absent were any representatives of the Asian American community, much less any wrongly accused Chinese American scientists, such as former Temple University professor Xiaoxing Xi, whose legal fight for redress from DoJ and FBI officials is ongoing.

In the two years since the CSIS event, further DoJ and FBI misconduct in “China Initiative”-related prosecutions has been exposed in the cases of Professors Anming Hu and Gang Chen, and outrage in the scientific community has only grown.

The high-profile, baseless prosecutions have clearly had at least some impact on Biden administration officials. Last month, the *New York Times* reported that the Department of Justice’s “China Initiative” might be coming to an end.

One of the most prominent former US Attorneys involved in bringing “China Initiative” cases and one of the four US Attorneys at the February 2020 CSIS event, Andrew Lelling, has belatedly realized the harmful effects the “China Initiative” has had on many Chinese American scientists wrongly accused of IP theft or even espionage.

"You don't want people to be scared of collaboration," he told the *Times*. "There's no question, on the academic side, the China Initiative has created a climate of fear among researchers. That is one reason why D.O.J. should step back a bit."

So will the Biden administration end the “China Initiative” any time soon?

The *Times* reported that while the name “China Initiative” may no longer be used, “the cases may no longer be packaged as a distinct group but reabsorbed into the caseload of the department’s National Security Division, according to current and former Justice Department officials. After initial discussion of offering amnesty in the pending grant fraud cases, officials are leaning toward resolving the cases individually, the officials said.”

In reality, Lelling, his former DoJ colleagues, and the entire FBI should have gotten themselves educated about how US universities and companies handle collaborations with Chinese researchers or entities *before* ever bringing a single case. In the episodes involving the three Chinese American scientists discussed in this piece, the FBI agents and prosecutors involved in bringing the charges had zero scientific expertise in the research and technologies at issue in each case.

The false statements by FBI agents in some of the cases only underscores another fundamental problem at DoJ and FBI: the institutional incentive structure that prioritizes starting investigations and bringing cases in the first place.

There's no question that China is a geopolitical and economic competitor of the United States. That the PRC seeks to try to leverage US technology to help make the PRC more self-sufficient and increase its economic power should come as a surprise to nobody. But it is hardly the only country offering incentives to scientists to collaborate with its own research institutions. Germany, France, and the United Kingdom all offer such programs, yet DoJ has brought no cases against American researchers who have availed themselves of such programs.

If the US government wants to really undermine the PRC's "Thousand Talents" program, it should stop conducting half-witted investigations into Chinese American researchers and instead provide immigration and grant programs of its own lure the best Chinese researchers to this country and incentivize them to become American citizens. Two can play this game, and I'm certain America can play it much, much better.

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