Time to Reassess and Reframe the U.S. Government's "China Initiative"

Changing the name is the first step

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By Margaret K. Lewis

The U.S. government's China Initiative to counter national security threats from the People's Republic of China recently entered its third year with the Department of Justice (DOJ) reporting that it has made substantial progress. The transition to a Biden administration in a few weeks is a fitting time to reassess and reframe the Initiative. Greater attention should be given to the message that the China Initiative conveys about the U.S. government's view of people of Chinese ethnicity and PRC nationality. The Biden administration can and should do a better job of grappling with two phenomena: actual threats from the PRC party-state that go beyond traditional spying, and the threat by association attaching to people who are viewed as connected to the "China" of the China Initiative. Changing the program's name would be a good first step, followed by a comprehensive review and reformulation of how criminal law can best be used to address illegal activity connected to the PRC party-state.

A few weeks after the program's two-year anniversary on November 1, the DOJ issued a "Year-in-Review" press release that celebrated, in then-Attorney General Bill Barr's words, the DOJ's "incredible strides in countering the systemic efforts by the PRC to enhance its economic and military strength at America's expense." FBI Director Christopher Wray added that CCP-linked theft "isn't a rumor or baseless accusation …. The FBI opens a new China-related counterintelligence case nearly every 10 hours and we'll continue our aggressive efforts to counter China's criminal activity." Indeed, at least some accusations of illegal activity linked to the PRC party-state have an evidentiary basis: to that extent I agree with Director Wray that the U.S. government's concerns are not driven by mere "rumor."

Yet the Year-in-Review fails to address other problems with the China Initiative. I have argued elsewhere that the name of the "China Initiative" lumps together people with ties to "China" based on nationality, ethnicity, or other connections as all part of a "China threat." The narrative of a vast China threat combined with an expansive view of national security-related assets that must be protected has encouraged overreliance on criminal law in the U.S. policy response. Subtle shifts in language suggest the China Initiative's leadership might be dialing back

its originally sweeping rhetoric. Compare, for example, FBI Director Wray's use of "China Threat" in a February 2020 speech with the more precise "Threat Posed by the Chinese Government and the Chinese Communist Party" in July 2020. To date, however, the DOJ has still failed to respond meaningfully to the critique that heavy-handed use of criminal law could hurt the United States' long-term economic competitiveness both by chilling research by Chinese Americans and staunching the flow of talent from the PRC to the United States in artificial intelligence and other critical areas.

There is no magic formula for charting a path whereby crimes are deterred while productive research continues. Yet the government will have a better chance of navigating this path if it enhances collaboration with experts in science and technology, China studies, and criminology. So far, the DOJ's external collaboration seems limited to "education and outreach" to explain the government's concerns to businesses and academia, without any meaningful complementary effort to pull in expertise from these quarters. It remains unclear how people working on the China Initiative are learning about China.

Pulling in outside expertise will take time. What the Biden administration can do immediately is drop the name "China Initiative" to demonstrate its rejection of the overbroad framing. Next, it should shift into a period of reformulation, including a rigorous analysis of the structure and implementation of the China Initiative over its first two years.

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A critical piece is to "do the work" of addressing bias. As Vice President-elect Kamala Harris, herself a former prosecutor, said, "[T]here is no vaccine for racism." Simply requiring people to sit through anti-bias training is not the answer. Rather, a more holistic approach is needed to mitigate bias against people who are seen as connected to China because of their ethnicity, nationality, national origin, or other characteristics. The American Bar Association has analyzed how implicit bias can influence prosecutors' decisions. The DOJ insists that it has been sensitive to this issue, but has not provided any details about specific measures.

The September release of the FBI's latest threat-awareness film—described in the Year-in-Review as an "educational film"—reinforces concerns that the China Initiative can actually fuel stigmatization. "The Nevernight Connection" joins earlier China Initiative products "Game of Pawns" and "The Company Man" to form a trilogy of short films warning that PRC agents are recruiting Americans to steal intellectual property, provide classified information, and engage in other illegal activities. The FBI says that Nevernight's fictional story is inspired by the real-life case of Kevin Mallory, who is serving twenty years in prison for "conspiracy to transmit national defense information" to PRC intelligence officers. I am not contesting that recruitment occurs. I am concerned that

the vehicle for warning against these practices feeds xenophobia and stereotypes rather than thoughtful discussion.

Nevernight's characters are more aptly termed caricatures. For example, when the slick PRC contact posing as a businessman gives Daniel Landry, a retired U.S. Navy scientist, a phone with the Chinese app WeChat, he explains slyly, "It is completely secure from both governmental and matrimonial surveillance. Don't worry. It's very popular in China." In another scene, Landry ogles a sexy bartender who encourages, "Baijiu. Chinese vodka. It's very good. You try." The movie ends with Landry in FBI custody as the credits roll atop the scene of a dark computer room filled with PRC operatives working to recruit Americans via social media.

To be sure, Beijing is not taking a "time out" while the Biden administration gets settled in. It will not be easy for the DOJ to engage in reflection and reformulation simultaneously with its extensive investigative and prosecutorial functions. But it is possible because, with the right leadership, the exceptional professionals throughout the DOJ are up for the challenge. President-elect Joe Biden has called for the United States to "lead not just with the example of power, but the power of our example." President-elect Biden's nominee for attorney general, Merrick Garland, should lead by the power of his example by saying goodnight to Nevernight and other bias-laden messages.

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