

**ONE YEAR OF THE NATIONAL SECURITY LAW'S
REPRESSION OF FUNDAMENTAL FREEDOMS IN
HONG KONG**

ROUNDTABLE
BEFORE THE
**CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA**
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

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JUNE 29, 2021
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TUESDAY, JUNE 29, 2021

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened via Webex at 1 p.m., Matt Squeri, Staff Director, Congressional-Executive Commission on China, presiding.

Participants: Jerome A. Cohen, Adjunct Senior Fellow for Asia Studies, Council on Foreign Relations, Victoria Tin-bor Hui, Associate Professor, Department of Political Science, University of Notre Dame, Thomas E. Kellogg, Adjunct Professor of Law, Georgetown Law School, Teng Biao, Pozen Visiting Professor, University of Chicago, and Chen Jiangang, Hubert H. Humphrey Fellow, American University Washington College of Law

OPENING STATEMENT OF MR. MATT SQUERI, STAFF DIRECTOR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Staff Director SQUERI. Good morning. I'm Matt Squeri, staff director of the Congressional-Executive Commission on China. Today's roundtable recognizes two anniversaries—the passage of the Hong Kong National Security Law and the 709 Crackdown on rights defenders and lawyers across China in July 2015. In particular, today's roundtable will examine procedural rights violations by the Chinese government, as illustrated by the 709 Crackdown, and their implications for the extraterritorial reach of the National Security Law and the potential for defendants to be extradited from Hong Kong to mainland China.

Our Commission, currently chaired by Senator Merkley and Representative McGovern, was created in 2000 to monitor China's compliance with, and violations of, international human rights standards. We also maintain a political prisoner database which, unfortunately, has recently begun to include political prisoners from Hong Kong. We periodically hold roundtables and hearings on China's human rights practices, including two hearings focusing on Hong Kong in 2019.

In May 2019, four witnesses—including Martin Lee and Nathan Law—testified about an extradition bill that would allow extradition from Hong Kong to mainland China. Given China's track record of serious violations of substantive and procedural rights of criminal defendants, as well as the threat that this extradition bill

poses to Hong Kong's one country, two systems model, the bill prompted a series of large-scale protests by Hong Kong residents in 2019. Sixteen weeks following our May hearing, Joshua Wong, Denise Ho, and three other witnesses testified in September about the widespread abuse of power and use of excessive force with impunity by Hong Kong police, which vividly illustrated the rapid deterioration of the rule of law in Hong Kong.

The National Security Law, passed in June 2020 without any meaningful input from Hong Kong residents, has effectively dismantled the one country, two systems model and destroyed the high degree of autonomy promised to Hong Kong. The law provides for heavy penalties for vaguely defined offenses and authorizes the Chinese government to take over certain cases, which potentially allows the government to physically transfer a person to China—a result that the people of Hong Kong tried so hard to prevent in reaction to the extradition bill in 2019.

Today we have invited five distinguished panelists to highlight important issues surrounding this troubling pair of anniversaries. To introduce our keynote speaker, I'd like to turn to the deputy staff director of the CECC, Todd Stein.

INTRODUCTION OF KEYNOTE SPEAKER PROFESSOR JEROME A. COHEN BY MR. TODD STEIN, DEPUTY STAFF DIRECTOR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Deputy Staff Director STEIN. Thank you. It's my honor to introduce Professor Jerome Cohen, a pioneer and leading figure in the field of study of Chinese law and government. He was a professor at NYU School of Law from 1990 to 2020 and mentor to several generations of experts in Chinese law. He is the founder of and faculty director emeritus at the U.S.-Asia Law Institute of NYU's School of Law and is adjunct senior fellow for Asia Studies at the Council on Foreign Relations. Professor Cohen has published several books on Chinese law and continues his research and writing on Asian law. And, in contrast to the dour marking of several July 1st anniversaries—the National Security Law, the Hong Kong handover, and the founding of the Chinese Communist Party—we are happy to celebrate Professor Cohen's 91st birthday on that day. Happy birthday. Over to you, Professor.

STATEMENT OF JEROME A. COHEN, ADJUNCT SENIOR FELLOW FOR ASIA STUDIES, COUNCIL ON FOREIGN RELATIONS

Mr. COHEN. The Communist Party is older than I am.

[Laughter.]

Mr. COHEN. This Commission has done great work. And I'm honored to be asked to take part in today's important exercise. It's an opportunity to reflect on both the 709 repression and, of course, the National Security Law recently enacted for Hong Kong.

It's a sad day, of course. The handover, as it was called in 1997, has certainly become the takeover. And I can't discuss all the aspects, but I do, in my opening remarks, want to focus on the legal and judicial aspects. And I should point out, I've just had the privilege of reading the report by Georgetown's Center for Asian Law that Tom Kellogg and his colleagues have done. I'm glad to see Tom is among the participants today in our discussion. And of

course, many of you already know Michael Davis's book that gives a wonderful review of how things developed in Hong Kong.

Hong Kong people, of course, have been resisting the takeover for some time. Their resistance became so strong in 2019 over the struggle to prevent forcible extradition from Hong Kong to the mainland for criminal trials that it really has provoked what we have seen in the National Security Law. Beijing ended the Hong Kong struggle just a year ago. And they've done more than just end the struggle. Hong Kong people are familiar with justice in China. Therefore, they didn't want to be subject to extradition—what technically, because it's not an international problem, should be called rendition.

And yet the new National Security Law has done two things. It has authorized extradition to the mainland in national security cases, which are very, very vaguely and broadly defined. But more importantly and immediately, it has brought the national security system of the mainland, the police state that it is, to Hong Kong. And this, of course, means—I wouldn't say the death of Hong Kong—a phrase that first became popular when the joint declaration between the U.K. and the PRC was signed in 1984—but it certainly transforms Hong Kong. It introduces "stability," as the mainland advocates keep saying. But of course, you have a lot of stability in cemeteries also.

So one has to appraise what's going on. I can't talk, because of time limitations, about all the restraints that have been imposed on Hong Kong in terms of the media, the government itself, the political-legislative system, the elections, the educational system. We could go on at length, and perhaps some of my distinguished colleagues will do that. But I do want to say something about the judicial system. A criminal defense lawyer in Hong Kong was recently quoted as saying that the infliction on Hong Kong of the new National Security Law is like an alien species invading our territory. How alien it is, of course, I'm going to demonstrate in certain respects. And I urge you to read the Georgetown report, which has some amazing revelations and very important detail.

We should say, first of all, a word about prosecutors. I was for a brief time a Federal prosecutor in Washington. I know the power that prosecutors have to ruin people's lives, regardless of the outcome of criminal prosecutions that they institute. And sadly, we see in Hong Kong today an illustration of the exercise of that power. I worry what the Secretary of Justice who presides over the Department of Justice has done to the system. Prosecutors in every jurisdiction have to exercise discretion. And it seems like discretion is being exercised for political reasons, and in ways that often wouldn't previously justify prosecution, or prosecution for cases as serious as have been brought.

Recently we know that a former director of public prosecutions resigned in protest because he wasn't even being told about—much less taking part in—decisions of security people who determined whether national security prosecutions would be brought in Hong Kong. And I'm sure he could tell us a lot. There's also the allegation in the Georgetown report that the staff, the lawyers in the Department of Justice in Hong Kong, may have been drafting, certainly, the implementing regulations that are crucial to under-

standing the scope of the authority of the central government's security police apparatus that has been brought to Hong Kong.

So I feel that the Department of Justice, the people who decide on prosecutions and who force the courts to consider very difficult and perhaps sometimes irresponsible accusations under great pressure, really deserves more attention than the prosecutors have received. The courts, of course, have been getting a lot of attention but perhaps their dilemma is not completely understood. We have seen that the National Security Law strips the courts of the review power, the jurisdiction to consider some of the basic constitutional law protection issues that the new regime has imposed on Hong Kong.

And we know from previous experience, and the court knows, that if it makes a decision that the central government doesn't like, that decision can be immediately overridden by the Standing Committee of the National People's Congress, as we have seen in the past. Not only do we have that problem, of course, but we have problems now that the prosecution of actual NSL cases has begun. What kind of fair trial are these people going to receive? And of course, the first question that we have to understand is: Who are the judges?

And here we see the special arrangements to select only certain judges, in whom the chief executive has confidence and who are assigned to cases in a way that isn't entirely clear to the public. But these are judges who are not ordinary judges but specially selected, and only for one-year terms, which means that if they say or do the wrong thing, they will not continue to enjoy that status, and they will be, of course, publicly embarrassed. It's not even possible to know who these judges are now because the government has not made the full list public.

So it's a sad thing about who is going to judge these cases. Not every regular Hong Kong judge will be allowed to take part. Some have been eliminated from these cases at the decision of the Secretary for Security of the Hong Kong government. Without persuasive argument, we've just seen a jury trial denied in the first prosecution being brought. And of course, that's one of the basic defenses that the common law system has guaranteed to people.

Even more important to me is the change in bail procedures. Normally there is a presumption of bail being granted in cases where at least the accused is not accused of violence. What we've seen under the NSL is a reversal of that presumption. And that means that the government can simply bring a charge against anybody. Given the vagueness and ambiguity of the prescriptions in the law, they can charge almost anybody for anything. And when they bring that case, it means it's very likely that the accused suspect—and he's only a suspect—can be kept in jail until the proceeding is entirely finished, which could take several years.

So the burden that the accused has—to persuade a court, even a conscientious one that doesn't feel under pressure—is very great to show that the accused is not likely to repeat any violation of the National Security Law when people don't really know yet what conduct violates the National Security Law. And the person, as many have been already, kept in detention, is kept there pending trial, pending conviction, appeal. It could go out to the Court of Final Ap-

peal, and that person's life has been ruined, even if the court system should ultimately vindicate the rights of the accused. Three years later, the accused has lost everything. So it's a win-win proposition for the prosecution and the Hong Kong government and the Chinese Communist Party to bring accusations against anybody, because it's a sure way of punishing. In a way, trial—certainly jury trial—but trial, has become secondary. It's arrest and detention, denial of bail, that is the sure thing. So that's a very sinister, of course, situation.

When we look at the question of judicial independence, the best defense that the PRC government and the Communist Party and the Hong Kong government can mount is they keep reciting how we can all rely on the judicial independence of Hong Kong judges. Well, that claim no longer looks very persuasive, and it's very likely to get worse. I've already said the courts have been denied full jurisdiction to consider constitutional issues. We already know that the selection of judges, even for the Court of Final Appeal—the highest court in Hong Kong—is being affected by political considerations. We have just seen a very able candidate for the CFA have to withdraw under political pressure that has not yet been publicly articulated. And this whole business about judges for security cases again shows the limits on the court system.

In a way, public attention has been diverted and misled by a focus on the continuing participation of foreign judges in the Court of Final Appeal. I think that's an eyewash question. I think those foreign judges who still have not resigned from the Court of Final Appeal should do so. They are there now as mere decoration for an increasingly oppressive national security system in Hong Kong. They don't play a role in national security cases. They're not there very often. They're just icing on the cake.

But there is a serious foreign judge problem that hasn't been focused on. Many, many lower court judges in Hong Kong have foreign nationality. And they are under pressure. Should they resign? Should they keep their jobs and listen to the party line and the pressure that every day is being evoked in the communist press in Hong Kong? And how will their successors be selected? This is going to be an increasingly apparent problem. But in the meantime, some of these judges have to make decisions, and not only in security cases—if they're among the elite, the chosen few to handle those cases. But there are many other cases in Hong Kong that involve charges of violating Hong Kong law before the National Security Law, and in addition to it, today. And we ought to be looking carefully at foreign judges in the lower courts in Hong Kong.

Finally, I'd like to say a word about the bar. One of the most serious revelations in the Georgetown report that just came out is that there are cases where there's a high suspicion that people accused under the National Security Law may be pressured to change their defense counsel. They may be pressured and advised, perhaps by the prosecution, perhaps by others, that it's wise to pick certain lawyers, certain solicitors, certain barristers who are known to have good connections to the existing government and the Public Prosecution Department at the Department of Justice. Connections, political contacts—seem to be rising in importance.

And this, of course, brings into focus the 709 movement and the denial of counsel, and all the sanctions against active independent human rights lawyers who try to provide criminal defense in China. Some have been sent to prison. Some have been disbarred. Some have been suspended. Some law firms have been closed down. Some have been forced into exile. The accused have not been free to select their own counsel. They have long had counsel imposed on them who aren't very vigorous. They're just there as decoration. And is that what Hong Kong could be coming to?

So we're having problems that we, I think, have to anticipate. But in the meantime, we have to recognize that the bar—the Bar Association, the barristers, the criminal defense lawyers in Hong Kong, many of them are as able as any in the world and courageous and dynamic. And they have been trying to stand up against the repression of the National Security Law. And the last two Bar Association chiefs have been publicly attacked. And there are underway schemes being discussed to dilute the influence of the Bar Association, most of whose members, but not all, seem to support opposition to repression imposed by the National Security Law.

Will there be some new Bar Association? Will there be some forced union of the solicitors—the lawyers' association who are not litigators—with the Bar Association? The law society seems to be majority in favor, at least insofar as people are not afraid to express themselves, of the national security regime. If there's a forced merger, that would change the balance of power and you'd see protests begin to cease from the Bar Association. Will there be some mainland organization that absorbs the Bar Association? We don't know. There are schemes afoot to try to dilute the last defense that Hong Kong has against further intrusions into the rule of law. And of course, if the Bar Association is muted or intimidated, then the courts are going to be denied the assistance they need for full consideration of the case.

Well, I won't go on. I do want to quote a professor at Hong Kong University Law School, who in March wrote that "the court maintains the rule of law in the shadow of a giant." Of course, that giant is the mainland. And since last March, that giant has begun to show that its influence is not limited to that of a shadow. And what we have found is that no matter whether you talk about the prosecutors, you talk about the court, you talk about defense lawyers, and solicitors, etc., they're all under increasing challenge.

And that leads to my ultimate worry which is, What about the law schools? Hong Kong now has several very good law schools. And Hong Kong University Law School, which was merely starting out in the '70s when I was first an early honorary lecturer there for eight weeks, has on its faculty many able, informed, courageous critics. Its students are also interested. And their programs have distinguished public intellectuals and others who are distinguished scholars and are increasingly necessarily critical of recent developments.

Will they be able to go on teaching? Will the example of Professor Benny Tai, who was ousted from his academic post because of his political involvement—will that be expanded? What will be taught in the future? Who will be accepted as students? Who will be able to publish in what periodicals, etc.? I think this is going to be com-

ing on the scene, just as I'm afraid restrictions on freedom of travel from Hong Kong also will be coming on the scene. But I think I've said enough, and I look forward to what my colleagues have to say, and to our discussion.

Staff Director SQUERI. Thank you, Professor Cohen. It is an honor to have you kick off our discussion and then this roundtable, with the rich detailing of the landscape in Hong Kong, and the evolution over time, and the troubling developments. Now we'll turn to the other panelists, as Professor Cohen mentioned.

First, we have Dr. Victoria Hui. Dr. Hui is Associate Professor of Political Science at the University of Notre Dame. She received her Ph.D. in political science from Columbia University and Bachelor of Social Sciences degree in journalism and communications from the Chinese University of Hong Kong. Dr. Hui studies contentious politics in Hong Kong's democracy movement. She has testified before both the Congressional-Executive Commission on China and the U.S.-China Economic and Security Review Commission and written on Hong Kong's Tiananmen 2.0 crackdown for Foreign Affairs, the Journal of Democracy, The Diplomat, and the Washington Post's Monkey Cage.

Dr. Hui also examines the centrality of war in Chinese history. She has published on state formation, nascent constitutional rights, Confucian pacifism or Confucian confusion, cultural diversity, assimilation and genocide, Asian civilizations, international order, and violent change. Before her academic career, Dr. Hui worked as the press officer for the then-United Democrats of Hong Kong and its chair, Martin Lee. We are delighted that starting later this summer Dr. Hui will participate in a Council on Foreign Relations International Affairs fellowship with the CECC. Dr. Hui, the floor is yours.

STATEMENT OF VICTORIA TIN-BOR HUI, ASSOCIATE PROFESSOR, DEPARTMENT OF POLITICAL SCIENCE, UNIVERSITY OF NOTRE DAME

Ms. HUI. Thank you so much for having me. I noticed that I am the only political scientist among a panel of lawyers. So I'm just trying to highlight the political aspects. What the National Security Law means is—it is a very cynical Beijing response to Hong Kong people's objection to extradition. "So you Hong Kong people, you guys do not like to be extradited across the border? We are just going to bring China's security police and public security agents to come in to overrun your once autonomous judiciary and criminal justice system."

And many people are worried very much that some of those who are particularly attacked by Ta Kung Pao and Wen Wei Po, the CCP's mouthpieces in Hong Kong, these are the likely suspects to be taken across the border—especially Jimmy Lai, the publisher of the Apple Daily, Joshua Wong, and Benny Tai, who were already mentioned by Jerry. My worst fear is that it may not matter anymore if some of these people are going to be taken across the border. What Jerry just said, and I suppose what Tom is going to say, is that some of those practices, very typical in mainland China, have already been imported to Hong Kong.

And we can think of Andy Li, one of those safe in Hong Kong, but who was intercepted at sea and taken to Shenzhen. Even when he was brought back to Hong Kong, he was assigned lawyers not of his family's choosing and he's been kept in a psychiatric hospital. We should also note that the National Security Office operates on a budget of \$1,000,000, just for the coming year, and it occupies two huge hotels. It has all the resources and physical space it needs to bring in all the practices of mistreatment of political prisoners and do that within Hong Kong.

And it seems that things are just going to get worse because now in Hong Kong we formally have a police state in command. Last week the promotions of John Lee from the security bureau chief to chief secretary and Chris Tang from the commissioner of police to security bureau chief mark the formal installation of the police state. We should say that this is essentially something long in the making, especially since the Umbrella Movement of 2014. In the aftermath, at the time the former deputy director of the Hong Kong Macau Affairs Office Chen Zuoer already said that, "we have to rein in Hong Kong's governance." And he declared an all-out struggle against civil society and especially the courts, the legislative counsel, people inside the government, universities, secondary schools—all of those pockets of civil society.

Now, Lee and Tang were rewarded for their very harsh crackdown on Hong Kong, especially the forced closure of Apple Daily and arrest of top executives and editors-in-chief. Their report cards also include over 10,000 arrests since June 2019, over 100 arrests under the National Security Law since July 2020, the arrest of pretty much the entire opposition camp. Many are denied bail, convicted, and jailed. And now there are no more pro-democracy legislators in the legislature. There will be no more meaningful elections. There will be no more street protests, no more Tiananmen candlelight vigils on June 4th, no more commemoration and mass protests on June 4th, June 9th, June 12th, June 16th, or the upcoming July 1st.

I've argued that what we are witnessing in Hong Kong is Tiananmen 2.0, essentially the wholesale transfer of mainland China's crackdown into Hong Kong. We shouldn't really focus on the fact that Beijing has not rolled out tanks into the streets of Hong Kong. There were other similarities—massive arrests, torture in full view of livestreaming media throughout 2019. And the Tiananmen model also includes both hard and soft repression. By hard, I mean physical forms of repression—arrests, beatings, torture. But also nonphysical forms of repression. Freezing people's accounts—including the Apple Daily's accounts and former legislators' accounts—and making people pledge loyalty to the CCP and fire those who are less than loyal.

And Jerry mentioned arrests. What is really important is that those who are arrested, even when they are not charged—thus not denied bail—even those who are charged and not convicted, what happens is that all those arrested incur immense legal fees, so they go broke. There have been many campaigns to fundraise to help these people. But at the same time, a lot of these funds themselves have become targets. At the same time when there are so many arrested, it's just really straining people's resources. Another "softer"

aspect of repression is censorship and the imposition of patriotic education in order to impose amnesia.

So what do we mean by a police state? A police state prosecutes political opponents and overlooks the crimes of security agents and political supporters. We've seen that there have been many cases of police brutality against protesters in 2019. They were caught on film, both local and international. And yet many of these officials, officers, have not really been held accountable. In fact, any accountability has been in the form of promotions. The most notorious was the August 31st incident in the downtown train station in Prince Edward. Police were just charging into these trains and indiscriminately attacking passengers. In the aftermath, the authorities said that anyone who talks about the August 31st incident—especially the possibility that some people got killed—is all fake news. And people who do so are subject to prosecution.

Another thing about tolerating regime supporters is another infamous case of collusion at the Yeun Long station on July 21, 2019. That evening thugs armed with sticks and rocks attacked communities and pedestrians at the train station. At the time, Chris Tang—who was later promoted to be commissioner of police and now is the security bureau chief—was the district commander. Officers did not show up until after all the thugs had left. Senior officers were filmed speaking with the men in white shirts; those thugs that evening were all wearing white shirts. And they were speaking prior to the attacks. And so many people have come up with the suspicion that the police were colluding with the attackers. So instead of arresting most of those people on the spot right in the aftermath, pro-democracy legislator Lam Cheuk-ting, who was himself beaten bloody, was actually arrested for rioting that day.

And then these security officers replaced Matthew Cheung. He was the last career administrator in the Carrie Lam administration. One thing he did well was apologize over the Yeun Long incident. He said the police handling fell short of the citizens' expectations. Immediately he was publicly rebuked by the police inspectors' association. Some of those statements read: "Matthew Cheung, why do you deserve to represent the police force? If you want to apologize, you should resign. If you don't step down or apologize to the whole force, you'll be a sworn enemy of the police." The fact that subordinates could openly challenge the number two in the government suggested that the police had backers more powerful than the Carrie Lam administration.

We should note that in fact Carrie Lam, as well as the city's security chiefs, has been under the direct command of the Beijing security apparatus. They began to have very regular sit-downs whenever Carrie Lam and Chris Tang visited Beijing. They were always having sit-downs with the Minister of Public Security Zhao Kezhi, and also the Police and Legal Affairs Commissioner Guo Shengkun in the rest of 2019. So now that the police are formally in charge of the Hong Kong government and they are subordinate to Beijing's security apparatus, the frightening prospect is that there's very little distinction between being arrested in Hong Kong versus the mainland. And this is why we really need to take stock of what has

happened to political prisoners and rights defense lawyers, from other panelists.

Let me also highlight that even though the name of the bill, the law, is “national security,” it really is about Beijing security. Tiny Hong Kong presents no threat to the national security of China. What Hong Kong represents is a threat to a regime that brooks no dissent. The one country, two systems model could work, except that what really is in place is a one party, two systems model, which cannot work at all. The CCP is a Leninist party that brooks no dissent. And it cannot tolerate any professional independence. “Any professional” here means somebody—the administration, or the police, the judiciary, the civil service, the media, the education sector—it’s actually the entire society. Once upon a time we thought that one country, two systems was meant to create a firewall to shield the city’s preexisting rights and freedoms from the one-party dictatorship in mainland China. What Beijing has done is to turn that into essentially capitalism without freedom. It helps to kill Hong Kong’s freedom while preserving its capitalism.

Let me just close with one point. If one country, two systems does not work because it is, in fact, one party, two systems, what does this also mean for the emerging order of one world, two systems? If Hong Kong once had a functioning legal order with a politically neutral civil service, an impartial police force, an independent judiciary, and an unfettered free press, and all that were taken down, what would that mean if China now is holding up these alternative institutions, creating this one world, two orders? One thing is that the immediate effect is this is just going to harden the line so that we are entering the next cold war in a more solid way. But more important in the long term, will Beijing’s order take over the liberal world order or would this world of one world, two systems, actually work? So let me close here and let’s hear from other panelist lawyers.

Staff Director SQUERI. Thank you so much, Dr. Hui, for your comments.

Our next panelist is Professor Tom Kellogg. Professor Kellogg is Executive Director of the Center for Asian Law, where he oversees various programs related to law and governance in Asia. He is a leading scholar of legal reform in China, Chinese constitutionalism, and civil society movements in China. Prior to joining Georgetown Law, Professor Kellogg was Director of the East Asia Program at Open Society Foundations, during which he focused most closely on civil society development, legal reform, and human rights. He also oversaw work on a range of other issues, including public health, environmental protection, and media development. Professor Kellogg has written widely on law and politics in China, U.S.-China relations, and Asian geopolitics. He has lectured on Chinese law at a number of universities in the United States, China, and Europe, and he has also taught courses on Chinese law at Columbia, Fordham, and Yale Law Schools.

Professor Kellogg.

**STATEMENT OF THOMAS E. KELLOGG, ADJUNCT PROFESSOR
OF LAW, GEORGETOWN LAW SCHOOL**

Mr. KELLOGG. Wonderful, wonderful. Well, I want to thank the CECC for this invitation to talk about the important topic of human rights and the rule of law in Hong Kong. And I certainly want to thank my colleagues on the panel for some very insightful remarks on where we are now. And I would agree with the other members of the panel that we are in a very difficult moment for human rights and the rule of law, both in Hong Kong and, as I think we'll hear in a little bit, on the mainland itself.

I do want to make sure to mention the report that my Center just put out yesterday on the Hong Kong National Security Law one-year anniversary, with a focus on the right to a fair trial. I thank Jerry for his kind words on the report. And I hope that those who are interested in more detail on some of these issues will check the report out. It is available on our website.

I want to say a quick word about the extraterritoriality concerns raised by the National Security Law and then use the remainder of my time to touch on the right to a fair trial for NSL suspects.

Article 38 of the National Security Law does create almost unlimited extraterritorial scope for the National Security Law, which means that individuals can be charged for national security crimes that take place anywhere in the world. And of course, as many in this audience will know, we've had at least one American citizen—Samuel Chu, head of the group HKDC, the Hong Kong Democracy Council, be named as somebody who was under investigation under the National Security Law, and other exiled activists have been similarly named by the Hong Kong police over the past year.

But I should point out that Article 38 is just one of many entry points into the international community that the Hong Kong police, the Hong Kong government, and by extension Beijing can use to extend the reach of the National Security Law. Under Schedule 5 of the National Security Law's implementing rules, the police can target foreign "political organizations" operating in Hong Kong and force them to answer questions about their activities in Hong Kong in ways that very much parallel the mainland's 2015 foreign NGO law. And of course the CECC has written about the rather extensive reach of that law and its implications for U.S. NGOs, U.S. universities, and others operating in China.

I would argue that Schedule 5 of the implementing rules sets up similar very thorny moral and ethical questions for organizations operating in Hong Kong and needs to be the subject of more attention and more discussion. Of course, many in this audience will know that Nathan Law, the exiled activist, was told by the Israeli internet service provision company Wix that his website was being taken down because the Hong Kong police, using their authority under Article 43 of the National Security Law, said that his website had to be taken down. The website was returned to service within a day or two, but the precedent was set. And we have to wonder whether other similar exiled activists will be targeted as well.

Now, on due process rights for individuals accused of NSL crimes—well, actually, if I could just quickly say a word or two about some of the broad brushstrokes of the NSL. First, I think it's

undeniable that the NSL's had a major impact on human rights and the rule of law in Hong Kong. And this is going to be a challenge that all of us are facing, and particularly the people of Hong Kong are facing, for years to come. I would argue that the law's passage itself is a violation of Hong Kong's Basic Law and the promises made to Hong Kong for a high degree of autonomy. And just to highlight one element—basically, mainland political entities operating in Hong Kong is a violation of the Basic Law itself and the promise by Beijing that it would be Hong Kong people themselves running Hong Kong.

The aggressive implementation of the law over the past year is also deeply disturbing. Since the law went into effect, we've had, by Georgetown's count, something like 128 individuals who have been arrested over the past 12 months, and 65 who have been charged. The vast majority of those 65 individuals have been targeted for peaceful political activity that should be protected by Hong Kong's Basic Law. And it's now an open question as to how the courts will reconcile the apparent conflict between the human rights of those accused and the very serious National Security Law crimes that they are charged with. That question, I think, will animate a lot of the conversation on the National Security Law in the months to come, as the trials get underway.

Quickly, on due process rights, Jerry already covered some of the questions related to bail so I will hold off on saying any more on that front for now. But of course, we could say more about that in the Q&A. I will say that jury trial is a disturbing element of the restrictions on due process rights that we have seen thus far. And we know that Tong Ying-kit, the first defendant to go on trial under the National Security Law, was denied his right to a jury trial literally in the days before his trial began. So he too will not have the benefit of this important prophylactic measure that can really do a lot to ensure judicial independence and that can guard against political prosecutions by the Hong Kong government.

Again, I share Jerry's concern, but there's been a lack of discussion of the role of the prosecutor in these cases over the past year. It's certainly welcome that there's been a lot of focus on judicial independence, and that needs to be a continuing subject of conversation and analysis. But we do need to be thinking more about the role that prosecutors are playing in some of these cases.

In conclusion, let me just say that the moves by the government that I've been mentioning here and that are described in the Georgetown report released yesterday do suggest that the government is chipping away at the due process rights of those accused of National Security Law crimes in ways that have grave implications for the right to a fair trial for those accused of crimes under the NSL. It's too early to say whether or not NSL defendants will actually get a fair trial. Any final analysis will have to wait until we have final verdicts in some of these initial cases, but the initial prospects, the initial signals are, to put it mildly, not good. Let me leave it there, and I look forward to continued discussion.

Staff Director SQUERI. Thank you, Professor Kellogg.

Our next panelist is Dr. Teng Biao. Dr. Teng is an academic lawyer, currently the Pozen Visiting Professor at the University of Chicago, and Grove Human Rights Scholar at Hunter College. He has

been a lecturer at the China University of Political Science and Law and a visiting scholar at Yale, Harvard, and NYU. Dr. Teng's research focuses on criminal justice, human rights, social movements, and political transition in China. Dr. Teng defended cases involving freedom of expression, religious freedom, the death penalty, Tibetans, and Uyghurs. He co-founded two human rights NGOs in Beijing, the Open Constitution Initiative and China Against the Death Penalty in 2003 and 2010, respectively. Dr. Teng is one of the earliest promoters of the rights defense movement in China and of the manifesto Charter 08 for which Dr. Liu Xiaobo was awarded the Nobel Peace Prize. Dr. Teng has received various international human rights awards, including the Human Rights Prize of the French Republic.

Dr. Teng, the floor is yours.

**STATEMENT OF TENG BIAO, POZEN VISITING PROFESSOR,
UNIVERSITY OF CHICAGO**

Mr. TENG. Thank you, Matt, for your invitation and introduction. I will briefly make a few points. First, how the National Security Law threatens human rights and freedom not only in Hong Kong, but also globally, focusing on two articles. The first one is Article 55 and the following Articles 56 and 61—between 56 and 61. And Article 55, the Office for Safeguarding National Security for the Central People's Government in Hong Kong, still exercises jurisdiction over cases concerning endangering national security if the case is complex or a serious situation occurs where Hong Kong is unable to effectively enforce the law or a major and imminent threat to national security has occurred. So it's very vague. And under these circumstances the police, the prosecution, and the court will be designated by Beijing.

And Hong Kong people can be sent to and detained in mainland China. The criminal procedure law of the People's Republic of China, not the Hong Kong procedural law, still applies to these cases. And this has almost legalized conduct like the kidnapping of Gui Minhai and the Causeway Bay booksellers. I call it the Causeway Bay Article. And you know, in 2015 Gui Minhai was abducted in Thailand and Lee Bo in Hong Kong. And Gui has a Swedish passport and Lee Bo has a U.K. passport. They were severely tortured. And Gui Minhai was forced to give up his Swedish citizenship and reapply for his Chinese passport. It's really, really terrifying. And by the way, the Causeway Bay kidnappings partly contributed to the protests in 2019.

Another article is Article 38. I call it the Long-Arm Article. I'm glad that Tom Kellogg has discussed this "long-arm article." Actually, this article targets anyone who criticizes Beijing's Hong Kong policy or who advocates for Hong Kong democracy or independence, no matter what passport you have or where you are based. And the second point is that torture is rampant in mainland China and is institutionalized. All the detained criminal suspects and defendants I represented in China have been tortured, without exception. And I myself was severely tortured in China. And if we go by the standards of the Convention against Torture, which China signed and ratified, I should say all over China nearly 100 percent of detainees have been tortured.

And what are the institutional reasons, the systemic reasons for the rampant torture? There are many. First is the narrow definition of torture. You know, the Chinese authorities adopted a narrower definition than the CAT, the Convention against Torture. Second, the flawed criminal procedure and evidence rules. And third, no judicial independence. And as I've observed, police have more power than the courts or the judges. The criminal investigations and the prosecutions rely heavily on extracting confessions and obtaining evidence through torture. And the purpose of the Criminal Procedure Law of the PRC includes the priority of combating crime and impunity for most torturers.

In China, most torturers are not punished. Or even if they are punished, it is generally very slight. And the political punishment—like dissidents, Falun Gong practitioners, and Tibetans, Uyghurs—there are many different kinds of extrajudicial detention, like legal education centers, like the concentration camps in Xinjiang, and many other kinds of extrajudicial or extralegal detention. And the limited role of Chinese lawyers—the human rights lawyers in China are frequently subjected to forced disappearance, house arrest, or disbarment, or even conviction and torture. And then there's the lack of freedom of expression and no independent—no free media in China, and that also contributes to the frequent use of torture.

And the final brief point I want to make—in mainland China, who has been charged with and convicted of endangering national security? I think 99 percent of them were not the people who are really endangering national security or those resorting to violence. Ninety-nine percent of them are people like Liu Xiaobo—dissidents, or NGO activists, or human rights defenders. And they were just exercising freedom of expression or writing articles critical of the CCP, the system, the policies, or the party officials, or practicing law representing dissidents. Unfortunately, this is happening not only in mainland China but also in Hong Kong.

Look at the cases like Joshua Wong, Benny Tai, Zhou Ting, or Jimmy Lai. The Chinese Communist Party is destroying Hong Kong's freedom and rule of law by implementing the draconian NSL. And the Chinese government violates its international commitments. So it is a legal, political, and moral obligation for the international community to protect a free Hong Kong and stand up to the CCP. I'll stop here. Thank you.

Staff Director SQUERI. Thank you, Dr. Teng.

Our fifth panelist is Mr. Chen Jiangang. Mr. Chen is a Hubert H. Humphrey fellow at the American University Washington College of Law. Before coming to the United States, Mr. Chen practiced law in China for over a decade with a focus on rights defense cases. He has handled cases involving torture, speech and religious freedom violations, and infringement of property rights. Notably, Mr. Chen was co-counsel for lawyer Xie Yang and played a critical role in exposing his client's experience of being tortured by Chinese officials. Mr. Chen fled China in 2019 after receiving threats of being disappeared in connection with his representation of a United States citizen who was subject to an exit ban.

Mr. Chen.

STATEMENT OF CHEN JIANGANG, HUBERT H. HUMPHREY FELLOW, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

Mr. CHEN. Hello. Thanks to CECC for inviting me. I have been a lawyer in China for 12 years, including 10 years representing human rights cases. In 2009 I represented my first human rights case, helping a client protect their family's house from the government. The last case I represented in 2019 was to help an American citizen, Fiona Huang. The Chinese government did not allow me to represent Fiona and asked me to quit the case. I replied that I would never quit, and the Chinese government issued death threats against me. So in July 2019, I led my wife and children out of China. Behind the living conditions of human rights lawyers lies the human rights situation and the judicial situation in China. What I'm talking about today is the personal experience of myself and my lawyer friends.

Now, we are talking about Hong Kong. I am not surprised at the state of Hong Kong today, because I know that the current situation in China that I have experienced is the future of Hong Kong. I need to tell you about the living conditions of human rights lawyers in China.

First, every lawyer in China is faced with the difficulties of annual inspection. In the case-filing system, lawyers are forbidden to use self-media to make comments, and the government monitors lawyers in handling cases. The annual inspection of lawyers has become an annual introductory approval and administrative license for lawyers, which is actually a rope through which the CCP controls lawyers. The Bureau of Justice has stipulated the degree of case reporting, which means that lawyers must report cases involving national security, religious belief, and mass incidents to the Bureau of Justice for filing.

In fact, the filing system is a disguised monitoring, or even a disguised restriction on the practice of lawyers. In some cases, the Justice Department sends agents to follow lawyers directly, monitor their sessions, and threaten those who dare to fight. The Supreme People's Court of the CCP and the Ministry of Justice issued a joint statement asking lawyers "not to hype up cases in their own names or by issuing statements, open letters, or urging letters in the media." Several lawyers have been punished or even stripped of their legal licenses for speaking out.

Second, government departments and the law firms can simply strip lawyers of their cases. There is now a tendency for the CCP to simply strip lawyers of their cases. The measure is to forbid the lawyer to meet with the person after arrest, forbid the family members and the person to appoint a lawyer, and then require the people to accept a lawyer appointed by the government. Even if a family member has a lawyer, the CCP can still ask the client to cancel the appointment.

Since 2015 this has been the norm. For example, the Chinese government explicitly prohibits lawyers from representing cases related to COVID-19. The bureau will instruct law firms and directors of law firms to directly suppress and control sensitive lawyers and prohibit them from handling sensitive cases. Once a lawyer is

banned from working, it will put the lawyer's family into financial crisis.

Third, various government agencies hinder the practice of lawyers and use various means to destroy the daily lives of lawyers. The CCP has imposed various obstacles on lawyers' handling of cases, such as refusing to let lawyers meet defendants without any justification, denying them access to their papers, denying them permission to speak in court, forcing them to go through security checks, frisking them, and even preventing them from entering court sessions. There are also direct beatings of lawyers, illegal seizure of lawyers' equipment for handling cases, and even illegal detention, torture, imposition of charges, and even imprisonment. The cases are numerous, and I have been a victim myself.

The CCP will destroy everything about a lawyer and his family in order to force them to obey, leaving them in immediate trouble. This often involves forcing lawyers to move, cutting off the water, power, gas, and internet of the lawyer's family, and cutting off the telephone, threatening a lawyer's family members, banning their children from school, and so on.

Fourth, among human rights lawyers in China, a large number were eventually deprived of their law licenses by the CCP through various means. I myself and a large number of my lawyer friends who are all well-known human rights lawyers and human rights defenders, were deprived of their licenses, and a number of law firms were dissolved.

Fifth, torture, imprisonment, and insulting media coverage. Dozens of Chinese lawyers have been found guilty by the CCP for their involvement in human rights cases, such as Gao Zhisheng, Li Heping, Wang Quanzhang, Xie Yang, Jiang Tianyong, and Wang Yu, who just won a Woman of Courage Award from the U.S. Government. All of these arrested lawyers have been tortured, and they're reported on in insulting ways by the CCP's media. The CCP also humiliates lawyers by fabricating shameful charges, such as visiting prostitutes.

Sixth, the CCP controls lawyers by keeping family members as hostages, and some lawyers have been held for long periods, or even been disappeared. In persecuting lawyers, the CCP controls the lawyers themselves by holding family members, especially children, as hostages—a tactic that has become common since 2015, with almost all persecuted lawyers and their families barred from leaving the country and their children prevented from going to school.

In my own case, in May 2017 my whole family was arrested. The police held the barrel of a pistol to the heads of my two sons, age six and two, in front of me. Then, for more than two years, the Beijing police put my home under 24-hour surveillance. The police told me in no uncertain terms that my children were their hostages. Individual lawyers, such as Gao Zhisheng and Jiang Tianyong, have been jailed for long periods, or even disappeared.

I can't cover all the ways in which the CCP persecutes lawyers because the CCP controls everything in China and has unlimited power. There are countless ways in which they can persecute lawyers.

In conclusion, I would like to make it clear to all of you that anti-human rights, anti-rule of law, and anti-constitutionalism are the essence of the CCP. Never, never, never trust the CCP. Thank you.

Staff Director SQUERI. Thank you, Mr. Chen. And thank you to all of our panelists for the very illuminating and thought-provoking comments. Each of you laid a lot on the table that I know is to the benefit of the CECC staff and commissioner staff that is joining us, as well as the broader public watching online. I will take the moderator's prerogative by starting off with an initial question, but if any CECC staff or commissioner staff have any questions or would like to make any comments, please use the smiley-face function at the bottom of your screen to use the raise-hand function. And I will make sure that we can recognize those who wish to speak or ask questions.

I'd like to start by asking our panelists for any reflections on where we go from here, what Congress can do in light of the deterioration in rule of law and the human rights situation that you've all so eloquently laid out. Should Congress be contemplating additional economic sanctions due to the Hong Kong government's seizure of Apple Daily's assets without a court order? Are there items of leverage that Congress can use when it comes to promoting a more robust focus on these issues at the United Nations?

There was a group of 50 independent United Nations human rights experts in June 2020 who urged the Human Rights Council to act with a sense of urgency and take all appropriate measures to monitor Chinese human rights practices. So are there steps that can be taken in that venue? I would just like to draw out the panelists on any reflections on policy levers or actions that the United States Government should be contemplating in light of what has been laid on the table.

Yes, Professor Cohen, let's start with you.

Mr. COHEN. I am glad that you raise the question, because for years I have been trying to persuade Congress to support research on what's taking place in China, especially with respect to the political-legal problems. Congress and the executive have done a lot to provide funding for training in China for cooperation and exchanges in China with respect to legal matters. And our NYU U.S.-Asia Law Institute has done remarkable and little-recognized work, often with the support of the State Department Human Rights Bureau, distributing funds made available by Congress.

But what Congress has resisted is putting up money for research on China. I have argued that it's nice to know more about the people you're trying to cooperate with and even train. And yet, research hasn't been attractive. And today, of course, we're restricted in opportunities for many of the things we used to do in China, in cooperation with the courts, with the lawyers, with academic people, the legal profession. Now it's hard to do that. We're trying to do more in this country and elsewhere, to the extent that those people are free to leave China. But this is the time for more research. This is a time for training our own people. We're going to need a new generation. I appreciated your birthday congratulations at the outset today, but I'm going to be 91 on July 1. We need a new generation.

Tom Kellogg is a wonderful scholar, but he's already—I hate to say it—approaching middle age, and the others here. So we need to train people and we need research. Congress is doing a good job on legislation, both with respect to Hong Kong and to Taiwan. And what I'd like to see with respect to Hong Kong, of course, is more information being made available. We just heard very good statements from two experienced mainland lawyers. It's lucky they are out of China so we can hear from Mr. Chen and Mr. Teng Biao. I hope their statements, by the way, can be circulated and published by the CECC so they'll have a much wider audience.

I was particularly struck by what Mr. Chen has said today. I know Teng Biao. We've cooperated on many things. He's a marvelous lawyer and courageous scholar. But I didn't know anything about Mr. Chen. And he gave a very detailed talk. To the extent people could follow that talk, they could learn about the realities of lawyers' lives. That should be made broadly available by the CECC. And if they need help, I'm sure many of us would help.

Finally, we should be cooperating with people in Hong Kong who are trying to defend the rule of law. We should be doing more to publicize their plight, as you're doing today, and we should be helping them in other ways. And last of all, I hope that Congress will open our doors to a greater extent for those people from Hong Kong who want to leave, and make money available for those who can't afford to take the risk on what is an upheaval in the lives of themselves and their family. I think we've got to do more. Let them try to walk with their feet before the door closes, because the PRC is not very likely to tolerate the humiliation of several hundred thousand people walking out on the new communist dictatorship.

Staff Director SQUERI. Thank you, Professor Cohen. Certainly poignant recommendations in light of the situation and the constricting space for civil society, both in Hong Kong and the mainland, as well as humanitarian issues that you rightly bring up.

I'd like to next turn to Dr. Hui for her thoughts on the question.

Ms. HUI. Thanks, Matt. Let me answer your question by providing a diagnosis of why the U.S. has not done more. The U.S. has decertified Hong Kong's autonomous status. The U.S. has imposed sanctions on a bunch of individuals in charge of Hong Kong. And at 2:30 there's going to be another kickoff of the Safe Harbor Act to provide asylum status to Hong Kongers trying to flee and who manage to get out. But these measures do not hurt. Last year and this year the State Department decertified Hong Kong's autonomous status. But then, so what?

What Beijing is counting on is that the rest of the world is going to continue to be dependent on China's economy. And so therefore even early this year the EU was going to sign the trade agreement with Beijing. Beijing is just counting on—well, you know, you guys continue to invest in Shanghai, and Shenzhen, and Beijing. So what does it matter that Hong Kong's just going to become part of China? So ultimately, it is very important to take actions that bite, but then at the same time for a lot of companies—essentially, Hong Kong has served as the window for China's businesses, for China to get technology and money. But now the international presence in Hong Kong is being taken hostage.

So you look at all these international embassies in Hong Kong. Can they leave easily? A survey says that 42 percent of them are planning to leave, but over 50 percent of them do not want to leave because this is still where they can make money. And we continue to have American businesses—just the other day Nike said, “We are for China.” And this is the kind of struggle, the obstacles that we face. Essentially the U.S. Government and U.S. businesses continue to support China’s ideal scenario for Hong Kong—capitalism without freedom. And this is something we need to target.

Staff Director SQUERI. Thank you.

Professor Kellogg.

Mr. KELLOGG. Sure. I would echo the comments of both Jerry and Victoria and say in general—it would be great if Congress could provide some additional funding to allow for new kinds of engagement by different players here in the United States who can build even stronger partnerships with their counterparts in Hong Kong. I think it’s pretty clear, and we’ve spoken about this during the discussion, that one of the goals of the National Security Law is to generally isolate key players in Hong Kong—academics, journalists, lawyers, and others—and to make them even more subject to government pressure, to Communist Party pressure, to all sorts of different pressures that can be brought—the financial pressure that can be brought to bear on them.

And it’s my hope that engagement by U.S. universities, that engagement by entities like the American Bar Association, journalistic collaboration and exchange, can help to break that kind of isolation that Hong Kong hopes, and Beijing hopes, will be a sort of very, very advantageous byproduct of the National Security Law itself. And again, the role of Congress is to provide the kind of funding support that would make it possible for some of these groups and some of these universities to step up their partnerships with their counterparts in Hong Kong.

Staff Director SQUERI. Thank you.

Dr. Teng Biao.

Mr. TENG. Yes. It’s great that Congress has passed the Global Magnitsky Act and Hong Kong Human Rights and Democracy Act, and some Chinese government officials and Hong Kong officials have been sanctioned, like the deputy heads of the National People’s Congress. And I think the United States should sanction more people who have violated human rights and who have suppressed Hong Kong freedom. And I think that sanctions are a powerful form of leverage that the international community has.

And the second suggestion might be to adopt more policies to protect Hong Kong asylees, get them special channels to approve their political asylum. And then third, the U.S. Congress has nominated Hong Kong activists to win the Nobel Peace Prize. I think that’s also a good idea, from Martin Lee to Joshua Wong. I think quite a few Hong Kong dissidents and democracy activists are qualified to get the Nobel Peace Prize.

And finally, it’s not only in Hong Kong that the human rights situation has been deteriorating. It’s much worse in Xinjiang and other parts of China, in Tibet, Mongolia, especially the ongoing Uyghur genocide. So I think the United States should consider a full boycott of the Beijing 2022 Olympics. And we have seen many

people—more and more people agree with the idea of a diplomatic and financial boycott, but we are calling for a full boycott. Anyway, any kind of boycott would be powerful in raising awareness of the situation of Hong Kong and Xinjiang.

Staff Director SQUERI. Thank you.

Mr. Chen, would you like to add anything?

Interpreter Mr. CHANG. Mr. Chen will speak through me, his interpreter right now. So please allow time for interpretation. Thank you.

Staff Director SQUERI. Thank you.

Mr. CHEN. (Through interpreter.) The current status of the CCP government is that the Chinese government, in fact, needs help from the United States Government. So the United States Government is able to control or to decide what the Chinese government is going to do. And the resistance and the fighting from the Chinese government against the United States Government right now is a show that China is putting on for the world. The only voice that the Chinese will listen to right now is the voice of the U.S. Government.

In my humble opinion, and then also my personal plea to the U.S. Government are the following three points: that the current U.S. Government should impose a very powerful and efficient retaliation or sanctions mechanism against the Chinese government. And then I hope that the U.S. Government can actually put this into practice upon the people who violate human rights. And that would be those Chinese government officials.

And then my second opinion is that, right now, it would be to the U.S.'s advantage to use this economic cooperation as a measure to force or to coerce the Chinese government to do something if the Chinese government violates human rights. This is the only way the Chinese government will listen, when such human rights violations happen. The Chinese government seems to play a big role right now in the economic aspect of the world. But we all know that the reason why China has obtained this power is because of the Chinese government's cooperation with the United States Government.

The third point that I would like to make—the U.S. Government should help people, those human rights fighters in China or in Hong Kong. And not only those people but also extend assistance to their families, because what the Chinese government is doing right now is holding people's family members as hostages. This is their weak point. Some of those fighters' families are trapped in China or in Hong Kong. Extending help to those families can give them more support to pursue what they are fighting for. I hope that this can be taken into consideration.

For example, one lawyer—Li Heping—his oldest son graduated from high school and was planning to come to the United States to study. But instead, he is being held in China. This is an obstacle to his dad's career and might not be a good thing for this young fellow's future. That's all I want to say.

Staff Director SQUERI. Thank you so much.

We are running short on time, but I would like to give an opportunity for a lightning round of questions, since we have such terrific expertise on this roundtable. Let's stick with Mr. Chen. Thank

you for sharing your personal story regarding your experience in detention and the harassment that your family underwent. We really commend your courage and we're sorry that you had to go through those threats.

Q. Can you tell us about the situation of rights defenders and lawyers connected to the 709 Crackdown, whom you've been in close contact with, and how the United States can most effectively advocate for them?

Mr. CHEN. (Through interpreter.) Let me tell you more about my personal experience. In 2019, I was planning to fly to the United States to study. Instead, I was forbidden to go. At the time, the U.S. Government I think made two tweets regarding my situation, and a journalist at the press conference also asked about this, but the CCP said very little and provided few details.

And that's the only help that I got from the United States Government. And then from the embassy—the U.S. embassy in China, the ambassador told me, “That's the only help that we can provide right now.” At the time my situation was very dangerous because the CCP government had learned of my intention to flee the country, to come to the United States as a visiting scholar. I really needed a lot of help, any support that I could get from the outside world.

I believe that if I had not fled from Guangxi with my family and crossed the border, I would be in jail right now. The same thing that happened to me happened to a friend of mine, also a human rights lawyer, from Sichuan, Chengdu. He was also planning to come to the United States, but was forbidden, and is now stranded in China. The only support that he got was exactly the same as I got in 2009—just an article in a newspaper. This lawyer was stripped of his law license and was then out of a job. He is also under severe monitoring right now—surveillance by the government. He is even forbidden to travel right now. So my plea to the Commission and to the United States Government is . . . Is there any assistance that you can provide to people like me or my friends in this situation? Can you do anything else, other than what you have already done? Thank you.

Staff Director SQUERI. Thank you very much. And again, it's very powerful to hear your personal experience and the testimony that you've provided.

Q. Dr. Cohen, as you noted in your remarks, there is a clear trend of Hong Kong prosecutors exercising prosecutorial discretion based on political motivations. What recommendations would you give to lawyers in Hong Kong to resist or to at least slow down this erosion of the institutional integrity of the prosecutor's office?

Mr. COHEN. I think that the lawyers who are knowledgeable about attempts and successful efforts to deprive the accused of adequate counsel should speak out. I'd like to hear from the former head of public prosecutions who last year resigned in protest, but he has not made public, as far as I know, the reasons. And he's got to have a successful law practice now. And I'm sure he's under conflicting pressures about going public. But we need to know more. I think the revelations in Tom Kellogg's Georgetown report about interference with the right to counsel are so reminiscent of what we've heard takes place in China today. Teng Biao has per-

sonally experienced that. I've had exposure to that in trying to advise on some cases. And we've just heard a very moving statement from Mr. Chen.

I think we're going to see more of that in Hong Kong. And the more public exposure we can give—I hope the media picks up this aspect of Tom's report because, like his discussion of the implementing regulations, which is too little known, this is too new—we need to have more public exposure. So we need to help Hong Kong people describe and evaluate this, and we need to have our own outside people better informed because this is a very sinister aspect of what's taking place.

Finally, I was very glad to hear Mr. Chen drop a few Chinese names that may not mean anything to most people, but when I hear the name Gao Zhisheng—once recognized, before he became too political, in opposition—as one of China's great lawyers—I think of what has happened to this man. Is he dead? Is he alive? He's been disappeared. And no one remembers him now except those who worked with him. I warned him in 2005 that if he went on going public as much as he did in his criticism of the Party, he wouldn't be on the street. And within months after that, he was arrested multiple times, tortured, and finally disposed of somehow. Is he a vegetable? Is he alive? What has happened to him?

And he's just one example. Xu Zhiyong is another great person I met, like Teng Biao and others, when I lectured at Yale. He's, again, in prison. We'd be better off if Xu Zhiyong, Gao Zhisheng, and others whose names aren't known to most people outside were outside of China, like Teng Biao and Mr. Chen, and able to tell us more. And I think it's a hard decision. Should we help people more who want to leave? Teng Biao and Mr. Chen got out via the underground railway. It took Teng Biao's wife and one of his children almost 28 days to go from Beijing to Boston. They need help. And how are these people going to live when they're here? If we had research projects, we would not only learn more, but we would provide support for people who have no way to maintain their livelihood once they get here.

Staff Director SQUERI. Thank you.

And following up on Professor Cohen's reference to the Georgetown research that Professor Kellogg led, I'd like to turn to you next, Professor Kellogg. And congratulations again on the release of the report on procedural rights under the National Security Law.

Q. One case that you highlighted in the report is the case of Tong Ying-kit, who was charged with an offense under the National Security Law and was denied jury trial. Can you tell us more about how this case compares with politically sensitive trials in mainland China?

Mr. KELLOGG. Thank you for that great question. And I do think Tong Ying-kit, his case is one to watch. We have talked a little bit about his right to a jury trial, which has been denied. But there are also key substantive law questions that are going to be at the forefront of his trial as it moves forward over the next couple of weeks. I've said publicly that I am not sure that a terrorism charge really makes sense in this case. He is credibly accused of driving his motorcycle into a group of police officers, and if those facts are proven, then an assault charge would certainly be warranted, a

dangerous driving charge would certainly be warranted. But it doesn't look to me like he has engaged in the level of planning, in the level of forethought with a political goal in mind that is usually required for a terrorism conviction under international press practice for domestic counterterrorism laws.

So you have that as one core concern. And then on top of that, you have the speech crime that he is accused of because he was carrying a banner that used one of those forbidden slogans from the 2019 movement. And there I think—coming back to your question—there I think are some of the parallels with political dissidents and political activism on the mainland, that if Tong Ying-kit is going to be convicted and punished merely for carrying a banner with a slogan, then we're getting into very, very difficult territory for the right of free expression in Hong Kong, which has all too many disturbing parallels to prosecutions of individuals for exercising their right to free speech on the mainland.

And we'll have to wait and see how this case plays out. And we'll have to wait and see how the three-judge panel weighs the arguments in this case, both on the terrorism charge and on the inciting subversion, I believe it is, charge. And one has to hope that the three-judge panel will rigorously use the Basic Law's human rights protections and apply them to this case. And then we'll see what kind of verdict we get.

Staff Director SQUERI. Thank you, Professor Kellogg.

Q. Dr. Teng Biao, between your detention in 2011 and today, I would be curious to hear your reflections on what has changed and what's remained the same in the landscape of how rights lawyers are treated by the Chinese government. One recent development that the Commission is tracking is the Chinese government's announcement of the expansion of legal aid services. And I would appreciate your evaluation of these services in terms of access to independent counsel and whether independent groups in China are allowed to provide legal services with any sort of latitude in their operations.

Mr. TENG. Yes, thank you. Since Xi Jinping came to power in late 2012, the human rights situation has been deteriorating. And Xi Jinping actually waged war on law. And many lawyers, human rights defenders, and activists, dissidents, also related groups, have been arrested and detained. And the roundup of human rights lawyers and defenders is really brutal suppression of the rule of law. And the legal aid became more and more difficult. You know, many lawyers—scores of human rights lawyers—have been disbarred, and they've lost their law licenses.

The chilling effect is apparent. You know, most lawyers fear taking sensitive cases, and in many cases, the Chinese government just blocks the human rights lawyers, the die-hard lawyers, from representing the clients, the suspect. And they appoint—the government appoints their own lawyers, who will definitely not challenge the abuse of power. So it's getting worse. Really worrying. Thank you.

Staff Director SQUERI. Thank you.

Q. And for our last question, I'd like to turn again to Dr. Hui. A human rights attorney who has been mentioned in this roundtable, Lu Siwei, has represented the Hong Kong 12 after they were

apprehended at sea. There's at least one other mainland Chinese attorney who also represented this group and is being threatened. How much danger do you assess that attorneys face for representing National Security Law cases, either in Hong Kong or in mainland China? And how likely is it that these attorneys will face—that the attorneys in Hong Kong will face similar treatment to their mainland peers?

Ms. HUI. Yes, Matt, thank you so much. That's essentially the case—and thank you for highlighting that, because I think Tom also earlier said that even those arrested are now told that there are certain lawyers that you should go to. And at the same time, there's also pro-regime people saying, because Martin Lee and Margaret Ng are already convicted, even though they've been given a suspended sentence, that they should be debarred as well.

So there are those very worrisome trends. And at the same time—again, it's not just about who agrees to represent these people, but also that as soon as you are arrested you are basically—for a lot of these people, they continue to live in stress. They are embattled. You know, when the police actually go to lay charges on them, how can they afford the legal fees? All of this is just basically mental torture.

I should also note that Chen Jianguang said that today's China is tomorrow's Hong Kong. I think once upon a time we said today's Tiananmen, tomorrow's Hong Kong. When we said that in 1989, it felt like tomorrow was going to be many years away—decades away. But, you know, when we say today's China, tomorrow's Hong Kong, it could well be tomorrow—literally the next day, or the next week. Just look at what happened, how rapidly Apple Daily was forced to shut down.

So these days we just have to really look at what happens to political prisoners in China, where we should expect to see horrible things happening—even in Hong Kong. At the same time, all the experiences of rights defense lawyers in China—there's a group of about 200 lawyers who do pro bono for a lot of the arrested—we also have to keep an eye on how they can survive and how much they can do, and if they themselves will be subjected to prosecution.

Staff Director SQUERI. Thank you. That is a very bracing, but I think accurate, characterization, and I think it should serve as a call to action for all of us. And I think this roundtable has been a tremendous contribution to the Commission's work and to the knowledge base of our Commissioners, the staff on Capitol Hill, and those watching these proceedings. And so I really want to thank our panelists for the very rich and illuminating discussion. And with that, that concludes our roundtable. Thank you.

[Whereupon, at 2:54 p.m., the roundtable was concluded.]