

Written Testimony of Samuel Bickett
Congressional Executive Commission on China, 12 July 2022

Mr. Chairman, members of the committee, thank you for inviting me to testify today.

The Deterioration of Hong Kong's Justice System

Hong Kong's justice system has been corrupted by Beijing's authoritarian security apparatus. If a court case is of political interest to Beijing or its agents in Hong Kong, a defendant has little hope of receiving a fair trial, and often will spend years in prison before receiving a verdict.

While few people of good faith would still defend the Hong Kong Department of Justice and Police Force, there are those who insist the judiciary continues to operate independently and in accordance with law. The evidence shows otherwise.

Under the 2020 National Security Law, Beijing formally set up a parallel justice system that it could control for certain political cases; the outrages of this system have been well documented. But relatively little is said about the deterioration of traditional common law courts. While some low-level protest cases might still fly under the radar, high profile political defendants wrongly charged in common law courts with crimes like unlawful assembly, riot, and incitement face almost as little hope as national security law defendants. In these cases, unable to rely on the repressive language of the National Security Law, prosecutors and judges instead manufacture evidence and twist well-established legal principles to obtain convictions.

Many ordinary judges have been willing participants in the dismantling of defendants' rights. The burden of proof has been turned on its head; rather than requiring the prosecution to prove its case, judges often declare that defendants haven't sufficiently proved their innocence. Faced with inconvenient facts, judges falsify or deliberately omit exculpatory evidence so frequently that those of us working to document it can't keep up.

Even in non-NSL cases, judges often deny bail to defendants who then languish in prison for years awaiting trial. The judiciary's leadership has also ordered all judges to attend national security seminars given by mainland officials, in which they are trained to view court cases through a political lens.

Judges who follow the law are punished. When Beijing's state media attacked several judges who acquitted protesters in early cases, the Judiciary's leadership removed the judges from the bench and reassigned them to desk duty. State actors harassed and threatened one judge so severely that in 2021 he abruptly resigned and moved with his family to the UK. As for the DOJ, when Beijing passed the National Security Law in Summer 2020, the Chief Prosecutor, David Leung—not a pro-democracy activist by any stretch—was reportedly seen as not loyal enough to Beijing and excluded from national security cases. He resigned and was replaced by someone more willing to play Beijing's game. The message to both judges and prosecutors has been crystal clear: get in line, or suffer the consequences. Many ethical judges and prosecutors have

left their jobs, and those who remain are a mix of those who are too craven to do their duty and those who enthusiastically embrace the authoritarian regime.

Private lawyers are next: Both the Law Society and Bar Association regularly issue screeds defending government positions while remaining silent on government abuses, and both organizations recently launched investigations into dozens of private lawyers for their work representing protesters. One national security judge, Stanley Chan, has suggested that lawyers who provided their business cards to protesters could be criminally liable as accomplices. National security police interrogated the former chair of the bar association, after which he quickly moved to the UK, and a number of esteemed barristers are in prison without trial for political activity. One well-known human rights solicitor decided to leave the city after being attacked in state media; he was harassed by CCP reporters even as he walked through the airport to his gate. Any remaining principled criminal lawyers will either fall in line, leave the profession, or risk prison themselves.

The Legal Aid system for indigent defendants was also revamped last year. Whereas previously a defendant could choose their lawyer, under the new system the government assigns a lawyer for them. Unsurprisingly, any lawyers seen as insufficiently loyal to the regime are excluded.

Many Cases, Including My Own, Illustrate How the System Has Been Co-opted

There are many non-NSL cases in which these abuses have been documented, some of which I have written about in my [Hong Kong Law & Policy Newsletter](#). Two high profile incitement of unlawful assembly cases illustrate this point:

- Magistrate Amy Chan convicted activist lawyer Chow Hang Tung of inciting others to unlawfully assemble in Victoria Park on the June 4, 2021 Tiananmen Crackdown anniversary. The conviction was based on a social media post in which Chow invited followers to “light candles in every corner of Hong Kong”—plainly, not an invitation to come to Victoria Park. In her written ruling, Magistrate Chan simply [deleted this exculpatory line](#) when she reprinted the social media post.
- Judge Amanda Woodcock convicted Apple Daily founder Jimmy Lai for inciting others to join a similar Tiananmen Crackdown vigil in Victoria Park a year earlier. Lai had stood by silently at a press event in which a pro-democracy organization, Hong Kong Alliance, announced it would later walk to Victoria Park. Lai left and did not go to the park. Woodcock ruled that because Lai “is a prominent public figure known to publicly share similar views as Hong Kong Alliance,” and because at the press conference, he was “surrounded and followed by photographers and reporters,” *his very presence* was an effort to incite others to attend the gathering. In other words, [Jimmy Lai was guilty because he was Jimmy Lai](#).

My own case is another illustration. While many Hongkongers have had it much worse than me, [my experience](#) shows how the system has been co-opted and politicized by officials, often crossing into outright criminal misconduct. At every stage, public servants failed me, failed their oath, and failed Hong Kong.

In December 2019 while out shopping, I came across two men beating and choking a teenager with a baton. As a crowd formed and several people filmed the events, a British man asked them in English if they were police. They both responded no. I then asked them in Chinese if they were police. They both responded no in Chinese. When one of the men, Yu Shu Sang, began to attack the British man, I grabbed at the baton to stop him. After a scuffle, I took hold of one side of the baton and detained him until the police arrived a few minutes later. When they came, the police claimed that Yu was actually a police officer. The whole incident was caught on cell phone video, and Yu admitted on questioning that he had falsely accused the teen he was beating of a crime he didn't commit, but they arrested me anyway and let the attackers go free.

I spent two days in police custody, where I was tortured using a common method in Hong Kong. The police put me in a room with the temperature set at around 35 degrees Fahrenheit (2 degrees Celsius) for hours at a time. Periodically, an officer would pull me out of the room shivering and turning blue, warm me up, and interrogate me. Each time, I would refuse to answer and they would put me back in the freezing room.

After obtaining bail, my lawyers wrote to the DOJ to urge them to look at the evidence showing my innocence and drop the case. I still held out hope that my legal colleagues in DOJ, sworn to the law just as I was, would do the right thing. They did not. A court prosecutor wrote back that they would pursue the charges, despite the evidence of my innocence.

In Spring 2020, the prosecutor assigned to the case told my counsel that she wanted to drop the charges, but that her superiors were proceeding with the case because I was a foreigner who had "embarrassed the police" on camera. That prosecutor was then removed from my case, and a private lawyer named Memi Ng was appointed to prosecute me instead.

It became clear by this point that it was the police, not the DOJ, calling the shots. At every hearing, two police officers sat behind Ms. Ng and instructed her on even minor issues—a violation of both the prosecution code and Hong Kong Law, which require prosecutors to act independently of the police and on the basis of law. This court scene—police officers quite literally whispering in the ear of the prosecutor—is now routine in politically sensitive cases.

During the discovery phase, we discovered that the police had destroyed CCTV camera footage showing an earlier attack on the teen by Yu that I had not witnessed. The police also admitted in writing that they had "no evidence" that Yu was a serving police officer, and only months later, after we raised objections repeatedly, produced a suspicious document "delaying" Yu's retirement date past the time of the incident. We also discovered that the Police had called in their only civilian witness, the second attacker Lo Chi Keung, before trial and offered to "award" him with a cash bribe. I was unusually persistent and rigorous in tracking down this rampant misconduct, but if it happened to me, it is surely happening in other political cases.

At my May 2021 trial, Magistrate Arthur Lam disregarded the inconvenient videos of the incident and police admissions at trial of repeated lying, destruction of evidence, and witness tampering. He then simply invented a new series of events, indifferent to how transparent his misconduct was. He convicted me and sentenced me to 4 ½ months in prison.

After nearly two months in prison, I was released on bail pending appeal. Despite everything, I still held out hope for the judiciary, and believed that an appellate judge would reverse the conviction.

I was wrong yet again. The court assigned the case—supposedly at random—to a notorious national security judge, Esther Toh. In reality, even common law case assignments are no longer random, and high-profile political cases almost always go to a small circle of Beijing-friendly judges. At the hearing, Judge Toh gave several speeches to the assembled press, including one defending the right of police officers to falsely accuse people of crimes they didn't commit, and another proclaiming that it is never lawful to stop a police officer, even if they're off duty and committing a violent crime. Judge Toh, of course, upheld the conviction, and sent me back to prison for the rest of my sentence.

On March 22 of this year, officers took me from the prison and immediately deported me to the US. I am still appealing my conviction, this time to the Court of Final Appeal. The Court has already refused to hear my case once, without any justification for doing so. I am now applying a second time for a hearing. But my previous optimism is gone—I expect nothing but obfuscation and rejection from the Court.

Final Observations and Proposals

Those holding out hope that courageous officials in the justice system will step up to save Hong Kong's rule of law must accept the reality: Hong Kong's much-lauded justice system is lost. Going forward, officials will no doubt point to an occasional acquittal as evidence of their fairness, but there is no chance of acquittals in any case that would risk a reaction from political authorities in Beijing.

For businesses who think the compromised legal system won't affect their interests, one only needs to look across the border to Mainland China to see that this cannot be the case. In the Mainland, business disputes involving a foreign company rarely turn in favor of the foreigners, and often result in not just financial losses but exit bans for foreign employees, sometimes for years. If prosecutors and judges have embraced the principle that cases of interest to Beijing must be decided in Beijing's favor, how could it not affect, say, a civil dispute between a US bank's Hong Kong branch and China Construction Bank, or a creditor claim filed in Hong Kong against an insolvent Chinese real estate company? A justice system is either independent of political authorities or it is not—there is no half-way option.

Hong Kong will not be restored to its former glory anytime soon. There is, however, much that the US Government can do to at least increase the costs of Hong Kong's crackdown and deter similar action in the future.

- *Human Rights (Magnitsky) Sanctions*: While the US has sanctioned a number of top Hong Kong officials, this does little to curb the serious abuses of officials in the justice system further down the chain. I urge Congress and the White House to issue sanctions against midlevel prosecutors and police officials who have misused the court system to unjustly imprison perceived dissidents. A wide net cast low enough into the ranks just might deter some civil servants from further perverting the justice system. And while any government that values judicial independence should be very cautious about sanctioning judges, there is simply no question that some judges have abandoned judicial independence, including the Chief Justice and the known National Security Law judges. These judges merit consideration for sanctions as well.
- *Penalties against US companies for facilitating human rights abuses*: Ultimately, only measures that increase the risk to businesses of investing in authoritarian regimes can curb Beijing's excesses in the Chinese mainland and its colonies. Industry-based sanctions such as those issued against Russia in 2014 are one way of doing this, but lesser measures can also have an impact. One option that could be very effective is a law in the mold of the Foreign Corrupt Practices Act that prohibits US persons, including US companies, from facilitating serious human rights abuses, and subjects violators to civil and criminal penalties. I would also urge that any such law go beyond the FCPA in permitting private civil actions against offenders, which would enable private plaintiffs and attorneys to take up much of the work of enforcing the law.
- *Immigration Pathways*: I urge Congress to finally provide a special immigration pathway for Hongkongers to live and work in the United States, and eventually obtain citizenship. As our allies in the UK, Canada, and Australia have moved forward with such pathways, Hongkongers have moved to these places in droves. These Hongkongers are by and large well-educated, relatively wealthy, and of working age. They will make exceptional contributions wherever they land, and it is America's loss that we are not doing more to attract them here.

Conclusion

To be frank, the US Government has, to this point, done far too little to stem the rise of CCP authoritarianism. To illustrate how far we are from the mindset we need to be in: As we speak, just a short walk away the Smithsonian National Museum of Asian Art is co-hosting a Hong Kong film festival with the Hong Kong Economic and Trade Office, Hong Kong's principal propaganda arm abroad. If even US Government entities here in the nation's capital haven't yet gotten the message that these are not people we can work with, how can we expect US businesses to stop cooperating with the regime? How can we demand it of our allies?

Finally, I urge all members of Congress to remember that this country's credibility abroad on issues of democracy and human rights is inextricably tied to whether our leaders are seen as respecting democracy and human rights at home. The rhetoric and actions of some members of

Congress related to the last presidential election have severely hurt America's influence abroad, and given our adversaries in China and elsewhere ammunition as they seek to spread authoritarianism across the world. I urge all of America's leaders to remember that their actions on domestic issues have consequences well beyond the country's borders.

Thank you for your time and attention.