

**12 Sept 2024**

**Peter Humphrey - Testimony to CECC Hearing on Unjustly Detained Americans in China**



**Before arrest**



**During captivity in a cage**

**Introduction**

I am a British citizen. Half my family is American. My wife and son are American citizens. For much of my life I have interacted with American institutions. I have spent 49 years involved with China as an academic, teacher, journalist, corporate investigator and philanthropist. I hold a degree in sinology from Durham University in England. I am currently an external affiliate of Harvard University's Fairbank Center for Chinese Studies, a member of the UK think tanks RUSI and Henry Jackson Society, and a pro bono mentor to families of foreign prisoners in China. I and my American wife Yingzeng Yu were wrongfully imprisoned in China in 2013-2015 on false charges of illegal information gathering for our due diligence firm, ChinaWhys, in an extensively publicized case. Since our release in June 2015 I have created an information and support network among families of foreign prisoners to lobby for their welfare and their release, as well as interviewing newly released prisoners in order to track changes in the prisons. Before testifying to this commission, I have testified to the UK parliament and the Australian Senate and I have provided evidence to support China-related legislation in the EU Parliament on China due diligence and the import of prison labor products.

I am testifying to the CECC both as a specialist on justice and imprisonment in China and as a foreign victim of unjust imprisonment. I have a wealth of personal experience and insights after being a fly on the wall inside the Chinese prison system for two years, and one of the first victims of dictator Xi Jinping's crusade against foreigners, and for the past nine years an activist who is exposing judicial and penal abuses that all foreign prisoners and detainees in China face.

In my statement I will include some high-level observations in addition to some examples of abuse in China's prison system, and I will touch upon the cases of some American prisoners that I have followed and supported. Finally, I will also make some observations and suggestions for improving policy in areas that need review and change.

First, let me also state that although we can see a number of American families presenting their cases of unjust imprisonment in China to this CECC hearing, there are a massive number who cannot or will not do so, largely due to fear of retribution against their loved-ones locked up in one of Xi Jinping's jails. In addition the communication of Americans languishing in China's prisons is deliberately obstructed by Chinese authorities, making it impossible for them to issue their own statements and pleas for help directly to such a hearing. We must keep all those Americans in our minds and hearts as we digest the testimony of the few who are able to testify. Regardless of class background, level of wealth, skin color, religious creed, or the crimes they are alleged by Chinese institutions to have committed, and whether "guilty" or not, they deserve equal support, as Americans. Some of them have been in Xi's jails for more than ten years and are in dire health.

### **The Humphrey & Yu Wrongful Imprisonment Case**

The story of what happened to me and my family in the clutches of China's judicial and prison system has been extensively documented and written about in the media and in the American litigation records of my lawsuit against a former client of mine.

In short, after decades of benign involvement in China, one morning in July 2013, I and my American wife Yingzeng Yu were suddenly detained, our Shanghai offices and apartment were raided at dawn and our 10-year-old due diligence consultancy company was shut down without any legal grounds. I was 57 at the time, and my wife was approaching her 60<sup>th</sup> birthday. Our son, an American citizen, was 18 at the time and had just completed high school – our arrest orphaned him for the next two years and seriously damaged his educational path and career ambitions. Our only crime really was to have offended somebody who we had investigated and profiled for a multinational client who suspected her of defaming the company. She turned out to have powerful connections in the Communist Party and arranged for us to be arrested in revenge.<sup>1</sup>

We never received a fair and transparent trial and we were treated inhumanely during two years of wrongful captivity. We spent over a year in a Shanghai detention center and the remainder of the period in prisons – me in Shanghai's Qingpu Prison and my wife in Shanghai Women's Prison.

The detention center was like a penal facility from day one and not a pre-trial detention facility. My cell was unfurnished and it incarcerated 12 men in a floor space of 17.5 square yards. The off white paint and plaster in the cells was rotting and peeling off the walls and ceiling. The other cellmates were mostly Chinese. Occasionally there would be another foreigner, from Africa or Asia. The ceiling lights were kept on 24/7. There was no furniture, no bed to sleep on. We slept on a bare, rough wooden floor, which was our bed, our breakfast and dinner table, and where we had to squat or sit cross-legged for most of the day. We never received outdoor exercise, sunshine or fresh air. The toilet was a hole in the corner of the cell open to the view of every cellmate and the surveillance cameras. There was never a moment of privacy. The only privacy was inside your own head. We ate three times a day from doggy bowls containing food that was pushed through the bars of the cell by convict laborers. The food comprised gritty rice, scraps of vegetable, and the occasional sliver of meat. The food lacked vital vitamins and minerals and we all suffered from malnutrition and diarrhea, and quickly lost weight and grew weak. I lost 22 pounds in weight. The cell provided no hot water but only cold water running from a tap in a crumbling stone sink. Medical attention was grossly inadequate. One cellmate was dying from heart disease and another, a Chinese-born American citizen, was suffering from a

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<sup>1</sup> I cannot name this client here, for legal reasons, in order to comply with a legal settlement between the Humphrey family and the client, the terms of which are confidential. I can only refer to the public dockets.

failing liver transplant that he had undergone just weeks before he was arrested on murky fraud charges in the middle of his own wedding party. The detention center authorities refused to acknowledge my prostate cancer situation and withheld medical treatment for it for the whole duration of my arbitrary detention there.

I and my wife were subjected separately to daily interrogations by the police (PSB) and initially also by State Security (MSS) who tried to pin an espionage charge on us. In the end they charged us with illegal information gathering under a law which at the time of our business activities did not make our business activities illegal. (Since our release China has introduced new laws which make all information gathering potentially illegal, regardless of the means used to gather it.) During this detention and interrogation period, I and my wife were allowed no contact with each other. After six months we were allowed to write letters to each other but these took weeks or months to travel 300 meters through the concrete walls of the detention center due to three layers of censorship. They were censored and sometimes confiscated without us being told. We were not allowed to discuss our case in these letters. Correspondence with family was highly restricted. No family visits were allowed. This severely hampered our efforts to help our 18-year-old son who was suddenly cut adrift by our disappearance and had no access to our family funds. But we received occasional welfare visits from our respective US and UK consulates bringing messages, letters and reading material.

In short, the conditions in the detention center in their totality added up to a torture designed to crush the human spirit and force out a confession, and failed to meet the standards required by international conventions or treaties that China has signed.

In April 2014, my wife's brother, Bernard Yu, an American citizen born in Ohio, died in Maryland from a fast-moving cancer accelerated by the stress that he was experiencing in handling his younger sister's incarceration. His situation was withheld from my wife until our trial and she never had a chance to say goodbye to him. He was her only other close relative from her original nuclear family. She was only informed of his death on the morning of our sham trial in August that year, which seriously destabilized her in court, no doubt intentionally.

During our detention we were allowed only minimalist meetings with defense lawyers, whose hands were tied by a rule that requires all Chinese lawyers to obey the Communist Party or lose their license. These meetings never enjoyed any privacy. The meetings were held a cell with bars between me and the visiting lawyer and were held under surveillance. No documents were supposed to be exchanged.

Needless to say, our defense was thus rendered useless. On 8 August 2014, we were taken to a court for a show trial that lasted one day and we were sentenced immediately – me to two and a half years and my wife to two years. We decided not to appeal because we were falsely led to believe that life would be easier in a prison, especially for my wife who was ill with swollen kidneys, and because the time required for an appeal process might exceed the length of our sentence.

For one month between the trial and my transfer to prison, I was in a transit cell for men who had been sentenced and were either awaiting transfer to a prison or were in the process of appeal. It was in this cell that I met the American prisoner named David McMahon, whose travesty I am separately presenting to this hearing, David having authorized me to take his case public over five years ago. I was so shocked by the sheer injustice of his case that I spent that month in interview mode, getting to know him as well as possible and assessing his case. We shared reading materials including books, magazines and judicial documents and became good friends. David McMahon was a primary school teacher who worked at the French International School and had been falsely accused of molesting a six year old girl in school. He showed me his indictment and judgment documents, family photos and love letters and I concluded that he was a normal heterosexual man in a normal loving heterosexual relationship with a female American school teacher who would never be a pedophile and who had been wrongly accused. He was the victim of a witch hunt by a French mother whose daughter had been molested the previous year by another American teacher who was indeed a fugitive pedophile,

Hector Oruela, and who was extradited to America and is now serving a long jail term for crimes he had committed in the US. Oruela was never tried in China and the French family resented this. They seized upon a proxy fantasy that their daughter had been molested by David.

Life in Qingpu Prison<sup>2</sup> was certainly not easier than in the detention center even though I was placed in a cell block designated exclusively for around 150 foreign citizens. Again I was in a 17.5 square yard cell shared among 12 cellmates, a standard cell size in Shanghai. The cell had two-tier bunk beds on each side with a very narrow floor space in the middle. Lights were kept on 24/7, although dimmed at night. Food was similar to the detention center, although warmer, cleaner and with a bit more protein, and was eaten in a separate “activity room”, at tables, served by fellow prisoners. We received one boiled egg per week every Sunday. There are restrictions on receiving or sending our letters – all are censored by language officers known as “letter captains”. And restrictions applied to receiving reading material – subjective censorship decisions are made by officers who confiscate anything that they deem to have a political nature.

I was placed in a “training cell” where a “chief prisoner” was assigned to bully me and a particular officer known to be sadistic was placed in charge of my cell with the specific mission to bully me into signing a confession. Other prisoners were ordered not to speak to me because I was a British “spy”.

Most of the prisoners were participating in mandatory manufacturing labor and some were employed as corridor cleaners or food servers. I boycotted the labor system and got away with it, perhaps because my sentence was short and I had no interest in earning points for a sentence reduction. Only through labor and through writing mandatory thought reports and confessions of guilt can you earn merit points and apply for sentence reductions. I had no intention of confessing to a crime that I had never committed. Most prisoners with longer sentences (including life terms) crumbled and many innocent people falsely confessed to uncommitted crimes in order to obtain sentence reductions.

In connection with forced prison labor among foreign inmates, I published a series of articles in the Sunday Times in December 2019 about Qingpu inmates packaging Christmas cards for the British supermarket chain Tesco, and Quaker oatmeal sachets for Pepsico. (See reading list below.)

During my time in Qingpu, I witnessed frequent rough-handling and beating of foreign prisoners and instances of brutal solitary confinement for the most minor of offences such as refusing to get out of the bunk bed. Solitary included food deprivation, sleep deprivation, and water boarding sessions that were performed by trusted Chinese convicts, according to prisoners who suffered this treatment.

Overall, the conditions in Qingpu Prison added up to torture as defined in the international treaty on torture and the international convention on minimum standards of treatment for prisoners which China has signed.<sup>3</sup>

In Qingpu, again, medical attention for my prostate cancer was deliberately withheld, this time on blatant illegal grounds: whenever I asked for treatment, I was told, “you have not confessed”. It was only in the 21<sup>st</sup> month of my captivity in April 2015 that I finally obtained an MRI scan confirming my tumor. I managed to get this information out to my son and to my consular representative. I made clear I would use this news to overcast an impending visit later in 2015 to the UK by President Xi Jinping. Soon afterwards, I felt that certain wheels were moving to try to get rid of me.

The most senior officer of the foreign cell block, and the governor of the prison, tried to negotiate with me to formulate some kind of statement – they wanted an acknowledgement of guilt but they were not going to get it and never did. In the end they settled for a fudged statement full of conditional clauses, ifs and buts. And even this I signed only under duress. In June 2015 they finally released me with my

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<sup>2</sup> Qingpu Prison is the very same prison where Kai Li and David McMahon are held today.

<sup>3</sup> Copies of treaties attached.

wife, after fabricating paperwork that claimed we had acknowledged our crimes, behaved well in prison and reformed. All of this was a sheer box-ticking fabrication, a show. A big lie.

We arrived in the UK on 17 June 2015. I underwent five years of prostate cancer treatments which failed. The two years in captivity without medical treatment for it had allowed it to advance to a dangerous point. In the end, in 2020, I had to undergo the removal of my prostate in its entirety to save my life. Although life-saving, this has brought *life-changing* consequences and daily management issues. I also underwent five years in and out of PTSD counseling, which has been unsuccessful. I still suffer from painful flashbacks and panic attacks. Although I have obtained some triumphs and exonerations outside China, delving into the fine details of my ordeal remains a huge mental and emotional struggle and I remain fragile as a result of my mistreatment, sometimes unable to marshal my thoughts as clearly as I could before this ordeal. A man leaves a prison, but a prison never leaves a man.

## **Prison Population**

There are no reliable official statistics for the number of prisoners in the People's Republic of China because China intentionally obfuscates the situation. Based on piece-meal data available from various sources, and on my own experience inside the system, on anecdotal information from prisoners and on my research, I estimate the prison population to be approaching ten million in various forms of regular and irregular incarceration.

Based on my most recent research, I estimate the number of foreigner prisoners in China to be approaching 10,000 having doubled under the rule of Xi Jinping. Two very large segments are Africans and China-born foreign citizens. Very few foreign governments have disclosed how many of their citizens are held in China. Australia has disclosed that 55 Australians are being held. Canada has admitted to there being 92 Canadian prisoners in China. Japan has admitted to 17 Japanese. America and the UK and many other countries have withheld such data, citing "privacy concerns" as an excuse. But these total numbers are not a matter of privacy at all. The public need to know. My own research estimates that there are close to 300 Americans, including many China-born American citizens, held in various forms of incarceration and detention in China or subject to exit bans.

The American prisoner segment in Chinese prisons has ballooned since the 2000s as a result of a cooperation agreement on transnational crime between China and the United States during the Obama-Biden administration on areas such as drugs, pedophiles, trafficking and money-laundering. The PRC seems to have taken this as a green light to arrest Americans. Then, in 2012/2013 when Xi Jinping took power in China, Chinese newspapers suddenly started talking about cleaning up all the "foreign trash" on China's streets and the arrest of Americans gathered pace. It was in this period that egregious false imprisonment drugs cases such as those of Mark Swidan, Nelson Wells Jr and Dawn-Michelle Hunt occurred.

By all accounts and standards, China's prison system is indeed a veritable "gulag". Its inmates are victims of injustice, as I will demonstrate here, and they are forced to work against their will to the profit of the prison system and its officers.

## **Judicial and Prison System**

Publicly available research and first-hand testimony make it clear that China's legal system, judicial system and prison system act as an organic whole to exercise repression, resulting in systemic abuse on a massive scale, including wrongful imprisonment.

Research and first-hand experiences make it clear that police, prosecutors, and judges all hail from the same stable – the Chinese Communist Party (CCP). And lawyers are compelled to obey the Communist Party, making them part of the same unfair and opaque system. Trial judgments are not determined by the judge on a case, but are handed to the judge by a Communist Party committee

who sits above him, known at local level as the Political and Legal Affairs Committee and at national level as the Political and Legal Affairs Commission. At every stage, whenever an official signs off on a detention order, a charge, an indictment, a judgment, they are taking a *political* step and immediately they have a political stake in this decision not being found to be mistaken and then reversed. In this sense, every convicted prisoner is a political prisoner, a prisoner of the political system.

As a victim and as a fly on the wall inside the system for two years and having conducted many investigations for the private sector over a 15-year period when I was in the due diligence business in China before my arrest, I observed that Chinese police do not conduct investigations with any real detective work or forensic procedures. They rely upon extracting confessions from detainees who are interrogated day by day under duress locked inside cages (as was I) with no lawyer present, and by extracting so-called witness statements (which are also often coerced) to frame the case the way they want it to be. Contradictory evidence is not allowed. People like American citizens Nelson Wells Jr, Dawn-Michelle Hunt, David McMahon, Kai Li, David Lin, Mark Swidan, to mention but a few, never stood a chance. (Nor did I and my wife.)

The system during Xi Jinping's reign has also often used televised forced and false confessions broadcast on the main party-owned outlets CCTV and CGTN in violation of the country's own laws and constitutional provisions on trials, to prejudice a trial and poison Chinese public opinion. I and my American wife were the first foreign victims of this illegal practice.<sup>4</sup> Our false TV "confessions" were broadcast to the world without our consent or awareness at the time.

After my release, I waged a campaign and legal action in the UK alongside an NGO against CGTN and CCTV. It resulted in the UK TV regulator Ofcom fining CGTN and stripping its UK broadcast license over the illegal forced confession broadcasts of me and my wife and over the fact that CGTN was owned by a political party, which is illegal in the UK. I also assisted other victims to file similar complaints. I would encourage other countries such as America to follow the UK lead on such action. (This would not be an assault on freedom of expression, it would be an action to protect the human rights of Americans abroad.)

There is no fair and transparent judicial process. Defense lawyers are prevented from conducting genuine and vigorous defense. No defense witnesses are allowed to be called to court. (Multiple defense witnesses wanted to testify in support of David McMahon but were not allowed.) Defense evidence is not permitted to be presented. Defense lawyers who try too hard are debarred or jailed. Prosecution witnesses are not required to appear in person – only written testimonials are presented and cannot be challenged. There is no cross-examination of prosecution witnesses by the defense.

As many as 99.9% of prosecutions in China result in convictions and sentences. And 99.9% of appeals are rejected. As beneficiaries of an open and fair judicial system in, say, America and the UK, we know that such glorious figures are simply not credible.

China's pre-trial detention centers do not function like pre-trial custody regimes but as penal regimes from day one, even when a detainee has not been indicted, tried and convicted of any crime. The harsh conditions which I described in my long FT Weekend Magazine article published in February 2018 (<https://www.ft.com/content/db8b9e36-1119-11e8-940e-08320fc2a277>) have grown worse since my own stay in the Chinese prisons.<sup>5</sup> I have interviewed released foreign prisoners, who have reported unspeakable woes in pre-trial detention. The detention centers are designed to crush the human spirit with the result that many prisoners falsely confess to a crime they never committed. Grown men and women cry inside those walls every day.

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<sup>4</sup> See photos at the top of this document. One photo shows me in a steel cage for the fake TV confession.

<sup>5</sup> Copy of FT article attached.

In the post-trial prisons, the Xi dictatorship has steadily toughened and harshened prison regimens for foreign prisoners, reducing food rations, exercise, family phone calls, letter writing, the receiving of comfort packages, reading materials and so forth, and sentence reductions have become impossible to obtain without signing false confessions and submitting to coerced manufacturing labor.

Keep in mind one very important thing: Among the millions of prisoners in the system, not a single prisoner has ever had a fair and transparent trial. Not a single one. Sentences tend to be reckless, inconsistent, and disproportionate to any offence. The entire system is arbitrary and subject to the whims of Communist Party officials and their friends. The system works to favor anyone with "guanxi" (connections) to use the law to bash people they dislike. The tone of this behavior has been set from the top down. This results in substantial harm to masses of innocent people.

As a result we cannot, by any stretch of the imagination, treat China as being a country under the rule of law and we should not accept any charges or trial judgments against our citizens at face value. They must all be challenged.

### **Forced Prison Labor System**

China's entire prison system holding many millions of prisoners is in fact at the same time a gigantic, self-perpetuating commercial enterprise which brings profits to the state, and income to prison officers, in other words a "gulag". This funds prison operations across the country. Foreign prisoners are not exempt from such labor.

Every Chinese prison imposes forced production labor on its prisoners for the commercial gain of the prison system. I have observed that prison officers are employed as labor supervisors, marketing and sales managers and they get bonuses and perks for winning orders and for high production output. Designated officers go out to win orders and contracts from commercial manufacturers. Every prison has incorporated one or more companies to hold this business.

Those of us who have been guests of Xi's jails have witnessed this system in practice. Those who refuse to participate in this labor get no merit points for sentence reductions. All other privileges such as spending on the prison shopping system, calls to family, family visits, reading and letter writing, etcetera, can be withheld if you refuse this work. Even food rations can be reduced. Recalcitrant prisoners get sent to solitary. (I personally was threatened with solitary when I refused to sign a confession.)

Prison campuses contain entire factories making a range of goods, from sports shoes, apparel and daily hardware items, to electronics such as keyboards and appliances. Chinese prisoners work up to 12 hours a day six days per week. The seventh day is spent on writing thought reports and on ideological study and on hand-washing clothes.

Accidents are frequent in the factories. I met many Chinese prisoners (and some other Asians) in the Shanghai Nanhui Prison hospital with broken bones caused by factory accidents.

Foreign prisoners, including Americans, in most prisons, do not usually perform heavy factory labor (except Pakistani prisoners who are all held in Xinjiang) but perform manual tasks that require no machinery. Most perform this labor in a work room in their own cell block. In Qingpu Prison, where I was held, they worked five and a half days a week, occasionally more. However, in some other prisons, African prisoners have complained that they are working 12-hour days every day - the same hours as Chinese prisoners – and consider themselves as "slave labor".

The typical work of foreign prisoners, including Americans, includes making gift bags for retail chains (including China's biggest duty-free shopping chain), making packaging materials, packaging items such as Christmas cards, plastic tags for retail display racks, keyboards, and breakfast oatmeal sachets, as witnessed among the foreigners in Qingpu Prison.

I wrote extensively in the Sunday Times in December 2019 about the packaging of Tesco Christmas cards and Quaker oats as revealed by foreign prisoners at Qingpu Prison in a message smuggled out inside a Tesco Christmas card box and found by a little girl in London at Christmas in 2019. <https://www.thetimes.com/uk/healthcare/article/tesco-charity-cards-packed-by-chinas-prison-slaves-v9psp9fqx> ;

<https://www.thetimes.com/world/asia/article/chinas-prison-slaves-forced-to-pack-quaker-oats-mrbcs8sgm#:~:text=The%20inmates%20of%20a%20Chinese,Sunday%20Times%20investigation%20has%20revealed>

While a prisoner in Qingpu Prison, I personally witnessed items being made or packaged for labels bearing the names 3M, H&M, C&A. Other prisoners that I have interviewed after their release have listed additional brands owned by companies in a number of countries appearing on items being made or packaged in Qingpu Prison. These names have included Pepsico, Tesco, Zara, Disney. These practices are repeated in all Chinese prisons.

With this system, Chinese prisons make huge profits for the authorities. There is no incentive to release prisoners early. There is every incentive to keep prisoners in prison for as long as possible to squeeze more labor out of them. And there is an incentive to grow the prison population.

Thus millions of prisoners are engaged in this enterprise against their will and without fair reward. For the Uighurs in Xinjiang labor camps things are even worse.

Most of the almost ten million prisoners in China are performing forced labor for the commercial gain of the prison system and hence for the CCP dictatorship.

I advised on and participated in a documentary film premiered last year which investigated forced prison labor in China, *SOS from a Chinese Prisoner*, which can be viewed here. It contains some remarkable details. <https://vimeo.com/manage/videos/894499408/952924accf>

### **Due diligence**

Before I was wrongfully imprisoned for two years in 2013, I had spent almost 20 years as a Reuters journalist, and then 15 years as a private sector due diligence and anti-fraud investigator running my own well-regarded consultancy, named ChinaWhys with offices in Shanghai, Beijing and Hong Kong.

I have extensive experience of performing due diligence in China for multinational companies, including many large manufacturing companies with deep and complex supply chains, and many American law firms. For example I have conducted investigations for Dow Chemical, Dell, Apple, Pepsico, Terex, Baker Mackenzie, Jones Day, H&M, BMW, Daimler, Unilever, Rolls-Royce Engines, to mention only a few.

In general, many multinationals sub-contract work to Chinese factories, which in turn may further sub-contract parts of their own job to other small factories and so on. This creates a complex and murky supply chain. So very often a multinational has no knowledge of what is going on at the bottom, such as the use of a prison enterprise or child labor. To illustrate this very simply, a fashion company may commission a Chinese factory to make the trimmings for a pair of trousers. But that Chinese factory contracts another factory to do the zippers, and another one to do the buttons, and another to do packaging, etcetera. Tesco had no idea that its Christmas cards were being packaged by a prison. Much of the work done by foreign prisoners is indeed such packaging and simple manual assembly.

The only way that companies become aware of this prison labor is when a prisoner manages to smuggle out a whistle-blowing message and it gets into the media. This happened with the Tesco Christmas cards in December 2019. Since then I have seen several similar messages emerge from various other Chinese prisons, related to completely different products including pregnancy test kits



made at a prison in Tianjin and PPE products such as Covid masks made in a prison in Guangdong, all sold in Europe.

It was always difficult for due diligence investigators to drill to the bottom of the chain but Xi Jinping has recently erected barriers to all information gathering by foreign companies and their agents, making meaningful on-the-ground due diligence impossible today. First it introduced privacy restrictions that limited due diligence activity. And the latest example is the new anti-espionage law introduced last year. Now, many activities that previously might have been treated merely as privacy matters have been moved under the spying law and could result in life sentences.

In these circumstances, multinationals cannot satisfactorily check whether a Chinese company is using prison labor or other illegal unsocial labor. The only way to avoid this risk today is not to do business in China at all. Anybody who says you can avoid it is either lying or fantasizing.

### **Life and Death matters**

The Chinese prison system weaponizes prisoners' health and medical care as an instrument to extort written confessions to crime, refusing to provide needed medical attention to prisoners who refuse to admit guilt. This is what happened to me and many others. They refused to treat my suspected prostate cancer and by the time of my release after two years I had developed advanced prostate cancer and then had to battle it for five years after my return to the UK. Finally my treatments failed, my cancer relapsed and my prostate had to be removed. I am lucky to still be alive.

Imagine what this means for anybody held in such conditions with a long sentence to serve, such as Americans Nelson Wells Jr, Mark Swidan, Dawn-Michelle Hunt, David Lin and many others.

This practice is the norm in Chinese prisons. Medical treatment is also withheld simply to avoid spending money on it. I learned of several Chinese deaths inside my prison from untreated cancers. Since my release I have learned that a number of foreign prisoners have died soon after their own release, and at least two foreign prisoners in my cell block have died from cancer inside the prison in the last few years.

### **USG should treat all American prisoners in China equally**

I have reviewed many cases of foreigners imprisoned in China including Americans. I mentor the families and/or prisoners in around 25 cases on a pro bono basis, to varying degrees as needed. I and other volunteers have analyzed the situations of prisoners including available judicial documents, for prisoners such as Nelson Wells Jr, David McMahon, Dawn-Michelle Hunt, Mark Swidan, Kai Li. I have followed other cases closely without being directly engaged to assist.

In all cases I have concluded that material and forensic evidence was absent in their prosecution, that these convictions are false, and that these cases would be thrown out of court in a country under the rule of law. I have concluded that not a single one of these prisoners received a fair and transparent trial and a proper defense. I have concluded through my wider research and experience that beyond these few cases, not a single prisoner in China as a whole has received a fair and transparent trial. The key values of justice that we espouse in democratic countries under the rule of law, and enshrined in the American Constitution, are absent.

America has a law known as the Levinson Act which sets criteria for defining who is arbitrarily detained and a hostage. Those thus defined are supposed to go on to the list of cases handed to the office of the Special Envoy on Hostage Affairs (SPEHA). Only three from China have made it on to the list. However, all American prisoners meet the criteria by dint of not having received a fair and transparent trial in front of an independent court. This needs to change. All Americans held in China are arbitrarily detained persons by this classification alone, not to mention the other criteria listed in the Levinson Act.

Nelson Wells Jr – the judicial documents show a lack of material, forensic evidence and a lack of proper defense. His self-defense arguments were ignored and he was never allowed to tell his story in full in court. Mr. Wells Jr is over 50 and critically ill after over 10 years of a life term in prison. He would receive medical parole if he were not a foreigner. He qualifies for a prisoner transfer to America under a Chinese law. The USG has not explored this opportunity with the Chinese side.

David McMahon – the judicial documents show a lack of material, forensic evidence and a lack of proper defense. The only witness was a six year old girl who was clearly primed and manipulated by her mother and the prosecution to utter sheer fabrications and fantasies. He has served 11 years from an uncommuted 12 year sentence. He has never admitted any guilt – because he is innocent. When he returns to America in May 2025 he plans to sue parties who have harmed him.

Dawn-Michelle Hunt the judicial documents show a lack of material, forensic evidence and a lack of proper defense. She initially received a death sentence, now commuted to life. She is over 50 and critically ill in prison and qualifies for a prisoner transfer to America under Chinese law. The USG has not explored this opportunity with the Chinese side. In addition, she would receive medical parole if she were not a foreigner. Throughout her captivity Chinese authorities have obstructed her communication with the outside world and prevented her from telling her story until the family managed to get it into the New York Times on 11 Sept 2024. <https://www.nytimes.com/2024/09/11/world/asia/china-us-woman-imprisoned.html>

Mark Swidan – the judicial documents show a lack of material, forensic evidence tying Mark Swidan directly to the crimes ascribed to him and a lack of proper defense. They show he was an innocent bystander who had somehow fallen socially into bad company without knowing the people. His fault was being in the wrong place at the wrong time with bad people, while his only reason for being in China was to explore the flooring products sector. For this he was sentenced to death now commuted to life. His story has been well-told very loudly by his brave and vociferous mother Katherine, who is elderly and ailing and fears that she will never see her son again. Mark is critically ill as witnessed by his own ambassador (Nicholas Burns) and would receive medical parole if he were not a foreigner. He should qualify for a prisoner transfer to America under Chinese law. The USG has not explored this opportunity with the Chinese side.

Kai Li – I have had no sight of his judicial documents proving the charge of espionage against him. I understand that these have been sealed by the Chinese authorities on grounds that it is an espionage case. This is a very convenient way for an enemy with powerful connections in the Shanghai establishment to cover up a deliberate act of false imprisonment perpetrated by a business rival. (My own judicial records are now also sealed.) Sources have pointed to a private business dispute being illegally criminalized against Mr. Li. I have seen other instances of this in Shanghai involving citizens of foreign countries. Other prisoners released from Qingpu say Mr. Li has ailments common to his age (62) but that he is coping reasonably well, working in the mini library of the foreigners cell block, with two years of a ten year sentence still to serve

### **Chinese Law on Prisoner Transfers**

A Chinese law promulgated in 2018 commonly known as the PRC Law on International Judicial Assistance in Criminal Matters contains a Chapter 8 that sets out a pathway and mechanism for a foreign prisoner to be transferred to a facility in their home country. Separately, a bilateral agreement known as a Prisoner Transfer Agreement (PTA) exists between China and many countries but not with the United States. The 2018 PRC law puts the onus on the United States to open a discussion with China's Ministry of Justice and Ministry of Foreign Affairs on any individual case. It does not require the pre-existence of a bilateral PTA.

To the best of my knowledge the USG has never explored this mechanism with China on any individual case. I have even been told it is impossible because “we don't have a prisoner transfer

treaty with China". But that is not the way the Chinese law reads. And it is not the way relevant NGO leaders and American lawyers in the US and China see it.

I also noticed on my last reading of the US State Department's guidance notes to its officers on the topic of American prisoners abroad that it does not even seem to be aware of this Chinese law. This has been a wasted opportunity to assist unjustly held American prisoners in China none of whom have had a fair and transparent trial.

### **Final Comments & recommendations**

- In their aggregate, the harsh conditions in China's pre-trial detention facilities and prisons are tantamount to torture per international treaties and conventions.

- China's judicial and prison system violates international norms and treaties such as the UN conventions on torture and on minimum standards for the treatment of prisoners.

- The Chinese prison system is a political system of oppression and slavery, not a justice system.

- The Chinese system is not the rule of law and should not be viewed by America as though it is. In America we all know what the rule of law is.

- Forced labor products from China's prison system are entering our economies, including America's. We must legislate stronger laws to prevent this and we must enforce the legislation.

- Prisoners held in China for alleged common crimes (including Americans) are just as much victims of human rights abuse as China's own political and religious prisoners. The scale of this abuse is immense. In a system where every prosecution is political then all American prisoners are de facto political prisoners. America needs to recognize this and to act and legislate accordingly.

- Not a single prosecution case in China would survive the scrutiny of a court in America, the UK, or any other country under the rule of law. This postulation is very simple to put to the test in a simulated courtroom or even on a college campus.

- Countries which uphold the genuine rule of law, such as America, should abandon their practice of non-intervention in Chinese judicial cases involving US citizens.

- In every case of a US citizen being detained in China, the US Government should challenge the processes and practices and the lack of transparency. America should intervene robustly both legally and politically in the cases of its citizens in China. This requirement should be contained in legislation.

- America owes this duty of care to its passport-holders. This must not be only the privilege of one or two selected prisoners on the SPEHA hostage list. It must be the government's response to all such cases, regardless of skin color, class background or the nature of the alleged crime.

- Congress should bring pressure on the USG to fully test the 2018 Chinese law on foreign prisoner transfers outside and beyond any bilateral treaty.

- America must impose mandatory due diligence requirements on all its firms to make them drill down their supply chains to ensure there is no prison labor or other unsocial labor or illegal practices in the chain. Where China erects barriers to adequate due diligence, American firms must be legally required to abandon said business projects.

- Legislators and government should internationalize the issue of prison abuse and arbitrary and wrongful detention in China as a systemic concern. It is no less a human rights issue than political and religious persecution and the scale is enormous.

- America should actively consider negotiated swaps for prisoners held for alleged “common crimes”, or even a mass swap, exchanging Chinese prisoners held in American jails for American prisoners held in China. Past experience (in China and Russia and elsewhere) shows this is a possible avenue.

## Recommended media docs for reference – internet links<sup>6</sup>

FT Weekend Magazine article by Peter Humphrey on his life inside a Chinese prison (Feb 2018)

<https://www.ft.com/content/db8b9e36-1119-11e8-940e-08320fc2a277>

Sunday Times article by Peter Humphrey on prison labor and Tesco Christmas cards (Dec 2019)

<https://www.thetimes.com/uk/healthcare/article/tesco-charity-cards-packed-by-chinas-prison-slaves-v9psp9fqx>

Sunday Times article by Peter Humphrey on prison labor and Quaker oats packaging (Jan 2020)

<https://www.thetimes.com/world/asia/article/chinas-prison-slaves-forced-to-pack-quaker-oats-mrbc8sgm>

The Diplomat article By Peter Humphrey on China cover-up of prison labor scandal (Jan 2022)

<https://thediplomat.com/2022/01/forced-prison-labor-in-china-hiding-in-plain-sight/>

Sunday Times article by Michael Sheridan on Peter Humphrey in the Chinese Gulag (July 2015)

<https://www.thetimes.com/article/inside-the-chinese-gulag-njcnm5sqtl>

Guardian's Mark Sweney on Ofcom probe into CGTN over airing forced confessions (May 2019)

<https://www.theguardian.com/media/2019/may/08/ofcom-investigating-chinese-channel-cgtn-forced-confession-claims>

BBC report on Ofcom punishing CGTN for broadcast of false confession

<https://www.bbc.co.uk/news/entertainment-arts-53308057#:~:text=Media%20watchdog%20Ofcom%20ruled%20that,his%20privacy%20had%20been%20infringed.>

Ofcom ruling withdrawing broadcast license of CGTN in UK

<https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/ofcom-revokes-cgtn-licence-to-broadcast-in-uk/#:~:text=London%2C%2010%3A15%20GMT%2C,by%20Star%20China%20Media%20Limited.>

Reuters - Australian broadcaster suspends China's CGTN citing human rights

complaint [https://www.reuters.com/world/china/australian-broadcaster-suspends-chinas-cgtn-citing-human-rights-complaint-2021-03-05/#:~:text=Australian%20broadcaster%20suspends%20China's%20CGTN%20citing%20human%20rights%20complaint,-By%20Kirsty%20Needham&text=SYDNEY%2C%20March%205%20\(Reuters\),receiving%20a%20human%20rights%20complaint](https://www.reuters.com/world/china/australian-broadcaster-suspends-chinas-cgtn-citing-human-rights-complaint-2021-03-05/#:~:text=Australian%20broadcaster%20suspends%20China's%20CGTN%20citing%20human%20rights%20complaint,-By%20Kirsty%20Needham&text=SYDNEY%2C%20March%205%20(Reuters),receiving%20a%20human%20rights%20complaint)

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<sup>6</sup> Caveat: some sites may be paywalled.