

Hearing of the Congressional Executive Commission on China (CECC)

One City, Two Legal Systems: Political Prisoners and the Erosion of the Rule of Law in Hong Kong

Written Testimony of Sebastien Lai, son of Jimmy Lai, journalist, media owner and pro-democracy campaigner imprisoned in Hong Kong

Introduction

I am Sebastien Lai, son of Jimmy Lai, the media owner, publisher, writer, and pro-democracy campaigner. My father has been imprisoned since December 2020, and he is now Hong Kong's highest profile political prisoner. He is also a prisoner of conscience, imprisoned for his work.

My father was also the founder and owner of Next Digital Ltd and its newspaper *Apple Daily*, which was closed down in June 2021 as a result of actions taken by the Hong Kong authorities against the paper.

At the outset I would like to thank the members of the Congressional Executive Commission on China for their nomination of my father, together with five other Hong Kongers – Cardinal Zen, Tonyee Chow Hang-tung, Gwyneth Ho, Lee Cheuk-Yan and Joshua Wong – for the Nobel Peace Prize, in recognition of my father's advocacy for peaceful protest, for the right to freedom of expression and an independent and free press, and for democracy in Hong Kong. This nomination has touched me deeply and I am very grateful for it.

My Father's Background in Summary

My father was born in mainland China's Guangdong province in 1947. He was born into a wealthy family, but they lost it all when the communists took power in 1949.

When he was only 12 years old, my father fled China and travelled to Hong Kong as a stowaway on a fishing boat. He immediately had to work when he arrived in Hong Kong, despite his young age: he had to work to pay back the cost of his passage. He worked as a child labourer in a garment factory, in a sweatshop.

He is an entirely self-made businessman and a huge Hong Kong success story. From the shop floor of the textiles industry he rose through the ranks and eventually started his own clothing firm, Giordano, that saw global success.

My father gained his full British citizenship in 1992. He has always been very proud to be British, and very proud of his Hong Kong roots. The values that made Hong Kong such a success as a place – the rule of law, freedom of speech, freedom to do business – are also values very dear to my father and which fuelled his own success.

My father is also a deeply Christian man, a devout Catholic. His faith is in no small part a driver of his belief in freedom and human rights.

1989

Until 1989, my father concentrated on his business interests, particularly growing his clothing business, Giordano.

However, the Tiananmen Square massacre in 1989 was a wake-up call for him. My father then resolved to direct his energy to supporting the fight for democracy and holding the powerful in Beijing to account, whatever the personal cost to him.

He did so first through Giordano. In the face of the crackdown on pro-democracy protesters in 1989, his company, Giordano, distributed t-shirts emblazoned with pro-democracy messages.

Soon after, in 1990, he entered into the publishing industry, and established Next Media (later to become Next Digital Ltd). His first publication, *Next Magazine*, was a Chinese-language weekly magazine that covered current affairs and business news. He established Next Magazine's sister newspaper, *Apple Daily*, in 1995.

Apple Daily, and its parent company, Next Digital Ltd, were born out of this resolve to promote freedom and democracy in Hong Kong, and in China. My father was quick to realise that without free and independent information, there is no freedom. *Apple Daily* was named after the forbidden fruit: if Adam and Eve did not eat it, there would be no evil, and there would be no news.

Apple Daily quickly grew to be the largest and most popular Chinese-language newspaper in Hong Kong. It was known for its independent journalism, and its anti-corruption and pro-democracy stance.

Targeting of my Father by the Chinese Communist Party (CCP)

Right from the start of his media career in 1990, my father stood up to China. He criticised China's leaders, and they hated him for it.

That is why the authorities quickly began to target him – in order to try to silence him. Ever since my father entered the publishing industry, his businesses have been subjected to harassment and targeting by the CCP because of the perceived threat that he posed to this authoritarian regime. He was effectively forced to sell Giordano after the CCP threatened to close down all the stores in mainland China. His business and our family home have been fire-bombed. He was subjected to long-running surveillance, and he and other members of our family were regularly followed. Seeing surveillance vans and cameramen outside our home when I was growing up was an everyday occurrence. His advertisers were targeted and he was threatened financially.

My father's Catholic faith is also relevant to the way in which the CCP targeted him, for many years. His close relationship with Cardinal Zen and other human rights defenders and activists in

Hong Kong who draw strength from their religion has become a focal point of the CCP repression upon him.

But none of these tactics by the CCP worked. My father is a man of strong principle and a man of deep faith. He was standing up to the CCP because it was the right thing to do. He refused to be intimidated.

The actions now taken against my father, that have resulted in his imprisonment and the destruction of his business, Next Digital Ltd, are the culmination of years of harassment and targeting of my father and his businesses by the CPP. What seems to have led to the authorities stepping up their actions against him and using the law to attempt to crush his business, and his spirit, was the 2019-2020 democracy movement and the protests which swept Hong Kong.

My father supported the democracy movement, and personally participated in some of the protests and vigils. As the authorities began to crack down on dissent, he knew he was a prime target for them and that they may try to imprison him. In an interview in 2020 with AFP, shortly before the National Security Law (NSL) was enacted, he said he had no plans to leave Hong Kong despite his wealth and the risks he faced:

"I came here with nothing, the freedom of this place has given me everything. Maybe it's time I paid back for that freedom by fighting for it..."

"I'm prepared for prison. If it comes, I will have the opportunity to read books I haven't read. The only thing I can do is to be positive."

My father was arrested first in August 2020, and has been in prison continuously since December 2020. The arrests were designed to be humiliating and to send a message to all *Apple Daily* staff, and to any other journalists watching. The *Apple Daily* offices were raided by hundreds of police officers in a show of extreme force, and my father was placed in handcuffs and paraded around his offices. This was all designed to try to crush his spirit and to frighten his staff and colleagues.

The Charges against My Father

The international legal team for me and my father explain the charges he has faced in more detail in their written submissions, but in summary he has already been prosecuted, convicted, and served lengthy prison sentences for exercising his right to peaceful protest. They have sought to discredit him and smear his reputation through allegations of 'fraud,' said to be based on a breach of the Next Digital office lease. He has now been sentenced to 5 years and 9 months imprisonment on that charge. This is unheard of for a commercial matter, and it should send a chill down the spine of any business owner in Hong Kong.

The Hong Kong authorities now accuse my father of crimes of sedition and crimes under the controversial NSL. These are charges based on his writings and other material published in *Apple Daily*, and meetings with various people. These are criminal charges for journalism. And criminal charges for discussing democracy and human rights with international figures. These are ludicrous charges which symbolise just how damaged the legal system in Hong Kong now is. There is no freedom of the press. There is no rule of law.

My father's NSL and sedition trial is due to take place later this year, starting on 25th September 2023. But I know the outcome is a foregone conclusion. The Security Minister has recently boasted of having a 100% conviction rate in national security cases, and the NSL itself is designed to

criminalise all dissent, all criticism of the authorities. The maximum sentence under the NSL is life imprisonment. I know that the authorities intend to crack down heavily upon my father, to send a message to him and others, and so I expect him to receive a lengthy sentence, and possibly a life sentence. He is already 75 years' old so any long sentence could see him die behind bars.

My father has never advocated for violence. He is a man of peace. His only so-called “crime” is to disagree and condemn the actions of the CCP and the Hong Kong authorities that seek to silence critical voices. For that, he faces the rest of his life in prison.

The actions taken against *Apple Daily* and its parent company, Next Digital Ltd, also resulted in the newspaper itself being destroyed. It ceased operating in 2021, as there was no other option: my father and other executives had been arrested and its assets frozen. On 12th January 2023, we saw the de-listing of this once thriving business from the Hong Kong stock exchange and the auctioning of its remaining assets in a fire-sale. This was a CCP theft and CCP destruction of a very successful media company.

The #FreeJimmyLai Campaign

My father is a victim of an autocratic State which will not tolerate dissent or criticism. It is clear that there is no longer ‘One Country, Two Systems’ but that Beijing is now controlling Hong Kong. The NSL spells that out. His treatment is grossly unfair.

As my lawyers explain in their submission, this unfairness has been recognised by many powerful voices, including the United States Government State Department, the Senate Foreign Relations Committee, and this Commission. What has happened to my father has also been condemned and criticised by United Nations officials, the European Union (both through its External Action Service and the European Parliament), many other countries and civil society groups such as Amnesty International, Human Rights Watch, the Committee to Protect Journalists, PEN International and Reporters Without Borders (RSF). The United Kingdom has also made clear that the authorities in Hong Kong are in breach of the Sino-British Joint Declaration, an international treaty in place since the handover.

I would like to thank the Commission for its condemnation of the actions taken against my father, including his imprisonment for peaceful protest in 2021, and for its statement on World Press Freedom Day this year calling on the United States Government to lead a global effort to secure the release of all those unjustly detained in Hong Kong, including my father.

I would also like to thank the United States Government for the strong stance it has taken against my father’s ongoing persecution, including the State Department’s condemnation of his conviction on spurious fraud charges in October 2022, and his lengthy sentence of imprisonment.

I am, however, disappointed that the United Kingdom has not taken a stronger stance in this shocking case. I have met with the UK’s Minister of State for the Indo-Pacific, Anne-Marie Trevelyan MP, twice, along with my lawyers, and they have also met with Rita French, Britain’s Global Ambassador for Human Rights and Deputy Permanent Representative to the United Nations in Geneva. In private meetings they have said that my father’s case is a very high priority for the UK, and that they are raising their concerns with Hong Kong and China at every available opportunity.

However this is not the impression which they are giving to me, or to China and Hong Kong. Both the Prime Minister, Rishi Sunak MP, and the Foreign Secretary, James Cleverly MP, have refused to meet with me and the international legal team. The Foreign Secretary has, however, been willing to meet personally with senior CCP Ministers and senior officials. In February 2023 at the Munich Security Conference he met with Member of the Political Bureau of the CPC Central Committee and Director of the Office of the Central Commission for Foreign Affairs, Wang Yi; and just last week he met with China's Vice-President, Han Zheng, the architect of the brutal crackdown on the pro-democracy movement in Hong Kong in 2019-2020.

The UK Government has yet to condemn my father's treatment or call for his release. I am shocked by this. My father is a British citizen. I am a British citizen. Why is our Government not supporting us fully and fearlessly?

I am now leading the international campaign to free my father, before it is too late: the #FreeJimmyLai campaign. I am very grateful to the Commission for holding the upcoming evidence session on 11th May 2023, and giving me a platform to explain more about my father and what he stands for.

Threats to My Father's Supporters

Because I have chosen to take a stand and advocate for my father, I cannot return to Hong Kong due to the risk of prosecution. This means I may never see or speak to my father again.

The Hong Kong authorities have made very clear that they do not agree with what I am doing, or the work of the international legal team. In response to my calls to the United Kingdom and the international community to condemn the actions taken against my father and demand his immediate release, the Hong Kong authorities have accused me, my lawyers, and the UK Government, of attempting to undermine the rule of law in Hong Kong.¹

Two weeks ago, a committee of the UK Parliament – the All-Party Parliamentary Group on Hong Kong – published a report, *Media Freedom in Hong Kong: the case of Jimmy Lai and Apple Daily*², that concluded that the provisions of the NSL are in violation of the International Covenant on Civil and Political Rights,³ and that the NSL and sedition laws have been improperly used to stifle dissent and suppress freedom of expression in Hong Kong.⁴ The Hong Kong authorities responded by declaring the report to be “*malicious slander against the NSL*” in an attempt to undermine the rule of law in Hong Kong.

The Hong Kong authorities have sought to defend their actions with the claim that, “*Hong Kong is a society underpinned by the rule of law and has always adhered to the principle that "laws must be obeyed and lawbreakers be held accountable"*.”⁵ This description of Hong Kong as a society underpinned by the rule of law is a description that once rang true, but now belongs to the past. It is no longer correct.

¹ See, for example, HKSAR press release, ‘HKSAR Government strongly opposes interference by foreign government in court case involving Lai Chee-ying’, 10th January 2023.

² All-Party Parliamentary Group on Hong Kong, ‘Inquiry into Media Freedom in Hong Kong: the case of Jimmy Lai and Apple Daily’, 25th April 2023. Available at: <https://www.hkinquiry.org/mediafreedominhongkongreport>

³ Ibid, pp.21-24.

⁴ Ibid, p.23.

⁵ HKSAR press release, ‘HKSAR Government strongly opposes interference by foreign government in court case involving Lai Chee-ying’, 10th January 2023. See also, HKSAR press release, ‘HKSAR Government strongly disapproves of and firmly rejects report by UK All-Party Parliamentary Group on Hong Kong’, 25th April 2023.

The actions taken against my father are not the actions of a government that respects the rule of law. They are the actions of a government that has no respect for law, and for the fundamental rights and freedoms of individuals in Hong Kong. As the Commission has noted in its October 2022 special report, *Hong Kong's Civil Society: From an Open City to a City of Fear*⁶ the provisions of the NSL have been used to effectively dismantle Hong Kong's once thriving civil society.⁷ The NSL has enabled the Hong Kong authorities to target not only protesters, for which it had previously used public order offences, but also the organisations that once formed the core of Hong Kong's civil society – human rights non-governmental organisations; pro-democracy religious groups; trade unions; professional groups; student union organisations; and the independent media including Next Digital Ltd and *Apple Daily* – organisations perceived by the CCP to undermine China and Hong Kong's international image, and to challenge the CCP's legitimacy.

Conclusion

What has happened to my father, to Next Digital and to *Apple Daily* should sound the alarm bells for any business operating in Hong Kong. What has happened to my father could happen to anyone, to any organisation. For as long as my father remains in prison, Hong Kong is not a safe place to do business. For as long as the NSL and other laws are used to target businesses and organisations considered to undermine the CCP, Hong Kong is not a safe place to do business.

I ask that the United States Government continues to do all it can to secure my father's freedom and to hold the CCP and the Hong Kong authorities accountable for their ongoing persecution of my father.

I wish to close my written testimony by quoting Common, the hip-hop artist and Academy Award winner. In 2015, he wrote in TIME Magazine that Jimmy Lai, my father, is “*a hero in Hong Kong*” because:

“There are those who, when given the keys to wealth and the perks of the Establishment, choose not to rock the boat because of the backlash they might face. Jimmy Lai is not such a person.

Though he went from a child laborer in a garment factory to owning his own clothing line and media company, he rejected complacency and the status quo when he chose to criticize a powerful government and support a primarily student-led democracy movement in his beloved Hong Kong.

His courage in the face of the firebombing of his home, as well as his subsequent arrest for his role in challenging the ruling order, resonates around the world as an inspiration for those seeking self-determination. It was this kind of bravery that inspired me to mention the Hong Kong protests in my Oscar acceptance speech, and that reminds all of us to always strive to speak truth to power.”⁸

⁶<https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Hong%20Kong%20Civil%20Society%20Report.pdf>

⁷ Ibid, pp.8-9.

⁸ <https://time.com/collection-post/3823046/jimmy-lai-2015-time-100/>.

My father is in prison because he spoke truth to power for decades. He is still speaking truth to power and refusing to be silenced, even though he has lost everything and he may die in prison. I am very proud to be his son.

Sebastien Lai
8th May 2023