

Can publicity help the plight of overseas Chinese detained on the mainland? Jerome A. Cohen believes it probably can

Out in the open

When Chinese law-enforcement officials detain a visitor, his family faces excruciating decisions. This is especially true when the detainee is either a foreigner who used to be a Chinese citizen or a Chinese residing abroad. If the case involves “state secrets”, it is more complex.

The hardest decisions concern publicity. Should the case be made public? When? The wife of Rio Tinto mining company executive Stern Hu, a naturalised Australian detained in China since July – initially on suspicion of stealing “state secrets” – was spared this dilemma. His detention was immediately reported by journalists focused on Sino-Australian iron ore negotiations.

The wife of naturalised American petroleum geologist Feng Xue wasn't so lucky. Until the Associated Press revealed her husband's detention last week, Nan Kang, also a naturalised American, had been agonising for two years over whether to go public. Her instincts told her to handle the problem “the Chinese way”, trying to quietly mobilise assistance for her husband's release from the United States government, a Beijing lawyer and whatever connections she could muster. Until recently, her husband's former employer,

Beijing belatedly complied with its obligation to give notice of his detention under the US-PRC Consular Convention, American embassy consuls began to make monthly visits to Xue in accordance with the convention.

Xue saw things differently from his wife. Certain of his innocence and angered by the torture to which his interrogators had subjected him, he showed consular officials cigarette burns on his arms and authorised them to contact the media. Yet the embassy, which has otherwise sought to protect Xue against vague charges enveloped in almost total secrecy, was reluctant to override the understandable concerns of his wife.

In June, however, following a human rights lecture that I gave to embassy personnel, I was asked to discuss the case with his wife. She had

already been advised to go public by Xue's former mentor and co-author, University of Chicago professor David Rowley. My view was similar. Recently, after inconclusive trial hearings, John Kamm, the dynamic American human rights advocate, was informed of the case. Satisfied that Xue had been tortured and convinced that Xue wanted his ordeal made known, Kamm urged the news agency AP to investigate.

Under this accumulating pressure, Kang was becoming distraught. She was reluctant to interfere with China's judicial process, hopeful that US efforts to secure Xue's release before and during US President Barack Obama's visit to China might succeed and yet increasingly disillusioned with quiet diplomacy. AP's Beijing bureau chief, Charles Hutzler, resolved her dilemma by breaking the story after weighing the ethical issues involved.

Xue's fate is still in doubt, and the case has dragged on. The court's repeated dissatisfaction with prosecution evidence



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the US company IHS Energy, ignored its responsibility for the case.

Kang worried that going public might worsen her husband's plight by angering Chinese officials and might even harm the couple's parents, who still live in China. Going public would also mean telling her young children that their father, a respected University of Chicago PhD, was being investigated on criminal charges – “secretly gathering intelligence and state secrets,” that is, oil data, and “providing it to a foreign organisation”, his employer.

Kang could not discuss her worries with her husband. China prohibits family visits with detained suspects. Fortunately, once

suggests that a not guilty verdict would be appropriate. Yet acquittals are rare in China, since the party/state does not want to “lose face”, and officials fear damage suits and administrative sanctions for violating a defendant's rights. Conviction of a lesser offence and sentence to time already served would be one type of Chinese compromise.

Whatever the outcome, it will be difficult to determine the impact of publicity compared to other factors, but Hutzler's inquiries may have stimulated Obama's recent, unexpected mention of the case to President Hu Jintao (胡锦涛).

Xue reportedly believed that publicity in the period before formal arrest might exert the strongest influence. This proved true in the subsequent Rio Tinto case when outcry over the initial “state secrets” accusation led to Stern Hu's formal arrest on a lesser, “commercial secrets”, charge.

Yet most Chinese prefer to keep matters private in the earliest stage, hoping that quiet diplomacy might prevent formal

arrest. After arrest, many become persuaded by statistics that show arrest ordinarily leads to indictment, conviction and prison unless public pressure is applied.

Post-arrest publicity helped to release Dickinson College librarian Song Yongyi, a US permanent resident, in 2000, when China needed US Congressional approval to join the World Trade Organisation.

One lesson already seems clear. Consular officials, or a lawyer if one is allowed, should honour a detainee's demand to go public.

It is his decision, not his family's. Indeed, this would relieve his family of a painful burden and be likely to help his case. It would also help educate the world about Chinese justice.

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