My name is Dan Harris. I am an international lawyer who has for the last 20 years been helping mostly American and European companies navigate China's legal landscape. I mention this upfront because what I am going to tell you today is based largely on what I have seen while representing companies that do -- or at least try to do -- business with or in China.

I will mostly be talking today about how China's Communist Party wields its laws and regulations to maximize its power and control to the detriment of foreign and domestic businesses. My firm's lawyers see the crushing of businesses in China every day and that has become increasingly true since Xi Jinping became China's president in 2013, and especially since he effectively became president for life in 2018.

1. The CCP is Cracking Down on Private Businesses

CCP antipathy towards private business is nothing new; it is as old as communism itself.

By way of an example, my law firm has represented most of the big US and Australian movie studios in their China legal matters and several of them have remarked how China "hates foreign movie companies" after learning how difficult it is to make a movie that passes Chinese censorship requirements. Our response has been that China hates all movie companies because they can speak somewhat directly to the Chinese people.

China also does its utmost to wall off its Internet from foreign companies. It does this by not giving foreign companies internet content provider (ICP) licenses, which in turn forces them to pay Chinese companies with their own ICP licenses to legally get their websites on Internet servers within China. The CCP does this with ICP licenses to maintain control online content. Because Chinese domestic companies fear the CCP they usually do not put anything on the Internet that the CCP does not want there. And if a Chinese company does put something on the Internet that the CCP does not like, a Chinese government official can threaten that Chinese company with bad things if it doesn't stop or even arrest someone on the spot. Doing this is a company whose leadership is in New York is considerably more complicated. The Chinese company that allows a New York company to use its ICP license will make sure the New York company does not put anything on the Internet that might offend the CCP.

The CCP also does not allow foreign companies to operate schools that teach Chinese children and it recently banned private tutoring in core school subjects.

Does China not care about foreign investment? Does China not care about its own economy? The answer to these questions today is the same answer I would have given 5, 10, and 15 years ago. China cares about both foreign investment and its own economy, but only to the extent that those bolster CCP power and help ensure its survival.

As a lawyer, the best example I see of the tension between investment and economics on the one hand and CCP power and control on the other hand is China's court system. Our clients are always asking us about the fairness of China's courts and my answer has always been the same. If you are suing a Chinese company for breaching your contract to make rubber duckies, you will get a fair trial. If you are suing a Chinese government company for stealing your cutting-edge semiconductor IP, well, good luck. Many China lawyers call this the 90-10 rule. Ninety percent of the time the Chinese courts will rule fairly because that allows its economy to function and that benefits the CCP. But when the case is itself important for the CCP, fairness instantly gets tossed out the window. Legal scholars describe this as rule by law, as opposed to rule of law.

The same is true for Chinese IPOs in the United States and for VIEs. China allows select companies to IPO in the US -- oftentimes via VIEs – because it wants the money. But if for any reason the balance shifts to prohibiting either of these things, the CCP will do so.

VIEs are a classic example of how the CCP operates. China has allowed VIEs for at least a decade to secure foreign capital. But it has never formally legalized them and now that the CCP is making clear in various ways it no longer values them as much, investors and underwriters are panicking. But this writing – actually, more accurately the lack of any writing – has been there all along for anyone interested in looking.

The same is generally true for China's new laws and regulations on data privacy, which are geared more towards giving the Chinese government access to data than towards protecting Chinese consumers. These recently revised regulations have not changed much, if at all from those that preceded them. The Chinese government has for years had essentially full access to all data, even data held buy foreign companies operating overseas. The new laws mostly just reiterate and clarify this and should be viewed not so much as new laws, but as the CCP signaling that companies that collect data the CCP does not want them to collect or that seek to hide data from the CCP are at increased risk of the Chinese government taking action against them.

2. **Why is the CCP Accelerating its Crackdown on Private Businesses?**

First off, let me make clear again that the CCP has been cracking down on private businesses and free speech and the rule of law pretty much since Xi Jinping assumed power.

The CCP's recent crackdowns on private businesses should not be at all surprising both because similar crackdowns have been going on for so long and because they were entirely predictable. What I find *more* surprising is how so many people are expressing surprise about the crackdowns. When people tell me they did not see this coming, my response is "right, I mean how could you possibly have known there were communists in China?" "And why should you not expect a country that is – at the very minimum –

engaging in a cultural genocide against its Uyghur and Tibetan populations to respect private property, private businesses, and the rule of law?"
On July 27, in a piece entitled *Wall Street Gets a Chinese Education: The Communist Party Control Always Trumps the Needs of Investors*, the Wall Street Journal's Editorial Board had this to say about the CCP's antipathy towards private business and lack of concern for the economy: "The big surprise from this week's slump in Chinese company stocks is that people are claiming to be surprised. President Xi Jinping has made plain for years that he intends to bring ever greater swathes of China's private economy under the state's control. Guess what, Wall Street: He meant it."

Western businesspeople have been getting China wrong for a long time, largely because they tend to assume everyone acts out of economic self-interest. But for the CCP, the economy is a means to an end, with the end being a socialist state fully controlled by the CCP. Do not forget: Xi Jinping and the CCP are Marxists and Marxists believe that after capitalism comes socialism and after that stateless communism. China has been moving along Marx's stages of development since Mao, and Xi Jinping appears to believe China is nearing the socialism stage, so it can start tossing out more and more capitalist elements and that is exactly what its crackdown on private businesses is doing. The West's recent efforts to disengage from China are another reason why the CCP is accelerating this crackdown now.

Did foreign investors not know these things about China? Many did not. Businesspeople and investors typically are trained to look at industries and companies, not governments.

However, many did know, but for monetary reasons, did not want others to know. I say this because when my firm's lawyers write anything remotely critical of China, expats in China often will tell us they wish we hadn't because our articles might encourage their companies to pull out of China and they may be out of a job. Few businesspeople have any incentive to tell the truth about China.

3. **What Should the U.S. Government do About China?**

Xi Jinping does not care about world opinion, and he certainly does not care about being liked. He also does not care about following international law, rules, or customs. And why should he, when China's size and money and bullying have allowed them to get away with so much already? Because no country, including the United States, can exert much influence on Xi Jinping or the CCP, we should focus more on what we can do to keep growing our own economy, technology and political standing and less on how the U.S. can stop China from doing the same.

The U.S. government should encourage U.S. companies -- and even companies from other countries – to cease doing business in or with China, especially manufacturing. The U.S. government should be forthright with the American people about how -- even if American companies reduce their manufacturing in China -- we still should not expect a wholesale return of manufacturing to the United States. But every dollar that goes from China to Mexico or Poland or Thailand is a victory for the United States.

Virtually all my clients who have their products manufactured in China would like to have them made somewhere else. Invariably, one of three things are stopping them from exiting China. One, the upfront costs of moving. Two, a lack of knowledge on where to go and how to find a good manufacturer elsewhere. And three, there are currently no viable alternatives to China for manufacturing their products.

Number one above can be ameliorated with subsidies and other incentives. Number two can be aided with information. Number three will require the United States government to work with manufacturers in the United States and elsewhere to help them develop the necessary manufacturing capabilities.

The U.S. Government also should do more to protect U.S. investors from publicly traded Chinese companies. It makes no sense for Chinese companies on U.S. exchanges to have lesser auditing requirements than other companies, but they do, and few know this. As someone who has literally never seen a Chinese company accounting records that are not at least highly suspect, I think Chinese companies should be removed from all U.S. stock exchanges. But if they are to be allowed, they should at least be required to meet the same standards as other companies and the SEC should alert investors to their special risks.

The U.S. Government also must do more to protect its own citizens and companies from China. It did so by blocking a Chinese company from purchasing Tinder, but this is just the tip of the iceberg in terms of how China uses its "private" companies to digitally invade the United States. Chinese companies are scooping up personal information about Americans with little being done to stop them. For example, and as was pointed out by Voice of America, "A Chinese gene company is collecting genetic data through prenatal tests from women in more than 50 countries for research on the traits of populations, raising concern that such a large DNA database could give China a technological advantage and the strategic edge to dominate global pharmaceuticals, according to a recent news report." Tik Tok is also a threat, as are other Chinese companies that operate in the United States, ostensibly for profit, but more likely to gather intelligence. We have to recognize that Chinese private companies – even the many that wish it were otherwise – are in no position to say "no" to the CCP.