

China is losing the 'soft power' campaign

Jerome A. Cohen says that by systematically undermining an accused person's right to effective counsel, as and when it is deemed necessary, China is only harming its own efforts to win foreign admirers

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In a global effort to attain "soft power" matching its growing economic and military prowess, China spends huge sums operating Confucius Institutes at hundreds of foreign universities and internationalising its media outlets. The goal is to promote respect for its contemporary civilisation and thereby enhance the government's political influence and image. Yet the effects of these programmes - unlike similar efforts by democratic countries - are undermined by daily reports of not only the repression of basic freedoms by the "people's democratic dictatorship", but also the unfair criminal justice system that is the major instrument of this repression.

Nothing more vividly illustrates this injustice than the restrictions imposed on an accused's right to effective counsel. These restrictions are not apparent from a reading of China's ever-improving legislation. The 2007 Lawyers Law eliminated some of the obstacles confronting defence counsel under the 1996 Criminal Procedure Law, but police skirted that reform, saying they are not governed by the Lawyers Law. This year, many of those 2007 changes were incorporated into the Criminal Procedure Law itself, so that, starting on January 1, when the revised law takes effect, police can no longer rely on that feeble excuse.

Unfortunately, as Shakespeare might note today, legislative improvements keep the promise to the ear, but Communist Party- controlled legal institutions break it to the hope. If current events are any guide, the situation is unlikely to change under the revised Criminal Procedure Law. Recent

cases remind us of the authorities' continuing refusal to implement the right to counsel in good faith.

The Bo Xilai scandal doubly demonstrates the denial of defence counsel. When, in March, Bo, removed from his post as Chongqing party secretary, disappeared into the bowels of the party's discipline inspection commission rather than its legal system, leaders solemnly announced - with no apparent awareness of how bizarre the announcement made them seem - that Bo would be handled strictly according to law. Although rumours have suggested that Bo, weeks ago, requested access to counsel, he will remain in incommunicado party custody until it decides whether he should be transferred to the legal system for formal criminal punishment.

Yet even criminal prosecution will not assure Bo the opportunity to be defended by lawyers of his choice. His wife Gu Kailai was detained months ago on murder charges but has yet to meet a lawyer. Although her family reportedly retained Shen Zhigeng, a well-known lawyer, the police have not approved this choice, and the authorities may themselves select more politically reliable counsel.

In China, law enforcement officials frequently resort to this technique in sensitive cases. The ongoing investigation on spurious attempted murder charges of Chen Kegui, the nephew of the blind "barefoot lawyer" Chen Guangcheng, who famously escaped from illegal home imprisonment to the US embassy, offers another example. For over two months, police in Shandong have refused to recognise the right of independent, out-of-town lawyers appointed by the Chen family to contact the hapless suspect. They falsely maintain that he prefers to be represented by local lawyers appointed by the county government's legal aid office, which, like all other legal institutions, is controlled by the local party political-legal committee.

Chen Guangcheng himself is familiar with this technique as he was victimised by it during the farcical trials in 2006 that led to his 51-month jail term for allegedly obstructing traffic and damaging property. Shandong authorities did everything possible to prevent Chen's lawyers from appearing in court and tried to cover this misconduct by appointing as

Chen's ostensible defenders two lawyers from the same law firm that has now been foisted on his nephew under the guise of "legal aid".

Such shenanigans are not new and are common in cases authorities deem sensitive, for whatever reason. I encountered this problem when advising the family of a detained man unwise enough to have supported the losing side in a quiet but bitter power struggle between the party political-legal secretary and the public security chief of Inner Mongolia . The accused's Hohhot lawyer, who alienated the police by repeatedly pointing out their illegal overtime detention of her client, was herself detained and freed only after promising to cease her efforts. She was so intimidated that she not only gave up the case but also the practice of law. Police coercion also forced the two senior Beijing lawyers I persuaded to take over the case - one a former prosecutor - to abandon it.

To be sure, the party's mistreatment of lawyers and their would-be clients often takes subtler forms. If local judicial bureaus, which operate under the Ministry of Justice but in concrete cases are usually more responsive to local power holders, do not flatly deny lawyers the right to take on certain representations, they may instead present formidable barriers to their doing so. They may insist, for example, that a lawyer bold enough to take on a controversial assignment first obtain the formal agreement of all his law firm partners, and they may dictate the terms on which the defence may be waged.

Moreover, as Gu's would-be lawyer confirmed, the judicial bureau often forbids lawyers to have contact with the media, thereby eliminating a check on law enforcement abuses. Informal pressures, including suggested "vacations", frequently prevent counsel from entering a case, as happened following the "residential surveillance" inflicted on the celebrated artist Ai Weiwei .

Defence counsel who refuse to toe the line risk their own prosecution and loss of their lawyer's licence, even if the prosecution is ultimately dropped. Vengeful local officials - such as the now lawyer-less Bo was when controlling Chongqing - can secure the conviction and substantial sentencing of recalcitrant lawyers, as the case of lawyer Li Zhuang illustrated.

These cases are legion and make a mockery of China's claims to have established "a socialist rule of law with Chinese characteristics". Until the right to effective counsel is recognised in practice as the cornerstone of criminal justice, China's "soft power" efforts are destined to fail.

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