

Is Chen Shui-bian Being Made a Surrogate Scapegoat for Taiwan? Part II of III

Written by Jerome F. Keating Ph.D.
Friday, 13 April 2012 08:00

A new violation then took place. While Chen was jailed without charges, his chief defense lawyer tried to visit him; he was denied privacy with Chen. The alleged reason was that Chen needed to be prevented from working deals, though in this several year old case if deals were to be worked they would have long been established. Again it was a basic violation of prisoner's rights of due process and attorney-client privilege. At heart, in addition to punishing Chen, prosecutors wanted to know what Chen's defense strategy would be; it was similar to illegal wire-tapping but even worse and more blatant. Two prosecutors had to be present at all times and if they missed anything, the sessions were also videotaped. This violation of prisoner rights was taken to court and found to be illegal. However even after it was found illegal since it would still take two months for the paper work of the court's decision to go through the system, the prosecutors persisted in their illegal listening until the paperwork cleared. Apparently they needed to stack the deck; their premature boast that they would get a conviction, was taking a nefarious effect.

Harassment and abuses continued. To cover the accusations of ill-gotten money, the Chen family deposited some NT\$700 million with the court. Prosecutors however wanted more; in a harassing way to force Chen to bargain with them, they wanted the court to seize all of the Chen family assets. Since the prosecutors had only been able to establish questionable guilt for NT\$400 million, the High Court finally ruled on 3/15/11 against the prosecutors.

On August 19, 2010, a KMT dominated Legislature passed an amendment to the Act Governing Preferential Treatment for Retired Presidents and Vice Presidents; while generally applicable for all, this focused primarily on denying Chen any and all of his privileges. The Legislature also passed a law that would aid prosecutors in cajoling those who give bribes by placing the burden of guilt on those who accept the bribe. Culturally prosecutors always want defendants to admit to at least some guilt; this gives them face and justifies whatever means they may use in cases. On the flip side, this would lead a stubborn Chen to persist in his innocence. His actions he said could be justified by the system in place.

To further understand the case one needs to know what can be called other profitable systems left over from the KMT one-party state days. Taiwan has two lax, lenient and/or flexible laws regarding politicians. One covers the use of campaign funds. Campaigns are expensive and money to run them is needed. However, there are little restrictions on how that money, once gotten, is used. At the end of the day, a person who runs for office can basically keep any unspent donations he gets. Running is expensive but it can also be lucrative. Similarly the head of a political party receives a certain amount of money per vote given. As one of many examples, James Soong has not had a job since 1998. Nonetheless he has lived quite handsomely because as head of the People's First Party (PFP) and as a regular candidate in

Is Chen Shui-bian Being Made a Surrogate Scapegoat for Taiwan? Part II of III

Written by Jerome F. Keating Ph.D.
Friday, 13 April 2012 08:00

elections he has garnered much funding. Jaw (Zhao) Shau-kong once head of the near defunct New Party (NP) retired from politics and easily purchased UFO Broadcasting Company in a similar way. That Chen has used this KMT devised system and become the recipient of many political donations is more salt in the wounds of KMT dislike.

Secondly, once in office politicians receive special allowances and funds varying on the position. These can be used for different purposes, rewarding staff, special projects etc. entirely at the office holder's discretion. Usually one need only provide some form of receipts on such. These allowances are discretionary funds and can be a personal windfall if handled correctly. By intent, the funds are to be used for purposes helpful to one's duties, but the law gives far too much leeway. It is not the purpose here to discuss the pro and con of such system but to acknowledge that it exists and much of Chen's money appears to come from either political donations and/or his discretionary funds.

A third element is the cultural concept of guanxi, the use of networks of influence to gain a favor. Guanxi conflicts with bribery laws. The real issue the bribery challenge raises is in the distinction in legal definition of the cultural concept of guanxi and that of bribery. Where does guanxi end and bribery begin? New laws allow the person giving the bribes to get off scot-free as it were. This however provides vindictive and unscrupulous prosecutors a tool to badger and "bribe" defendants. Jeffrey Koo Jr.'s lawyers have stated that prosecutors used this technique to get him to say what was not true. Similarly, Diana Chen had repeatedly claimed that her gift was a political donation, though she had no receipt for it. Then when the law was changed, she was allowed to plead "state's evidence" and get off free. While earlier prosecutors could illegally monitor Chen's conversations with his lawyers, there has never been any one to monitor the prosecutor's conversations with those that "bribed" Chen. Koo's lawyers have certainly cast doubt on this aspect.

In these cases, culture does come in as justice and the legal system must navigate around the hierarchical system of guanxi where one gives gifts to those above and receives from those below; where even doctors with a Hippocratic oath are given and accept gifts presumably to ensure that they give proper attention to family members in the hospital.

What are Chen's crimes? There is no question that Chen had profited immensely during his presidency, but was it illegal? He has publicly stated he felt he did something wrong but Chen is not a man to give ammunition to his prosecutors. What he sees as wrong may be his betrayal of the Democratic Progressive Party's (DPP) ideals and the trust of those that supported him. Back to crimes then, of all those thousands who have held legislative, national assembly and other offices as well as that of president for the past sixty plus years on Taiwan,

Is Chen Shui-bian Being Made a Surrogate Scapegoat for Taiwan? Part II of III

Written by Jerome F. Keating Ph.D.
Friday, 13 April 2012 08:00

Chen raises the issue as to why he is the only one whose funds have been carefully dissected and examined. This may partly be due to the post 9/11 world regulation of the USA regarding the transfer of funds, but nonetheless, Chen is also the only one who has been held without charges while the examination of his case was being done. If anyone wishes to get a feeling of the grand scale of monies involved in Taiwan politics Google Taiwan's one case of the Lafayette Frigate Scandal. In comparison to what has gone on before including Taiwan's iron rice bowl legislators and members of the National Assembly (1947—1992), the monies that Chen is being accused of taking are a spit in the ocean.

This raises yet a deeper question is Chen being tried more as a surrogate scapegoat for a corrupt system that remains from the KMT one-party state empire? Both blue and green politicians have participated and benefited from this system. In the film, "A Few Good Men," Jack Nicholson in the character of Colonel Jessep utters the following famous line when Tom Cruise as prosecutor had asked for answers and then the truth. Jessep retorts, "You can't handle the truth." Is this what Taiwanese need ask themselves when they seek answers and the truth in the Chen trial? Can they handle the truth, the whole truth? We speak not just of Chen's charges, but also of the prosecutors, the system, the extent of past crimes etc. Is Chen a surrogate scapegoat to avoid any further examination of the inadequacies of a current bankrupt system? Chen's defense is that all he has done is both justified by the system and preceded by thousands of others many of whom as high-ranking members of both parties have benefited from. He has never attempted to flee, ironically it may be because in his pride, he wishes to prove that his only crime is to use that system. Is this a truth that Taiwan wants to face?

On 4/29/11 the Supreme Court acquitted Chen of guilt in US\$330,000 secret funds case; this supported decisions by the Taipei District Court and the Taiwan High Court. But it also revealed a frequent type of abuse by prosecutors. Despite losing at all levels because they had no evidence, Chen's prosecutors had continued in what can be called a "method of death by a thousand cuts" or a "thousand insinuations." They not only punished Chen by this method but also the untold people brought in for questioning in numerous fishing expeditions. For legitimate and illegitimate reasons prosecutors can drag a case out for years, imposing loss of employment and heavy court costs on a defendant so that even if they are not successful, prosecutors can harm if not destroy an individual. The case of Dr. Shieh Ching-jyh involving the High Speed Rail in Tainan is a good example of such. For political and other reasons, Dr. Shieh was forced to repeatedly defend his name. Prosecutors need to be aggressive, but judges must make a distinction between an aggressive prosecution and prosecutors' repeated use of this abusive technique with defendants. Is that what has been used in Chen's special funds cases and bribery cases?

Is Chen Shui-bian Being Made a Surrogate Scapegoat for Taiwan? Part II of III

Written by Jerome F. Keating Ph.D.

Friday, 13 April 2012 08:00

Source:

[Jerome F.
Keating's writings](#)
