

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

Written by Jerome F. Keating Ph.D.  
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There are crimes and then there are crimes; there are trials and then there are trials; there are standards and then there are standards; unfortunately, however, there are also double standards. These concepts have all come into play in the complex and twisted corruption case of Taiwan's former president Chen Shui-bian. This is a case that will have few winners and justice will be lucky if it is even half served, for at heart, what is on trial here is more than just Chen himself though he certainly is. On trial is the legacy of a one-party state system of corruption and double standards, a party where some still carry the bitterness and vindictiveness of lost entitlement and unrealized dreams, a nation that struggles to emerge from a belabored past that includes a lack of transitional justice, stolen state assets, and finally the complicity and betrayal of lost ideals on all sides. If that is not enough, on trial may even be the after effects of a hybrid culture on Taiwan trying to adjust to the realities and differences of a post-modern judicial world.

How can so much be wrapped into one little trial? Though investigations of Chen had been going on long before, the official starting point can be set when Chen Shui-bian stepped down from office on May 20, 2008. No sooner had he stepped down than he was clapped with a restraining order from leaving the country. In the name of justice, his enemies were out to get him. They had long been tipped off by Swiss banks operating under post 9/11 US imposed sanctions that large sums of money had been moved from Taiwan to Switzerland during Chen's presidency. Vengeance, for reasons that will be stated shortly, was theirs and they were not about to pass up the chance.

What followed this would be Chen's questionable preliminary imprisonment, denial of certain human rights due a prisoner, trial, conviction, appeal, reversal of some but not all convictions, and further appeal leading up to today's present situation. Throughout this labyrinthine process, for those who try to follow it, is a constant application of double standards and selective prosecution that if it happened in only one instance could be excused. However when this is placed in the totality of Chen's trial and in the context of Taiwan's historic and unfortunate one-party state legacy, it points to the difficult time that true justice will have to be served. If there are any skeptical of this they should now realize this stark reality; i.e. that despite three years of untold accusations, imprisonment, fishing expeditions and all sorts of leaks and hullabaloo about Chen Shui-bian and corruption, the only real convictions that the prosecutors have been able to substantiate and sustain are those in two bribery cases (one large and one small). Those two cases, which are under appeal, rest solely on the very questionable and potentially illegally obtained testimony of two people. In the larger case, the lawyers of the defendant Jeffrey Koo Jr. (the one that gave the alleged bribe), have stated that prosecutors bargained and pressured him to "lie" in his accusation of Chen. In the smaller case, that of Diana Chen, there is also question of brow-beaten testimony exhorted from a woman by threatening to deny her future work if she did not say what the prosecutors wanted her to say. Buckle your seat belts; this is going to be a long and bumpy ride.

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Start with the important background setting. Taiwan, under the Chinese Nationalist Party (KMT) has had a 40 plus year bitter legacy of a one-party state replete with White Terror, Martial Law, deaths, and imprisonments. Like any one-party state, i.e. the current government in the People's Republic of China (PRC), it had viewed (and for some still views) any questioning of its imposed authority as subversive, illegal and disloyal. For those in power such thinking subsequently breeds a sense of self-righteous entitlement, pride, and privilege. When the KMT was finally forced to share its autocratic power in a multi-party democracy in Taiwan, this left a vacuum and vindictiveness among many members; they regretted the loss of that privilege and entitlement and the exposure of their sullied past ideals. Chen Shui-bian was there in the pivotal years of that loss as a lawyer for the defense in the infamous Kaohsiung Incident (1979) and the trials that followed.

Taiwan's continuing struggle for democracy did not proceed easily; there were still imprisonments, torture and deaths. In the early 80s, three high profile murders epitomized the vindictiveness in that begrudging loss. They are the murder of Lin Yi-hsiung's mother and twin daughters (6 years old), the murder of US Carnegie Mellon professor Chen Wen-chen and that of US citizen Henry Liu in the USA. During that same time, Chen Shui-bian's wife was permanently crippled in a highly questionable accident after Chen had run for county magistrate. Some could say that this is all past but it isn't. Chen and too many current rulers in the KMT were contemporaries then and are contemporaries now.

Besides Chen's involvement in the Kaohsiung Incident trials, much else has contributed to make him the bête noire of the KMT. Chen is Taiwanese and not Chinese. Chen has no history and little sympathy with the KMT's lost Civil War in China; he was not part of the diaspora that fled to Taiwan with shattered pride. Even though he is a lawyer and passed the difficult Taiwan bar exam (something Ma Ying-jeou never did) Chen is repeatedly viewed as redneck "Taibazi" in the eyes of many KMT; this cultural image needed to be projected on the Taiwanese to justify the KMT "saving takeover" of the island. Further in 1994 Chen was the one who became Mayor of Taipei (1994-1998) when the KMT split its vote between Huang Ta-chou and Jaw (Zhao) Shau-kong. In 2000, Chen took Taiwan's Presidency again due to a split between James Soong and Lien Chan; Chen won with 39 per cent of the vote. Though these losses were of the KMT's own doing, Chen still became representative of the man who took these prized possessions from the KMT. But it was in 2004, where the real rub came; this time against a sure fire linkage of Soong and Lien, Chen still won by a fraction of 50.1 per cent. At heart here was the assassination attempt, which in many blue minds was staged to gain sympathy. Much of the previous could be seen as the KMT destroying itself, but this was for them a "clear steal." For all these and more, there has been a strong will in the KMT to bring Chen down; a vindictive killing may no longer be possible but imprisonment and disgrace would satisfy. In so many ways Chen epitomized the upsetting of the hierarchical order. Add to this, the fact that Chen has a strong will and often abrupt personality as well as being a determined

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and charismatic leader. This would make him enemies even in his own party.

Another problem for Taiwan is its carry over judicial system, called dinosaur judges and prosecutors. When the Berlin Wall fell, and east Germans were given freedom one of the first things done was the seizing of the Stassi files and the ouster of all of the old judges that had reigned during the Communist days; when Taiwan's one-party state finally gave way, there was no such purging; as a result, Taiwan has many judges and prosecutors who are termed "dinosaur judges" and "dinosaur prosecutors;" these have maintained the mentality of privilege and righteousness from the one-party state days. Included in this system is the fact that the Republic of China's (ROC) legal code borrowed heavily in the 1930s from that of Nazi, Germany vis-a-vis treatment of prisoner detention without specified indictments. Judicial reform in Taiwan has begun in 2011, but it is far from resolved.

Utilizing the Nazi era influenced elements on detention, the ROC law allowed Chen to be jailed without charges on November 11, 2008 as the government built its case; this detention has rarely and selectively been applied in the past. If it had, it usually was on those who were "perceived enemies" of the one-party state. Though Chen already had a restraining order and no formal charges were issued, prosecutors still claimed that he might try to flee the country. At this time, several prosecutors made bold statements that they would resign if they did not bring a conviction of Chen. Such claims, in a face saving culture, present many potential problems and conflicts of purpose. As it would become more and more difficult to prove the various cases against Chen, prosecutors repeatedly would resort to highly questionable means rather than admit failure.

When the reason for Chen's imprisonment without charges was contested in court, Chen was released on 12/13/08. Then came the KMT switching of judges; Judge Chou Chan-chun who had released him would be replaced so that a judge favorable to imprisoning Chen could be selected. Not only that, Chen's four months detention without charges would later be extended for another two so that prosecutors who had begun their investigation years earlier would have "time to build their case" against what would be a prisoner not allowed proper access to attorneys.

Close on the heels of the above, came other subsequent violations and unprofessional treatment. In December 2008, at a Law party held for all judges and prosecutors, a joint skit was held mocking former President Chen and the humiliating way he was taken to prison in handcuffs. Prosecutors and judges should have balancing adversarial roles in Taiwan's justice system, but here there was a joint collusion to mock the former president. The Minister of Justice would attempt to pass the skit off as just fun. Abuses of power would continue.

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To be continued. . .

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