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**J.Y. Interpretation No. 585 (December 15, 2004)\***

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**Scope of Legislative Authority Case****Issue**

Has the Legislative Yuan, by enacting the Act of the Special Commission on the Investigation of Truth in Respect of the 319 Shooting, gone beyond the scope of its legislative power? Are any of the relevant provisions contained therein unconstitutional?

**Holding**

[1] For the purpose of effectively exercising its constitutional powers, the Legislative Yuan may exercise a certain power of investigation, which is inherent in its legislative powers, to take the initiative in obtaining all relevant information necessary to exercise its powers so that it can fulfill its duties as an elected body of representatives and bring its functions of separation of powers and checks and balances into full play by making informed and prudent decisions after adequate and sufficient deliberations. The Legislative Yuan's investigative power is a subsidiary power necessary for the said Yuan to exercise its constitutional powers and authority. Under the principles of separation of powers and checks and balances, the scope of the targets or matters subject to the Legislative Yuan's investigative power does not grow unchecked. The matters to be investigated by the Legislative Yuan must be substantially related to the exercise of its powers under the Constitution. And, in addition, whenever a matter is related to the independent exercise of powers by an organ of the State that is guaranteed by the Constitution, the Legislative Yuan may not extend its investigative power to such

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\* Translation and Note by Chung-Hsi Vincent KUAN

a matter. Furthermore, an executive chief, by the authority inherent in his or her executive powers, is entitled to decide not to make public any information that may affect or interfere with the effective operation of the executive branch. This is an executive privilege intrinsic to the executive power. The Legislative Yuan, in exercising its investigative power, should give due respect to such privilege if the matter subject to investigation involves such information. In a specific case, should there exist any dispute as to whether a particular matter to be investigated either relates to the independent exercise of powers by an organ of the State or falls within the scope of executive privileges, or whether any information subject to the executive privilege should be under investigation or made public, the Legislative Yuan and the other organs of the State should seek reasonable channels to negotiate and settle their differences, or establish applicable requirements and procedures by law, pursuant to which the judicial organ will hear and settle the dispute.

[2] The manner in which the Legislative Yuan may exercise its investigative power is not limited to the power to request the production of files, under which it may request the agencies concerned to provide reference materials in regard to the matters involving the exercise of the Legislative Yuan's powers or request such agencies to produce the original documents in respect thereof. If and when necessary, the Legislative Yuan may also, by resolution of its plenary session, request the presence of a civilian or government official related to the matter under investigation to give testimony or express opinions, and may impose reasonably compulsory measures upon those who refuse to fulfill their obligations to assist in the investigation within the scope of pecuniary fines. (The aforesaid should serve as a supplement to J.Y. Interpretation No. 325.) Nevertheless, the relevant procedures, e.g., the initiation of the investigative power, the organization responsible for the exercise of such power, the scope of the matters subject to investigation in a particular case, the procedures to be

followed under various methods of investigation, as well as judicial relief procedures, should all be adequately prescribed by law. In extraordinary cases, should there exist any necessity of mandating those other than members of the Legislative Yuan to assist in the investigation as to any particular matters, special laws must be enacted, setting forth in detail the purpose of the mandate, the scope of the investigation, the matters relating to personnel and organization, including, without limitation, the qualifications, appointment, term of the mandated persons, the authorities and the methods and procedures for the special investigation, which would also serve as the basis of supervision. The organizations and meeting procedures prescribed under the respective laws must conform to the principle of democracy. The scope of the investigation in a specific case shall not be in violation of the principles of separation of powers and checks and balances, nor can it infringe upon the core authority of another constitutional organ or cause material harm to the exercise of powers of another constitutional organ. In regard to the procedures prescribed for the investigation methods, the constitutional principles of proportionality, clarity and definitiveness of law, as well as due process of law, must all be complied with where such procedures may involve any restrictions imposed upon the rights of the people.

[3] Thus, this Court hereby renders its opinions as to whether the various provisions of the Act of the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting as promulgated and implemented on September 24, 2004, (hereinafter the “SCITA”) regarding the organization, authority, methods of investigation, procedures and compulsory measures for the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting (hereinafter the “SCIT”) are in line with the constitutional intent set forth above.

1. The first sentence of Article 2, Paragraph 1 of the SCITA provides, “This Commission shall consist of seventeen members who shall be fair and impartial with professional knowledge and outstanding reputation, and shall be

recommended by the various political parties (groups) of the fifth Legislative Yuan for appointment by the President within five days of the promulgation hereof.” The second sentence of Article 2, Paragraph 2 thereof provides, “The various political parties (groups) shall submit their respective lists of recommended persons within five days of the promulgation hereof; failure to submit such list within the specified time limit shall be deemed as renouncement of such recommendation and any and all resulting vacancies shall be filled within five days by selection of the convening member of the Commission who is elected by the existing members for appointment by the President.” Article 15, Paragraph 2 thereof provides, “The vacant seat of any member of this Commission who is expelled or any seat that falls vacant for any reason shall be filled by another person recommended by the political party (group) making the original recommendation within five days; failure to so recommend any person within the specified time limit shall entitle the convening member of the Commission to select a person *sua sponte* for appointment by the President within five days.” And, finally, Article 16 thereof provides, “Where appointments shall be made by the President under Articles 2 and 15 hereof, the President shall make such appointments within the specified time limit. The President’s failure to make such appointments within the specified time limit shall render such appointments effective automatically.” The foregoing provisions regarding the appointment of members of the SCIT are not allowed under the Constitution unless the appointments were approved by a resolution of the Legislative Yuan and made by the President of the Legislative Yuan.

2. The SCITA fails to specify the term for members of the SCIT. However, to the extent that the principle of non-continuance upon expiration of term for the Legislative Yuan is followed, there is no violation of the Constitution. Furthermore, Article 11, Paragraph 2 thereof provides, “The funds required by this Commission shall be appropriated from the second reserves of the Executive

Yuan, and the Executive Yuan shall not reject such appropriation.” As long as all applicable laws and regulations concerning budgets are complied with, there is no violation of the Constitution.

3. Article 4 of the SCITA provides, “This Commission and its members shall be above partisanship and shall, in accordance with laws, exercise its and their respective authorities and answer to the entire nation without being subject to any instruction or supervision by any other agency or any interference.” The phrase “without being subject to any instruction or supervision by any other agency” is intended to mean “without being subject to any instruction or supervision by any agency other than the Legislative Yuan.” Article 15, Paragraph 1 thereof provides, “Any member of this Commission who is incapacitated, in violation of laws and/or regulations, or who has made inappropriate statements or committed inappropriate acts may be expelled from his or her office by the consent of two thirds of the total number of members of this Commission.” In regard to the provisions governing the expulsion of members of the SCIT, the Legislative Yuan’s power to remove such members is not precluded thereby. There is no violation of the Constitution in this regard.

4. Article 15, Paragraph 1 of the SCITA provides, “Any member of this Commission who is incapacitated, in violation of laws and/or regulations, or who has made inappropriate statements or committed inappropriate acts may be expelled from his or her office by the consent of two thirds of the total number of members of this Commission.” The said provision, in making “violation of laws and/or regulations or who has made inappropriate statements or committed inappropriate acts” a cause for expulsion, may not be in line with the principle of clarity and definiteness of law and thus should be reconsidered and revised accordingly.

5. The first sentence of Article 8, Paragraph 1 of the SCITA provides, “This

Commission shall have exclusive jurisdiction over the investigation of any and all cases involving criminal liability in relation to the 319 Shooting.” Furthermore, Article 8, Paragraph 2 thereof provides, “This Commission, in exercising the aforesaid authorities, shall have any and all powers and authorities exercisable by a prosecutor or military prosecutor pursuant to law.” In addition, Article 13, Paragraph 1 thereof provides, “In the event that the outcome of the investigation conducted by this Commission reveals any case involving criminal liabilities, the prosecutor or military prosecutor transferred *pro tempore* to this Commission shall *sua sponte* prosecute for such a case.” The foregoing provisions have gone beyond the scope of the investigative power exercisable by the Legislative Yuan and thus are contrary to the principles of separation of powers and checks and balances.

6. Article 13, Paragraph 3 of the SCITA provides, “In the event that the outcome of the investigation conducted by this Commission differs from the facts as determined by a court in its final and conclusive judgment, it shall be a ground for retrial.” The said provision is in violation of the fundamental principle of rule of law whereby a law shall be equally applied to all and is also beyond the scope of the investigative power exercisable by the Legislative Yuan.

7. Article 12, Paragraph 1 of the SCITA provides, “In respect of the events under investigation by this Commission, a written investigative report shall be submitted to the Legislative Yuan within three months and the same shall be published. If the truth remains unascertained, the investigation shall continue and a report shall be submitted to the Legislative Yuan and Control Yuan every three months and the same shall be published.” As far as the report to the Control Yuan is concerned, the said provision should be reconsidered and revised, since it is not in line with the constitutional intent that each organ shall attend to its own business.

8. Article 8, Paragraph 3 of the SCITA provides, “On the date of promulgation hereof, various agencies shall make available any and all files and exhibits in their possession in respect of the cases over which this Commission shall have exclusive jurisdiction and transfer the same to this Commission.” Article 8, Paragraph 4 thereof provides, “In exercising its authorities, this Commission shall not be subject to any restrictions imposed by the National Secrets Protection Act, Trade Secrets Act, Code of Criminal Procedure and any other laws. Any agency requested to provide information to this Commission shall not avoid, delay or reject any relevant request on the grounds of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground.” Article 8, Paragraph 6 thereof provides, “This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground.” With respect to the parts of the provisions concerning exclusive jurisdiction, transfer of files and exhibits, as well as the provisions concerning the independent exercise of powers by an organ of the State that is guaranteed by the Constitution, they are contrary to the principles of separation of powers and checks and balances and have gone beyond the scope of the investigative power exercisable by the Legislative Yuan.

9. Article 8, Paragraph 6 of the SCITA provides, “This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other

ground.” With respect to the provisions to the effect that no rejection may be made whatsoever as to matters involving national secrets or investigation secrets, appropriate amendments should be made.

10. The first sentence of Article 8, Paragraph 4 of the SCITA provides, “In exercising its authorities, this Commission shall not be subject to any restrictions imposed by the National Secrets Protection Act, Trade Secrets Act, Code of Criminal Procedure and any other laws.” Furthermore, Article 8, Paragraph 6 thereof provides, “This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground.” With respect to the provisions concerning the fundamental rights of the people, the principle of due process of law and the principle of clarity and definiteness of law have been violated.

11. Article 8, Paragraph 7 of the SCITA provides, “In case of violation of the provisions of Paragraphs 1, 2, 3, 4, or 6 hereof, the head of the agency and individual in violation shall be subject to a fine of not less than TWD100,000 but not more than TWD1,000,000; in case of any continuous violation subsequent to any fine already imposed hereby, successive fines may be imposed.” In addition, the first sentence of Article 8, Paragraph 8 thereof provides, “Any head of agency, responsible person of any group or any individual concerned who rejects the investigation conducted by this Commission or any of its members and, in so rejecting, causes material impact, or who makes false statements, shall be subject to punishment pursuant to Paragraph 7 hereof.” The foregoing provisions are contrary to the principle of due process of law and the principle of clarity and definiteness of law.



12. The second sentence of Article 8, Paragraph 8 of the SCITA provides, “Any head of agency, responsible person of any group or any individual concerned who rejects the investigation conducted by this Commission or any of its members and, in so rejecting, causes material impact, or who makes false statements,...shall also be subject to prosecution and punishment pursuant to Articles 165 and 214 of the Criminal Code.” The foregoing provision should mean that the prosecutorial agencies shall carry out investigations and prosecutions and the courts shall hold trials according to law, respectively, if any of the aforesaid persons is suspected of any crime after the investigation is conducted. The said provision should be reconsidered and revised accordingly.

13. Article 8, Paragraph 9 of the SCITA provides, “This Commission and its members, in exercising its or their respective authorities, may prohibit any person under investigation or any other person related to such person from exiting the country.” The said provision is found to go beyond the scope of the investigative power of the Legislative Yuan and is in violation of the principle of proportionality.

[4] The provisions of the SCITA as covered by Items 5, 6, 8, 10, 11 and 13 above, which are found to be contrary to constitutional intent, shall become null and void as of the date of the promulgation hereof.

[5] The Constitutional Court is empowered by the Constitution to exercise its authority independently to interpret the Constitution and hold constitutional trials. The preventative system used to ensure the effectiveness of the interpretations given or judgments rendered by the judiciary is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretation or trials, or civil, criminal or administrative litigation. Although the petition for preliminary injunction at issue is not in conflict with the Constitution, it nevertheless is no longer necessary to examine the issue now that an

interpretation has been given for the case at issue.

## **Reasoning**

[1] This matter has been brought to the attention of this Court because ninety-three members of the Legislative Yuan, including Jian-Ming KE, were of the opinion that the Act of the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting as promulgated and implemented on September 24, 2004 (hereinafter the “SCITA”) had transgressed the authority granted to the Legislative Yuan by the Constitution. They have, therefore, by more than one third of the incumbent members of the Legislative Yuan, duly initiated a petition for constitutional interpretation in regard to the questions about the meanings of the constitutional provisions governing their functions and duties, as well as of the question as to the constitutionality of the SCITA. Simultaneously, they have petitioned this Court for a preliminary injunction (referred to by the Petitioners and hereinafter as “expeditious disposition”) before an interpretation is delivered for this matter, declaring in effect that the application of the SCITA be suspended for the time being. In regard to the petition for the preliminary injunction, this Court, pursuant to Article 13, Paragraph 1 of the Constitutional Court Procedure Act, ordered that the representatives of the Petitioners, their agents *ad litem*, as well as the representatives appointed by the agency concerned, namely, the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting (hereinafter the “SCIT”), appear before the Constitutional Court for oral arguments on October 14, 2004. In addition, legal scholars were also invited to appear before this Court to present their opinions as *amicus curiae*. Whereas, in regard to the petition for the constitutional interpretation, this Court ordered that the representatives of the Petitioners, their agents *ad litem*, as well as the representatives and agents *ad litem* appointed by the agency concerned, namely, the Legislative Yuan, appear before the Constitutional Court for oral arguments

on October 27 and 29, 2004. In addition, representatives of the other agencies concerned, namely, the Control Yuan, Ministry of Justice and Ministry of the Interior, as well as legal scholars, were also invited to appear before this Court to present their opinions.

[2] The Petitioners have argued summarily that: (1) The SCIT, by its nature, is an unconstitutional organ: the SCIT not only replaces the prosecutorial agencies in regard to the conducting of investigations (*see* Article 8, Paragraphs 1, 2 and 3), transferring prosecutors *pro tempore* (*see* Article 9, Paragraph 1), instructing prosecutors as to the prosecution (*see* Article 13, Paragraph 1), but also interferes with the courts in holding trials (*see* Article 13, Paragraph 3), as well as with the investigative power of the Control Yuan (*see* Article 8, Paragraph 3). And, additionally, the SCIT may possess the power to organize itself, prepare offices, administer affairs and hire staff on its own initiative (*see* Article 11, Paragraph 1), and the funds required by the SCIT shall be appropriated from the second reserves of the Executive Yuan, which shall not reject such appropriation (*see* Article 11, Paragraph 2). As such, the SCIT is a centralized special organ whose powers are simply unchecked by any other agency, which does not fit within with the constitutional order of freedom and democracy. The SCIT, which does not belong to any constitutional organ as provided under the Constitution, and is not restricted by the Five-Yuan system, may nonetheless exercise the judicial power, control powers and the power of the Legislative Yuan to request production of files, as well as the executive power. It, therefore, is an unconstitutional hybrid organ. (2) The enactment of the SCITA has transgressed the legislative power: The Legislative Yuan, by creating an unconstitutional hybrid organ through the enactment of the SCITA, has transgressed the boundaries of the legislative power, thus contradicting the demands of equitable democracy. (3) The enactment of the SCITA is contrary to the principle of separation of powers: The SCITA, as legislation aiming at a specific case, namely, the 319 Shooting, should be deemed

as null and void because it results in the combination of legislation and execution, which is contrary to the separation of powers. (4) The authorities exercisable by the SCIT have infringed upon the powers of other constitutional organs, which is contrary to the principle of separation of powers: (i) Invasion of the President's powers of immunity, as well as appointment and removal of personnel: Under Article 8 of the SCITA, the targets subject to the investigation conducted by the SCIT shall include the President, who may not reject the investigation conducted by the SCIT or its members on the ground of national secrets, which provision is clearly void for violation of Article 52 of the Constitution. In addition, the appointment of members of the SCIT completely deprives the President of his power to appoint and remove personnel, which is also void for violation of Article 41 of the Constitution. (ii) Invasion of the core areas of the investigative power of prosecutors: (a) Under Article 8, Paragraphs 1, 2 and 3 and Article 9 of the SCITA, the prosecutorial agencies have been replaced by the SCIT; and (b) Under Article 13, Paragraphs 1 and 3, the SCIT not only has jurisdiction over a specific criminal case, but also may instruct a prosecutor in carrying out prosecution, thus combining the legislative power with the executive power and weakening the principle of separation of powers as to criminal procedure and *Rechtsstaat* (a state governed by rule of law). (iii) Invasion of the core areas of the judicial power: Article 13, Paragraph 3 of the SCITA provides that, if the outcome of the investigation conducted by the SCITA differs from the facts as determined by a court in its final and conclusive judgment, the determination of the SCITA shall control. Thus, it has infringed upon the core of an independent trial, which is in violation of Article 80 of the Constitution. (iv) Invasion of the core areas of the investigative power of the Control Yuan: (a) Article 8, Paragraphs 3, 4, 5 and 6 of the SCITA have granted the SCIT the congressional power of investigation, which should not have belonged to the Legislative Yuan. Thus, it has gone beyond the boundaries set by J.Y. Interpretation No. 325 as to

the investigative power of the Control Yuan. (5) The provisions regarding the appropriation of funds for the SCIT are in violation of the Constitution: The Legislative Yuan may not request the Executive Yuan to make budgetary spending as to any specific items, or it will be in violation of the Constitution. The provisions of Article 11, Paragraph 2 of the SCITA have obscured the boundaries between the legislative and executive powers and rendered the system of accountability of politics chaotic, which is contrary to Article 70 of the Constitution, as well as J.Y. Interpretations No. 264 and 391. (6) The organization of the SCIT is in violation of the Constitution: (i) The SCIT has replaced the people with political parties: Article 2, Paragraph 2 of the SCITA provides that various political parties (groups) shall recommend candidates for membership of the SCITA. However, since political parties cannot represent the people, the recommendation of the members of the SCIT has destroyed the legitimacy of the members and the organization by enabling the Chinese Nationalist Party and the People First Party to recommend a total of nine members, giving the said parties outright control over the operation of the SCIT. (ii) Members of the SCIT do not have any term of office: According to Article 15, Paragraph 1 of the SCITA, any member “recommended” by the minority party is likely to be expelled from his or her office at any time by the members of the majority party for “inappropriate statements or acts,” whereas a member “recommended” by the majority party may not be removed from office once he or she assumes the office unconstitutionally, which is in violation of the principle of democracy of limited mandate of powers. (7) The SCITA is in violation of the fundamental rights of the people and is inconsistent with the principles of proportionality and due process of law: (i) Inconsistency with the principle of proportionality: Article 8, Paragraph 7 of the SCITA provides that, in case of violation of the provisions of Paragraphs 1, 2, 3, 4 or 6 hereof, the head of the agency and individual in violation shall be subject to a fine of not less than TWD100,000 but not more

than TWD1,000,000 and successive fines may be imposed. Since the purpose of the said provision is unconstitutional, it shall not pass review for the constitutionality of its purpose. Furthermore, Article 1, Paragraph 1 of the SCITA provides that the legislative objectives of the SCITA shall be to settle the disputes arising from the election and to stabilize the political situation. When it comes to the means employed, however, the SCITA not only has failed to use the least intrusive means, but also has used disproportional means in comparison with the desired objectives in terms of the blanket, generalized authorization granted to members of the SCIT to exercise compulsory measures, thus infringing upon such fundamental rights of the people as freedom, privacy, etc. (ii) Inconsistency with due process of law: The provisions of Article 8, Paragraphs 4 and 8 have precluded the various restrictions imposed by the Code of Criminal Procedure, etc., by granting blanket and generalized authorization to the SCIT and its members to exercise compulsory measures at will. Any head of agency or other person who rejects the investigation or makes false statements shall, in addition to the punishment set forth in Article 8, Paragraph 7 thereof, also be subject to prosecution and punishment pursuant to Articles 165 and 214 of the Criminal Code, which is obviously in violation of due process of law.

[3] The agency concerned, namely, the Legislative Yuan, has argued summarily that: (1) The petition at issue fails to meet the requirements for filing such a petition and thus should be dismissed because it does not involve questions about the meanings of constitutional provisions governing the functions and duties of the legislators, nor does it concern any question as to the constitutionality of the application of any law. (2) Under the principle of constitutional interpretation of law, the SCITA, whether in whole or in part, does not violate the Constitution: (i) The nature of the SCIT: Under the principle of separation of powers, most suitable agency and distribution of agency functions, the pertinent powers shall be allocated to the most suitable, efficient agency available. The ROC

Constitution does not provide in any article for executive reservation, nor does it clearly prohibit the creation of any similar agency such as the SCIT. Thus, the Legislative Yuan shall have the power to enact such legislation. Since a public legal entity may exist between the State and a private person apart from the five Yuans provided for under the Constitution, and the State may entrust public authority to a private person, the SCIT, which is created *ad hoc* for a specific mission, should in principle be allowed. (ii) The enactment of the SCITA falls within the legislative powers: The Legislative Yuan, under Article 63 of the Constitution, shall have the power to legislate as to any important affairs of the State. Since the creation of the SCIT is intended to settle the political disputes arising from the undiscovered truth of the 319 Shooting, which is an important affair of the State, it falls within the legislative power as long as no fundamental rights of the people are infringed. (3) The authorities exercisable by the SCIT have not infringed upon the powers of other constitutional organs, nor is the manner in which the SCIT exercises its authority contrary to the principles of separation of powers and checks and balances: There are two mechanisms covered by the SCITA. One is the SCIT, which is created under the SCITA and in charge of the “investigation of the truth”; the other is the prosecutor(s) borrowed *pro tempore* by the SCIT pursuant to the SCITA, who shall be solely in charge of the exercise of the “investigative power regarding criminal cases”. Articles 1 through 7 of the SCITA govern the “authorities and methods of investigation” for the SCIT; Article 8 et seq. govern the “criminal investigations” conducted by the prosecutors borrowed *pro tempore* by the SCIT; and Articles 9 and 18 thereof serve as the linking clauses for the SCIT and the prosecutors borrowed *pro tempore*, requiring mutual cooperation between the SCIT and the prosecutors borrowed *pro tempore*. The two agencies exercise the investigative power and prosecutorial power, respectively, and cooperate with each other. As a result, the SCIT does not infringe upon any executive power or prosecutorial

power and thus does not violate the principle of separation of powers. In addition, since the SCITA does not endow the SCIT with any judicial power, there is no infringement of any judicial power (court jurisdiction). (4) The provisions regarding the appropriation of funds for the SCIT are in line with the Constitution: Article 11, Paragraph 2 of the SCITA provides that the funds required by the SCIT may be appropriated from the second reserves, which is legally supported by Article 70, Subparagraph 3 of the Budget Act and Article 11, Paragraph 2 of the SCITA. In addition, Article 70 of the Constitution is not violated since such spending does not increase expenditures. In addition, since the appropriation of the second reserves is not an exclusive power of the Executive Yuan, the Legislative Yuan is not precluded from making use of such funds. Therefore, no inherent executive power is infringed. (5) The appointment of members of the SCIT and the organization of the SCIT are both in line with the Constitution: Article 2 of the SCITA provides that the members of the SCIT shall be recommended by means of proportionality of various political parties. Similar methods are seen in other organizations, e.g., the recommendation of members of the Central Election Commission. And no party manipulation is seen in such organizations, which is therefore in line with fairness and professionalism. Article 16 of the SCITA does not infringe upon the presidential power to appoint and remove personnel. (6) The SCITA is not in violation of the fundamental rights of the people or due process of law: Article 8, Paragraphs 4, 6 and 9 and Article 10 of the SCITA must be read together with Articles 8 and 9 thereof. As a result, the “prosecutors borrowed *pro tempore*,” who are already entrusted with such power, shall still exercise the power of compulsory measures, and thus the SCIT is not authorized by the law in an extraordinary manner to impose any restrictions on personal freedom. In addition, the SCITA has granted the SCIT necessary investigative power. Under Article 1, Paragraph 2 and Article 8, Paragraph 2, the SCIT must exercise its powers pursuant to law. Moreover, a



generalized provision of law is not necessarily unconstitutional. Articles 152 et seq. of the Administrative Procedure Act, which prescribe the procedure for formulating regulations, may be applied *mutatis mutandis* by making and publishing administrative regulations. The working rules for the SCITA are in line with the said legal principle. As for the infringement of the people's fundamental rights, depending upon the circumstances, administrative appeals, administrative litigation or state compensation claims may be initiated or brought by the aggrieved person. The protections and remedies for rights are already in place. Therefore, there is no infringement of the demand for the protection of the people's fundamental rights.

[4] Having taken into consideration all aspects of the arguments, this Court has delivered this interpretation. The reasons are as follows:

The Petitioners, in exercising the legislative power provided under Article 62 of the Constitution, question the constitutionality of the SCITA, i.e., whether the SCITA is consistent with the constitutional principle of separation of powers. Furthermore, under the SCITA, the members of the SCIT shall be recommended by the various political parties (groups) (*see* Article 2, Paragraph 1 and 2 thereof); the SCIT shall be created by the Legislative Yuan (*see* Article 17 thereof); and the SCIT shall submit investigative reports to the Legislative Yuan periodically (*see* Article 12). All of the foregoing matters concern the legislators' exercise of their authorities, and the exercise of such authorities in respect of the SCITA has generated doubt as to the constitutionality of the SCITA. Besides, more than one third of the incumbent members of the Legislative Yuan have initiated a petition for constitutional interpretation in respect of the said doubt. We, therefore, are of the opinion that this matter should be heard since it is in line with the provisions of Article 5, Paragraph 1, Subparagraph 3 of the Constitutional Court Procedure Act.

[5] The Legislative Yuan, consisting of members elected by the people, is the highest legislative organ of the State and shall exercise the legislative power on behalf of the people. For the purpose of effectively exercising its constitutional powers, the Legislative Yuan may exercise a certain power of investigation, which is inherent in its legislative powers, to take the initiative in obtaining all relevant information necessary to exercise its powers so that it can fulfill its duties as an elected body of representatives and bring its functions of separation of powers and checks and balances into full play by making informed and prudent decisions after adequate and sufficient deliberations.

[6] The Legislative Yuan's investigative power is a subsidiary power necessary for the said Yuan to exercise its constitutional powers and authorities. Under the principles of separation of powers and checks and balances, the scope of the targets or matters subject to the Legislative Yuan's investigative power does not grow unchecked. The matters to be investigated by the Legislative Yuan must be substantially related to the exercise of its powers under the Constitution. And, in addition, whenever a matter is related to the independent exercise of powers by an organ of the State that is guaranteed by the Constitution, the Legislative Yuan may not extend its investigative power to such a matter (*see* J.Y. Interpretations Nos. 325 and 461). Furthermore, an executive chief, by the authority inherent in his or her executive powers, is entitled to decide not to make public any information that may affect or interfere with the effective operation of the executive branch, e.g., matters relating to such national secrets as national security, defense or diplomacy; internal discussions in the process of policy-making and information regarding existing criminal investigations. This is an executive privilege intrinsic to the executive powers. The Legislative Yuan, in exercising its investigative power, should give due respect to such privilege and not compel publication of such information or provision of relevant documents by the executive branch if the matter subject to investigation involves such

information. In a specific case, should there exist any dispute as to whether a particular matter to be investigated either relates to the independent exercise of powers by an organ of the State or falls within the scope of executive privilege, or whether any information subject to the executive privilege should be under investigation or made public, the Legislative Yuan and the other organs of the State should seek reasonable channels to negotiate and settle their differences, or establish applicable requirements and procedures by law, pursuant to which the judicial organ will hear and settle the dispute.

[7] The manner in which the Legislative Yuan may exercise its investigative power is not limited to the power to request the production of files, under which it may request that the agencies concerned provide reference materials in respect of the matters involving the exercise of the Legislative Yuan's powers or request such agencies to produce the original documents in respect thereof. If and when necessary, the Legislative Yuan may also, by resolution of its plenary session, request the presence of a civilian or government official related to the matter under investigation to give testimony or express opinions, and may impose reasonably compulsory measures upon those who refuse to fulfill their obligations to assist in the investigation within the scope of pecuniary fines. (The aforesaid should serve as a supplement to J.Y. Interpretation No. 325.) Nevertheless, the relevant procedures, e.g., the initiation of the investigative power, the organization responsible for the exercise of such power, the scope of the matters subject to investigation in a particular case, the procedures to be followed under various methods of investigation, as well as the judicial relief procedures, should all be adequately prescribed by law. In extraordinary cases, should there exist any necessity of mandating those other than members of the Legislative Yuan to assist in the investigation as to any particular matters, special laws must be enacted, setting forth in detail the purposes of the mandate, the scope of the investigation, the matters relating to personnel and organization,

including, without limitation, the qualifications, appointment, term of the mandated persons and the authorities, methods and procedures for the special investigation, which would also serve as the basis of supervision. The organizations and meeting procedures prescribed under the respective laws must conform to the principle of democracy. The scope of the investigation in a specific case shall not be in violation of the principles of separation of powers and checks and balances, nor can it infringe upon the core authority of another constitutional organ or cause material harm to the exercise of powers by another constitutional organ. In respect of the procedures prescribed for the investigation methods, the constitutional principles of proportionality, clarity and definiteness of law, as well as due process of law, must all be complied with where such procedures may involve any restrictions imposed on the people.

#### 1. The Nature of the SCIT

[8] The SCITA is an extraordinary piece of legislation passed by the Legislative Yuan for the purpose of creating the SCIT in an attempt to ascertain the truth of the 319 Shooting. Judging from the provisions of Article 2, Paragraphs 1 and 2 and Articles 16 and 17 of the SCITA, the formation of the SCIT is prepared by the Legislative Yuan. Based on the constitutional principle of accountability of politics, under which an organization and its authorities should not be separated, the SCIT should be categorized as a special commission designed to assist the Legislative Yuan in exercising the investigative power. This theory is also supported by Article 12, Paragraph 1 thereof, which provides for the SCIT's obligation to submit reports to the Legislative Yuan. Therefore, the SCIT is not an organization that does not belong to any constitutional organ, nor is it a hybrid organ that exercises the legislative, executive, judicial and control powers simultaneously.

[9] The creation of the SCIT under the SCITA is intended to discover the truth

of the 319 Shooting of the President and Vice President (*see* Article 1, Paragraph 1 thereof). This is an important affair of the State as to which the Legislative Yuan may conduct an investigation so that it may supervise the executive branch and satisfy the people's right to know, which is consistent with the requirement that the Legislative Yuan may exercise the investigative power, if necessary, to exercise its constitutional authorities effectively.

[10] Even though the Legislative Yuan has the power to enact the SCITA, the constitutionality of the SCITA should nevertheless be determined after taking into consideration whether the organization, authorities, meeting procedures and the investigative methods and proceedings of the SCIT fit in with the constitutionally required principles of democracy, separation of powers and checks and balances, proportionality and clarity and definiteness of law, as well as due process of law. Hence, this Court hereby renders its opinions as to whether the relevant provisions of the SCITA are in line with the constitutional intent set forth above.

## 2. The Organization of the SCIT

[11] The Legislative Yuan's investigative power is a subsidiary power necessary for the said Yuan to exercise its constitutional powers and authority. The exercise of such power should be carried out by the Legislative Yuan by establishing an investigation commission pursuant to law. Only in extraordinary cases should the Legislative Yuan mandate non-members of the Legislative Yuan to assist in the investigation as to any particular matters by enacting special laws through resolutions in its plenary session. For instance, an investigation commission consisting of members of the Legislative Yuan cannot conduct effective investigations due to the highly specialized nature of the matters subject to investigation. Although the qualifications, appointment, and procedures for the selection of the members of such a commission fall within the confines of

parliamentary autonomy, such matters should nonetheless be prescribed by law and the appointments made by the President of the Legislative Yuan upon resolution by the plenary session of the said Yuan. Article 41 of the Constitution is not relevant in such a situation.

[12] The first sentence of Article 2, Paragraph 1 of the SCITA provides, “This Commission shall consist of seventeen members who shall be fair and impartial with professional knowledge and outstanding reputations, and shall be recommended by the various political parties (groups) of the fifth Legislative Yuan for appointment by the President within five days of the promulgation hereof.” The second sentence of Article 2, Paragraph 2 thereof provides, “The various political parties (groups) shall submit their respective lists of recommended persons within five days of the promulgation hereof; failure to submit such list within the specified time limit shall be deemed as renouncement of such recommendation and any and all resulting vacancies shall be filled within five days by selection of the convening member of the Commission who is elected by the existing members for appointment by the President.” The foregoing provisions are meant to be part of a special law enacted by the Legislative Yuan, which, having taken into account that the matters subject to investigation are of a special nature, requiring highly specialized expertise, fairness and impartiality, has mandated those professionals other than members of the Legislative Yuan to form an investigation commission for the purpose of assisting the said Yuan in exercising the investigative power. Under the principle of parliamentary autonomy, the Legislative Yuan should decide on the qualifications, appointment, and procedures for the selection of the members of such a commission. If the Legislative Yuan has decided to accept the candidates recommended by the various political parties (groups), and the appointments of such candidates have been made by the President of the Legislative Yuan upon resolution by the plenary session of the said Yuan, there is no violation of the

Constitution. Although the Legislative Yuan may, as a token of respect for the head of state, submit a list of the nominated candidates to the President for the latter to appoint under Article 41 of the Constitution, this, however, does not mean that the President has any substantive authority to select such members. Nor is the countersignature of the Premier as provided under Article 37 of the Constitution required. The President should also respect the candidates selected by the Legislative Yuan in order to show respect for the authorities of the said Yuan. Therefore, the foregoing provisions of Article 2, Paragraphs 1 and 2 of the SCITA, as well as Article 15, Paragraph 2 thereof, which provide, “The vacant seat for any member of this Commission who is expelled or whose seat falls vacant for any reason shall be filled by another person recommended by the political party (group) making the original recommendation within five days; failure to so recommend any person within the specified time limit shall entitle the convening member of the Commission to select a person *sua sponte* for appointment by the President within five days,” should mean that, upon recommendation of such members by the various political parties (groups) or selection of a candidate by the convening member of the SCIT, the appointment shall pass the Legislative Yuan by resolution of the plenary session before the President of the Legislative Yuan submits it to the President for appointment. By the same token, Article 16 of the SCIT, which provides, “where appointments shall be made by the President under Articles 2 and 15 hereof, the President shall make such appointments within the specified time limit; failure to make such appointments within the specified time limit shall render such appointments effective automatically,” is also found not to contravene Articles 41 and 37 of the Constitution.

[13] Since the investigative power of the Legislative Yuan is exercised by an investigation commission created by the plenary session of the said Yuan and composed of members thereof, the term of office for the members of the

investigation commission shall end no later than the day when the specific term of the Legislative Yuan expires so that the principle of representative politics is followed. The principle of non-continuance upon expiration of term shall also apply to the situation where an investigation commission is composed of non-members of the Legislative Yuan who are mandated by the said Yuan by resolution of its plenary session. It should be noted that Article 12, Paragraph 1 of the SCITA provides, “In respect of the events under investigation by this Commission, a written investigative report shall be submitted to the Legislative Yuan within three months and the same shall be published. If the truth remains unascertained, the investigation shall continue...” Although the failure of the said provision to specify the term of office for the members of the SCIT is not unconstitutional in itself, the term of office for such members should, as a matter of course, end no later than the day when the term of the fifth Legislative Yuan expires, as the SCIT is created by the authorization of the fifth Legislative Yuan. Furthermore, since the SCIT is a special commission subordinate to the Legislative Yuan, the funds required for its operations shall be allocated by the said Yuan. However, if dictated by the factual situations and consistent with applicable laws and regulations relating to budgets, the second reserves may also be appropriated without infringing upon the executive power. Article 11, Paragraph 2 of the SCITA provides, “The funds required by this Commission shall be appropriated from the second reserves of the Executive Yuan, and the Executive Yuan shall not reject such appropriation.” This provision, along with Article 12, Paragraph 1 thereof mentioned above, is not unconstitutional as long as the constitutional intent mentioned above is complied with.

[14] Under the principles of representative politics and the accountability of politics, the Legislative Yuan shall, in exercising its investigative power, assume political responsibility and be subject to popular supervision as to whether it has abused its power and authority. Even under extraordinary circumstances when



the Legislative Yuan deems it necessary to mandate those other than members of the Legislative Yuan to assist or substitute for the legislators in investigation as to any particular matters, the Legislative Yuan shall still be obligated to supervise the performance of those mandated personnel in carrying out their duties under the principles of representative politics and the accountability of politics. By no means should such mandated personnel be exempt from any supervision by the Legislative Yuan and allowed to exercise the investigative power on their own initiative. Therefore, the SCIT is obligated to report to the Legislative Yuan under Article 12, Paragraph 1 of the SCITA, which provides, “In respect of the events under investigation by this Commission, a written investigative report shall be submitted to the Legislative Yuan within three months and the same shall be published. If the truth remains unascertained, the investigation shall continue and a report shall be submitted to the Legislative Yuan...every three months and the same shall be published.” Moreover, Article 4 thereof provides, “This Commission and its members shall be above partisanship and shall, in accordance with laws, exercise its and their respective authorities and answer to the entire nation without being subject to any instruction or supervision by any other agency or any interference.” The phrase “without being subject to any instruction or supervision by any other agency” should not have precluded the Legislative Yuan from exercising its supervision over the SCIT, but, instead, is intended to mean “without being subject to any instruction or supervision by any agency other than the Legislative Yuan.” Additionally, in view of its duty to instruct and supervise the SCIT, the Legislative Yuan shall have the power to remove any member of the SCIT who is deemed incompetent by resolution of its plenary session. The power to remove personnel, when compared with the power to appoint personnel, is more permanent and exercisable at any time. Thus, it is not only a power necessary to control and supervise effectively those personnel who are conducting the investigation, but also is a key to the

fulfillment of the Legislative Yuan's constitutional obligation under the principle of representative politics. Therefore, Article 15, Paragraph 1 thereof provides, "Any member of this Commission who is incapacitated, in violation of laws and/or regulations, or who has made inappropriate statements or committed inappropriate acts may be expelled from his or her office by the consent of two thirds of the total number of members of this Commission." The provision is intended to grant the SCIT the power to expel its members, but it should still be subject to the resolution of the plenary session of the Legislative Yuan, whose power to remove members of the SCIT remains intact. The foregoing provisions are not unconstitutional as long as the constitutional intent mentioned above is followed. However, part of the foregoing provisions, in making "violation of laws and/or regulations or has made inappropriate statements or committed inappropriate acts" a cause for expulsion, may not be in line with the constitutional principle of clarity and definiteness of law and thus should be reconsidered and revised accordingly. As an additional note, the SCIT's exercise of its authorities shall comply with the principle of democracy. Hence, the quorum for members of the SCIT to commence the exercise of the investigative power should also be clearly provided by law.

### 3. The Powers of the SCIT

[15] The Legislative Yuan's investigative power is a mere subsidiary power of the said Yuan to facilitate the exercise of its constitutionally mandated legislative powers and authorities. Naturally, such power is different from either the investigative power in respect of prosecution for criminal offenses or the jurisdiction of courts. Under the principles of separation of powers and checks and balances, the Legislative Yuan may not, by legislation, grant itself or any committee subordinate to it the power to exercise the said investigative power or court jurisdiction. Since the SCIT is a special commission subordinate to the Legislative Yuan that is designed to exercise the investigative power of the said

Yuan, the authorities possessed by the SCIT should be no more than those exercisable by the Legislative Yuan under its investigative power. Furthermore, the authorities of the SCIT should be limited to the investigation of the 319 Shooting, but should not go so far as to exercise the investigative power as to crimes, which is only exercisable by a prosecutor or military prosecutor pursuant to law, nor the court jurisdiction. Therefore, the authorities of the SCIT should be limited to the scope specified in Article 7 of the SCITA, which provides, “This Commission shall conduct investigations into the events having occurred before and after the 319 Shooting, or into any and all relevant matters derived from such events so as to discover the truth relating to the planning and the motives, objectives of any and all persons concerned, as well as the facts and effects of such events and matters.” Nevertheless, such investigations should not exclude or interfere with the Control Yuan or any other agency concerned in conducting investigations into the same events or matters by their own authorities. Therefore, the first sentence of Article 8, Paragraph 1 thereof provides, “This Commission shall have exclusive jurisdiction over the investigation of any and all cases involving criminal liabilities in relation to the 319 Shooting.” Furthermore, Article 8, Paragraph 2 provides, “This Commission, in exercising the aforesaid authorities, shall have any and all powers and authorities exercisable by a prosecutor or military prosecutor pursuant to law.” In addition, Article 8, Paragraph 3 thereof provides, “On the date of promulgation hereof, various agencies shall make available any and all files and exhibits in their possession in respect of the cases over which this Commission shall have exclusive jurisdiction and transfer the same to this Commission.” The foregoing provisions have delegated to the SCIT more authority than the investigative power exercisable by the Legislative Yuan itself and therefore are not consistent with the Constitution. In addition, Article 13, Paragraph 1 thereof provides, “In the event that the outcome of the investigation conducted by this Commission reveals any case

involving criminal liabilities, the prosecutor or military prosecutor transferred *pro tempore* to this Commission shall *sua sponte* prosecute for such a case.” The foregoing provisions have also gone beyond the scope of the investigative power exercisable by the SCIT by delegating more authority to such prosecutor or military prosecutor than the SCIT may possess and thus are contrary to the Constitution. As a result, the provisions of Article 13, Paragraph 2 thereof regarding jurisdiction, which are ancillary to the foregoing provisions, should also be so treated. All the above provisions are contrary to the fundamental constitutional principles of separation of powers and checks and balances. As for Article 9, Paragraph 1 thereof, which provides, “While exercising its authorities, this Commission may borrow and transfer a prosecutor or military prosecutor *pro tempore* to assist in the relevant investigations,” such borrowing and transfer should be subject to the consent of the borrowed person and of the agency to which he or she belongs out of respect for such borrowed person and agency. The prosecutor or military prosecutor *pro tempore* transferred to the SCIT, though still preserving his or her status as a prosecutor or military prosecutor during the period of such transfer, may not, as a matter of course, exercise the prosecutorial power exercisable by him or her pursuant to law under his or her original status due to the nature of the Legislative Yuan’s investigative power.

[16] No doubt, the lawmakers are free to some extent to formulate the reasons for retrial, which forms one of the links in legal proceedings. However, any enacted law should have general application to a majority of future events whose occurrence is uncertain and which meets the requisite elements of such law. Article 13, Paragraph 3 of the SCITA provides, “In the event that the outcome of the investigation conducted by this Commission differs from the facts as determined by a court in its final and conclusive judgment, it shall be a ground for retrial.” The said provision is not constitutionally valid, since the reason for retrial is intended for a specific case only, which is in violation of the fundamental

principle of rule of law whereby a law shall be equally applied to all, and is also beyond the scope of the investigative power exercisable by the Legislative Yuan.

[17] The Control Yuan is the highest control organ of the State and shall exercise the constitutionally mandated powers of impeachment, censure, redress and auditing provided under Articles 95 and 96 on an exclusive basis. The Control and Legislative Yuans have their respective constitutional mandates, and the investigative powers exercisable by the said Yuans are not identical in terms of their respective natures, functions and purposes, nor do they overlap or conflict with each other. Since the SCIT is a special commission subordinate to the Legislative Yuan that is designed to exercise the investigative power of the said Yuan, it should not be obligated to answer to the Control Yuan, nor subject to the supervision of the Control Yuan. In addition, the investigative power exercisable by the SCIT differs from that of the Control Yuan. Besides, the exercise of such power by the SCIT, as well as the outcome of its investigation, should not affect the exercise of the investigative power by the Control Yuan. Article 12, Paragraph 1 of the SCITA provides, “In respect of the events under investigation by this Commission, a written investigative report shall be submitted to the Legislative Yuan within three months and the same shall be published. If the truth remains unascertained, the investigation shall continue and a report shall be submitted to the Legislative Yuan and Control Yuan every three months and the same shall be published.” As far as the report to the Control Yuan is concerned, the said provision should be reconsidered and revised so as to clarify the authorities and duties of the SCIT and to avoid undue influence on the Control Yuan’s exercise of its investigative power, since such provision is contrary to the principle described above.

#### 4. The Scope of Investigative Power Exercisable by the SCIT

[18] As mentioned above, under the principles of separation of powers and

checks and balances, the Legislative Yuan, in exercising its investigative power, shall also be subject to certain restrictions as to the targets or matters under investigation. Article 8, Paragraph 3 of the SCITA provides, “On the date of promulgation hereof, various agencies shall make available any and all files and exhibits in their possession in respect of the cases over which this Commission shall have exclusive jurisdiction and transfer the same to this Commission.” Article 8, Paragraph 4 thereof provides, “In exercising its authorities, this Commission shall not be subject to any restrictions imposed by the National Secrets Protection Act, Trade Secrets Act, Code of Criminal Procedure and any other laws. Any agency requested by this Commission shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground.” Article 8, Paragraph 6 thereof provides, “This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground.” With respect to the parts of the provisions concerning exclusive jurisdiction, transfer of files and exhibits, as well as the provisions concerning the independent exercise of powers by an organ of the State that is guaranteed by the Constitution, they have failed to exclude the same from the scope of the investigative power and thus have gone beyond the scope of the investigative power exercisable by the Legislative Yuan, which is not in line with the Constitution. Additionally, as mentioned above, an executive chief, by virtue of the executive privilege inherent in his or her executive power, is entitled to decide whether or not to make public any information that involves national secrets or investigation secrets. The Legislative Yuan, in exercising its investigative power, should give due respect

to such privilege and not compel publication of such information or provision of relevant documents by the executive branch if the matter subject to investigation involves such information. In a specific case, should there exist any dispute as to whether a particular matter to be investigated either relates to the independent exercise of powers by an organ of the State or falls within the scope of executive privilege, or whether any information subject to the executive privilege should be under investigation or made public, the Legislative Yuan and the other organs of the State should seek reasonable channels to negotiate and settle their differences, or establish applicable requirements and procedures by law, pursuant to which the judicial organ will hear and settle the dispute. Therefore, with respect to the provisions to the effect that no rejection may be made whatsoever as to matters involving national secrets or investigation secrets, appropriate amendments should be made so as to comply with the aforesaid intent.

#### 5. The Methods, Procedures and Compulsory Measures of the SCIT in Exercising the Investigative Power

[19] Every organ of the State, in exercising its power, should be subject to the law, which is the fundamental demand under the principle of rule of law. The same principle shall apply to the Legislative Yuan without exception in exercising its constitutionally-mandated powers. The exercise of the investigative power by the Legislative Yuan, depending upon the matters subject to investigation and the compulsory means used while conducting an investigation, may involve the imposition of restrictions on a variety of constitutionally-guaranteed fundamental rights of the people, including, without limitation, the personal freedom as safeguarded under Article 8 of the Constitution or the negative freedom of speech under Article 11 thereof (*see* J.Y. Interpretation No. 577), the freedom of privacy of correspondence under Article 12 thereof, trade secrets under Article 15 thereof, the right of privacy, etc. The right of privacy, though not clearly enumerated under the Constitution, is an

indispensable fundamental right protected under Article 22 of the Constitution because it is necessary to preserve human dignity, individuality, and the wholeness of development of personality, as well as to safeguard the freedom of private living space from interference and the freedom of self-control of personal information (*see* J.Y. Interpretations Nos. 509 and 535). Where the investigative power exercised by the Legislative Yuan may involve any restrictions imposed on the fundamental rights of the people, not only should there be a basis of law whose contents should be clear and definite, but it should also follow the principles of proportionality and due process of law. The first sentence of Article 8, Paragraph 4 of the SCITA provides, “In exercising its authorities, this Commission shall not be subject to any restrictions imposed by the National Secrets Protection Act, Trade Secrets Act, Code of Criminal Procedure and any other laws.” Furthermore, Article 8, Paragraph 6 thereof provides, “This Commission and its members, in exercising its or their respective authorities, may designate any matter and request any and all agencies, groups or individuals concerned to make explanations or provide assistance in respect of such matter. Those so requested shall not avoid, delay or reject any relevant request on the ground of national secrets, trade secrets, investigation secrets, individual privacy or on any other ground.” The foregoing provisions have granted the SCIT the authority to enforce its investigations. However, the said provisions, after eliminating the procedural safeguards granted to persons subject to investigation under existing laws, have failed to formulate applicable procedural rules, e.g., prior and sufficient notification to person(s) subject to investigation regarding the matters under investigation; statutory objectives of the investigation and the connection between such objectives and the matters under investigation; granting adequate preparation time to the person(s) under investigation; permitting the person(s) under investigation to accept legal assistance; permitting reasonable grounds for rejection of investigation, testimony and provision of confidential



documentation; appropriate mechanisms of examination and cross-examination, if necessary; option of open or *in camera* proceedings as per nature of the matters subject to investigation, etc. Despite the fact that Article 1, Paragraph 2 of the SCITA provides, “For matters not provided for by this Act, the provisions of any other applicable laws shall apply,” the phrase “the provisions of any other applicable laws shall apply” contained therein still does not alter the fact that the SCITA fails to provide adequately for the methods and procedures to be adopted by the SCIT in exercising its authorities. Thus, the requirement of due process of law is not satisfied. As to the issue of whether the imposition of restrictions upon the fundamental rights of the people is necessary to achieve the objective of ascertaining the truth, it would be difficult to decide if the principle of proportionality is complied with since the regulatory contents remain ambiguous at this point. Accordingly, both Article 8, Paragraph 4 and Article 8, Paragraph 6 of the SCITA have failed to satisfy the requirements of due process of law and the principle of clarity and definiteness of law.

[20] In order to exercise its investigative power effectively, the Legislative Yuan may, by resolution of its plenary session, impose reasonable pecuniary fines upon those who refuse to fulfill their obligations to assist in the investigation, which is a power ancillary to the Legislative Yuan’s investigative power. Nevertheless, in respect of the imposition of pecuniary fines upon those who refuse to fulfill their obligations to assist in the investigation, the means of imposing fines must be necessary to achieve the objectives of the investigation on the one hand, and the requirements and criteria for such fines must be specific and unambiguous on the other hand, so that any person subject to the fines may foresee the culpability of his or her act. In addition, the provisions in respect thereof shall also be subject to judicial review so as to determine whether they satisfy the demands of the principle of proportionality under Article 23 of the Constitution, as well as the principle of clarity and definiteness of law. Article 8,

Paragraph 7 of the SCITA provides, “In case of violation of the provisions of Paragraphs 1, 2, 3, 4 or 6 hereof, the head of the agency and individual in violation shall be subject to a fine of not less than TWD100,000 but not more than TWD1,000,000; in case of any continuous violation subsequent to any fine already imposed hereby, successive fines may be imposed.” In addition, the first sentence of Article 8, Paragraph 8 thereof provides, “Any head of agency, responsible person of any group or any individual concerned who rejects the investigation conducted by this Commission or any of its members and, in so rejecting, causes material impact, or who makes false statements, shall be subject to punishment pursuant to Paragraph 7 hereof.” The foregoing provisions have failed to specify the procedure under which the Legislative Yuan may exercise its power to impose such pecuniary fines. In addition, before the provisions of Article 8, Paragraphs 4 and 6 are amended according to the aforesaid intent, the requirements for the imposition of such fines upon those who refuse to fulfill their obligations to assist in the investigation are also ambiguous, which is contrary to the demands of due process of law and the principle of clarity and definiteness of law. Moreover, if any head of agency, responsible person of any group or any individual concerned rejects the investigation conducted by the SCIT or any of its members and, in so rejecting, causes material impact, or makes false statements, he or she shall also be “subject to prosecution and punishment pursuant to Articles 165 and 214 of the Criminal Code” according to the second sentence of Article 8, Paragraph 8 of the SCITA. The foregoing provision should mean that the prosecutorial agencies shall carry out investigations and prosecutions and the courts shall hold trials according to law, respectively, if any of the aforesaid persons is suspected of any crime after the investigation is conducted, but does not mean that the mere rejection of investigation or making of false statements by the said persons will suffice to meet the criminal elements of Articles 165 and 214 of the Criminal Code or any other offense. The said

provision should be reconsidered and revised accordingly. The compulsory measures ancillary to the investigative power exercisable by the Legislative Yuan should be limited to the imposition of pecuniary fines. Nevertheless, Article 8, Paragraph 9 of the SCITA provides, “This Commission and its members, in exercising its or their respective authorities, may prohibit any person under investigation or any other person related to such person from exiting the country.” The said provision, by granting the SCIT or its members the compulsory power to prohibit the persons concerned from exiting the country at its or their discretion, has gone beyond the necessary scope within which the Legislative Yuan may exercise its investigative power. Furthermore, such restrictions are not necessary to achieve the objective of ascertaining the truth, and thus are found to be contrary to constitutional intent provided for under Articles 10 and 23 of the Constitution.

[21] The provisions of the SCITA, to the extent that they are found to be contrary to constitutional intent, shall become null and void as of the date of the promulgation hereof.

[22] It should be noted that the Justices of the Judicial Yuan, in interpreting the Constitution, should do so based on the Justices’ certainty of the law, and are not bound by the views held by petitioners or agencies concerned as to how the law should be applied. This Court is of the opinion that the SCITA is an extraordinary piece of legislation passed by the Legislative Yuan for the purpose of creating the SCIT in an attempt to ascertain the truth regarding the 319 Shooting. The SCIT should be categorized as a special commission designed to assist the Legislative Yuan in exercising the investigative power. Therefore, it is not an organization that does not belong to any constitutional organ, nor is it a hybrid organ that exercises the legislative, executive, judicial and control powers simultaneously. Accordingly, this interpretation is premised on the investigative power of the Legislative Yuan, which forms the basis of argument. Detailed reasoning is thus

given above as to whether the applicable provisions of the SCITA that involve the organization and authorities of the SCIT, the scope of investigation exercisable by the SCIT, as well as the methods, procedures and compulsory measures for the SCIT are consistent with the Constitution. Therefore, it should be noted that either the claim that the SCIT does not belong to any constitutional organ, as held by the Petitioners; or the claim that the SCIT, an *ad hoc* organization created for a special mission, stands apart from the constitutional five Yuans, as embraced by the agency concerned, namely, the Legislative Yuan; or the statements made by the respective parties in support of their claims, must be granted or dismissed by this Court one by one.

[23] Article 78 of the Constitution provides that the Judicial Yuan shall interpret the Constitution and shall have the authority to unify the interpretation of laws and regulations. Article 79 of the Constitution and Article 5, Paragraph 4 of the Amendments to the Constitution provide that the Justices of the Judicial Yuan shall have the authority to interpret the Constitution and form a Constitutional Court to adjudicate matters relating to the dissolution of political parties violating the Constitution. While independently exercising the foregoing essential judicial powers mandated by the Constitution, the Justices of the Judicial Yuan shall be considered judges under the Constitution. The purposes of constitutional interpretation are to ensure the supremacy of the State's Constitution in the legal hierarchy in a constitutional democracy and to render binding judgments for the protection of fundamental rights of the people and the preservation of such fundamental constitutional values as a free, democratic constitutional order. In order to serve the purpose of the judicial power, when exercising the power of constitutional interpretation, the judiciary should avoid the situation where the outcome of the interpretation may be in favor of the petitioner, but no meaningful benefits accrue to him or her due to passage of time or certain other factors. The preventive system used to ensure the effectiveness of the interpretations given or

judgments rendered by the judiciary is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretation, trial, or civil, criminal or administrative litigation.

[24] Although the preventive system is a core function of the judicial power, it should still be subject to the principle of legal reservation and formulated by the legislators by means of enactment because it is of importance for fundamental rights and public interests. Before the legislature specifies by law any preventive system for the procedure of constitutional interpretation, this Court, in exercising the power of constitutional interpretation, may grant a declaration of preliminary injunction in the event that the continuance of the doubt or dispute as to the constitutional provisions at issue, the application of the law or regulation in dispute or the enforcement of the judgment for the case at issue may cause irreparable or virtually irreparable harm to any fundamental right of the people or any fundamental constitutional principle, that the granting of a preliminary injunction on the motion of a petitioner prior to the delivery of an interpretation for the case at issue may be imminently necessary to prevent any harm, that no other means is available to prevent such harm, and that, after weighing the pros and cons of granting a preliminary injunction, the granting of the injunction definitively has more advantages than disadvantages. As an additional note, although the petition for preliminary injunction prior to the delivery of an interpretation for the case at issue is not in conflict with the Constitution, it nevertheless is no longer necessary to examine the issue now that an interpretation has been given for the case at issue.

### **Background Note** by the Translator

This matter was brought to the attention of the Constitutional Court because ninety-three members of the Legislative Yuan, including Jian-Ming KE,

were of the opinion that the Act of the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting as promulgated and implemented on September 24, 2004, (hereinafter the “SCITA”) had transgressed the authorities granted to the Legislative Yuan by the Constitution. They, therefore, by more than one third of the incumbent members of the Legislative Yuan, duly initiated a petition for constitutional interpretation in respect of the questions about the meanings of the constitutional provisions governing their functions and duties, as well as of the question as to the constitutionality of the SCITA. Simultaneously, they petitioned the Constitutional Court for a preliminary injunction (referred to by the Petitioners and hereinafter as “expeditious disposition”) before an interpretation was delivered for this matter, declaring to the effect that the application of the SCITA be suspended for the time being. In respect of the petition for the constitutional interpretation, the Constitutional Court resolved to accept the case. Whereas, in respect of the petition for the expeditious disposition, the Constitutional Court, pursuant to Article 13, Paragraph 1 of the Constitutional Court Procedure Act, ordered that the representatives of the Petitioners, their agents *ad litem*, as well as the representatives appointed by the agency concerned, namely, the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting (hereinafter the “SCIT”), appear before the Constitutional Court for oral arguments on October 14, 2004. In addition, legal scholars were also invited to appear before the Constitutional Court to present their opinions as *amicus curiae*. Furthermore, in respect of the petition for the constitutional interpretation, the Constitutional Court ordered that the representatives of the Petitioners, their agents *ad litem*, as well as the representatives and agents *ad litem* appointed by the agency concerned, namely, the Legislative Yuan, appear before the Constitutional Court for oral arguments on October 27 and 29, 2004. In addition, representatives of the other agencies concerned, namely, the Control Yuan, Ministry of Justice and Ministry of the Interior, as well as legal scholars,

were also invited to appear before the Constitutional Court to present their opinions.

After the Constitutional Court declared parts of the Act of the Special Commission on the Investigation of the Truth in Respect of the 319 Shooting as promulgated and implemented on September 24, 2004 (hereinafter the “SCITA of 2004”) unconstitutional in this J.Y. Interpretation No. 585, the Legislative Yuan made amendments to the SCITA of 2004 on April 11, 2006, by passing Articles 2 to 4, 8, 11 to 13, 15 and 17 thereof, while adding Articles 8-1 to 8-3 and deleting Article 16, all of which were promulgated on May 1 of the same year. Nevertheless, eighty-seven petitioners continued to challenge the constitutionality of the new SCITA, arguing that said amendments remained unconstitutional on the grounds that the entire design of the SCITA was seriously flawed and could not fit within with the constitutional order of freedom and democracy. Hence, they petitioned the Constitutional Court to declare the SCITA unconstitutional as a whole. Simultaneously, they also petitioned the Court for a preliminary injunction before an interpretation was delivered in regard to the matter so as to preserve the constitutionally recognized interest and public interest.

In this Interpretation No. 585, the Constitutional Court affirmed the constitutionality of those articles regarding reports and public announcements, secondment of officials from administrative organs, as well as the majority of the other articles of the SCITA. However, it found those articles regarding pecuniary fines contrary to the intent of J.Y. Interpretation No. 585, and also found Article 11, Paragraph 3 thereof contrary to the principles of the separation of powers and checks and balances to the extent that an administrative organ had no right to refuse the secondment.

