

Response to questions regarding a major judicial discipline case

Supreme Prosecutors Office

I. Background

1. The Special Investigation Division (SID) of the Supreme Prosecutors Office, together with the Taipei District Prosecutors Office, directed an investigation by the Northern Mobile Team of the Investigation Bureau, Ministry of Justice, into a case involving collective corruption among judges of the Taiwan High Court. During a search on July 12, 2010, NT\$1.3 million in cash was found in the office of defendant Chen Jung-ho, as well as NT\$900,000 in Chen's residence. On Nov. 8 of the same year prosecutors applied to have the court impound the NT\$1.3 million as proceeds of corruption (the case is currently pending in the Supreme Court). Chen gave differing accounts as to the source of the NT\$900,000, and his spouse had no knowledge of it, so investigation of the money continued (100 SID No. 61). No quid pro quo that could explain the money was discovered, so the case was closed. However, as Chen could not clarify the source of the money, changing his testimony about it several times, the Taipei District Prosecutors Office was directed to investigate whether he should be charged with the crime of having property or income that cannot be reasonably accounted for.
2. In the course of the SID investigation of 100 SID No. 61, it was learned that Legislator Ker Chien-ming may have been involved in influence peddling in a parole case; funds from an unspecified source were deposited in his bank account, bringing him under suspicion of corruption. Thus an application was filed with the Taipei District Court for lawful surveillance on Ker's cellphone (number 0938-xxx-xxx), and the court issued the warrant (102 Sheng Jian No. 527). Further investigation revealed that the funds deposited in Ker's account came from a person unrelated to the case who had nothing to do with the parolee, and uncovered no conclusive evidence that Ker was involved in corruption. The case was closed on Sept. 5, 2013.
3. However, in the course of wiretapping on Ker's cellphone (number 0938-xxx-xxx), it was found that then Minister of Justice

Tseng Yung-fu and Chief Prosecutor of the Taiwan High Prosecutors Office Chen Shou-huang appeared to have been influenced by Wang Jin-pyng, president of the Legislative Yuan, and Ker to illegally instruct Prosecutor Lin Hsiu-tao of the Taiwan High Prosecutors Office not to appeal a not guilty verdict for Ker in a case involving breach of trust and violation of the Business Entity Accounting Act (Taiwan High Court 101 Ruling Yi-92 in the First Retrial by the Court of Appeals, 101 shang geng [1] No.92), resulting in the not guilty verdict being confirmed.

II. Questions that have been raised regarding the major judicial discipline case

1. Whether there was illegal wiretapping

A. Absolutely no illegal telephone surveillance on legislators

The SID, in the course of investigating the case involving corruption among judges of the Taiwan High Court, discovered possible involvement by Ker in influence peddling in a parole case, including the deposit of cash in his bank account, and thus applied to a judge of the Taipei District Court for a wiretap warrant according to the regulations of the Communication Security and Surveillance Act. Only after the court issued 102 Sheng Jian No. 527 wiretap warrant did surveillance on Ker's cellphone communications (number 0938-xxx-xxx) begin on May 16, 2013; each time the time limit on surveillance had expired, the SID applied to the Taipei District Court for an extension of the wiretapping, again according to the regulations of the Communication Security and Surveillance Act (CSSA). The telephone surveillance was thus conducted entirely according to the law; there was no illegal wiretapping. With regard to notification of the person whose communications were intercepted, when surveillance has concluded, prosecutors report to the court for the person to be notified (see Article 15 of the CSSA).

B. Absolutely no illegal wiretapping on Legislative President Wang Jin-pyng

While lawfully intercepting communications on Ker's cellphone (number 0938-xxx-xxx), it was found that conversations between Ker and Wang on June 28 and 29 appeared to involve interference in a judicial case. Only to check the content of these conversations were the telephone records of those involved obtained for verification. The SID carried out no communications surveillance on Wang's telephone(s). It can thus be seen that the SID is extremely cautious in using wiretapping in criminal investigations.

2. Whether the SID bypassed its superiors in reporting the case

A. While conducting the investigation of 100 SID No. 61, the SID learned that Ker may have been involved in influence peddling in a parole case; funds from an unspecified source were deposited in his bank account, bringing him under suspicion of corruption. Thus an application was filed with the Taipei District Court for the lawful interception of communications on Ker's telephone (number 0938-xxx-xxx), and the court issued wiretap warrant (102 Sheng Jian No. 527) approving the wiretapping. In the course of wiretapping on Ker's cellphone (number 0938-xxx-xxx), it was found that then Minister of Justice Tseng Yung-fu and Chief Prosecutor Chen Shou-huang of the Taiwan High Prosecutors Office appeared to have been influenced by Wang Jin-pyng, president of the Legislative Yuan, and Ker to illegally instruct Prosecutor Lin Hsiu-tao of the Taiwan High Prosecutors Office not to appeal a not guilty verdict against Ker in a case involving breach of trust and violation of the Business Entity Accounting Act (Taiwan High Court 101 Ruling Yi-92 in the First Retrial by the Court of Appeals, 101 shang geng [1] No.92), resulting in a final verdict of not guilty. President Ma had no prior knowledge of this case.

B. After the SID discovered the fact that Ker had gone through Wang, Tseng and Chen to influence Lin, two months' of

investigation revealed that Lin did not abuse her power by having knowledge that Ker was guilty while not prosecuting him, nor was there evidence of quid pro quo money. Thus it was determined that this major judicial discipline case did not entail any criminal violation of the law, and only involved responsibility for breach of administrative duty, in which the minister of justice was personally involved. Prosecutor-General Huang Shyh-ming therefore could not report on the case to his superior, the minister of justice.

C. This major judicial discipline case involves the president of the Legislative Yuan and a minister under the Executive Yuan, as well as having great influence on the nation and society. According to Article 44 of the ROC Constitution, “In cases of dispute between two or more Yuan other than those concerning which there are relevant provisions in the Constitution, the President may call a meeting of the Presidents of the Yuan concerned for consultation with a view to reaching a solution.” Thus in accordance with the system of checks and balances Huang reported the case to the president. This is the only case Huang has reported to the president since taking office April 19, 2010.

3. Whether classified information was disclosed or guidelines for the confidentiality of investigations were violated

A. Article 245 of the Code of Criminal Procedure regarding the confidentiality of investigations; News Handling Guidelines for Prosecutorial, Police and Anti-Corruption Agencies Investigating Criminal Cases; and the Guidelines on the Confidentiality of Investigations drawn up jointly by the Judicial Yuan and Executive Yuan Dec. 5, 2012, all apply to the conduct of criminal investigations. Only after Prosecutor-General Huang learned Aug. 31, 2013, that prosecutors had finished questioning Lin and concluded that the influence peddling case involved breach of administrative duty but no criminal violations, and was not related to the original case of corruption by judges or to the parole case

involving Ker, did he report to the president. There was clearly no violation of the confidentiality of the investigation.

B. Moreover, according to Paragraph 3, Article 245 of the Code of Criminal Procedure, Item 3 of the Guidelines on the Confidentiality of Investigations and Item 4 of the News Handling Guidelines for Prosecutorial, Police and Anti-Corruption Agencies Investigating Criminal Cases, before the completion of criminal investigations, the investigating agency may release appropriate news for the purpose of serving the public interest or protecting legal rights. For example, with regard to the Guang Da Xing No. 28 incident in which personnel on a Philippine government vessel shot and killed a Taiwanese fisherman, the MOJ spokesman twice—on May 10 and May 19, 2013—released related news before the Pingtung District Prosecutors Office completed its investigation Aug. 17, releasing important evidence in the case for the public good. These announcements were not in violation of regulations on the confidentiality of investigations. Thus Huang’s report to the president was merely to explain that the case involved influence peddling in a breach of administrative duty, a much less serious circumstance than the criminal investigation in the Guang Da Xing No. 28 incident, and so naturally there was no violation of the confidentiality of an investigation.

C. The case in which Yeh Sheng-mao, then director-general of the Investigation Bureau, gave then President Chen Shui-bian details about a probe into overseas money laundering by Chen’s family did involve a violation of the confidentiality of the investigation, as Yeh divulged information to Chen, a suspect in the case. In contrast, President Ma Ying-jeou was in no way involved in this major judicial discipline case. Analogies drawn by the media to the Yeh case are thus entirely inappropriate.

4. Whether public disclosure of the wiretapping transcript violates the Communication Security and Surveillance Act (CSSA)

- A. Pursuant to Paragraph 5, Article 5 of the CSSA and Paragraph 3, Article 6 of the same law, in cases of wiretapping in serious violation of the stipulations of Article 5 and Article 6, the content obtained or its derivative evidence is inadmissible as evidence in judicial investigations, trials or other procedures. According to an inverse interpretation of the aforementioned regulations, wiretap content obtained by surveillance conducted in accordance with Article 5 and Article 6 of the CSSA, or from wiretaps conducted in violation of Article 5 and Article 6 of the CSSA where the circumstances are not serious, is admissible as evidence in judicial investigations, trials or other procedures. “Other procedures” include the impeachment procedure conducted by the Control Yuan in accordance with the Control Act, disciplinary procedures conducted by the Legislative Yuan Discipline Committee in accordance with the Legislator Demeanor Law, and the Prosecutor Evaluation procedure of the Judges Act. This case involves content obtained by wiretap carried out under the court-issued 102 Sheng Jian No. 527 wiretap warrant, and does not violate the conditions stipulated in Article 5 and Article 6 of the CSSA. The content obtained by wiretap is therefore admissible as evidence in the aforementioned impeachment, disciplinary and prosecutor evaluation procedures; and, according to a proviso in Article 18 of the CSSA, information obtained by wiretap may be provided to other agencies, organizations or individuals.
- B. The aforementioned wiretap content is admissible as evidence in impeachment, disciplinary and prosecutor evaluation procedures, thus on Sept. 5, 2013, following the signing off on a case in which Legislator Ker Chien-ming was involved in lobbying to seek parole in violation of the Anti-Corruption Statute, the SID forwarded the pertinent file containing the aforementioned wiretap transcripts to each of the competent agencies for processing. However, since this case contained

illegalities involving the president of the Legislative Yuan, the chief legislative whip of the opposition party, the minister of justice, and the chief prosecutor in the Taiwan High Prosecutors Office, it fell into the category of “major judicial disciplinary incident.” With reference to Guideline 4, Paragraph 1, first section in the News Handling Guidelines for Prosecutorial, Police and Anti-Corruption Agencies Investigating Criminal Cases, in order to inform the public about the evidentiary basis for the breach of administrative duty by Legislative Yuan President Wang Jin-pyng and the three other suspects, wiretap content of one cellphone call between Legislator Ker Chien-ming and his defense lawyer Tsai XX, and two calls with his administrative assistant Hu XX, as well as two calls with Wang, were publicly disclosed to serve as proof. This least harmful approach was adopted to meet the public right to know, and the requirements of the principle of proportionality are naturally distinct from the term “without proper cause” referred to in Article 27 of the CSSA.

- C. Paragraph 1, Article 25 of the CSSA stipulates that “Those who are clearly aware that information has been obtained by illegal surveillance and disclose or provide it without proper cause are subject to incarceration for up to three years.” The SID, in accordance with the stipulations of the CSSA, applied to the Taipei District Court for issuance of a wiretap warrant (102 Sheng Jian No. 527), by which wiretapping was carried out on telephone number 0938-xxx-xxx used by Ker. The transcript of the wiretaps obtained was not information obtained illegally, so there is no issue of being in violation of Article 25 of the CSSA.
- D. In accord with judicial practice, when prosecutors conclude an investigation and bring charges, the documents pressing charges and wiretap transcripts bearing evidence of the commission of a crime are publicly disclosed. Since the wiretap transcripts of June 28 and June 29 in this case involve evidence of breach of duty under relevant administrative regulations, based on consideration of the public interest and to

satisfy the right of the public to know, the public disclosure could be made at the conclusion of the criminal investigation.

- E. Before the Supreme Prosecutors Office concluded its investigation of 100 SID No. 61 on Sept. 5, 2013, there were media reports that “a prosecutor with the Taiwan High Prosecutors Office was questioned by the SID, and a case bigger than the Anti-Corruption Self-Discipline Campaign is brewing.” Therefore, the Supreme Prosecutors Office issued a press release on this case Sept. 6 to prevent the media from first breaking the story, which could have resulted in a misunderstanding in society that this agency had deliberately leaked it and moreover violated its duty in the process of deliberation and evaluation, thus continuing to besmirch the honor of the judiciary in other influence peddling cases. In making the case public, the Supreme Prosecutors Office was also publically declaring its initiative in investigating illegalities and its determination to set judicial discipline in order.

5. Whether criminal investigation procedures were applied to investigate breach of administrative duty

- A. There is no way to judge on the surface whether any illegal behavior is a breach of duty under administrative law or a violation of criminal law. An investigative procedure must be undertaken before such a judgment can be made. This is also the case for influence peddling. Criminal investigations are fluid; discovery of concrete evidence of criminal illegalities is not a foregone conclusion. If it is determined that the investigation results in no suspicion of the commission of a crime, the prosecutor should take action to write up a report and close the case or decide not to press charges. However, when there is no involvement of the commission of a crime and the case only constitutes breach of administrative duty, when there is explicit stipulation of what is punishable under administrative law, the illegality cannot be disregarded and the portion involving breach of administrative duty should be

forwarded to the relevant authorities for handling. Item 9 of the Supreme Prosecutors Office's Guidelines for Implementing the Anti-Corruption Self-Discipline Campaign stipulates that "upon the conclusion of investigations into cases where these guidelines pertain, if no crime involving a judicial official is discovered, but there is negligent behavior, it shall be reported to the Ministry of Justice or Judicial Yuan for handling."

- B. In the course of investigating 100 SID No. 61, the SID discovered that after Ker was found not guilty in Taiwan High Court (Taiwan High Court 101 Ruling Yi-92 in the First Retrial by the Court of Appeals, 101 shang geng [1] No.92), he was involved in lobbying for his case not to be appealed, resulting in the not guilty verdict being confirmed. To investigate whether during this process there was any corruption or malfeasance, the SID prosecutor ordered the transfer of the pertinent case documents, witness depositions and investigative evidence, all of which was standard practice with a legal basis in the Code of Criminal Procedure.
- C. After investigation by the SID, it was determined that this particular case of lobbying the judiciary did not involve a public official knowingly causing a guilty person not to be prosecuted, nor was there evidence of quid pro quo money. It was instead a major judicial discipline case and belonged within the scope of administrative responsibility. To avoid public suspicion that the SID applied criminal investigation procedures to investigate suspicions of a breach of administrative duty, and to determine that the evidence is explicit of such a breach, Wang, Ker, Tseng and Chen were not summoned by the prosecutor office. This suffices to attest that the SID has strictly followed the law and in no way abused its authority.

6. Whether the SID exceeded its jurisdiction

In the course of investigating 100 SID No. 61, the SID discovered that after Ker was found not guilty in Taiwan High Court (Taiwan

High Court 101 Ruling Yi-92 in the First Retrial by the Court of Appeals, 101 shang geng [1] No.92), he was involved in lobbying for his case not to be appealed, resulting in the not guilty verdict being confirmed. Analysis of the content of the wiretapping transcript involving Wang and Tseng showed that if an abuse of power occurred in which improper benefits including money or a decision not to prosecute were offered, then malfeasance was committed under the Anti-Corruption Act and the Criminal Code. Where Item 1, Paragraph 1 of Article 63 of the Court Organizational Act applies, involving corruption by one of the heads of the five Yuan or the head of a central government agency, the SID has the authority to investigate. As per the stipulations of Article 7 of the Code of Criminal Procedure, Chief Prosecutor Chen Shou-huang of the Taiwan High Prosecutors Office is also being investigated. No part of the investigation has exceeded the limits of the law.

7. Whether the Code of Criminal Procedure was violated during questioning

- A. While carrying out its investigation related to 101 SID No. 61, the SID prosecutor questioned witnesses Lin Hsiu-tao and Chen XX, and audio and video recordings were made of the proceedings in accordance with the Code of Criminal Procedure. The witnesses were only questioned after signing an affidavit. The witnesses signed transcripts following questioning and after making sure there were no errors. The transcripts match the video and audio recordings.

- B. Lin later went before the media and accused the SID of twisting her words and intimidating her. She also claimed that she could not recall whether in her statement she had implicated Chen Shou-huang, that the interrogation room had been too cold, and that the SID had made her go into the room for questioning empty-handed. In fact, on the night in question, Aug. 31, she did not at any time state that the room was too cold. For her second round of questioning, she put on a jacket, and during that time, when asked if a superior had lobbied for the case not to be appealed, she first answered in the negative, and later said, "I refuse to answer." She then stared at the video monitor and requested that this response be written down. When repeatedly asked by the

prosecutor why she had changed her response to a refusal to answer, she said simply, “If I gave you reasons, it would be tantamount to giving you the answer.” The prosecutor then decided to take a recess so that the witness could have a meal. After eating, Lin asked for time to pray. The SID Security Office provided her with a Bible.

Following prayer and having contacted fellow congregants, Lin returned to the interrogation room and said, “Chief Prosecutor Chen Shou-huang told me that Legislator Ker Chien-ming had sought him out, and that for a case I was about to handle, Ker Chien-ming believed it would be best if it were not appealed, and that Legislator Ker believed that it was not a very important or serious case; the chief prosecutor advised me not to appeal; the chief prosecutor mentioned that given budgetary pressures, things should be done as Legislator Ker wished.” The witness was calm as she delivered her testimony—this is borne out by audio and video recordings, as well as the written transcript. Lin’s testimony took place prior to Sept. 6, when the Supreme Prosecutors Office released its investigation report. It was only after the report’s release, when she came under public scrutiny, that she sought to recant her testimony. This all calls into question her claims that the SID prosecutor twisted her meaning or intimidated her.

8. Whether the SID is acting as a political hired gun

In tapping the cellular phone used by Ker with number 0938-xxx-xxx, the SID discovered that both Tseng and Chen had been lobbied by Wang and Ker, and thereafter illegally instructed Taiwan High Prosecutors Office Prosecutor Lin Hsiu-tao not to appeal the not guilty decision for Ker in Taiwan High Court 101 Ruling Yi-92 in the First Retrial by the Court of Appeals (101 shang geng [1] No.92), in the lawsuit involving breach of trust and violation of the Business Entity Accounting Act, thus finalizing the verdict. Wang and Tseng, both members of the ruling party, were, respectively, president of the Legislative Yuan and minister of an Executive Yuan agency, while Ker was minority caucus whip in the Legislature. This shows that the SID acted to uphold justice, without regard for the political affiliation, identity, or status of persons involved.