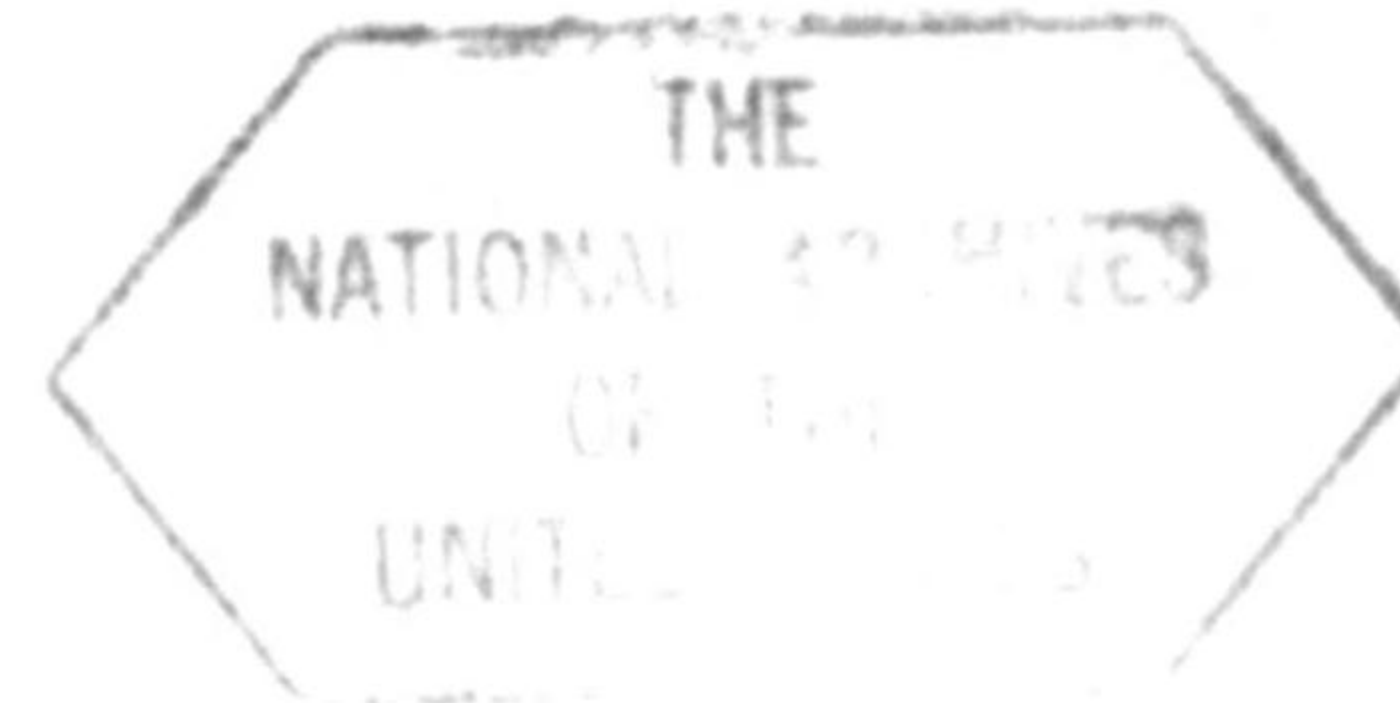


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GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

LEGAL SECTION

NOVEMBER 1949

CIVIL LIBERTIES IN THE NEW JAPAN

A lecture was given in Urawa, Saitama Prefecture, by the Chief, Legislation and Justice Division, Legal Section, on the occasion of the first anniversary of the Universal Declaration of Human Rights as adopted by the General Assembly of the United Nations. After having welcomed the audience, the speaker emphasized that there exists beyond the citizenship of the local community, prefecture and nation, a citizenship of the world, the recognition of which lay at the very heart of the International Bill of Rights, as the declaration has been termed. He continued:

"The underlying philosophy is not new. Thinkers of all nations have at all times expressed the idea that human nature is, after all, basically the same throughout the world, regardless of the difference in governmental systems and customs of the nations. Everybody who has lived in many countries and observed people of different race, color, and nationality is forced to admit that, with slight variations, human beings have very much in common their pleasures and sufferings, as well as hopes and fears. In the metaphysical realm advanced religions have early realized that the relationship between God and man did not allow any restrictive interpretation. Thus Christianity in its pure doctrine teaches that before God all men are equal. In the field of jurisprudence this philosophy resulted in the school of so-called natural law which has been described as that law which God, the sovereign of the Universe, has prescribed to all men, not by any formal promulgation, but by the eternal dictate of reason alone. As the living embodiment of the collective reasoning of civilized mankind, this natural law which is moral rather than legal by nature and based on universal human needs may be called the precursor of international law. The development of the concept of fundamental human rights is a logical consequence of this theory. The pioneers of enlightenment, men like Burke, Rousseau and Voltaire, caused a mighty ideological revolution and thus paved the way to the political revolutions in colonial America and France. The two maxims of their philosophy, dignity of the individual and equality of all men, combined with an ardent protest against any kind of oppression, found a fertile soil in the minds of the political leaders of these two countries which both suffered from the evils of an outworn regime.

Jefferson gave these ideas eloquent expression in one of the most remarkable documents of political history, the Declaration of Independence. It solemnly states that all men are created equal and entitled to certain inalienable rights. It emphasizes the right of the people to overthrow a tyrannical government. Here the ideas of the eighteenth century were transformed into political reality. The influence of this doctrine long survived the events which gave birth to it. Not only its French counterpart, the Declaration of the Rights of Man and Citizen, but the subsequent constitutions of democracies of all countries show the imprint of Jefferson's spirit. They all recognize certain fundamental human rights such as freedom of thought and conscience, of religion, speech, press and assembly.

Still these constitutions remain national documents. The great innovation of the International Bill of Rights lies in the fact that it has established principles and standards which are to be applied not only by one nation under domestic law, but by all member nations under a new type of international law. The Director of the Division of Human Rights of the United Nations, John P. Humphrey, emphasizes this novel character of the bill by saying

"That the United Nations is trying to do is revolutionary in character. Human rights are largely a matter of relationships between the state and individuals, and therefore, a matter which has been traditionally regarded as being within the domestic jurisdiction of states. What is now being proposed is, in effect, the creation of some kind of supernational supervision of this relationship between the state and its citizens."

The Declaration, itself, is not in any form of a treaty or international agreement and, accordingly, it does not purport to be a statement of the law or of a legal obligation, but the principles set forth in the Declaration will, no doubt, have considerable psychological and moral influence in the world. At the present time the draft of an international Covenant on human rights is being worked out and a great many problems have to be solved in finding appropriate ways and means to make the international safeguards of fundamental human rights binding upon all member nations. This task is a delicate one because to make the principles binding will require the nations which are parties of the agreement to give up part of their sovereignty. One way to achieve this goal would be to create the obligation for all United Nations to integrate the basic of the International Bill of Rights into their own constitutions and bodies of law.

Ladies and gentlemen, let us now turn to the situation in Japan. Although Japan is not yet admitted to the United Nations, her new Constitution clearly reflects the realization that Japan belongs to the larger international society. The preamble emphasizes that the Japanese people desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. It is, furthermore, recognized that all peoples of the world have the right to live in peace, free from fear and want. It appears almost an anticipation of the International Bill of Rights when the preamble continues: "We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their relationship with other nations."

If we compare Chapter III of the Constitution which provides for the rights and duties of the people, with the International Bill of Rights, we arrive at the conclusion that the Japanese people can be proud of their modern and advanced basic law. While the language naturally differs from that of the Universal Declaration of Human Rights, there is no important principle of the international instrument omitted in the Japanese document, as far as can be said without thorough study. When Japan one day joins the United Nations and becomes a party to a Covenant making these principles binding, no substantial change in the Japanese Constitution would be required.

Let me give you the high lights of the International Bill of Rights and let me discuss how the Japanese Constitution and law compares with it.

The preamble recognizes the inherent dignity and the equal and inalienable rights of all members of the human family and states that such recognition is the foundation of freedom, justice and peace in the world. Reference is made to the fact that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. Freedom of speech and belief as well as freedom from fear and want are mentioned as the highest aspiration of the common people. Protection of human rights by the rule of law is declared essential if man is not to be compelled to have recourse as a last resort to rebellion against tyranny. The peoples of the United Nations reaffirm their faith in fundamental human rights and pledge themselves to achieve their promotion. Therefore, "the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction." The first Article of the Bill generally states that all human beings are born free and equal, in dignity and rights; that they are endowed with reason and conscience and should act toward one another in a spirit of brotherhood. Article 2, elaborates on the principle of equality with regard to the application of the international instrument. It explicitly bans any discrimination of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

While these provisions are still dealing with the extent of the applicability of the Declaration, the subsequent Articles set up the standards to be followed by the member nations in their domestic policies and legislation.

Article 3 establishes the safeguard that everyone has the right to life, liberty and security of person, and Article 4 prohibits slavery and servitude. The Japanese Constitution emphasizes the people's right to life, liberty and pursuit of happiness and also provides that no person shall be held in bondage of any kind or in involuntary servitude, except as punishment for crime. Such safeguard was particularly necessary in a country, where trade with women and children had been a frequent phenomenon. The security of the person has been specifically guaranteed by the provision

that no person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed except according to procedure established by law. This principle has been implemented by the Habeas Corpus Law which the Supreme Commander hailed by saying that with the provision of the privilege of the Writ of Habeas Corpus Japan now assumes a place among those peoples of the world who live in the safeguards of the sanctity of individual right, liberty and human dignity. Also, Article 5 of the International Bill of Rights, which provides that no one shall be subjected to torture or to cruel or inhuman or degrading treatment or punishment has its counterpart in the Constitution of Japan. To be sure, the Criminal Code provided for the punishment of officials who used third degree methods, but actually the law was not always applied in practice.

The principle in Article 6 that everyone has the right to recognition everywhere as a person before the law means in substance the same as the Japanese provision that all of the people shall be respected as individuals.

Article 7 establishes the principle of equality before the law which is the outstanding feature of the Japanese Constitution. I may remind you of the fact that both principles, dignity of the individual, as well as equality before the law, have been implemented, particularly in the Civil Code which lifts the individual in his domestic relations to a dignified and independent position and abolishes all discrimination against women as wives and mothers.

Article 6 of the International Bill of Rights gives the individual the right to an effective remedy by the competent national tribunals of acts violating the fundamental rights granted him by the Constitution or by law. The Constitution of Japan not only provides that no person shall be denied access to the courts, but confers upon the Supreme Court the power to determine the constitutionality of any law, order, regulation or official act. This power of judicial review which authorizes the Supreme Court to invalidate any law or administrative act contrary to the principles of the Constitution may be characterized as the very essence of democratic government by law. It remains to be seen how Japan's highest tribunal will live up to its task to be the guardian of the Constitution.

Article 9 of the International Bill of Rights, according to which no one shall be subjected to arbitrary arrest, detention or exile, is another aspect of the security of a person, which I have already covered.

Article 10 provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. The Constitution of Japan gives the accused in criminal cases the right to a speedy and public trial by an impartial tribunal and beyond that vests the whole judicial power in the regular courts. It furthermore provides that no extra-ordinary tribunal be established, nor shall any organ or agency of the executive be given final judicial power. The Administrative Litigation Law even opens the way to challenging the legality of any administrative act in the regular courts.

As to criminal procedure, the rule in Article 11, paragraph 1, that everyone charged with a penal offense has the right to be presumed innocent until proved guilty has been integrated into the Constitution of Japan. This is an extremely important rule against which Japan has sinned in the past. While in theory it applied to the Japanese criminal procedure, the actual attitude has been all too frequently that being indicted is almost identical with being convicted. It is to be hoped that with the changed relationship between public procurators and courts and with the rules of evidence adopted in the new Code of Criminal Procedure, this attitude will undergo a basic change. The second paragraph of Article 11 is directed against retroactive punishment which is also forbidden under the Japanese Constitution.

Article 12 provides that no one shall be subjected to arbitrary interference with his private family, home, or correspondence, nor to attack upon his honor and reputation. Similar safeguards can be found in the Japanese Constitution which establishes the right of all persons to be secure in their homes, papers, and effects, against entries, searches and seizure, except upon judicial warrant issued for adequate cause. The protection of honor and reputation while not explicitly mentioned in the Japanese Constitution is amply provided by the provisions of the Criminal Code, dealing with defamation and libel. It may be remarked that the Japanese Constitution provides many additional important safeguards for those involved in criminal prosecution, safeguards which are implemented and greatly enhanced in the new Code of Criminal Procedure.

Freedom of movement and residence, as provided in Article 13, of the Bill has its counterpart in the Japanese Constitution. The right to seek and enjoy in other countries asylum from persecution connected with political offenses or acts contrary to the purpose and principles of the United Nations (Art. 14) has international character and has up to now been the subject of international treaties. Under the Bill it will become the general rule.

Article 15, par. 1, confers upon everyone the right to a nationality. The right of a person to change his nationality, as mentioned in par. 2 of this article, is specifically guaranteed by the Japanese Constitution.

Article 16 gives the right to marry and to found a family to men and women of full age without any limitation due to race, nationality or religion. The free and full consent of the spouses, and their equal rights in marriage are emphasized. Similar insistence on mutual consent and equal rights of husband and wife is shown in the Constitution of Japan and in her revised Civil Code.

Article 17 contains safeguards with regard to private property. While it prescribes that no one shall be arbitrarily deprived of his property, the Constitution of Japan goes further in providing that property rights shall be defined by law in conformity with the public welfare and that property may be taken for public use upon just compensation only.

Article 18 through 20 establish safeguards for the freedom of thought, conscience and religion; for the freedom of opinion and expression; and for the freedom of peaceful assembly and association. All these civil liberties which are the very essence of democracy have been firmly established in the Constitution and in various statutes of Japan. I may also refer to the extensive labor legislation and to the fact that the Japanese Constitution explicitly protects academic freedom.

Article 21 sets forth the principle that everyone has the right to take part in the government of his country directly or through freely chosen representatives. This has its counterpart in the Japanese provision that the people have the inalienable right to choose their public officials and to dismiss them. The additional right for everyone of equal access to public service in his country is not specifically listed in the Constitution of Japan. Equal access obviously does not mean that no requirements of education and qualification may be made. The National Public Service Law is based on the merit system and would, therefore, satisfy the requirements of equal access. The further requirement that the will of the people shall be the basis of the authority of government has found its expression in the announcement of the Japanese Constitution that sovereignty resides with the people. Universal and equal suffrage held by secret vote has also been provided in Japan.

Article 22-25 are concerned with social matters such as the right to social security, the right to work, to free choice of employment; favorable working conditions and remuneration; equal pay for equal work; the right to form and join trade unions for the protection of one's interests; the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay; and the right to a decent living standard. Motherhood and childhood are entitled to special care and assistance. Most of these rights, sometimes defined in different language, have been provided either in the Japanese Constitution or by the Labor Standard Law.

Article 26 establishes the right of everyone to education, which shall be free at least in the elementary and fundamental stage. Elementary education shall be compulsory. Similar provisions exist in the Japanese Constitution which, however, does not go into the objectives of education, as the International Bill of Rights does by requiring that education be directed to the full development of human personality and to the strengthening of respect of human rights and fundamental freedoms; that it shall promote understanding, friendship and tolerance among all nations, racial and religious groups and establish a foundation for the United Nations for the maintenance of peace. Broad principles of the same nature are expounded in the Japanese Fundamental Law of Education.

Article 27 emphasizes the right freely to participate in the cultural life of the community; to enjoy the arts and to share in scientific advancement and its benefits. In addition, it protects the right of everyone to the protection of moral and material interests resulting in any scientific, literary or artistic production of which he is the author. The participation in the cultural life and the enjoyment of arts and science may be considered as covered by the reference in the Japanese Constitution to the pursuit of happiness, while the protection of material interests resulting from intellectual production is probably included in the guarantee of private property.

Article 28, which declares that everyone is entitled to a social and international order in which the rights and freedoms set forth in the International Bill of Rights can be fully realized, is tied up with the international aspect of the bill.

Article 29 emphasizes that everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. The Japanese Constitution, which also points out that the people have not only rights but also duties explicitly contains the admonition that the freedoms and rights granted the people shall be maintained by their constant endeavor and that they shall refrain from any abuse of these freedoms and the rights and shall always be responsible for utilizing them for the public welfare. The occasion today has naturally brought about emphasis upon the people's fundamental rights rather than upon their duties. However, it must be kept in mind that no democratic society is conceivable unless the citizen has reached the maturity of mind and attitude, which enables him to realize the irresponsible disregard of the interests of his fellowman and of the community at large makes him forfeit the rights to which he is legally entitled. This should be seriously considered by those who aim at the destruction of such democratic society by using the tools of democracy and by abusing their constitutional rights.

Finally, Article 30 contains the important reservation that nothing in this Declaration may be interpreted as implying for any states, groups or persons any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms set forth.

This brings to a close my comparison which I regret had to be very brief and somewhat superficial. However, I want to draw the gratifying conclusion that in my personal opinion your Constitution and your reformed law would successfully pass any test given to secure their compliance with the newest and most advanced safeguards of civil liberties integrated in the International Bill of Rights, on which more than fifty nations of the world have agreed. This lifts your own basic law beyond the domestic realm and indicates that your representatives who enacted the Constitution were inspired by a spirit which recognized the supernational truth, that certain fundamental human rights are inherent to all men regardless of nationality and race.

The Japanese legislators have implemented the constitutional safeguards into a great number of basic codes. However, it behooves us all to realize that freedom, in the last analysis, cannot be achieved only by the adoption of good laws, or a noble constitution or an international covenant. There can be no doubt that, in spite of them, violations of civil liberties are bound to occur frequently and almost anywhere in the world either by governmental interference or by action of individuals. No document can, in itself, prevent this. Such documents are the essential tools to achieve liberty, but they are tools only, nevertheless. From the outset it was clear to the peoples who had achieved some measure of freedom that their eternal vigilance is the price of liberty. Thus, there remains a final test to be taken by the Japanese people themselves. They have to convince the world that the Bill of Rights in their Constitution has become a living instrument which they understand and use wisely and courageously. That can only be achieved by a continuous endeavor of every single man and woman to learn and to develop their personalities to conscious and responsible citizenship. You, the people, have become the sovereign of the nation and with this you have assumed the responsibility to see to it that your government applies the lofty standards set in the Universal Declaration. In doing so you will help open the door for your country to the great society of the world.



*file*

*Opinion  
File  
15 Sept*

PETITION

Date: \_\_\_\_\_

SUBJECT: On the Amendment of Daily Life Protection Law.

TO : General of the Army Douglas MacArthur,  
Supreme Commander for the Allied Powers.

FROM : Shoze Okada, Secretary General of Mayor of Ward Council,  
Special Ward Council of Tokyo.

*Kiyoshi Murase.*

*Representative of mayors  
of 23 Special Wards Council  
in Tokyo.*

## I. SUBJECT:

On the Amendment of Daily Life Protection Law.

## II. SUBSTANCE:

To amend the Daily Life Protection Law in order to apply the same law to a special ward as well as to city, town or village.

## III. EXPLANATION:

At present, the daily life protection in a special ward is the responsibility of Metropolitan Governor, and those facilities are carried out by the metropolis depending on the provisions of Art.4 of Daily Life Protection Law. In this flat and huge city of Tokyo, however, due to the concentrical execution and management of this work; the direction and supervision can not reach all of the people; the efficiency of work might be naturally lowered; and that operational expense, increased. Furthermore, that policy is carried out so uniformly and self-satisfactorily, that it may be very hard to expect any excellent effect of its administration that is conformity with the speciality of each area.

For the purpose of eliminating the vice of administrative concentration and making the administration of daily life protection proper, appropriate and more efficient in this great city it may be better to let a mayor of special ward and the special ward recognized as a fundamental public body in consequence with the enforcement of Local Autonomy Law execute and carry out those works of daily life protection and their facilities in each special ward under the criticism and supervision of habitants.

Therefor, your special attention is heartily desired to amend the Daily Life Protection Law as the substance given above. We wish to petition your favorable effort to establish a real local self-government based on the spirit of Democracy.

The Essential Factors of  
Daily Life Protection Law

1. The Protective Organization:

- (1) A head of city, town or village of the habitation of the person who need to be protected. (Art.4)
- (2) A head of city, town or village of present habitation in case that the dwelling is not clear or no dwelling is. (Art.4)
- (3) A welfare committee shall assist a head of city, town or village in regard to the protective affairs. (Art5)

2. The Protective Facility:

- (1) Kind: (Art.6)
  - a). To offer the lodging.
  - b). Child nersery.
  - c). Private work agency.
  - d). Other facilities as to the protective work.
- (2) Founder: (Art.7)
  - a). A city, town, village or others.

### 3. The Kind of Life Protection:

- (1) Aids of daily life. (Art.11)
- (2) Physical Services. ( " )
- (3) Assisting the childbirth. "
- (4) Aids of livelihood. "
- (5) Aids of funerals and festivals. "

### 4. The Power of a Head of City, Town, or Village. (concerning the protection)

- (1) To accommodate, or to entrust to accommodate into the protective facility. (Art.12)
- (2) To appoint the person who execute the duty of guardianship, or to execute it by himself in case that the person accommodated or entrusted to accommodate is a minor, or has no person who has a parental authority or execute the duty of guardianship. (Art.15)
- (3) To indicate all affairs concerning the work and other necessities to maintain his livelihood for the person who needs to be protected. (Art.16)
- (4) To execute the funeral and festival in case that the person who need to be protected dies, or no person who executes them is. (Art.17 Par.2)

### 5. The Burden of Operational Expense.

- (1) Protective Expense.

To be a burden of city, town or village (Art.18, 19). But 10% of its amount shall be added by To, Do, or Prefecture (Art.28); and 80%, by National Treasury. (Art.29).

- (2) The Expense that a Welfare Committee shall do his duty.

To be a burden of city, town or village (Art.23). But 25% of its amount shall be aided by To, Do, or Prefecture (Art.28); and 80%, by National Treasury. (Art.29)

(3) The Office Business Expense of Protective Facility.

To be a burden of city, town, or village in case that the facility was established by the city, town, or village (Art.24). But 10% of its amount shall be aided by To, Do, or Prefecture. (Art.28); and 80%, by National Treasury. (Art.28).

(4) The Accomodation Expense of Protective Facility.

To be a burden of city, town or village in case that the facility was established by the city, town, or village. But 25% of its amount shall be aided by To, Do, or Prefecture. (Art.27); and 50%, by National Treasury. (Art.31).

6. The Position of Special Ward:

The power of protective facility establishment is given to a special ward depending on Art.7, Para.2 (Note1); but in regard to the execution of protection a mayor of special ward is excluded from its application depending on Art.4 (Note. 2).

(Note 1)

Art.7.

When a head of city, town or village wish to establish those protective facilities, he should get the authorization of Local Governor in regard to those equipments.

When the others except a city, town, or village (excluded To, Do, or Prefecture; and rest same); they should get the authorization of Local Governor.

(Note 2)

Art. 4.

The protection shall be executed by a head of city, town, or village (the Governor of Tokyo Metropolis -- in case of the area in which special wards exist), of which the person who need to be protected is living; but in case that no habitation or it is not clear, by the head of city, town or village of present habitation.

PETITION

Date: \_\_\_\_\_

SUBJECT: On the application of City Planning Law and the Ordinance for the Enforcement of same to a Special Ward.

TO : General of the Army Douglas MacArthur,  
Supreme Commander for the Allied Powers.

FROM : Shozo Okada, Secretary General of Mayor of Ward Council,  
Special Ward Council of Tokyo.

*Kiyoshi Murase.*

*Representative of Mayors  
of 23 Special Wards Council  
in Tokyo.*

## I. SUBJECT:

On the application of City Planning Law and the Ordinance for the Enforcement of same to a Special Ward.

## II. SUBSTANCE:

To amend all related laws, and ordinances in order to apply the City Planning Law and the Ordinance for the Enforcement of same to a special ward and to let a mayor of special ward and the member of ward assembly take a part in the City Planning Conference as the committee.

## III. EXPLANATION:

A special ward is excluded from the application of City Planning Law and Ordinance for the Enforcement of same depending on Art.4 of Ordinance for the Enforcement of Local Autonomy Law. But, in such a flat and huge city like Tokyo Metropolis, as those works such as the block planning, that effects directly an important interest of habitancy, and etc., are being executed quite concentrically; the will of each habitancy can not be noticed completely; its policy may be separated from the reality of life and also it may be carried out uniformly and self-satisfactorily. Accordingly the direction and supervision for its work can hardly reach all of the people. Therefore, no one can deny that the efficiency is lowered and much expense is required.

As the mention given above we believe that so-called front affairs like the land block planning may be taken charge of by each special ward that was recognized as a fundamental public body consequented to the enforcement of Local Autonomy Law. And also in regard to the city planning it may be better to let those representatives of special ward take a part in



the City Planning Conference in order to adopt the request of habitancy in each area.

Hence, we heartily wish to have your favorable treatment for our petitions.

The Essential Factors  
of City Planning Law.

1. Decision of the Block:

• Competent Minister shall decide it. (Art.2).

2. Decision of the plan, the work, and the work which shall be executed annually.

• competent Minister shall decide them after the decision of the City Planning Conference. (Art.3).

3. Execution of the Planning and Work.

(1) The administrative agency that governs a city or designated town and village shall execute. (Art.4, Art.1 of Ord.),

(2) In a case of special conditions the Construction Minister shall designate the agency. (Art.3, of Ord.)

(3) In a case of special necessity, shall be able to let others, excluded any administrative agency execute depend on special requests. (Art.4).

4. Burden of the Expense:

Art.6

(1) In a case of execution of administrative agency --  
Nation.

- (2) In a case of the execution of the agency which governs the public body -- That Public Body.
- (3) In a case of the execution of others excluded any agency -- That person.
- (4) A part or whole expense of the work shall be able to be a burden of the beneficiary.
- Art. 6, Para. 2.  
 (5) In a case of important plannings and works that are carried out by the agency that governs the public body -- National Treasury shall aid 50% of its amount.

#### 5. Land Block Planning:

- (1) Purpose: To try the promotion of utility within as to the land in area of City Planning as a residential land. (Art. 12).
- (2) Execution: (A special example is as below).  
 The Construction Minister shall be able to give a public body the order of its execution in case that there is no one who takes over that enforcement within one year after the authorization of Cabinet, or a special requisition of early enforcement due to any calamity or other special reason. (Art. 13, Ord. Art. 15)
- (3) Burden of Expenses:  
 To be a burden of land owner, interest persons and beneficiarys. (Art. 15 of Ord.)

The Essential Factors of Ordinance  
of City Planning Conference.

1. The Place of Establishment:

To establish in each To, Do, or Prefecture (Art.3).

2. The Duty:

To reply those question of related administrative agency, and to propose the draft concerning those affairs of City Planning. (Art.2)

3. The affair that has the necessity of decision of this Conference:

The Construction Minister shall propose to the Conference, but those simple and easy affairs shall be able to be entrusted to a governor, mayor or head of city, town or village. (Art.4)

4. The Organization:

Chief of the Conference:

A Governor of To, Do, or Prefecture (Art.7).

Art.8.

Committee

- (1) A mayor or head of designated town or village depended on Art.1 of City Planning Law.
- (2) Those assistant governors of Do or Prefecture and those commissioners or engineering officials of Do or Prefecture as a chief of division in Do, or Prefecture.
- (3) Those first or second class officials of each related agency within 8 persons.
- (4) Those members of city asseembly and of the town or village assembly appointed at the paragraph 1 above -- within one-sixth (1/6) of regular members of each city, town or village assembly; but within 15 persons per city, town, or village.

- (5) Those members of Metropolitan Asseembly within 15 persons.
- (6) Those of Do or Urban-Prefecture asseembly, within 10% of regular members.
- (6) Those city officials excluded a mayor of city, within 4 persons per city.
- (7) Those men of knowledge and experience, within 10.
- (8) In a case of Conference established in Tokyo Metropolis; the vice governors, the chiefs of bureau of Tokyo, or the commissioners or engineering officials as a chief of division; and the local official as a head of public station and fire brigade station which are supported conjointly by special wards.

5. The Standing Committee:

(1) Duty:

To treat those simple and easy affairs, being entrusted by the Conference.

(2) Organization:

Art.15.

Those committees within 9, who are appointed by a mayor or head of designated city, town or village and a chief of Conference. depended on Art.1 of City Planning Law; but in case that there are two or more cities, towns, and village those committees shall be able to be increased within 2 persons per city, town or village.

PETITION

Date: \_\_\_\_\_

SUBJECT: On the Establishment of Personnel Power of Special Wards.

TO : General of the Army Douglas MacArthur, Supreme Commander for the Allied Powers.

FROM : Shozo Okada, Secretary General of the Special Ward Council, Tokyo Metropolis.

*Kiyosshi Murase.*

*Representative of Mayors  
of 23 Special Wards Council  
in Tokyo*

1. SUBJECT: On the Establishment of Personnel Power of Special Wards.

2. SUBSTANCE: To omit Article 210 of Ordinance for the Enforcement of Local Autonomy Law in order to completely establish the Personnel Power of Special Wards.

3. EXPLANATION:

Although a special ward has been given the almost similar power to that of city as a fundamental local public entity in consequence of enforcing of the Local Autonomy Law, the personnel power of special ward is governed by metropolis depending on Art.210 of Ordinance for the enforcement of same. Accordingly, at present, only those officials such as Mayor, Deputy Assistant Mayor, Chief of Revenue Officials and Deputy Chief of same are of special ward; and other auxiliary ones are just metropolitan officials who have been disposed to special wards. By that, as the hearts of all officials are always unstabilized, it must be very hard to be completely united as to carry out the local self-governing.

Therefore, we might not be able to say that all officials can get a real spirit of the public servant for the habitants of special ward each other.

Anyone will be able to realize such a plain reason that must be impossible to expect the improvement and development of its administrative effect in the self-governing body without their own officials in it.

Hence, we heartily wish to have your favourable attention and effort to strike out Article 210 of Ordinance for the enforcement of Local Autonomy Law in line with the original spirit of enactment of same as fast as possible.

PETITION

Date: \_\_\_\_\_

SUBJECT: On the Amendment of Child Welfare Law.

TO: General of the Army Douglas MacArthur,  
Supreme Commander for the Allied Powers.

FROM : Shozo Okada, Secretary General of Mayor of Ward Council,  
Special Ward Council of Tokyo.

*Kiyoshi Murase*

*Representative of mayors  
of 23 Special Wards Council  
in Tokyo.*



## I. SUBJECT:

On the Amendment of Child Welfare Law

## II. SUBSTANCE:

In order to apply the Child Welfare Law to a special ward as well as to a city, town and village article 71 of same law may be omitted.

## III. EXPLANATION:

At present, the authorization of entrance to the women's hospital of pregnant and lying-in women, the widows' house of mothers' and children, and the public nursery of babies and infants is belonging to the power of Metropolitan Governor depending on the provisions of Art.71 of the Child Welfare Law; and those facilities are carried out by Metropolis.

But in such a flat and huge city like Tokyo, however, because of executing and managing them so concentrically the direction and supervision can not reach all of the people. Therefore, inevitably its efficiency might be lowered and the operational expense is not only increased but also policies of all affairs are executed uniformly and self-satisfactorily; by that, we can hardly expect to have any excellent effect of administration fitting to the speciality of each area.

For the purpose of eliminating this administrative concentration and of making the administration of protection proper, appropriate, and more efficient: as the substance of above, the Child Welfare Affairs and the management of those facilities might be executed and carried out under the criticism and supervision of the habitant by a mayor of special ward and the special ward which has been recognized as a fundamental public entity consequented to the enforcement

of Local Autonomy Law.

Therefore, your special attention is heartily desired to get a real democratic administration stated on the expectation of the people.

The Essential Factors of  
Child Welfare Law

1. Facilities of the Child Welfare:

(1) Kind (Art.7):

Lying-in Hospital, Baby Nursery, Widows' Dormitory, Public Nursery, Child Recreational Facilities (Such as Child Recreational Ground and Child Center), Facility for the Depended Children, Facility for the Mental Handicapped Children, Facility for the Feebleminded Children, and Home for Juvenile Training and Education.

(2) Founder: (Art.35)

(a) A responsible Person -- :

Nation, and To, Do, Urban-Prefecture.

(b) Voluntary Person -- :

City, Town, Village or Others.

2. Power of the Head of City, Town, or Village:

- (1) To be able to mention the opinion to those child Welfare Officials and Committee (Art.13).
- (2) To accept the report of pregnancy (Art.20).
- (3) Those pregnant and lying-in women, who can not be hospitalised and aided to be delivered to a child because of economic reasons although there is a necessity of sanitation, have to be accommodated to

the lying-in hospital (Art.22).

(4) To accommodate and protect those women and their children who have no husbands and have a lack of welfare to the Widows' Home. (Art.23).

(5) To accommodate and bring up those infants and babies who can hardly be supported because of the works, or disease of protectors in the Public Nersery. (Art.24).

3. Burden of Expense charged to City, Town, or Village:  
(is the responsibility of as follow)

(1) The expense to let them accomodate into the lying-in Hospital, Widows' Home, and Public Nersery (Art.51, No.1). But 10% of its amount shall be aided by To, Do, or Prefecture (Art.55) and 80%, by National Treasury (Art.53).

(2) The expense of facility of Child Welfare Agency and the facility of those staffs' training agency. (Art.51, No.2). But from 25% to 33% of its amount shall be aided by To, Do or Urban-Prefecture (Art.54); and from 33% to 50%, by National Treasury (Art.52).

4. Position of a Special Ward:

Although a mayor of special ward or the ward is given the power for stressing the opinion to the Child Welfare Officials and Welfare Committees, accepting the report of pregnancy, and establishing the child welfare facility depended on Art.13, Art.20, and Art.35 Para.2; a mayor of special ward is excluded from those powers for accomodating the people into the lying-in Hospital, Widows' Home, or Public Nersery depended on Art.71. (cf. Note below).

## (Notes)

In the area in which special wards exist in Tokyo Metropolis, for the present, the ward "Mayor of Special Ward" provided in the provision from Art.22 to 24 and Art.56 Para.2 shall be understood as "Metropolitan Governor"; and the ward "Special Ward" indicated in the provisions of Art.51 and Art.56 Para.2, as "Tokyo Metropolis" as far as concerning the provisions of Art.51 No.1.

PETITION

Date: \_\_\_\_\_

SUBJECT: On the application of Road Law and the Ordinance for the enforcement of same to a special ward.

TO : General of the Army Douglas MacArthur,  
Supreme Commander for the Allied Powers.

FROM : Shozo Okada, Secretary General of Mayor of Ward Council,  
Special Ward Council of Tokyo.

*Kiyoshi Murase.*

*Representative of mayors  
of 23 Special Wards  
Council in Tokyo.*

## I. SUBJECT:

On the application of Road Law and the Ordinance for the enforcement of same to a special ward.

## II. SUBSTANCE:

To amend all related laws and ordinances in order to let a mayor of special ward carry out the management, conclusion, establishment, reconstruction, repair and maintainance for the national road, urban prefectural road, and the road corresponded to the municipal road on the area in which special wards exist.

## III. EXPLANATION:

At present, the management, conclusion, establishment, reconstruction, repair and maintainance for the national road, the urban-prefectural road and the road corresponded to the municipal road on the area in which special wards exist are carried out by the governor of metropolis depending on the 461st Imperial Ordinance of 1919, (8th of Taisho Era.), Art. 147 of Ord. for the Enforcement of Tokyo Metropolis Organization, and Art.2 of Supplement provisions of Ord. for the Enforcement of Local Autonomy Law.

But because of executing them so concentrecally in this flat and huge city of Tokyo; the direction and supervision can not reach all of the people, by that, the efficiency is inevitably lowered; the operational expense may be not only increased but also its policies may be executed uniformly and dogmatically. Therefore, we can hardly expect any excellent effect of administration fitting to the realities of life in each area.

For the purpose of eliminating this administrative concentration in this great city and of making the administration of civil engineering proper, appropriate and more efficient we may think that is better to let a mayor of special ward execute those management and so on mentioned above for the road corresponded to the municipal road on the area in which special ward exists under the criticism and supervision of the habitant.

As the substance given above, therefor, we wish heartily to have your great favorable attention in regard to our desires to amend all related laws and ordinances to apply the Road Law and the Ordinance for the Enforcement of same to a fundamental public body consequent to the enforcement of Local Autonomy Law as well as to a city.

The Essential Factors  
of Road Law.

1. The Kind of Road (Art.8)
  - (1) National Road.
  - (2) Urban-Prefectural Road.
  - (3) City Road. (Municipal Road).
  - (4) Town's and Village's Road.
2. The Conclusion of Road.
  - (1) National Road -- Competent Minister (Art.10).
  - (2) Urban-Prefectural Road -- Governor of urban-Prefecture (Art.11)
  - (3) Municipal Road -- Mayor of City (Art.12).
  - (4) Town's and Village's Road -- Heads of the Town or Village (Art.13).

3. The Supervisor of Road. (Art.17)

- (1) National Road -- Governor of Urban-Prefecture.
- (2) Urban-Prefectural Road -- Governor of Urban-Prefecture.
- (3) Municipal Road -- Mayor of City.
- (4) Town's and Village's Road -- Head of Town or Village.

There's the special example as fellow: (461st Imperial Ordinance 1919).

The supervisors of National, Urban-Prefectural and Municipal Roads in these cities: Tokyo, Kyoto, Osaka, Yokohama, Kobe, and Nagoya are mayors of each.

4. The Establishment, Reconstruction, Repair and Maintenance of Road:

- (1) The supervisor shall do, but the competent minister shall be able to do the establishment and reconstruction of National Road. (Art.20)
- (2) In a case of special condition the administrative agency, a supervisor, shall be able to let the lower class agency or the private repair or maintain the road. (Art.23)

5. The Operational Expense and the Duty concerning the Road.

- (1) The expense required for the newly-establishment or reconstruction of National Road designated by the Competent Minister shall be a burden of National Treasury. (Art.33, Para.1)
- (2) To be a burden of the public body governed by the supervisor, administrative agency in a case of others except Para.1 given above. (Art.33, Para.2).



- (3) A part of amount required for the establishment or reconstruction of National Road shall be aided by National Treasury. (Art.35)
- (4) In a case of special condition, the expense of establishment or reconstruction of Urban-Prefectural Road or others shall be able to be aided in some part of amount by National Treasury (Art.35).
6. The Position of Special Ward prescribed in the Road Law.
- 4 special ward is excluded from the application of this law depending on Art.4 of supplementary provisions of Ordinance for the Enforcement of Local Autonomy Law.

- (3) A part of amount required for the establishment or reconstruction of National Road shall be aided by National Treasury. (Art.35)
- (4) In a case of special condition, the expense of establishment or reconstruction of Urban-Prefectural Road or others shall be able to be aided in some part of amount by National Treasury (Art.35).
6. The Position of Special Ward prescribed in the Road Law.  
A special ward is excluded from the application of this law depending on Art.4 of supplementary provisions of Ordinance for the Enforcement of Local Autonomy Law.

775013

*Legal*

*File  
7 Nov*

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS  
Civil Affairs Section  
APO 500

014 6 NOV 1950 CAS-L

3 NOV 1950

SUBJECT: Oath of Office

TO: Chief, Chugoku Civil Affairs Region, APO 182  
Chief, Hokkaido Civil Affairs Region, APO 309  
Chief, Kanto Civil Affairs Region, APO 500  
Chief, Kyushu Civil Affairs Region, APO 24-5  
Chief, Shikoku Civil Affairs Region, APO 1050  
Chief, Tohoku Civil Affairs Region, APO 547  
Chief, Tokai-Hokuriku Civil Affairs Region, APO 710  
Attn: Legal & Government Officer

1. Information obtained from various authorities confirms the fact that the only law in Japan providing for an oath of office is the National Public Service Law (No. 120 of 1947). According to Article 2 thereof, the requirement is applicable to the regular government services, but not to the special services, the latter including among other positions those of the Prime Minister, Ministers of State, and judges, as well as all elective officers.

2. A copy of a detailed study by a member of Legal Section, SCAP, relative to the subject as practiced in the United States and Japan is attached hereto for your information.

FOR THE CHIEF, CIVIL AFFAIRS SECTION:

1 Incl  
Study on subject

*J. A. O'Brien*  
J. A. O'BRIEN  
GPO USA  
Adj Off

RECEIVED  
NOV 3 1950  
CIVIL AFFAIRS SECTION

013.1

Legal and Government Section

File No. \_\_\_\_\_ Date: 3 1950

Attention:	Check	Initial
Nolan		
Featherstone	✓	JST
Abrams	✓	WHA
Uno	✓	ETA
Mizunoto	✓	JNO

12 September 1950

DISPOSITION: \_\_\_\_\_ Date: \_\_\_\_\_ 1950

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ice.

to Oath of Office.

- c. Japanese Concept of Oath.
  - d. Oath of Office Practices.
  - e. Postwar Confusion.
3. Conclusion.

1. OATH OF OFFICE IN THE UNITED STATES:

a. Federal Offices: Article II, Section 1, of the Constitution of the United States, directs that the president upon assumption of office shall take an oath of affirmation as follows:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

Article VI, the concluding article of the Constitution, requires that not only the senators and representatives of the United States Congress, but also all the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, be bound by oath or affirmation to support the Constitution of the United States.

Implementing this provision of the Constitution, the Congress provided that the justices of the Supreme Court and the district judges shall take the following oath before they proceed to perform the duties of their respective offices:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as \_\_\_\_\_ according to the best of my abilities and understanding, agreeable to the Constitution and laws of the United States." (Title 28, Sec. 572, USCA.)

12 September 1950

MEMO FOR THE RECORD

SUBJECT: Oath of Office

1. Oath of Office in the United States.
  - a. Federal Offices.
  - b. State Offices.
  - c. Underlying Concept of Oath.
  - d. Who May Administer Oath of Office.
  - e. Miscellaneous Requirements.
2. Oath of Office in Japan.
  - a. Laws and Regulations Relating to Oath of Office.
  - b. The Japanese Word for Oath.
  - c. Japanese Concept of Oath.
  - d. Oath of Office Practices.
  - e. Postwar Confusion.
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The clerks of the Supreme Court, and every clerk and deputy of a district court are likewise required to take an oath of office before they enter upon the execution of their duties. The form of their oath, as required under the statute, is as follows:

"I, A.B., being appointed the clerk of \_\_\_\_\_, do solemnly swear (or affirm) that I will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of said court and that I will faithfully and impartially discharge and perform all the duties of my said office according to the best of my abilities and understanding; So help me God. (Title 28, Sec. 512, USCA)

Title 2, Sections 21-25, USCA, requires all the members of the Senate and of the House of Representatives and the delegates present, and also the clerks of the respective Houses to be bound by oath of office previous to taking their seats.

These provisions of the federal statutes deal with certain specific groups of officials separately, but under the provisions of Title 5, Section 18, USCA, practically all of the government officials of the United States are covered. (See Foot Note No. 1). The omnibus provision of this Section reads:

The oath to be taken by any person elected or appointed to any office of honor or profit, either in the civil, military, or naval services, except the President of the United States, shall be as follows:

"I, A.B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter; So help me God."

B. State Offices: Restating the requirement of Article VI of the Federal Constitution, Title 4, Section 9, USCA, provides that:

Every member of a state legislature, and every executive and judicial officer of a state, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit:

"I, A.B., do solemnly swear that I will support the Constitution of the United States."

The constitutions and statutes of the various states provide that all public and governmental officials of the states, elective or otherwise, including all civil officers, public administrators, executors, guardians, commissioners, wardens of prisons, police magistrates, peace officers, and all officers of municipal corporations, shall be required to take an oath or affirmation of office before entering upon their discharge of official duties. Though some variations in the form and language are found for certain offices, depending upon the nature of the office, it is generally required that an incumbent swear or affirm that:

- (1) He will support, protect and defend the constitution of the United States and that of his own state, and

- (2) He will faithfully and truly perform the duties incumbent upon the office he is to enter.

Both the federal and state laws require in most instances that the person swearing shall, with his right hand uplifted, swear "by the ever-living God" or conclude with the expression, "So help me God." It is generally held by the courts that where a statute lays down a particular form of oath or affirmation, that form should be followed, but that rigid compliance with the letter is not necessary--substantial compliance is sufficient. It is also held that corporal acts such as uplifting of the hand, placing of hand on the Holy Scriptures, or kissing the Bible are not absolutely necessary to constitute a valid oath, and that while it may be the better practice to conclude the oath with words addressed to the Supreme Being, they are not absolutely essential, for the words "I do solemnly swear" in and of themselves impart a serious appeal to God.

c. The Underlying Concept of Oath: Both the federal and state constitutions jealously guard against any infringement of the individual's right to freedom of religion and expressly provide that no civil or political rights shall be affected by his religious beliefs. Under this provision, the old requirement of the religious test of the common law has been abolished in the United States. Therefore, whenever any person required to take an oath of office has conscientious scruples against taking an oath, he is permitted to make a solemn affirmation or declaration instead of an oath. Thus, the competency of a person to take an oath is not affected by his disbelief in the existence of God or in the visitation of divine punishment if he swears falsely. He is competent within the meaning of the law if he is able to signify that his solemn attestation is binding upon his conscience.

It is further established in American jurisprudence that the form in which an oath is taken does not affect its validity or sufficiency. Any form which appeals to the conscience of the person and binds him to do the act avowed is sufficient; and any person who has a peculiar form which he recognizes as obligatory and believes in rather than a Christian form may be sworn according to his choice or to the peculiar ceremony of the religion which he declares to be binding. Thus, it has been held that an oath taken before a temple, an altar, the Blood of Abel, the Koren, or a tribal superior, or an appeal to some superior sanction or a sacred or revered person was good, sufficient, and binding. The age-old Chinese practice of performance of various act such as breaking of a saucer, blowing out of a lighted candle, burning of a piece of paper, or chopping off of the head of a cock was also held sufficient. In general, if something is present to distinguish between the oath and the bare assertion, the purpose of oath taking is accomplished. The only objective of an oath is to make the words binding upon the conscience so as to hold one responsible for his utterances. If this purpose is accomplished, all extrinsic manifestation is immaterial.

d. Who May Administer Oath of Office: The laws of the different jurisdictions variously provide as to who may administer the oath of office. Under the Constitution, the President is directed to take the oath of office before the Chief Justice of the United States Supreme Court. Section 18 of Title 5, USCA, provides that the oath of office required under Section 16 of the same Title may be taken before any officer who is authorized either by the laws of the United States or by the local laws to administer oaths. Section 19 of the same Title provides that the chief clerks of the several executive departments, and of the various bureaus and offices thereof, are authorized and directed to administer oaths to those who are required to take an oath on their appointment or promotion.

The oath of office of senators is administered by the President of the Senate, and the oath of the President of the Senate may be administered by any member of the Senate. (Title 2, Sections 21-23). The secretary of the Senate, and the Chief Clerk thereof are authorized to administer any oath or affirmation required by law, or by rules or orders of the Senate. (Title 2, Section 24).

The oath of office of members of the House of Representatives and the delegates present in the House is administered by the Speaker of the House, and the oath of office of the Speaker can be administered by any member of the House of Representatives. (Title 2, Section 28.)

The oath or affirmation of office required for the personnel in the postal service may be taken before any officer, civil or military, holding a commission under the United States which authorizes him to administer and certify such oath or affirmation. (Title 5, Section 365).

e. Miscellaneous Requirements: In the federal government, as well as in the many state governments, the process of oath taking is not completed until the oath is subscribed to in the presence of the official administering it and filed in the office designated by law.

Section 21, Title 5, USCA, provides that the oath of office taken by any person pursuant to the requirement of Section 16 of the same Title, shall be preserved among the files of the House of Congress, department, or court to which the office in respect of which the oath is made may appertain.

Section 102, Title 4, USCA, states that with respect to the oath of office of the members of state legislatures, and executive and judicial officers of the states, the person administering the oath shall cause a record or certificate thereof to be made in manner, as by the law of the State, he is directed to record or certify the oath of office.

It appears to be a common practice for the various states to provide that the oath of the officials of the executive department, of the judges of the Supreme Court and the district courts, and of the district attorney be filed with the secretary of state, and those of the other officials be filed with the county clerk of the county wherein they shall have been elected.

In some states the laws go much farther and provide that if the person fails to take the oath of office as required by law within a certain prescribed period after he has been notified of his appointment or election, his position may be declared vacant and a new incumbent appointed to fill the vacancy just as in any other cases of vacancy. It is generally held that until and unless the oath of office is taken, subscribed to, and filed in the manner prescribed by the law, no incumbent is entitled to his salary.

From the foregoing it will be seen that the practice of oath taking before assumption of his official duties by a new incumbent is a time honored institution within the framework of our government and is an integral part of the system. The installation of any public officer without such a ceremony is hardly conceivable.

## 2. OATH OF OFFICE IN JAPAN:

Under the existing practice in Japan the significant requirement of an oath of office appears to be entirely dispensed with in the process of installing public officials. The new Constitution provides, under Article 6, that the Emperor shall appoint the Prime Minister as designated by the Diet, and the Chief Justice of the Supreme Court as designated by the Cabinet. Accordingly, when the Prime Minister is designated by the Diet or the Chief Justice is designated by the Cabinet, the Emperor sends for the new incumbent and hands him the notice of appointment. The receipt of such notice constitutes the formal appointment without any further ceremony or oath taking. In all cases where the position is by appointment, the legal title to the office is deemed to be conferred when the notice of appointment is received from the appointing authority. In the case of elective positions, the certificate from the Election Administration Committee to the successful candidates constitutes the formal appointment and assignment to the office.



a. Laws and Regulations Relating to Oath of Office: The Constitution of Japan is silent on the question of oath of office, and apparently no law, other than the National Public Service Law (Law No. 120, 1947), contains any provision pertaining to an oath of office.

Article 6 of the National Public Service Law dealing with the members of the National Personnel Commission provides that the new incumbent shall not exercise the powers pertaining to his office until he has signed a written oath before the Chief Justice of the Supreme Court, and Rule No. 2-0 of the National Personnel Authority, implementing this Article, provides for the form of the oath in the following language:

"I hereby solemnly declare that I will support and protect the Constitution of Japan which recognizes that sovereign power resides with the people.

"I firmly swear that I, as a servant of the community, will be deeply conscious of my responsibility for performing public duties in a manner so consistent with democratic practices as to promote maximum efficiency, will respect the law enacted by the will of the people and perform official duties with diligence and justice."

Article 97 of the same law deals with all the civil service appointments and provides that the personnel of the regular service shall subscribe to the oath of office. Rule No. 14-6, implementing this provision, provides for the form in the same language as set forth in Rule 2-0. It further provides that the newly appointed employee shall not perform his duty until and unless a written oath as mentioned above is signed by him in the presence of the appointing officer or senior personnel duty officer designated by the appointing officer.

These provisions of the law requiring the oath of office are applied only to these public servants who are in the regular national government service under Article 2 and not to the employees of the local entities or to those whose positions are designated as "Special Service". This latter category includes the Prime Minister, Ministers of the State and their secretaries, judges, all elective officers, etc.

In line with the provisions of the National Public Service Law, the Supreme Court has issued a rule which requires that certain of the court employees take and subscribe to the oath of office before assuming the duties of the office. The form of the oath is in the same language as provided in the rules of the National Personnel Authority. However, this provision of the Supreme Court Rule applies only to those court employees who are in the regular service within the meaning of the National Public Service Law, including such administrative court officials as secretaries, clerks and bailiffs. The judges are not required to take the oath of office.

Summarized, the personnel of the so-called special government service, namely the Prime Minister, Ministers of the State, the judges, the members of the Diet, the personnel of the local entities, and all elective officials of the various levels of government, national, prefectural or local, are not required by law to swear an oath or to make an affirmation. This also applies to the Emperor.

Notwithstanding the absence of any legal requirement, however, oath taking in Japan is not without precedent when viewed from historical background, and it can be safely said that the fundamental concept of an oath is rather prevalent in all walks of Japanese life, as will hereafter be shown.

b. The Japanese Word for Oath: The Japanese equivalent for the term "oath" is "SENSEI" which is an ideograph comprised of two Chinese characters, "(SEN)" and "(SEI)". The first character means, "to say, to declare, to proclaim, to express," or "to make known"; and when used in conjunction with

other characters it generally means, "proclamation, declaration, imperial ordinance, imperial mandate," or a pronouncement of a public nature. The second character means, "to promise, to pledge, to take an oath, to swear, to take a vow," or "to affirm". (See Foot Note No. 2) Together they spell out the meaning "declaration of oath". The Japanese law dictionaries generally define the term "SENSEI" as follows:

An oath to be taken by a witness or an expert when he testifies in court or by an interpreter to tell the truth according to his conscience or to fulfill his duty faithfully. It is a system under which religious or moral psychology secures the truth of his statement or conduct.

The form of judicial oath taken by witnesses either in the courts of law or before the investigation committee of the Diet is as follows:

"In accordance with my conscience, I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

Incidentally, this form of oath was administered to the Japanese witnesses summoned to testify in the war crimes trials.

It is claimed that the ideograph for "SENSEI" was newly coined when the concept of the judicial oath was adopted in the judicial system of Japan at the time the code of criminal procedure was enacted on the continental European pattern. It appears that at that time there was no exact equivalent in the Japanese language which adequately brought out the meaning of "oath" as used in courts of law, and the law-makers thereupon adopted the ideograph in its present form. Today, the term has become common parlance among Japanese.

As heretofore mentioned, although the ideograph "SENSEI" is relatively new, the idea of oath and swearing in Japan is as old as the nation itself. "KOJIKI", the oldest written history of Japan, is full of accounts of sacred pledges made between and among men and gods. "SEI" has the same connotation in the minds of the Japanese as the word "oath" has among the people of the western world. It is clearly contradistinguished from such terms as promise, contract, agreement, petition, etc. It denotes a sacredness and solemnity not usually associated with similar words.

Just as it is a common practice among the people of the west to perform some corporal acts to solemnize the oath, so it is with the Japanese. There are many interesting customs among the Japanese people in which various acts are performed to distinguish a solemn oath from a mere declaration or assertion. Some of the examples are YUBI KIRI, KEPPAN, striking of the chest, use of HAN or seal, SHINJU, Blood Brotherhood, KINCHO or KANEUCHI, SHINZEN SHIYAKU or pledge before a god, exchange of SAKE cup, writing of SEISHI or KISHOMON, etc. (See Foot Note 3).

A common practice today, where a person is required to take an oath, is to have him stand in a position of attention with his hands outstretched, read the oath, signify that he understands the same, and then sign his name. It is customary that the signature be accompanied by his HAN or personal seal.

Thus, the practice of oath taking and some corporal act to solemnize the pledge are as widespread in Japan as in the United States, and their binding nature is fully understood by the Japanese.

c. The Japanese Concept of Oath: In the Christian world, in addition to the aspect of personal honor involved, an oath is essentially a religious act, an appeal by a person to God, and a solemn invocation of the vengeance of Heaven if he does not speak the truth. In Japan, while a sacred pledge before God and in the name of God is a common practice, in most instances such a pledge

is made with no thought of a divine or supreme being. Rather, the Japanese seem to regard the oath so solemnized to be binding upon their conscience for the conscience's sake alone. The person making the oath is bound not because of any exterior influence, but because it is done upon his honor, his conscience and for his own name's sake. False swearing is condemned, not because it is a breach of a pledge to God and may even arouse a divine vengeance, but because of its detrimental effect upon his honor, integrity, prestige and reputation. To a Japanese, whether he swears in the name of God or Buddha or merely declares his sincerity, it is a solemn affirmation and declaration. In this sense, a Japanese oath solemnized in his own peculiar way and belief is an affirmation within the meaning of the Constitution and the laws of the United States and of the several states.

d. Oath of Office Practices in Japan: Although there is no law in Japan which requires the taking of an oath of office except in the instance heretofore explained, the custom of solemnizing the assumption of office and of pledging to do one's best has been quite prevalent. An excellent example of this is to be found in the writing of the pledge sheet called "SEISHI". During the early period of the TOKUGAWA Shogunate, a lord who newly received vassalage under a shogun was required to pledge that he would obey all orders unconditionally regardless of their validity or wisdom. The pledge was signed and sealed in blood in the presence of the shogun. This practice constituted for all intents and purposes an oath of office.

In the customary ceremony of Accession and Coronation of the Emperor may also be seen a pledge of office. To date, 124 emperors have ascended to the throne of Japan. All have been crowned with typical oriental solemnity and grandeur concluding with a trip to the grand shrine of ISE. In these ceremonies are to be seen all the essential requirements of a valid oath of office, except that they are not formal pledges in terms usually applied to oaths. The Emperor goes before the shrine, where he makes report of his accession, pledges that he will rule the people of the sacred land in the way most pleasing to his Imperial Ancestors and to the CHIYO YOROZU NO KAMI (myriads of gods of Japan), and asks for their divine assistance, protection, and guidance. He also makes a solemn promise to his subjects that he will be most benevolent and do his utmost for their welfare.

Prior to the postwar reformation, the Prime Minister of Japan was directly appointed by the Emperor. The former cult of the emperor institution is well known and does not require any elaboration. A direct appointment by the Emperor was regarded as the highest honor that could ever be conferred upon any individual. Consequently, an appointment such as that of the Prime Minister was observed with the deepest reverence and veneration. The new incumbent received the JIREI (the Imperial appointment) in an official ceremony veiled in an awe-inspiring atmosphere. He prostrated himself in humble adoration, heart filled with honor and compassion, eyes filled with tears, and avowed that he would do his best to serve the Emperor and meet his expectations. To a Japanese, a pledge made in such a psychological and emotional moment was the most sacred of all promises, for the Emperor was considered a supreme being, a revered personage, and a direct descendant of the Sun-goddess AMATERASU. Here again, we find the essential elements of an oath of office.

The Emperor was the sovereign of the nation, the creator of all public offices, and the source of all powers attached thereto. All officials owed their responsibilities to him. Holding of a public office, therefore, was regarded as a great honor and an opportunity to serve him. With this frame of mind, the public officials assumed their posts, pledging their loyalty to the Emperor and swearing to do their best.

This feeling of responsibility to the Emperor was cultivated to the utmost by the militarists in the past few decades, as we have seen in the last war. It was this belief that sent the KAMEKAZE pilots to their tragic death in a crashing dive and the soldiers to their glorious death in the banzai charges. Similar zeal and veneration were consciously developed in the hearts of all governmental officials. They were taught that they owed their allegiance to the Emperor and that they were responsible to him for the faithful performance of their duties in the manner most pleasing to him.

The Japanese also customarily made reports to their ancestors and gods of their honorable appointment, pledged their faithful performance and loyalty to the Emperor, asked for the divine assistance and guidance, and promised that they would not do anything that might bring disgrace and dishonor to themselves, their families or their ancestors. The seriousness of such a pledge was indicated by the fact that if the office holder failed to carry out his trusted mission or brought disgrace to himself, his ancestors, or to the State, he was expected to commit *hara kiri* if he wanted to rehabilitate his honor.

In the non-governmental circles, too, it has been a very common practice among associations, societies, fraternities, secret orders and other private organizations for their officials to take an oath upon installation and for the new members to make a pledge upon initiation.

e. Post-war Condition: The post-war development has greatly changed these traditional attitudes of the Japanese people. Under the new Constitution the position of the Emperor is described as the symbol of the State and of the unity of the people, and he no longer has any power relating to the government. The sovereign power now rests with the people, and the public officials are made responsible to the people and to the Constitution. Therefore, gone is the foundation which once supported the feeling of responsibility and devotion in making an oath. The awesome atmosphere which previously inspired office holders during the ceremony of appointment is now lacking.

### 3. CONCLUSION:

As explained heretofore, in Japan the practice of oath taking is a time honored custom and the underlying concept of an oath of office has been well known to the Japanese. The provision in the National Public Service Law for the taking of an oath of office is merely an acceptance of those practices which have been in existence for many centuries. That law has helped to partially fill the vacuum in the field of oaths of office, its application being limited to only a small part of Japan's officialdom. The reasons which prompted the provisions concerning the oath of office in the National Public Service Law are of course also present in the cases of other government personnel. In fact, there is no reason why the requirement of the oath should not be made applicable to all public officials, such as the Prime Minister, the Ministers of the State, judges of the courts, and the members of the various legislative assemblies, since much heavier responsibilities are assigned to and more conscientious performance of their duties is required of them. Such a safeguard is necessary not only for the protection of the offices, but also for the preservation of the constitutional form of government. The need is especially urgent at this time, now that lawless elements are seeking governmental positions for the purpose of using them to destroy the existing democratic system of government. Swearing in at a public ceremony will give government servants that solemn feeling and mystic atmosphere so dear to the Japanese. More important still, a solemn oath to support and defend the Constitution of Japan, to preserve and uphold justice and order, and to faithfully execute the duties of office will give to the new incumbent an added strength and sense of responsibility.

### FOOT NOTE NO. 1

The Federal statutes recognize the specially confidential nature of the postal service of the United States, and require the persons in that service to be doubly impressed with the seriousness of their duties. While postmasters, in common with all other officers of the United States except the President, are required to take the oath of office prescribed in Section 15 of Title 5 quoted in the main text, they are, in addition, required to take the following oath under Section 365 of the same Title:

"I, AS, do hereby solemnly swear (or affirm as the case may be) that I will faithfully perform all the duties required of me and abstain from every thing forbidden by the laws in relation to the establishment of the post offices and post roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear (or affirm) that I will support the Constitution of the United States; So help me God."

This provision is applied to the Postmaster General, as well as to all the employees of the postal services throughout the United States, its territory and possessions.

FOOT NOTE NO. 2.

The following is a list of examples of words and ideographs in which the character "SEI" also pronounced "CHIKAI" is used:

CHIKAU or CHIKAI	( )	To pledge, to take an oath to make a vow, etc.
CHIKAI WO TATERU	( )	To take a vow; to be under oath.
CHIKAI WO NAMORU	( )	To keep one's vow.
CHIKAI WO YABURU	( )	To break one's pledge.

or in conjunction with another Chinese character or characters in such ideographs as:

SEIKOKU	( )	To affirm or declare an oath; to pledge; to take a vow.
SEIGON	( )	Pledge, an oath, as in the expression "To take an oath of allegiance."
SEIKEN	( )	A written oath; a sheet of paper upon which an oath or pledge is written.
SEIYAKU	( )	A pledge, a sacred promise, a covenant.
SEIYAKUSHO	( )	A written oath or covenant.
SEIMBI	( )	A pledge of a ruler to his subjects. It was a common practice among the ancient Chinese for the ruler to make a promise to his subjects with regard to his policy of administration. In Japan this practice is seen in the ceremony of accession of the Emperor. He makes a solemn declaration to the subjects that he will govern them most judiciously.
SEISHA	( )	To pledge in the name of the local gods, to take an oath before gods.
SEIMON	( )	A written pledge, sacred oath.

SEIMONSHO	( )	A written pledge or an oath: paper upon which an oath is written.
SEISHI	( )	A written pledge or an oath.
SEIGAN	( )	To pledge Before God or Buddha; to make a sacred promise before God, to submit a petition to a god or Buddha.
SEIGANSHO	( )	A written request or petition to a god or Buddha; a written pledge offered to a god or Buddha.

FOOT NOTE NO. 3.

Striking of the Chest: It was and still is a common practice among the Japanese to stroke the chest when making a promise to signify that an assertion is binding upon the heart. This practice resembles the custom in the United States whereby a person giving a promise makes a gesture of crossing his heart and says that he hopes to die if he breaks the promise.

YUBI KIRI: This is a practice commonly seen among the young children in solemnizing their promises. The parties interlock their little fingers and recite a nursery rhyme-like verse to bind each other. It is also seen among young lovers at the scene of parting, generally promising each other to meet again. Yubi Kiri is said to be an outgrowth of the ancient practice of cutting off of the little finger to express one's sincerity; hence the name "YUBI KIRI" or finger-cutting.

KEPPAN: This is a practice of placing a seal of blood upon a written oath or promise by drawing blood from the little finger. It was a common practice during the feudal age on such occasions as signing of a peace treaty, entering upon an alliance with one another, sending of a petition to a lord, entering into a compact to uphold a certain cause or to undertake some important conspiracy, etc. On those occasions, the parties concerned signed their names to the document, then sliced off the tip of the little finger, or injured it to draw blood, to make an impression of blood under the name. It is no longer practiced today.

HAN OR SEAL: The use of HAN instead of a personal signature is as general and widespread in Japan as the writing of signatures in the western world. Upon affixing his HAN, a person becomes legally and morally bound. Promises made under HAN are just as binding upon his conscience as any other form of promise. It is said that the use of HAN grew from the practice of KEPPAN.

Blood Brotherhood: This was a practice of drawing blood from the parties concerned into a common cup. The blood was drunk while pledging themselves into a band of brotherhood. Strangely enough, a very similar practice known as Bluts bruderschaft prevailed among the ancient Germanic tribes.

SHINJU: The term "SHINJU" literally means double suicide, but originally it was used to mean sincerity. Expression of words of sincerity, attested to by drawing of blood, made the promise or relationship of the parties concerned binding. Today, the term is used to signify sincerity, faith, and sacred vow between two lovers who pledge to find refuge in the world hereafter.

KIUCHO or KANSUCHI: This practice while making a promise was very common among the samurai who wore swords. It consisted of striking or knocking of the sword handle or guard with Kozuka (a small knife worn in the sword sheath). The sword was regarded as the spirit of samurai and a pledge made with it was considered sacred and binding. For women, the mirror was regarded as sacred just as the sword was for samurai, and knocking of the mirror symbolized a solemn pledge for women.

SHINZEN SHIYAKU or a pledge before a god: This is a practice of going to a shrine for the purpose of making a binding pledge. Before going, the person usually performs certain acts of purification. At the shrine, he kneels or squats with folded knees, slaps his hands and makes a pledge to do or refrain from doing certain acts. The ceremony is terminated by a silent meditation and a deep and prolonged bow. Isolated instances of this practice are still seen in various parts of Japan on various occasions.

Exchange of SAKE Cups: This practice is still commonly observed in Japan. In the olden days, the SAKE cups were exchanged on such occasions as when one pledged himself to the service of another, as in the case of a retainer to his lord, servant to his master, kebun to his oyabun, or ototobun to his aniki. The most common occurrence of this practice today is in the wedding ceremonies where sake cups are exchanged between the bride and the bridegroom as they exchange solemn vows.

Writing of KISHOMON: KISHOMON is a sacred pledge in writing. In it are stated the object and the conditions of the pledge or assertion. It is concluded with a solemn oath and words to the effect that if the pledger fails to perform the acts avowed to, he will suffer himself to be damned to hell and even the curse of leprosy. This pledge is usually written on the back of the amulet issued by KUMANO GOWO of the Three-Sacred-Mountains of KUMANO (located in WAKAYAMA Prefecture). KUMANO GOWA is the chief god of cattle and the amulet is made of thin rice paper upon which are drawn figures of 76 black crabs arranged in a peculiar formation, and the characters KUMANO GOWA HOIN (The Sacred Seal of Kumano Gowo) inscribed at the bottom. The KISHOMON then is either left at a shrine located nearby or torn into several pieces and kept by the parties concerned. In some instances it is swallowed by the party making the pledge, with the thought that the pledge will remain in the body and soul until he meets his words, and that if he fails the full force of vengeance and damnation of KUMANO GOWO might be felt more effectively.

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HEADQUARTERS  
KANTO CIVIL AFFAIRS REGION  
APO 500

30 September 1950

INFORMATIONAL ACTIVITIES OF THE HUMAN RIGHTS COMMISSIONERS  
IN KANTO CIVIL AFFAIRS REGION

## 1. Summary:

a. KaGAR Civil Information Section has made a two-month study of the informational aspects of the work of the Civil Liberties Commissioners. These persons were appointed under Law 139 to acquaint the people with their rights under the new Japanese Constitution and to investigate infringements of these rights. Here are the results of this study.

b. Investigation showed that the Civil Liberties Commission program has certain basic defects which cannot be divorced from the informational activities. These are:

(1) Lack of organization. (No regular meetings are held. No officers have been elected.)

(2) Lack of funds.

c. Inquiries showed that the Commissioners are still being flooded with complaints of a general legal nature. The fact that these are increasing indicates that more people are aware of the existence and functions of the Civil Liberties Commissioners. However, it also indicates that they do not understand their rights under the new Constitution well enough to differentiate an infringement of these rights from other legal problems.

d. Part of the difficulty arises from the Constitution itself. Even the best educated of the Civil Liberties Commissioners are confused about how to interpret the sweeping guarantees of social and economic rights it contains.

e. This headquarters recommends:

(1) That the organizational weaknesses of the Civil Liberties Commissioners' program be remedied.

(2) That an adequate working definition of Civil Liberties be devised.

(3) That the Human Rights Commissioners be thoroughly acquainted with the meaning of the Civil Liberties and the scope of their duties in protecting them.



(4) That continuing effort be made--utilizing all available information media--to present Civil Liberties problems in terms meaningful to the Japanese people.

f. This headquarters believes that the most effective way of presenting such problems is through discussions of situations familiar to the Japanese people in which Civil Liberties are involved. (Discrimination against the sta class, ostracism, sale of children, forced marriage, etc.)

## 2. Introductions:

a. Law 139 of 31 May 1949, which establishes the Japanese Civil Liberties Commissioners program states that one of the duties of each Commissioner shall be:

"To make public enlightenment and publicity concerning the idea of Civil Liberties." Art. 11, Sec. 1.

b. In July 1950, the Civil Information Section of Kanto Civil Affairs Region began interviewing Civil Liberties Commissioners in Kanto Region to:

(1) Find out what progress the Commissioners had made in acquainting the people with their rights under the new Japanese Constitution.

(2) Look for ways in which the Civil Liberties informational program could be conducted more effectively.

c. This headquarters has held meetings during the past two months with twelve groups of Civil Liberties Commissioners and with representatives of four private organizations interested in Civil Liberties questions.

d. This report summarizes the findings of this office and suggests ways in which the Civil Liberties information program might be improved.

## 3. Development of the Civil Liberties Commission Program:

a. The informational activities of the Civil Liberties Commissioners cannot be discussed without reference to the structure and aims of the program as a whole. The origin of the program goes back to the Potsdam Declaration. In accepting this declaration, the Japanese people agreed to remove all obstacles to the strengthening of democratic tendencies and to establish freedom of speech and religion and respect

for basic human rights. The sweeping changes in the Japanese Constitution which now contains a lengthy section on rights and duties of the people (Japanese Constitution, Chapter 3) is a logical outgrowth of the Potsdam aims.

b. In establishing the Human Rights Commission system, the Japanese Government took upon itself a positive responsibility to safeguard the rights of the people.

c. A Civil Liberties Bureau was set up on 15 February 1948, in the Attorney General's Office with authority to investigate cases involving infringements of Civil Liberties and to take what steps are necessary for the settlement of the cases.

d. Five months later, the Attorney General, acting under Government Ordinance 168, appointed 150 non-salaried Commissioners representing each prefecture in Japan. Their job was to work with the Civil Rights Bureau in spreading information about Civil Liberties and in investigating and collecting information on violations of human rights. The Commissioners were also to give advice and assistance to persons whose rights have been infringed upon.

e. It became clear, however, that more Commissioners were needed if the program were to function effectively. In the summer of 1949, the Civil Liberties Committee Law was passed and provision was made through Attorney General's Ordinance No. 41 for the appointment of approximately 11,000 Civil Liberties Commissioners in cities, towns and villages throughout the country. Appointments were to be made by the Attorney General's office from a list of recommended individuals.

f. Law 139 which creates the Civil Liberties Commission calls for the formation of councils of the Civil Liberties Commissioners in each area. These councils, are in turn to be formed into federations.

#### 4. Organizational Weaknesses:

a. When the organizational structure is weak, all of a group's activities--information or otherwise--are likely to suffer. Consequently, it seems necessary to say a word here about the present weaknesses observed in the Civil Liberties Commissioner program.

b. The Commissioners work mostly as individuals--not as a well-co-ordinated group. In Hamamatsu and in Chiba City the Commissioners met for the first time when requested to confer with this headquarters. The same thing appeared to be true in Iida. None of the groups of Commissioners interviewed were meeting regularly except in Tokyo where one general meeting is held each year. Small groups of Tokyo Commissioners are occasionally asked to meet with the Civil Liberties Bureau

of the Japanese Attorney General's Office. It appears that the Civil Liberties Bureaus are providing such co-ordination as has been achieved in the activities of the Civil Liberties Commissioners. None of the groups of Commissioners interviewed were holding meetings on their own initiative, the obvious reason for this being that the Commissioners have not selected chairmen with authority to call meetings.

c. Individually, many of the Commissioners are doing excellent work in the various legal affairs sections. They appear to be some of the best educated people in the community. The groups interviewed usually consisted of lawyers, teachers, university professors, business men, physicians and occasionally, leaders of women's organizations.

d. However, the best results certainly cannot be expected in informational--or any other activities--of the Human Rights Commissioners until their efforts are organized.

e. Steps are being taken to remedy the present lack of organization. According to a recent publication of the Japanese Attorney General's Office\*, rules for the organization of Civil Liberties Councils are being prepared. The formation of these councils in Kanto Region, at least, seems to be awaiting the appointment of the remainder of the Civil Liberties Commissioners authorized to each area. (Most of the major towns have completed making their appointments. However, in many cases the Commissioners have not yet been appointed at the village level.)

f. When these councils begin to function, perhaps a substantial improvement may be expected in the Civil Liberties informational programs--and in their other activities as well.

g. One more major weakness exists which cannot be divorced from the informational aspect of the Commissioners' work. That is their lack of funds. The Commissioners are non-salaried and have no money at their disposal. They are, however, authorized to spend money in connection with actual and necessary duties involved in their work. While there may be advantages in keeping the operation of the Civil Liberties Commissioners above monetary considerations, there is no doubt that lack of money has curbed their informational activity. This matter has been the subject of complaint in virtually every group interviewed.

h. It was mentioned in the meeting with Tokyo Civil Liberties Commissioners that the establishment of a Civil Liberties Bureau in the Attorney General's Office is an unworkable plan, because, as government officials, the Civil Liberties Bureau personnel are reluctant to prosecute in cases involving government officials or police. One of the

\*--Civil Liberties Bureau, Attorney General's Office, Japanese Government, Achievements of the Civil Liberties Bureau Since Its Establishment, (March 31, 1950) p.8.

Tokyo Civil Liberties Commissioners claims that action usually is not taken on cases involving police, government officials, or American troops. About 35 per cent of the cases brought to the attention of the Commissioners involve persons in one of the above categories, he said. He did not cite any examples to support the above claims.

i. This is a matter which would seem to warrant further investigation. No specific inquiry into the above situation was made by this headquarters. However, this headquarters noted in talking to personnel from Civil Liberties Bureaus that action has been taken on a number which involved human rights violations by police officers.

j. Regarding the "unworkability" of a system in which the Civil Liberties Bureau is an organ of government, it should be noted that the Japanese program is patterned after the Civil Rights Section established in 1939 in the Criminal Division of the United States Department of Justice. While governmental programs of this kind are perhaps not the best way to guard against abuse of Civil Liberties by government, they provide substantial aid in the field of protecting individual rights against infringement by other individuals or private groups.

#### 5. Informational Activities:

a. The major activity of the Civil Liberties Commissioners has been to hold consultations to which individuals who believe their rights have been violated can bring complaints. So far, the informational activities of the Commissioners have centered about these consultations.

b. In Tokyo-to, the information section put up displays in department stores illustrating the procedure for bringing Civil Liberties cases to the attention of the Commissioners. In Kofu, Yamanashi, the branch office of the Attorney General's office had 50,000 posters printed and distributed before consultation days were held by the Civil Liberties Commissioners. The posters told the time and place consultations would be held and gave a brief explanation of what the rights of the people are under the new Constitution. In Chiba and Nagano, radio stations have broadcast announcements of consultation days. In several prefectures, notices of Civil Liberties consultations have been carried in wall newspapers, prefectural information bulletins, and in newspapers.

c. In Matsumoto, Nagano, and in Tokyo, recordings have been made of street-corner consultations held by the Civil Liberties Commissioners. These recordings were broadcast over the radio.

d. Efforts have also been made to explain to the people the meaning of the term human rights. A vigorous informational campaign was put into operation at the time the new Constitution was promulgated

to familiarize the people with their new organic law. However, this campaign gradually tapered off and subsequent educational efforts have been sporadic. Prefectural information offices and wall newspapers occasionally devote space to Civil Liberties topics. Many of them have carried articles explaining the work of the Civil Liberties Commissioners.

e. A sample is this excerpt from the Yamanashi prefectural newspaper: "Respect for Human Rights: Is the freedom of thought, conscience, religion, speech, learning safeguarded? Have man and woman and husband and wife been rejoicing in equal rights? Are they getting married with mutual agreement? Has an equal opportunity in education been realized?"--Yamanashi Kensei Dayori, No.3, 1 May 1950.

f. Matsumoto radio station has a weekly broadcast called the citizens' program which emphasizes subjects related to Civil Liberties. On one occasion, the Civil Liberties Commissioners in Utsunomiya, Tochigi, sponsored the showing of a film on repatriates. (They considered this a Civil Liberties problem.) On another, they sponsored a lecture on Civil Liberties by a man who had helped draft the Japanese Constitution.

g. The Japanese Civil Liberties Union in Nagano has also been sponsoring lectures on human rights topics. This is a private organization whose chief activity is giving advice and free legal assistance to persons who believe their rights have been violated.

h. Some of the most effective Civil Liberties work is being done by Mrs. Kikue Yamakawa of the Women's and Minor's Bureau of the Japanese Labor Ministry. She has been making frequent speeches before women's groups throughout Japan and has discussed Civil Liberties with them in terms of concrete problems. Sample topics: Should parents sell their children's services as housemaids or farm workers? Should parents arrange marriages and force the daughter to marry against her will? Is it right for a husband to sell his wife's property if he needs money?

i. Some newspapers have given good support to Civil Liberties Commissioners' work. Shiotsuke Shinbun in Utsunomiya, Tochigi, carries editorials frequently on human rights questions. The editor of Shinano Mainichi in Matsumoto, Nagano, is especially interested in human rights questions and has been giving publicity to the activities of the Nagano chapter of the Civil Liberties Union. In many towns, newspaper editors who are Civil Liberties Commissioners have assured this headquarters that they give space to Civil Liberties stories whenever possible. Yukan Asahi, on September 11, carried a story and an editorial on an ostracism case.

j. However, these newspapers may be exceptions to the rule. Newspaper editors interviewed by this headquarters do not seem particularly interested in Civil Liberties cases unless they involve abuse of authority by officials or police.

k. A Tokyo Civil Liberties Commissioner who is on the staff of Kyodo Press says his agency occasionally sends out stories about civil rights cases. However, very few newspapers use them. He believes the reason for this is that the Japanese people have not yet obtained a clear enough understanding of civil rights to appreciate stories concerning them.

6. Effectiveness of the Informational Program:

a. It can be seen, then, that some effort has been made by the Civil Liberties Commissioners to acquaint the people with what Civil Liberties are. How successful has this effort been?

b. One way to measure the success of the informational side of the program is through the number and kind of cases brought to the attention of the commissioners.

c. The total number of cases of infringements reported to the Commissioners has increased steadily, according to statistics from the Japanese Attorney General's Office.\* For the fiscal year 1948-1949, a total of 48 cases were handled as compared to 5,076 for the fiscal year 1949-1950.

d. This seems to indicate that the people are increasingly aware of the existence and functions of the Civil Liberties Commissioners. But despite the increase in the number of cases reported, the general belief of the Civil Liberties Commissioners seems to be that many human rights cases are not being brought to their attention because the people involved are not aware that their rights have been violated.

e. A commissioner from Kanuma District of Tochigi brought up an interesting example of this problem. In Kanuma, definite class distinctions exist. Consequently, when a member of the upper class violates the right of an inferior, the inferior does not consider that he has been done an injustice. He believes that because of his social position, the member of the higher class had a right to do as he did. The commissioner who related this case thinks that schooling is the only way to make people understand what Civil Liberties means.

f. An examination of the kinds of cases referred to the Civil Liberties Commissioners also indicates a need for further effort in the informational and educational field. In 1948-49, 40 of the 48 cases handled dealt with Civil Liberties problems. However, in 1949-1950, only 178 out of 5,076 cases dealt with Civil Liberties. All others had to do with general legal problems.

g. Statistics for various towns in Kanto Region show a pattern similar to that for the year 1949-1950. In Nagano City of the 90 cases

\*--Civil Liberties Bureau, Attorney-General's Office, Japanese Government, Achievements of the Civil Liberties Bureau Since Its Establishment (March 31 1950) p.2 and 3.

settled by the Civil Liberties Commissioners, 80 were family disputes which the Commissioners felt were not concerned with Civil Liberties problems. The Gunma Civil Liberties Commissioners have handled 140 cases, 19 of which they felt were properly considered Civil Liberties cases. In Shizuoka, one of the 28 cases recently brought to the attention of the Commissioners dealt with Civil Liberties questions. In Utsunomiya, Tochigi, Commissioners reported that "nearly all" of the 20 cases brought to their attention on a recent consultation day dealt with marital troubles or property disputes--questions which in Western law, at least, would not be considered human rights questions.\*

h. It seems obvious that such work remains to be done both in informational and educational fields. Unless the informational aspect of the Civil Liberties program receives considerable attention, there is danger that the purpose of the Human Rights Commission will be lost and the Commissioners will become advisors on all legal problems. Several Commissioners have told this headquarters they think the people confuse their functions with that of the law consultation offices.

i. Until the people understand the function of the Commissioners and what are the rights they are protecting, it seems likely that the Commissioners will continue to expend much of their effort on cases which are not properly their responsibility.

j. The problem of understanding Civil Liberties is not confined to the people in general. Further questioning by this headquarters showed that in several instances the Human Rights Commissioners themselves do not understand what Civil Liberties are or what kinds of cases they should be handling. In Yokohama, a Commissioner who is a leader of a women's organization, frankly admitted that she didn't know what the term Human Rights means. A representative of the Legal Affairs Bureau in Shizuoka told the interviewer that he was discussing "freedom of conscience" with one of the Commissioners one day and discovered that the Commissioner didn't know what he meant. In Kofu, Yamanaishi, an attorney from the Legal Affairs Bureau, when asked to explain what Human Rights meant, said that he found the term hard to define but usually associated it with property rights.

k. The problem is not simply one which results from insufficient study on the part of the Civil Liberties Commissioners. Those members of the Commission who were attorneys also admitted difficulties in understanding what Civil Liberties means in the Japanese sense although they were familiar with the usual meaning of the term in Western law.

l. The problem seems to be due partially from the wording of the "rights and duties section" of the new Japanese Constitution which

\*--For samples of the cases brought to the attention of Civil Liberties Commissioners, see Appendix A.

contains such a clause as "... there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origins." The Japanese Constitution contains all the usual safeguards for privacy of person and property and enumerates the freedom granted to the people. In addition, it has included economic rights: "all people shall have the right to maintain the minimum standards of wholesome and cultured living" and "all people shall have the right and obligation to work." It also deals with marriage, providing that "marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual co-operation with the equal rights of husband and wife as a basis."

m. Several Civil Liberties Commissioners with whom the matter was discussed stated that probably all legal problems are, in a sense, Civil Liberties problems under the new Japanese Constitution. They agree, however, that for practical purposes a definition should be worked out regarding which cases are to be considered Civil Liberties, which are not.

n. In time, decisions in the Japanese courts will supply the definition of what constitutes a violation of Civil Liberties under Japanese law. But until judicial interpretation supplies the answer, the Commissioners are faced with the double problem of deciding what the Japanese Constitution means and of giving advice based upon it.

o. As might be expected, some disagreement is growing up among the Commissioners as to what constitutes a Civil Liberties case. To take one example, there is the question of marital disputes. Most of the Commissioners interviewed believe that marital disputes are under the jurisdiction of the family court--unless there is indication that one or the other of the parties was coerced into marriage against his or her will.

p. However, in Kanuma, Tochigi, one Commissioner declared that all marital disputes in Japan involve Civil Liberties problems. As an example of Civil Liberties cases, he told of marriages which had been contracted during the war between city dwellers and farm girls. The men married primarily to get food. Now that food is more plentiful, they want to divorce their farm wives. The cases have been brought to the attention of the Civil Liberties Commissioners. This Commissioner thinks that they should have jurisdiction over such matters.

q. A similar view was expressed in Iida, Nagano, where a Commissioner described the only case which had been brought to his attention. In this case, the husband drank, beat his wife, finally decided to separate from her, returned to her, beat her again, but refused to appear in family court to arrange a settlement of their disagreements. Both the Commissioner and an attorney who was head of the Legal Section agreed that this case involved "infringement of the basic rights"--although they could not say specifically which rights was involved. The attorney said he thought all similar marital disputes are Civil Liberties problems.



r. Substantial areas of agreement exist, however, regarding the question of what constitutes a Civil Liberties case. These have been summarized by Kurt Steiner, Chief, Civil Affairs and Civil Liberties Branch, Legislation and Justice Division, Legal Section, GHQ, SCAP. He says the essential element in a Civil Liberties case is "an attempt at subjugating another person's individuality, of dwarfing that person." He points out that identical sets of facts may constitute a Civil Liberties violation depending on the presence or absence of the element mentioned. This element, he says is present in:

- (1) Boss rule.
- (2) Sale of children.
- (3) Murahachibu. (ostracising from the social and economic life of the village individuals who have incurred the anger of the other villagers.)
- (4) Police brutality.
- (5) Violations of constitutional safeguards for criminal procedures.

s. While the above definition may not be a perfect instrument for distinguishing Civil Liberties cases, it is at least a valuable guide. No information program can be effective, however, until the Civil Liberties Commissioners agree on the substance of the material to be publicized. Much work needs to be done to shift thinking about Civil Liberties problems from the present vague generalizations to terms that are concrete and meaningful for most of the people. The above definition is certainly a step in the right direction. But it appears that further clarification is necessary if the meaning of Civil Liberties under the new Japanese Constitution is to be fully understood. When the problem of definitions is worked out, a serious handicap to the informational program will have been overcome.

t. The central office of the Japanese Attorney General would appear to be the logical group to deal with the problem of definitions. These definitions--worked out in terms of actual cases--could then be distributed throughout Japan for the use of every Civil Liberties Commissioner.

u. As the above discussion has indicated, the first target of the Civil Liberties Commission information program should be the Civil Liberties Commissioners themselves.

#### 7. An Effective Information Program

a. Once the Civil Liberties Commissioners have organized their efforts and worked out to their own satisfaction an understanding of what Civil Liberties are, the next question is: what means can be most

effective in explaining Civil Liberties questions to the Japanese people?

b. During its interviews, this headquarters was told that Civil Liberties is an alien term devoid of meaning and interest for most Japanese. The chairman of the Nagano Civil Liberties Union said he has frequently made speeches on Civil Liberties topics. However, these did not seem to interest the audience. The chairman said he believes people are interested in Civil Liberties problems only when situation arise in which their own rights are being trampled upon.

c. One of the Tokyo Civil Liberties Commissioners presented the problem forcefully when he said: "How can we talk about Civil Liberties to people who scarcely have the right to live?"

d. His objection may be true as applied to abstract discussions about Civil Liberties. But many cases of Civil Liberties violations here in Japan seem to arise from just that struggle for existence. As such, they should be particularly meaningful to those depressed elements of the population which "scarcely have the right to live."

e. Murahachibu--the practice still prevalent in some Japanese villages of ostracizing individuals who anger the other villagers--is a fearful thing not only for the severance of social contact but for the economic ostracism which sometimes makes it impossible for the individual to earn a living in the village. Selling children as servants or young girls as prostitutes or geishas are also Civil Liberties problems which arise from the "struggle to live."

f. The answer seems to be to present Civil Liberties problems to the Japanese people in terms of situations which are a part of their every day lives. This headquarters believes that this approach will be the most successful in giving meaning to what are apparently empty terms for many Japanese--the rights to life, liberty and the pursuit of happiness.

g. Another approach which should not be ignored would be to relate Civil Liberties to incidents in Japanese history or ideas in Japanese and Chinese philosophy. If it could be shown that Civil Liberties (the real basis of democracy) has roots in Japanese tradition and is not simply a product of American Occupation it might lay the ideological groundwork for a respect for Civil Liberties that will outlast the Occupation.

h. As it was pointed out earlier in this report, the information activities of the Civil Liberties Commissioners have so far centered about the functions and activities of the Commission itself. This is undoubtedly a valuable part of the information program and one that should be continued. Efforts should continue to be made to let the people know when and where consultation days sponsored by the Commission are to be

held. Posters, radio, newspaper notices and sound cars have been--and can continue to be--used effectively for this purpose.

i. It is in the field of explaining to the people what Civil Liberties mean that most work needs to be done. Many of the Commissioners have expressed the viewpoint that the only way to make people understand Civil Liberties is to teach classes on the subject in schools and require that all school children take them.

j. One Civil Liberties Commissioner asserted that there is no sense in putting stories about Civil Liberties in newspapers and other mass communications media unless the schools have laid the foundation. People won't believe what is put in a newspaper if they have been taught from childhood that the opposite point of view is correct, he said. He believes Civil Liberties courses should begin in the first grade in school.

k. This headquarters recognizes that awakening the Japanese people to an awareness of their rights under the new Constitution is not the whole answer to the problem of Civil Liberties in Japan. Many Civil Liberties problems arise from economic hardships and can be alleviated probably only through a general increase in the standard of living or in improved programs for the aid of the destitute and unemployed. Civil Liberties problems are also closely connected with traditional hierarchial patterns in Japanese society. Breaking down these traditions is a slow, difficult process. Probably it is through the schools that we must expect much of the reorientation to come. However, this headquarters believes that informational work can be valuable to the Civil Liberties program--particularly in the field of adult education.

l. Lectures are one media which could be used. There are in Japan now a number of Japanese officials and educators who are qualified to speak on Civil Liberties topics. Six prominent Japanese recently made a trip to the United States to study Civil Liberties problems.

m. The Civil Liberties Councils (once they are formed) should be encouraged to sponsor lectures by these individuals. In some cases, the fact that a prominent person from Tokyo will be the speaker should be sufficient to draw a crowd. If it is feared that this will not be the case, the lecture on Civil Liberties should be made part of a general town hall program--or entertainment should be included along with the lecture.

n. The speakers should be asked to avoid abstract discussions of Civil Liberties and to present their information in terms of illustrations most likely to appeal to the group addressed. The lecture should be followed by a question period and discussion.

o. Films or kagi shibai could also be used in connection with lectures to add to the interest of the program. These could be used to illustrate typical Civil Liberties cases--many of which seem well suited for dramatic presentation. There are no films available now which adequately deal with Civil Liberties questions. However, it would seem that private companies might find as a good market a series of films depicting various kinds of human rights cases--one on the sale of a child, another on ostracism of a family, another on a girl who is forced to

marry against her will, etc. With a little imagination, all of the above-mentioned themes should be capable of being developed into a movie as high in audience appeal as the kind shown in commercial movie theaters.

q. Film-making is an expensive matter that can probably be handled only by a private company or by the Japanese national government. However, the information sections of the various prefectural governments should be able to turn out kami shibai suitable for use with lectures.

r. The important thing, again, is to concentrate on presenting typical cases of Civil Liberties violations. These should be presented not in legal terminology but in terms of situations familiar to the people addressed.

s. Radio is also a good outlet for dramatic presentations of Civil Liberties questions.

t. Regarding broadcasts of street-corner consultations held by Civil Liberties Commissioners--these have been broadcast both in Nagano and in Tokyo and apparently have considerable audience appeal. However, it should be born in mind that the Civil Liberties Commissioners are required to keep confidential the complaints brought to them. Radio broadcasts of their consultations would seem to be a flagrant violation of this provision. If consent of the individual interviewed is obtained in advance--or if the name and all identifying circumstances are withheld from the radio presentation, the broadcasts might be permissible. However, it would seem undesirable to undertake any program which might discourage people from bringing their troubles to the Commissioners for fear of publicity.

u. Round table discussions of Civil Liberties questions might make an interesting series of radio programs. For example, the question: "Does a husband have the right to spend a wife's money without her consent" might be discussed--or some other problem of concrete interest to the majority of the listeners.

v. Newspaper coverage of Civil Liberties questions is necessarily limited to material that will attract the interest of the general public. With the present shortage of newsprint, papers cannot be expected to devote much space to "educational" material that has little news value.

w. However, they can contribute a great deal through accurate reporting of all infringements of Civil Liberties which come to their attention and through writing explanations of the cases in editorials. They can also help by extending the audience reached by Civil Liberties lectures and discussion groups through reporting the gist of the speeches and discussions.

x. The Civil Liberties Commissioners can help keep the press informed by designating at least one member of the group "information chairman." It should be his job to distribute to newspapers any information which might be newsworthy. Many of the groups of commissioners interviewed contained at least one newspaper editor.

y. Finally, the Civil Liberties Commissioners can encourage the formation of "study groups" on Civil Liberties topics. Women's clubs and youth groups can be encouraged to adopt at least one Civil Liberties project each year.

## Appendix A

The cases described below are a sample of the Civil Liberties infringements brought to the attention of the Civil Liberties Commissioners interviewed by this headquarters. The nature of these cases indicates the confusion now surrounding the idea of Civil Liberties in the minds of many Japanese. In addition, these cases illustrate Civil Liberties violations which are peculiar to Japan such as "suruhachibu" (ostracism) and discrimination against the sta class.

Violations of the Right to Live

In Maebashi, Gunma, the Civil Liberties Commissioners told of a case in which a wife quarrelled with her husband, left him. When she left, he would not give her back her ration book. She complained to the Civil Liberties Commissioners that she was being denied the right to live.

In Tokyo-to, a Civil Liberties Commissioner said that denials of the right to live are resulting from overcrowded conditions in the unemployment offices. The unemployment offices are frequently so busy that they refuse to take any more names on the unemployment lists. This constitutes a "denial of the right to live" for the people who are turned away from the unemployment office.

Class Discrimination

(Note: In Japan there exists a class of people known as "sta" which might be considered the "Untouchables" of Japan. These people have traditionally performed menial and disagreeable work and are often excluded from most village activity.)

In Kiryu, Gunma, the Civil Liberties Commissioners were told of a case in which a man lost his job in a factory when it became known that he was member of the "sta" class. The word spread that the man was an sta and he was unable to get work in any other factory. The Civil Liberties Commissioners reported that they were able to work out a satisfactory settlement of the dispute.

In Nagano Prefecture, a group of sta who had been excluded from attending a village meeting became involved in a fight with the other villagers. One of the villagers was injured. The Attorney General's Office began investigating the case and sent police to question some of the sta. A policeman used insulting language in dealing with the sta and one of them committed suicide. Representatives of the sta family finally came to the Nagano Civil Liberties Union (a private organization) for help. Through the efforts of the Civil Liberties Union, the matter was settled with a light fine for the sta (200 yen). The policeman who had insulted the sta during his questioning was transferred. In handling the case, it was recognized by the authorities that the fight had been provoked by excluding sta from the meeting.

Murahachibu:

(Note: Murahachibu is the practice by which an individual or a family is excluded from communal activity of the village by informal agreement between the other villagers. This practice is not commonly observed today except in isolated villages. Murahachibu was recognized as illegal in Japan in the 7th year of Taisho (1918). In that year, a man who had been ostracized for refusing to permit construction of a public road through his land took the case to court. The Supreme Court of Japan ruled that "though it is the free will of the people to associate or not with any individual, this case was done in a way by group and has deprived the involved party of his freedom in society." As the cases below indicate, murahachibu makes it unpleasant--or even economically impossible--for a family to live in a community. One explanation of the term "murahachibu" is that "hachibu" means 80 per cent. It is said that the people of the village will not associate with the ostracized person except at times of funerals or fire (or 20 per cent of the time.) In some districts, "murahachibu" is referred to as "nachi-nosoki" or "kusihagushi" or "honganbarai."

In Nagano, where murahachibu seems to be fairly common, Civil Liberties Commissioners say that typical cases often involve new families in the community. These newcomers are considered to be "outsiders" and are not permitted to vote for the buraku chief, participate in buraku festivals, belong to the fire brigade, obtain wood from the forest owned by the village or in any way share in the co-operative property and actions of the village. Their children are not permitted to play with the children of other villagers.)

One case reported in Nagano was concerned with an outsider who owned land that the buraku wanted to use as the site of a large public hall. The man protested that without his land he could not live. The people of the buraku ostracized him and put out guards to enforce the "murahachibu" against this man.

Another case of murahachibu occurring in Nagano involved a rice miller and his family. This mill owner was unpopular with the people in his village. The villagers tried to buy the mill and operate it for the community. When the miller refused to sell, they set up a mill of their own. This took most of the miller's business. He set fire to the village mill, was caught, tried and sentenced to prison for three years. The villagers ostracized the rice miller's family. The Civil Liberties Union in Nagano to whom the complaint was made was successful in persuading the people to lift their "murahachibu."

A murahachibu case reported recently in Yukan Asahi involved a family which had a long standing dispute with a village boss over forest boundary. The boundary dispute was finally settled informally last March, but the boss was not satisfied with the settlement. He urged the members of the local agricultural co-operative to ostracize the family.

On June 2 of this year, the co-operative members paid a visit to the family's house and formally announced that they would not associate with them in the future. The only man in the household--the husband of one of the daughters--returned to his own home the next day, leaving his wife, her younger sister and her foster-mother along to manage the farm. It is said to have cost the family 30,000 yen to hire workers from other villagers to do jobs that formerly were done jointly with the other people of the village.

#### Violation of a Property Right:

The Utsunomiya, Tochigi, Civil Liberties Commissioners received a complaint from a widow who said that the government had built a fire tower on her land without reimbursing her or getting her consent. Through the help of the Civil Liberties Commissioners, an arrangement was worked out whereby the government would rent the land from the widow.

#### Intimidation:

The town boss in Oyoda went to a store, ordered several bottles of sake, and began to walk off with them--without paying--as was his habit. This time, the store proprietor protested. The boss threatened the store owner's life. The case is still pending.

#### Marriage:

The Civil Liberties Commissioners in Tochigi-machi were told of a case in which mother-in-law of a man's deceased wife complained that she could not get along with the man's new wife. She asked the man to divorce his new wife. The human rights commissioners tried to explain to the mother-in-law that she had no right to interfere in her son-in-law's second marriage.

#### Violations of Constitutional Safeguards for Criminal Procedure:

The Legal Affairs Bureau of Tokyo-to described a case in which a police officer had "pushed" a drunken woman while she and her companion were being questioned in a police box by another policeman. (The woman who was "pushed" was injured badly enough so that it took her five days to recover.) The woman brought a complaint to the Civil Liberties Commissioners which referred the matter to the Legal Affairs Bureau. A few days after the incident occurred, the policeman who had "pushed" the woman came to the Legal Affairs Bureau with a written statement saying that the matter had been settled out of court. The Legal Section suspected that the policeman had used intimidation to obtain the written statement and continued its investigation of the case.



The Chiba City Civil Liberties Commissioners heard reports that an innocent man had served a long prison term in the place of the man who was originally tried and convicted of the crime for which the sentence was given. They are investigating the matter.

The Chiba City Civil Liberties Commissioners also received a complaint from a man who had finished serving a prison term that he had been unjustly imprisoned. They began to investigate the case, but discovered that all records had been destroyed during the war. They dropped the matter.

In Gumma Prefecture, the Civil Liberties Commissioners received a complaint from a man who had been arrested for debt. The police arrested him without a warrant upon the complaint of his creditor.

Another complaint in Gumma Prefecture involved a poor Korean family which had recently moved into the community. Some money was stolen in the neighborhood where the Korean family lived. Police arrested the head of the Korean family, insulted him, and imprisoned him. Later on, it was found that he was not guilty.

In Takasaki, Gumma, the Civil Liberties Commissioners received a case in which a man suspected his neighbor of setting his house afire. There was no evidence to show that the neighbor was responsible, but the man whose house was burned down complained to the police who jailed the neighbor. The neighbor's daughter complained to the Civil Liberties Commissioners who were unable, upon investigation, to find any reason for the arrest.

In Kumagaya in Saitama Prefecture, a boy borrowed a book from a lending library for a few days and then lent the book to a friend. A policeman saw the lending library's name on the book the boy was carrying, so they held the boy and called his parents. The parents could not understand why the boy had been picked up and why police thought he was lying.

#### Miscellaneous:

A girl bus conductor in Nagano Prefecture began living with the bus driver. The father of the bus driver did not approve of the affair and asked his son's friend to break it up. The bus driver's friend visited the couple and contrary to what the father said, found them living together more happily than the average married couple. He suggested that they marry. This was reported to the father of the bus driver who

became furious with the friend and demanded that he apologize publicly for not breaking up the couple. He refused to forgive his son or his son's friend. The Civil Liberties Commissioners were asked to settle this.

In Omiya, Seitama, a drunken man refused to pay his bill when he left a restaurant where he had been drinking. The restaurant got the police to put the man in jail. They put him in a cell with several other prisoners. The man became very noisy and yelled to the other prisoners to beat him. Finally, they obliged. When the man was released from prison, he paid the restaurant owner and complained to the Civil Liberties Commissioners that the inmates of the prison had violated his civil rights.

A teacher encouraged his student to plant a vegetable garden near the school. One boy volunteered to bring all of the seeds. Later it was found that the boy had stolen the seed from a farmer who was a prominent member of the PTA. The farmer beat the boy and blamed the teacher for the theft. The teacher told the Civil Liberties Commissioners that he thinks the farmer can ruin his career and thus violate his civil rights.

A 17 year old boy complained to the Tokyo-to Civil Liberties Commissioners that a gangster had not lived up to an agreement he had made with the boy. The boy had promised to operate a machine gun for the gangster on one occasion in return for a promise from the gangster to set the boy up in business. The boy was caught and sentenced to prison. He was released after four years and went to the gangster to ask him to fulfill his end of the bargain. The gangster gave the boy 5,000 yen and sent him away. The boy complained to the Civil Liberties Commissioners.

In Tochigi-pashi, Civil Liberties Commissioners received a complaint from a woman who had asked a lawyer's assistance in cashing a check. (She didn't understand what the proper procedure was.) The lawyer cashed the check for her but refused to give her the money. She complained to the procurator's office and to the lawyer's association who did nothing. When she brought the matter to the Civil Liberties Commissioners, they found out that the woman's husband owed money which he had made no attempt to pay and that the lawyer had retained the money from the check for another attorney who was trying to secure payment of the debt.

## Appendix B

## Rights and Duties Section of the New Japanese Constitution.

## Chapter III

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12. The enjoyment of the freedoms and rights guaranteed to the people by this Constitution shall be maintained by the eternal vigilance of the people and the people shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals, and their right to life, liberty, and the pursuit of happiness shall, within the limits of the public welfare, be the supreme consideration in legislation and in governmental affairs.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin. Peerage shall not be recognized.

No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special group.

Universal adult suffrage is hereby guaranteed with regard to the election of public officials.

In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article 16. Every person has the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matter; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17. Every person has the right to sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19. Freedom of thought and conscience shall be held inviolable.

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article 21. Freedom of assembly, association, speech and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. Laws shall be enacted considering choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to insure that all boys and girls under their protection receive ordinary education as provided for by law. Such education shall be free.

Article 27. All people have the right and the obligation to work. Standards for working conditions, wages, hours and rest shall be fixed by law. The exploitation of children shall be prohibited.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29. The right to own property is inviolable, but property rights shall be defined by law in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

Article 30. The people are liable to taxation as provided by law.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

Article 33. No person shall be apprehended except, upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while committing a crime.

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right to compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government.

Article 38. No person shall be compelled to testify against himself.

No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 39. No person shall be criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted nor shall he, in any way, be placed in double jeopardy.

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

COPY

MEMORANDUM FOR RECORD

SUBJECT: New Search Warrant Procedure for United Nation Nationals  
on Economic Violations

- file - "I persons"*  
*22 Sept*
1. The new procedure for Japanese Law Enforcement Agencies obtaining and issuing search warrants with and without Military Police in the Kanto Area as approved by the FM Tokyo, Yokohama and 1st Cav. Division is as follows:
    - a. In 15 wards in Tokyo Metropolitan Area, Japanese Law Enforcement Agency will submit requests for search warrants to this division. In turn this division will prepare the search warrants and submit them to the GHQ Provost Court for signature and approval, then the search warrants are turned over to the Tokyo Metropolitan Police Dept., Liaison Section. The Tokyo MPD Liaison Section will contact the Tokyo Provost Marshal to obtain Military Police to serve the search warrant and the Japanese Law Enforcement Agency will do the necessary investigations. The Japanese Law Enforcement Agency will have full responsibility for all commodities impounded. The Tokyo Provost Marshal shall return the executed search warrant to the GHQ Tokyo Provost Court, and submit copies of the executed search warrant to this division. This division will prepare fact sheets and submit the case to the GHQ Provost Courts.
    - b. For the remaining 8 wards in the Tokyo Area, Saitama Prefecture and Gumma Prefecture, the Japanese Law Enforcement Agency will request the 1st Cav. Division Provost Marshal, Camp Drake for search warrants which the 1st Cav. Division Military Police will serve and all cases will be tried by the 1st Cav. Division Provost Court, Camp Drake. Japanese Law Enforcement Agencies in Gumma also can obtain search warrants and Military Police service from Camp Drew, Gumma Prefecture.
    - c. For Kanagawa (except Yokohama and Kawasaki), Shizuoka, Chiba, Ibaraki, Tochigi, Nagano and Yamanashi Prefectures, Japanese Law Enforcement Agency will submit request for search warrants to this division and in turn this division will issue search warrants which the Japanese Law Enforcement Agency will serve and return to this division within ten days. This division will also work up the cases and submit fact sheets to the GHQ Tokyo Provost Courts.
    - d. For Yokohama and Kawasaki the Japanese Law Enforcement agencies will submit requests for search warrants to the Yokohama Provost Marshal. In turn the Yokohama Provost Marshal will obtain search warrants from the Yokohama Provost Court and will execute the search warrants along with Japanese Law Enforcement Agencies who will make the necessary investigation and take full responsibility for commodities confiscated.

The Yokohama Provost Marshal will prepare the cases and will submit the fact sheets to the Yokohama Provost Court.

J. G. HEDDERMAN  
Distribution & Industry Division

MEMO ROUTING SLIP		NEVER USE FOR APPROVALS, DISAPPROVALS, CONCURRENCES, OR SIMILAR ACTIONS	
1 NAME OR TITLE	<i>Chief</i>	INITIALS	
ORGANIZATION AND LOCATION	<i>KaCAR 26</i>	DATE	<i>JUN 1950</i>
2			CIRCULATE
			COORDINATION
			FILE
		<input checked="" type="checkbox"/>	INFORMATION
3			NECESSARY ACTION
			NOTE AND RETURN
4			SEE ME
			SIGNATURE
REMARKS			
<p><i>file</i> <i>(N)</i> <i>22</i> <i>2000</i></p>			
FROM NAME OR TITLE	<i>Econ Sec</i>	DATE	
ORGANIZATION AND LOCATION		TELEPHONE	

ak

22 June 1950

Give Matsumoto Seiki Kogyo recently inventoried per inst-

for information on whether in the building in Kodaira

al Shepard, GAS thru Col. Dayton submitted (files - memo for w, this division are scheduled information.

vide several days indoctrination

Ltd., (39-128) Shinagawa-ku, ng scrapping of reparations about three months ago. kind about having this equip- tion cancelled. Inspection under application are usable.

scrapped-down was made on this date. Ninety (90) the list of scrap machines found after physical check: machines should be changed of which are missing or hines listed should not be

These machines should be taken off the list of scrap machines which was submitted to KaCAR by the company.

e. Conferences were held with the following agencies this date, relative to surveillance outlined in ODs 9, 10 and 11: Tokyo EIA; FRP; Municipal Police; Local MAF; Tokyo-To Food, Fertilizer, Incentives, and Civil Engineering Sections; Staple Food and Fertilizer Kodans. (See memo for record attached as Annex 1a.)

f. Attached as Annex 1b is memo for record re Saitama EIA, and 1c is surveillance report on distribution, enforcement and public works, Kanagawa, 13-16 June 1950.



## DAILY ACTIVITIES REPORT

ak

ECONOMICS SECTION, KaGAR

DAR #130

22 June 1950

## 1. DISTRIBUTION &amp; INDUSTRY

a. 1500 - Called Mr. Woodward for permission to give Matsumoto Seiki Kogyo K.K. (26-28) "Temporary Use" of 7 transformers that were recently inventoried per instructions from CPC.

1505 - Called KLO (Mr. Takahashi's assistant) for information on whether the machinery can be consolidated into other buildings from the building in Kodaira Jukogyo (38-01) that is in need of repairs.

b. Bunjudo Printing Plant - Per request of General Shepard, GAS thru Col. Dayton information on the status of the Bunjudo Printing Plant was submitted (files - memo for records). Mr. Kemake, Chief Economics Section and Mr. Sprow, this division are scheduled to visit Bunjudo tomorrow (23 June) for further up to date information.

c. Requested by Lt. Col. Wellendorf, GAS, to provide several days indoctrination for Major King (on 2 weeks TDY with army).

d. Reparations:

(1) Inspection was made at Nippon Kesan Co., Ltd., (39-128) Shinagawa-ku, Tokyo, regarding an application requesting scrapping of reparations equipment. The application was submitted about three months ago. The plant manager has since changed his mind about having this equipment scrapped, and now wants the application cancelled. Inspection revealed that all these reparations items under application are usable.

(2) An inspection of machines intended to be scrapped-down was made on Haneda Seiki K.K., Haneda Plant (39-163) this date. Ninety (90) machines were checked. Some mistakes in the list of scrap machines which was submitted by the company were found after physical check: (1) Category 2b in the list of scrap-down machines should be changed to category 1a (machines the major parts of which are missing or broken); (2) Twenty-three (23) of the machines listed should not be scrapped down. They lack no major parts and need only minor repair. These machines should be taken off the list of scrap machines which was submitted to KaGAR by the company.

e. Conferences were held with the following agencies this date, relative to surveillance outlined in ODe 9, 10 and 11: Tokyo EIA; FRP; Municipal Police; Local MAF; Tokyo-To Food, Fertilizer, Incentives, and Civil Engineering Sections; Staple Food and Fertilizer Kodans. (See memo for record attached as Annex 1a.)

f. Attached as Annex 1b is memo for record re Saitama EIA, and 1c is surveillance report on distribution, enforcement and public works, Kanagawa, 13-16 June 1950.

2. NATURAL RESOURCES

a. Agriculture - Examined Agricultural Cooperatives Affairs in Saitama and Chiba Prefectures. See Annex 2a and 2b.

P. S. SIMS



kn

22 June 1950

## MEMORANDUM FOR RECORD

SUBJECT: Distribution &amp; Industry Surveillance, Tokyo-To

## 1. Distribution:

a. Staple Food - Staple food rejections by general consumers increased from 3.6 percent (2,202 tons) during April, to 7.2 percent (4,168 tons) during May, with imported and domestic wheat, milled 85 and 80 percent respectively, accounting for the bulk of refusals. Local MAF Food Office officials appear concerned over the rationing of white potatoes, claiming that they will be unable to dispose of the 4 million kan allocated Tokyo for July August and September, not to mention shipments of potatoes rejected in other prefectures. The crux of the problem lies in lack of storage facilities, which is aggravated by stored grains, rejected earlier. Officials were reminded of the seriousness of the situation and urged to work with the central government toward a solution before shipments begin arriving. No plans have been made to dispose of some 2,600 tons of rejected staples to institutions and restaurants, as a prefectural government survey will not be completed until the 25th. Officials were requested to inform this headquarters of the amounts could be utilized by authorized consumers, by category per month.

b. Fertilizer - Officials estimate that fertilizer rejections will show a definite increase over earlier estimates, with nitrogenous agents making up the bulk of refusals. Lack of money increased allocations are held accountable. Use of organic agents has not increased to a noticeable degree.

2. Enforcement - Enforcement appears functioning quite well, with greater emphasis placed on transportation control. During the first 15 days of June, Tokyo MPD confiscated over 48 tons of rice from transportation checks alone. Restaurant controls were also intensified, with MPD reporting 67 arrests during the first fifteen days of June. Officials claim, that because of the increasing tightness of control, the blackmarket price of rice has increased from 120 to 140 yen per sho.

3. Public Works - No problems in this field were presented.

4. Industry - Commerce and Industry officials were reminded of their responsibilities with respect to the security of reparations equipment in plants undergoing labor difficulties and advised to make both parties involved in a strike aware of these responsibilities.

Annex 1a, page 1.

5. Control Associations - No problems in this field were uncovered.

6. Conclusions: In order to forestall anticipated storage difficulties with resultant loss due to spoilage, action will have to be initiated by the central government to prevent the flooding of distribution agents with white potatoes. Present allocations to Tokyo are considered too high for general distribution, but there is no indication that it will be reduced, rather, it is anticipated that other prefectures will begin shipping their rejected potatoes into Tokyo.

EDWIN MARSULLO  
Distribution & Industry Division

kn

22 June 1950

MEMORANDUM FOR RECORD

SUBJECT: Saitama EIA

1. Information received from Mr. Inouye, chief of Saitama local EIA, on Furuya Case is:

a. Omiya police tried to bribe (300,000 yen) Saitama CIC but the money was refused. The reason for this action by the police was to hush up the illegal operations done by the police by having Saitama CIC contact Japanese officials concerned with the case to show that CIC is backing the police.

b. Mr. Nittono, assistant chief procurator of Urawa Procurators Office prepares false documents and has no inclination to cooperate with KaGAR.

c. Mr. Kazama, Urawa procurator in charge of Furuya case was going to be replaced. However he is still in charge. He tries to induce witnesses to give false statements.

d. Although Tokyo Higher Procurator's Office is investigating the case separately, the number of investigators is limited and it is most likely that the report of the investigation will be made up of informations received from Urawa Procurator's Office.

*copy sent to Legal with Dr. Fetterstone*

W. J. JONES  
Distribution & Industry Division

Annex 1b.

ak

22 June 1950

## MEMORANDUM FOR RECORD

SUBJECT: Distribution, Enforcement and Public Works Surveillance,  
Kanagawa, 13-16 June 1950.

In compliance with instructions contained in OD's 9 and 11, dated 10 April 1950, and subsequent instructions, spot checks were made in Yokohama and surrounding areas and conferences were held with prefectural town and city officials, businessmen and consumers by the writer and Messrs Sugiyama and Suzuki. Observations made and information received was as follows:

## 1. Enforcement:

a. Restaurant Control: Spot checks and conferences with enforcement officials revealed continued laxity on the part of responsible officials with regard to action in this program. Inspection at the Ego Market area near the Sakuragicho Station revealed flagrant and open violations in the presence of policemen who were seen strolling past open sales of rice, noodles, bread and other staple foods. When this was pointed out to city and prefectural officials along with the fact that in spite of at least ten raids to date during June, only one violation was found, absurd and conflicting reasons were given by city and prefectural authorities. When officials were questioned concerning action taken with violators reported as having been seized last month, it was found that no action was taken in view of the necessity for further investigation and the need for written confessions by violators. Officials could not quote any authority for this statement but promised to submit a written report giving the directive requiring such confessions.

A report was submitted by enforcement officials concerning restaurant control raids conducted and quite a number planned. However, according to records of over 15 raids held to date under this program it is evident that the program is merely a paper plan with little real action taken inasmuch as only one arrest is reported to date, although hundreds of enforcement officials have taken part in these raids.

b. Staple Food Control: Continued activities against professional rice carriers, private staple food distribution points and shipping of rice in false packages is reported by the MIA and the police but questioning revealed that little if any control action has actually been taken by the authorities since the last conference in May. Although

enforcement officials reported that most black market rice in Kanagawa arrives from Chiba by ferry. At a May conference immediate action was promised by enforcement officials but none is reported to have been taken as yet.

c. Ghost Population: Investigations are reportedly continuing on this program but only minor violations are reported to have been uncovered other than one case in Tsurumi on which a report is being submitted. In this case a Korean operator is reported to have received 4,557 kgs of staple foods in rice equivalents by drawing rations for several "ghosts" for the period 16 May 1949 through February 12, 1950. The Yokohama MP is taking action in this case.

d. Thefts of Imported Flour: According to information uncovered by the Kawasaki MP and turned over to the procurator for action it is reported that 25 metric tons of imported flour was stolen by eleven men while it was being unloaded from ships during the period 21 November 1949 to 4 June 1950.

This flour is reported to have been sold for ¥960,000 to the Ogawa Provision Industry Company in Kawasaki which processed it into dried noodles to be sold on the black market.

## 2. Distribution:

a. Staple Food: Distribution is reported to be progressing satisfactorily with no serious difficulties faced in the program. Rejections of rations continues to be one of the principal problems with 88 M/T rejections of staples in brown rice equivalents during May as compared with 456 M/T in April and 410 M/T in March. Principal reasons for these rejections are reportedly due to the poor quality of imported rice and the high price of flour, barley and other staples as compared with the black market price of rice which is available to those who desire to purchase it.

When disposition of accumulated stocks became too difficult through regular ration channels, the prefectural government reported that as of the end of May 133 M/T was disposed of by selling at auction in accordance with authorization received in the MAF Food Agency letter "25 Shokuryo 3,023" dated 13/4/50 as follows:

<u>Item</u>	<u>Purpose for which used</u>	<u>Amount</u>
Imported milo	Shoyu mfg & animal feed	117 M/T
Dried noodles, bread, misc cereals	School lunch, Food Industry	16 M/T
		<u>133 M/T</u>

Kanagawa food officials are somewhat disturbed about allocations received by their prefecture as compared with Tokyo in that they were allocated 6 days imported rice rations as compared to only 2.5 days

allocation of the same undesired rice for Tokyo. It was further pointed out that four days rations of potatoes from other prefectures during July and August is considered unwise inasmuch as fresh potatoes will be available when Kanagawa growers harvest their crop during that period.

b. Fertilizer: Distribution as of 10 June 1950 is reported to have been as follows:

	<u>Allocation</u>	<u>Received by Pref.</u>	<u>Distribution to</u>	
			<u>Coops &amp; Dealers</u>	<u>Farmers</u>
Nitrogenous	15,655 M/T	100%	52%	50%
Phosphatic	9,285 "	100%	60%	56%
Potassium	3,452 "	100%	44%	40%

Rejections of nitrogenous fertilizers have been noticed by prefectural officials and according to estimates made by them, approximately 1,800 M/T of ammonium nitrate will have been rejected by farmers in Kanagawa by 31 July. The principal reason given for this is the small need for this fertilizer in rice paddies in the spring also, the money shortage is another reason cited. In some areas such as Tsurumi it was also pointed out that due to the availability of nite soil, calcium cyanamide and ammonium nitrate were rejected and resulted in a re-allocation of these fertilizers to the NW part of Yokohama.

c. Incentive Goods: The return of accumulated fall crop incentive goods to wholesalers by the Purchase Federation Agricultural Cooperatives and authorized dealers is reported to have been completed on 14 June. It is reported that these goods were returned for the purchase price with cooperatives and dealers paying transportation costs and the wholesalers paying packaging costs. It is further reported that ¥942,000,000 in payments is to be requested for losses incurred in the fall crop incentive goods program by those taking part at the next session of the Diet in July, so Kanagawa people concerned are waiting to receive their share of this amount.

### 3. Public Works:

#### a. Roads and Highways:

- (1) Requests for road construction by Occupation authorities: With regard to this matter, Mr. Y. Nagaoka, chief engineer of the prefectural Civil Engineering Dept, stated that PD's (Procurement Demands) would be required to pay for work such as road construction, etc., requested by such occupational authorities as those in 8th Army, Yokosuka Naval Base, Camp McGill and Zama mentioned at a 17 May conference. For the purpose of bringing the requests received from members of the above-named military and naval organizations to the attention of higher authorities,



it is reported that outlines of requests received by the prefectural government have been forwarded to the Road Bureau Chief of the Ministry of Construction.

- (2) Communists and Road Improvement: Near Gungoiji on the Yokohama to Enoshima highway there is a very narrow strip in the road making it necessary for the traffic to slow down considerably and at the same time causing added danger to pedestrians. To improve this situation the Yokohama City Assembly voted to widen the strip of road even though the removal of certain houses on at least one side of the road is necessary. At this, a group of Communists called the residents and owners of the houses together and succeeded in agitating them, telling them the program was an order given by members of the Occupation forces for military purposes. At this, Mr. Nogose, chief of the planning section, spoke to 150 residents and succeeded in convincing most of them that the program is to their advantage; but from all appearances, prefectural officials are still hesitant about beginning the program.
- (3) Construction of Enoshima Tower: Conferences were held with persons concerned with this project proposed by the Enoshima Electric Car Company now operating between Yokohama and Fujisawa. Indications were that although completion of the plan would encourage more visits to the island and add to the income of established businesses, a group of Communist agitators have aroused business interests and sympathizers to oppose the plan by submitting petitions to the Construction Ministry, the Ministry of Education and to this headquarters, etc. Signatures to the petition received by KaCAR were found to be Communists and their sympathizers and families when shown to Mr. Futani, member of the city assembly. It is reported that there are 28 known Communists and their families on the island, led by a Mr. Katano, son of the operator of the Sanukiya hotel on Enoshima island.

#### 4. Conclusions:

a. In view of the laxity of control action with respect to restaurant and other staple food control by responsible officials, not only at the local level but from all indications at the prefectural level as well, it is considered important that action by officials at the regional and national levels is important if this program is to be continued satisfactorily.

b. Action taken to punish guilty persons for thefts of 25,000 kgs of imported flour reported by the Kawasaki MP ~~will~~ be watched by this headquarters to see that proper action is taken.

c. Investigation has revealed that Communists are responsible for the action being taken to prohibit the construction of the Enoshima Tower as well as the proposed road improvement program on the Yokohama to Enoshima highway. Spot checks and discussions with interested parties indicate that the above proposals are worthwhile and from all indications are being held up by the Communists merely to create agitation and unrest among those concerned.

R. HASHITANI  
Distribution & Industry Division

ak

20 June 1950

## MEMORANDUM FOR RECORD

SUBJECT: Agriculture Co-operatives - Chiba Prefecture

1. Reference Operational Directive #12, dated 12 April 1950.
2. For the purpose of obtaining local information and trends about co-operative associations, a field trip was made to Chiba on 19 and 20 June 1950.
3. Of the 337 total general agriculture co-operatives in Chiba, 305 have submitted their yearly business reports to the prefecture co-operative section. This leaves only 32 more or about 2% of the total co-operatives, which have yet to submit their reports. Of those which have submitted reports, 47% showed profits, 51% losses, and 2% broke even.
4. The activity of the responsible prefecture officials for the co-operative program in Chiba appears to be equal to that of other prefectures in the region. Guidance and examination of the accounts of co-operatives is actively undertaken by the officials concerned. These activities are primarily an informational drive carried on by means of pamphlets and visits of officials to associations acquainting both membership and co-operative officials on the provisions of the recent co-operative program laws and revisions.
5. Summary: The co-operative program in Chiba is actively carried out by the responsible prefecture officials concerned. An improvement in business management and membership relationship of co-operatives of this prefecture can be expected.

GEOGE H. OSSORIO  
Natural Resources Division

Annex 2b

Legal and Government Section

File No. \_\_\_\_\_

Date: 30 Sept 1950

Attention:	Check	Initial
Nolan		
Featherstone	✓	
Abrams	✓	WNA
Uno		
Hizumoto		

DISPOSITION:

Date: \_\_\_\_\_ 1950

*Info copy from Mr Giltner @1*

QUARTERS

THE ALLIED POWERS  
 Scientific Section  
 Division

Justice Jackson, U. S. Supreme Court, con-  
 sideration requiring affidavit as to member-  
 ship. The Court upheld the constitutionality of  
 (on, GHQ, SCAP)

at al

Board

on the constitutionality of par 9(H) (Non-  
 Management Relations Act of 1947.

Paragraph to be constitutional this  
 Justice Jackson concerning Communism.

To state controlling criteria definitively is both important and difficult, because those Communist Party activities visible to the public closely resemble those of any other party. Parties, whether in office or out, are often irresponsible in their use and abuse of freedoms of speech and press. They all make scapegoats of unpopular persons or classes and make promises of dubious sincerity or feasibility in order to win votes. All parties, when in opposition, strive to discredit and embarrass the Government of the day by spreading exaggerations and untruths and by inciting prejudiced or unreasoning discontent, not hesitating to injure the Nation's prestige among the family of nations. The Communist Party, at least outwardly, only exaggerates these well-worn political techniques and many persons are thus led to think of it as just another more radical political party. If it were nothing but that, I think this legislation would be unconstitutional. There are, however, contradictions between what meets the eye and what is covertly done, which, in my view of the issues, provide a rational basis upon which Congress reasonably could have concluded that the Communist Party is something different in fact from any other substantial party we have known, and hence may constitutionally be treated as something different in law.

I

From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party facade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system. A rough and compressed grouping of this data would permit Congress to draw these important conclusions as to its distinguishing characteristics.

1. The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate. It seeks not merely a change of administration, or of Congress, or reform legislation within the constitutional framework. Its program is not merely to socialize property more rapidly and extensively than the other parties are doing. While the difference between other parties in these matters is largely as to pace, the Communist Party's difference is one of direction.

The Communist program only begins with seizure of government, which then becomes a means to impose upon society an organization on principles fundamentally opposed to those presupposed by our Constitution. It purposes forcibly to recast our whole social and political structure after the Muscovite model of

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS  
Economic and Scientific Section  
Labor Division

Brief of opinion rendered by Associate Justice Jackson, U. S. Supreme Court, concerning constitutionality of federal legislation requiring affidavit as to membership in Communist Party. The U. S. Supreme Court upheld the constitutionality of the legislation. (Prepared by Legal Section, GHQ, SCAP)

(1)

American Communications Association, CIO et al  
vs  
Charles T DOUDS, National Labor Relations Board

(2)

United Steel Workers of America et al  
vs  
National Labor Relations Board

1. These cases presented for decision the constitutionality of par 9(H) (Non Communist affidavit provision) of the Labor Management Relations Act of 1947.

2. While the court determined such paragraph to be constitutional this brief merely presents the opinion of Mr. Justice Jackson concerning Communism.

"To state controlling criteria definitively is both important and difficult, because those Communist Party activities visible to the public closely resemble those of any other party. Parties, whether in office or out, are often irresponsible in their use and abuse of freedoms of speech and press. They all make scapegoats of unpopular persons or classes and make promises of dubious sincerity or feasibility in order to win votes. All parties, when in opposition, strive to discredit and embarrass the Government of the day by spreading exaggerations and untruths and by inciting prejudiced or unreasoning discontent, not hesitating to injure the Nation's prestige among the family of nations. The Communist Party, at least outwardly, only exaggerates these well-worn political techniques and many persons are thus led to think of it as just another more radical political party. If it were nothing but that, I think this legislation would be unconstitutional. There are, however, contradictions between what meets the eye and what is covertly done, which, in my view of the issues, provide a rational basis upon which Congress reasonably could have concluded that the Communist Party is something different in fact from any other substantial party we have known, and hence may constitutionally be treated as something different in law.

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1. The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate. It seeks not merely a change of administration, or of Congress, or reform legislation within the constitutional framework. Its program is not merely to socialize property more rapidly and extensively than the other parties are doing. While the difference between other parties in these matters is largely as to pace, the Communist Party's difference is one of direction.

The Communist program only begins with seizure of government, which then becomes a means to impose upon society an organization on principles fundamentally opposed to those presupposed by our Constitution. It purposes forcibly to recast our whole social and political structure after the Muscovite model of

police-state dictatorship. It rejects the entire religious and cultural heritage of Western civilization, as well as the American economic and political systems. This Communist movement is a belated counter-revolution to the American Revolution designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government.

Goals so extreme and offensive to American tradition and aspiration obviously could not be attained or approached through order or with tranquility. If, by their better organization and discipline, they were successful, more candid Communists admit that it would be to an accompaniment of violence, but at the same time they disclaim responsibility by blaming the violence upon those who engage in resistance or reprisal. It matters little by whom the first blow would be struck; no one can doubt that an era of violence and oppression, confiscations and liquidations would be concurrent with a regime of Communism.

Such goals set up a cleavage among us too fundamental to be composed by democratic processes. Our constitutional scheme of elections will not settle issues between large groups when the price of losing is to suffer extinction. When dissensions cut too deeply, men will fight, even hopelessly, before they will submit. And this is the kind of struggle projected by the Communist Party and inherent in its program.

2. The Communist Party alone among American parties past or present is dominated and controlled by a foreign government. It is a satrap party which, to the threat of civil disorder, adds the threat of betrayal into alien hands.

The chain of command from the Kremlin to the American party is stoutly denied and usually invisible, but it was unmistakably disclosed by the American Communist Party somersaulting in synchronism with shifts in the Kremlin's foreign policy. Before Munich, Soviet policy was anti-German -- "anti-fascist" -- and the Communists in this country were likewise. However, when Stalin concluded a nonaggression pact with Hitler and Nazi Germany and the Soviet Union became partners in the war, the Communists here did everything within their power to retard and embarrass the United States' policy of rendering aid short of war to victims of aggression by that evil partnership. When those partners again fell out and Russian policy once more became anti-German, the Communists in this country made an abrupt and fierce reversal and were unconscionable in their demands that American soldiers, whose equipment they had delayed and sabotaged, be sacrificed in a premature second front to spare Russia. American Communists, like Communists elsewhere in the world, placed Moscow's demand above every patriotic interest.

By lineage and composition the Communist Party will remain peculiarly susceptible to this alien control. The entire apparatus of Communism -- its grievances, program, propaganda and vocabulary -- were evolved for Eastern and Central Europe, whose social and political conditions bear no semblance to our own. However gifted may have been the Communist Party's founders and leaders -- Marx, Engels, Lenin and Stalin -- not one of them ever lived in America, experienced our conditions, or imbibed the spirit of our institutions. The Communist Party is not native to this country and its beginnings here were not an effort of Americans to answer American problems. Nor is it the response to a quest by American political leaders for lessons from European experiences. As a consequence, the leaders of the American Communist Party have been otherwise insignificant personalities, without personal political followings or aptitudes for our political methods, adapted by training only to boring their way into the labor movement, minority groups and coteries of naive and confused liberals, whose organizations they have captured and discredited and among whom they lie in wait for further orders.

The Old World may be rich in lessons which our statesmen could consult with advantage. But it is one thing to learn from or support, a foreign power because that policy serves American interests, and another thing to support American policies because they will serve foreign interests. In each country where the

Communists have seized control, they have so denationalized its foreign policy as to make it a satellite and vassal of the Soviet Union and enforced a domestic policy in complete conformity with the Soviet pattern, tolerating no deviation in deference to any people's separate history, tradition or national interests.

3. Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal. It would be incredible naivete to expect the American branch of this movement to forego the only methods by which a Communist Party has anywhere come into power. In not one of the countries it now dominates was the Communist Party chosen by a free or contestible election; in not one can it be evicted by any election. The international police state has crept over Eastern Europe by deception, coercion, coup d'etat, terrorism and assassination. Not only has it overpowered its critics and opponents; it has usually liquidated them. The American Communist Party has copied the organizational structure and its leaders have been schooled in the same technique and from the same tutors.

The American Communists have imported the totalitarian organization's disciplines and techniques, notwithstanding the fact that this country offers them and other discontented elements a way to peaceful revolution by ballot. If they can persuade enough citizens, they may not only name new officials and inaugurate new policies, but, by amendment of the Constitution, they can abolish the Bill of Rights and set up an absolute government by legal methods. They are given liberties of speech, press and assembly to enable them to present to the people their proposals and propaganda for peaceful and lawful changes, however extreme. But instead of resting their case upon persuasion and any appeal inherent in their ideas and principles, the Communist Party adopts the techniques of a secret cabal -- false names, forged passports, code messages, clandestine meetings. To these it adds occasional terroristic and threatening methods, such as picketing courts and juries, political strikes and sabotage.

This cabalism and terrorism is understandable in the light of what they want to accomplish and what they have to overcome. The Communist program does not presently, nor in foreseeable future elections, commend itself to enough American voters to be a substantial political force. Unless the Communist Party can obtain some powerful leverage on the population, it is doomed to remain a negligible factor in the United States. Hence, conspiracy, violence, intimidation and the coup d'etat are all that keep hope alive in the Communist breast.

4. The Communist Party has sought to gain this leverage and hold on the American population by acquiring control of the labor movement. All political parties have wooed labor and its leaders. But what other parties seek is principally the vote of labor. The Communist Party, on the other hand, is not primarily interested in labor's vote, for it does not expect to win by votes. It strives for control of labor's coercive power -- the strike, the sit-down, the slow-down, sabotage, or other means of producing industrial paralysis. Congress has legalized the strike as labor's weapon for improving its own lot. But where Communists have labor control, the strike can be and sometimes is perverted to a party weapon. In 1940 and 1941, undisclosed Communists used their labor offices to sabotage this Nation's effort to rebuild its own defenses. Disguised as leaders of free American labor, they were in truth secret partisans of Stalin, who, in partnership with Hitler, was overrunning Europe, sending honest labor leaders to concentration camps, and reducing labor to slavery in every land either of them was able to occupy. No other important political party in our history has attempted to use the strike to nullify a foreign or a domestic policy adopted by those chosen under our representative system.

This labor leverage, however, usually can be obtained only by concealing the Communist tie from the union membership. Whatever grievances American workmen may have with American employers, they are too intelligent and informed to seek a remedy through a Communist Party which defends Soviet conscription of labor, forced labor camps and the police state. Hence the resort to concealment, and hence the resentment of laws to compel disclosure of Communist Party ties. The

membership is not likely to entrust its bargaining power, its records, and its treasury to such hands. When it does, the union finds itself a more or less helpless captive of the Communist Party. Its officers cease to be interested in correcting grievances but seek to worsen and exploit them; they care less for winning strikes than that they be long, bitter and disruptive. They always follow the Communist Party line, without even knowing its source or its objectives. The most promising course of the Communist Party has been the undercover capture of the coercive power of strategic labor unions as a leverage to magnify its power over the American people.

5. Every member of the Communist Party is an agent to execute the Communist program. What constitutes a party? Major political parties in the United States have never been closely knit or secret organizations. Anyone who usually votes the party ticket is reckoned a member, although he has not applied for or been admitted to membership, pays no dues, has taken no pledge, and is free to vote, speak and act as he wills. Followers are held together by rather casual acceptance of general principles, the influence of leaders, and sometimes by the cohesive power of patronage. Membership in the party carries with it little assurance that the member understands or believes in its principles and none at all that he will take orders from its leaders. One may quarrel with the party and bolt its candidates and return again as much a member as those who were regular. And it is often a source of grief to those who have labored long in the vineyard that late arrivals are taken into the party councils from other parties without scrutiny. Of course, when party organization is of this character, there is little ground for inference that all members are committed to party plans or that they are agents for their execution.

Membership in the Communist Party is totally different. The Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed. They are provided with cards or credentials, usually issued under false names so that the identification can only be made by offices of the Party who hold the code. Moreover, each pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute "cells" in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded.

Inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party. Individuals who assume such obligations are chargeable, on ordinary conspiracy principles, with responsibility for and participation in all that makes up the Party's program. The conspiracy principle has traditionally been employed to protect society against all "ganging up" or concerted action in violation of its laws. No term passes that this Court does not sustain convictions based on that doctrine for violations of the antitrust laws or other statutes. However, there has recently entered the dialectic of politics a cliché used to condemn application of the conspiracy principle to Communists. "Guilt by association" is an epithet frequently used and little explained, except that it is generally accompanied by another slogan, "guilt is personal." Of course it is; but personal guilt may be incurred by joining a conspiracy. That act of association makes one responsible for the acts of other committed in pursuance of the association. It is wholly a question of the sufficiency of evidence of association to imply conspiracy. There is certainly sufficient evidence that all members owe allegiance to every detail of the Communist Party program and have assumed a duty actively to help execute it, so that Congress could, on familiar conspiracy principles, charge each member with responsibility for the goals and means of the Party.

Such then is the background which Congress could reasonably find as a basis for exerting its constitutional powers, and which the judiciary cannot disregard in testing them. On this hypothesis we may revert to consideration of the contention of unconstitutionality of this oath insofar as it requires disclosure of Communist Party membership or affiliation."



CIVIL INFORMATION OFFICER

共産党員に關しての宣誓書を要求する連邦法規の合憲性に  
關する米國最高裁判所判事ジャクソン氏の見解の概要

労働省 労働政局

このパンフレットは、連台軍総司令部法務局から同司令部経済科学局労働課を通じて提供を受けたもので労働省労働局において假訳したものである。

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(註) 米國最高裁判所は、右連邦法規の合憲性を支持した。

- (1) CIOアメリカ通信労働組合その他 対 全国労働関係局 チャールス・テイ・ダウツ
  - (2) アメリカ合同製鋼労働組合その他 対 全国労働関係局
- 一、右の二つの事件は、一九四七年の労使関係法第九項(H)(非共産党員宣誓規定)の合憲性を決定するために提出されたものである。
- 二、裁判所では第九項(H)を合憲的であると決定したのであるが 次に掲げる概要は、単に共産主義に関するジャクソン判事の見解を紹介しているにすぎない。

一般大衆の目に見える共産党の諸活動は他の諸政党の活動と極めて類似しているので、批判の基準を明確に述べることは重要且つ困難である。諸政党は与党であるときも反対党であるときも言論及び出版の自由を利用し且つ濫用することにつき屢々無責任である。

政党はすべて人気のない人々或いは階級をその身代りにしたり、又投票を勝ち取るためには、誠意も可能性も疑わしいような公約をする。すべての政党は、野党にあるとき、国際間における自国の威信を傷つけることになるのも躊躇することなく、事実を誇張し虚偽を伝播し或いは偏頗な理屈に合わない不満を煽動することによつて、時の政府の信用を落したり、困惑させることに努めるものである。共産党は少くとも外見的にはこれらの常套的政治的技巧を大げさに用いるだけなので、多くの人々は、共産党は単により急進的な政党であると考えようになるのである。若し共産党が単にこれだけのものにすぎないならば、私はこの法規を違憲的であると考えるであらう。しかしながら、目にふれるものと隠密になされているものとの間に矛盾があるのであり、同問題に関する私の見解では、これらの矛盾こそは、共産党は事実我々が知つている他の真の意味の政党とは何か異つたものであつて、それ故に共産党は憲法上は法律的に何か異つたものとして取扱われてよいと議会が正当にも結論を下す合理的基礎を与えているのである。

幾つかの委員会に提出された情報及び一般的に知られている事実から判断して、共産党はその政党の表看板の裏では我々の憲法制度と両立しない目的を達成し、又憲法制度と両立しない方法を用いるために組織せられた陰謀的、且つ革命的機構であると議会は合理的に結論を下し得たのである。議会はこの簡勁に纏つた資料から共産党の特異の性格に関するこれらの重要な結論を引き出すことが出来るであらう。

一、共産党の目標は、自由な選挙民の投票を通して権力を獲得するよりも、寧ろ少数によつて少数のために政治の権力を強奪することである。共産党は、憲法の枠内で政府若しくは議会の変革又は法規を改変することだけを望んでいるのではない。共産党の計画は他の政党が現に行つてゐるよりも一層急速且つ広範囲に、財産の社会化を企図するだけではない。これらの事柄に関する他の諸政党間の相違は、主としてその改革の速度に関するものであるが、共産党の相違はその方向である。

共産党の計画は、先づ政府の強奪から始まり、そしてそれから我々の憲法が前提とした原理に根本的に反する原理に基づく組織を社会に強要するという手段となる。その目的とするところは、モスコト型の警察国家独裁にならつて我々の社会及び政治の全機構を強制的に改鑄することである。又、共産党は、米国の経済的政治的制度のみならず西洋文明の宗教的文化的遺産を

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全面的に拒否する。この共産党の運動は独立宣言、憲法及び人権宣言を破壊し、且つ自由な代議自治制を覆がえすために企図されたものであり、昔日の米國革命に対する後ればせの反対革命である。

目標が米國の伝統と抱負とに対して斯くの如く極端であり、且つ攻撃的であるので、秩序を乱さずには平靜裡に達成又は着手され得ないことは明らかである。たとえ彼等が更にすぐれた組織と紀律とを以て成功するとしても、率直な共産黨員はそれが暴力を伴いがちなものであることを認め、同時にその暴力の責任を抵抗又は報復を行う者に転嫁することによつて責任を回避するであらう。最初の一撃が誰の手で喰わされるかということは大した問題ではない。何人も暴力と、圧迫、没收と整理の時代が共産主義制度にはつきものであることを疑うことが出来ない。

かかる目標は余りにも根本的な分裂を生ぜしめるので、民主的方法を以て解決することは出来ない。敗北するということが滅亡を意味するような時には、我々の憲法の定める選挙方式と雖も大きな陣営間の争いを解決し得ないであらう。意見の衝突があまりにも深刻である場合には、たとえ絶望的であつても、人は屈従する前に一応戦うものである。このような性質の斗争は、共産党によつて計画せられ、又その計画に必然的に伴うものである。

二、過去、現在のアメリカ政界の中で共産党のみが外国政府に支配せられ統御せられている。共産党は専制的政党であつて、社会の混乱の脅威に加えて、外国の手に國を裏切る脅威を与えてゐる。

クレムリンからアメリカの政界への命令の連繫は頑強に否認せられており、又通常認知し難いが、このことは、クレムリンの外交方針の変化と同時にアメリカ共産党が豹変することによつて紛れもなく露呈された。ミュンヘン会議前は、ソヴィエトの政策は反独、「反ファシスト」であり、アメリカの共産黨員も同様であつた。しかし、スターリンがヒトラー及びナチ独逸と不可侵條約を締結し、ソヴィエト連邦が戦争の共同者になるに及んで、この独ソの邪惡な提携による侵略の犠牲國に対し戦争に至らぬ援助を与えんとするアメリカ合衆國の政策を阻止し紛糾せしめんとして、アメリカの共産主義者達は彼等の力の及ぶ限りあらゆる事を遂行した。

独ソの提携が再び破れ、ロシアの政策が再度反独となるに及んで、アメリカの共産主義者は豹変して彼等がそれ迄その裝備を遅延せしめ、サボツていた所のアメリカ兵を、ロシアを救うために早期に第二戦線を結成して犠牲とすることを不当にも要求した。アメリカの共産黨員は世界の到る所の共産主義者と同様モスコートの要求をあらゆる愛國的関心事以上に尊重した。

系統と構成の上から共産党は、終始此の外国の支配を受け易いものと思われる。共産主義の

全機構—その苦情、計画、宣伝及び語彙—はその社会的政治的状态がアメリカと異なる東欧中欧を目的として発展したものである。共産党の創始者及び指導者達—マルクス、エンゲルス、レーニン及スターリンが如何に天賦の才を有しておつたとしても、彼等の中一人としてアメリカに住まつた者はなく、又我が国の状態を経験し、或は我が国の制度の精神を摂取した者もないのである。共産党は此の国が産んだものではなく、又アメリカの問題を解決するためにアメリカ人の努力から生れたものではなかつた。

又それは欧洲の経験から得た教訓に対するアメリカの政治指導者達の探究に対する回答でもない。従つて、アメリカ共産党の指導者達は、共産党をはなれては大した人物でないし、親しい政治的支持者もなく、又アメリカの政治方式に対する適応性もないのであるが、ただ訓練によつて労働運動、少数派、單純なはき違えた自由主義者の仲間の中に喰ひ込んで行くことだけに適合しているのであり、かくして彼等はその組織を強奪し、その信用をなくし、しかる後その組織の中にあつて更に命令のくるのを待つのである。

旧世界(ヨーロッパ)には、アメリカの政治家が求めれば利益のある、あまたの教訓があるかも知れない。しかし一外国を、その政策がアメリカの政策にかなうが故にこれを学び、或は之を支持することとアメリカの政策が外国の利害にかなうが故に、アメリカの政策を支持すること、

とは、全然別個のことからである。共産主義者が覇権を獲得した国ではどこでも、彼等は、その国の外交政策を骨抜きにして、ソヴィエト連邦の衛星国或は属国として、国内政策はソヴィエト様式に完全に一致するように強要し、各国民の歴史、伝統或は国家的利害を尊重することによつてこの様式から逸脱することを許さなかつた。

三、暴力的且つ非民主的手段は、共産党がその目的を達成するための、計画的不可欠の方法である。共産党が、今迄何処に於ても政權を握る際に用いたこの唯一の方法を、アメリカの同党支部が放棄すると思ふのは余りにも單純な考えである。共産党が、今日支配している何れの国に於ても、共産党が自由な競争選挙によつて選ばれたことはない。又共産党が選挙によつて排除された例もない。虚偽と脅迫とクーデターと暴力行為と暗殺の手段を用いて国際警察国家が東欧全域に入り込んで来た。この警察国家は、警察国家に対する批判者、反対者を制圧したばかりでなく、彼等を肅清するのが常であつた。アメリカ共産党は、此の党組織を見做い、この指導幹部は同じ教師から同じ方法を教えこまれた。

米国は、共産黨員及び其他の不平分子に選挙による平和的革命的道を与えているにも拘わらず、米国共産党は全体主義的組織の規律と技術を輸入したのである。もし彼等が国民多数を納得させることが出来るならば、新らしい官吏を任用し新しい政策を確立する事が出来るのみな

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らず、憲法を改正して、人権宣言を廃止することも出来るし、又合法的手段によつて専制政府を樹立することも出来る。彼等は言論、出版、集会の自由も与えられているので、これが如何に過激であるにせよ、平和的、合法的な改革に関する彼等の提案と宣伝とを国民の前に提出することが出来る。然し、彼等は共産党本来の思想及び原理を国民に訴えて国民を説得する代りに、秘密な政治運動―偽名、パスポートの偽造、暗号通信、秘密の会合等の方法を採用している。

これ等の方法に加うるに、彼等は更に裁判官及び陪審員をビケツトしたり政治的ストライキ及び怠業を行うという暴力的威嚇的手段をしばしば用いている。

此の陰謀主義と暴力主義とは、彼等が何を成し遂げようとし、彼等が何を制圧せねばならぬかの点より見れば了解し得るのである。共産党の計画は今すぐに或は予見し得る将来の選挙に於て共産党が有力な政治的勢力になり得るとの印象を充分多数のアメリカ選挙民に与えるものではない。共産党がアメリカ国民の中に或る程度有力な政治勢力を獲得しない限り、アメリカに於てはとるに足らぬ存在となる運命にある。それ故に、陰謀、暴力、脅迫及びクーデターが共産党員の胸中に希望を生き生きと保たせるすべてのものである。

四、共産党は労働運動の支配権を握ることによつてアメリカ国民中に政治勢力と支援とを獲得し

ようとつとめたのである。何れの政党も労働者及び其の幹部の援助を乞うているが、共産党以外の政党は主として労働者の投票を求めている。これに反して、共産党はもともと労働者の投票には関心を持っていない。何故かといえば、彼等は投票で勝つことを予期していないからである。共産党は、労働者の脅迫的な力―ストライキ、坐り込み、同盟怠業、サボタージュ又は産業の麻ひを起させる他の手段―の支配権を握ろうとつとめている。アメリカ議会は、ストライキは労働者の地位を向上させるための労働者の武器であるとしてこれを合法化した。

然し共産党が、労働者の支配権を握るところでは、ストライキは党の武器に悪用される事が出来るし、又現に悪用しているところもある。一九四〇年と四一年には、秘密共産党員が労働者の細胞を利用してアメリカの国防再建の努力を妨害させた。彼等は自由なアメリカ労働者の幹部として偽装してはいたが、実はスターリンの秘密党員であつた。そのスターリンは、ヒットラーと組んで歐洲を蹂躪し、正直な労働者の幹部を收容所に送り込み、スターリンとヒットラーの何れかが占領し得たすべての国に於ても、労働者を奴隷に引き下げてしまった。アメリカの歴史に於て、他の如何なる重要な政党といえども、その代議制度に基いて選出された人々が採択した対外対内政策をストライキの手段で無効にしようと試みたものは未だかつてなかつた。

然し労働階級におけるこのような勢力は、通常共産党員と労働組合との連絡を秘密にしておくことによつてのみ、獲得されるものである。アメリカの労働者がその使用者に対してどんな不平があろうとも、彼等は、ソヴェエトの労働力徴用、労働者強制收容所及び警察国家を弁護するような共産党を通して、その救済を求める程無智でもなければ、事情に暗くもない。それ故に自分を秘密にする手段をとり、又共産党との連絡の暴露を強制するような法律に対して反抗する。組合員は、団体交渉権、組合記録及び組合の会計を共産党の手に委任したがいらないものである。それらを共産党の手に委任するときは、組合自身が、多かれ少かれ、共産党の捕虜となつて動きがとれなくなる。共産党員である組合幹部は、苦情の是正に関心を持たないで却つてその苦情を更に悪化させ、それを利用する。彼等はストライキに勝利を占めることよりもそれを長びかせ、悪化させ、分裂させようとする。彼等は、その出所もその目的さへも知らないで常に共産党の線を守る。共産党の最も有望な進路は、アメリカ国民の中に政治勢力を拡大する手段として、重要な労働組合の威力をひそかに掌握することであつた。

五、共産党の各党員は、党の計画を実行する代理者である。政党を構成するものは何であらうか。アメリカに於ける主要政党は、決して緊密に結合された組織ではなかつたし又秘密組織でもなかつた。誰も入党を願ひ出たこともなければ、入党を許可されたこともなく、党費を支払うこ

ともなければ、宣誓をしたこともない。通常党の候補者名簿に投票するものは、誰でも党員に数えられ、欲するまゝに投票し発言し行動する自由を持つてゐる。政点の支持者は、むしろ概念的綱領を偶然に受け容れるとか指導者の影響によるとか、或る時は後援者との結合力によつて集るものである。その党の党員は、党の主義主張を了解しているとか、それを信奉しているとかについては、殆んど確信を持つていないし、その指導者の命令を受けるなどは少しも考えていない。誰でも党と争いをし、候補者を締め上げておいて、再び正規の党員と同じようにその党に復帰することもあり得る。又長い間下働きをして来た人達の恨みの種子であることは、他の党から後に来た人達が、吟味されることもなく、党の評議会に、採り入れられることである。勿論党の組織がかかる性質のものであるから、すべての党員が、党の計画に参画するとか彼等がすべて計画執行の代理者であるとかいう推論を下す根拠は殆んどないのである。

共産党に於ける党員は、全くこれと異なるものである。党自体が一つの秘密会議である。党員は十分信頼できるものとして認められ、その政策を体得した後においてのみ入党が許されるのであり、党員はその政策に全く委ねられる。彼等はカード又は信任書を供与されている。それは通常偽名で発給されているので、その暗号帳を保管している党の事務所だけが本人たることを確かめるのである。その上各党員は、党の権威に対して無條件服従を誓うのである。関係者



一一

は秘密の又は暗号の名で知られている。  
彼等は工場に、事務所、政界に、又は労働組合の中に「細胞」を組織しているのである。党の方針から少しでも外れると彼等は淘汰され排除される。

この種の組織団体員ということから種々推定すると、それは通常の型式の政黨員という点から出す推定とは当然異つたものとなる。こんな義務を持つてゐる個人は、一般の共同謀議の原理上、党の行動計画一切に対する責任とこれに参加したことに對し責任がある。

共同謀議の原理なるものは伝統的に現在まで、法律に違反する凡べての不法行為又は共同謀議行動に對し社会を保護するために使われて来た。当法廷は反トラスト法其の他の法規違反に對し、この原理に基く有罪判決を支持しないことはない。併し乍ら、最近政治上弁証論の一つの常套語が出て来て、共産党主義者に對し、この共同謀議原理を適用するのを非難するのに使われている。「団体による罪」と云うのは、屢々使用される通用語であるが、通例「罪は個人的なもの」というもう一つの、スローガンが伴うということを除き、説明は殆んどされてない。勿論その通りである。併し乍ら、個人的な罪は共同謀議に参加することにより生ずることもある。団結行為は、団体の目的遂行のために他のものによつてなされた行為に對する個人の責任を負わせることになる。それは共同謀議を意味する団結についての証拠の充足性という問

題である。黨員がみな共産党行動計画の一切合切細い点にまで忠誠の義務があり、また黨員が積極的に実行援助の義務をとつてゐるのだから、たしかに充分な証拠である。  
それ故に、議會はお馴染みの共同謀議原則にもとづいて党の目的と手段とに對して責任を持つてゐる各黨員を責めることが出来るわけである。

右は議會がその憲法上の諸権力を行使するための基礎として当然著目し得る背景であり、且つその憲法上の権力を検討する場合司法当局として無視することの出来ない背景である。この仮説に基いてわれわれは、共産黨員であるか、又はそれと関係者であるか、これを究明する必要のある限りに於て、この宣誓の違憲性の論争を考察し得るのである。

*File - Opinions*

*7/15/49*

## Preparatory Document

Plaintiff: Mr. Sei and other fours.

Defendant: Governor of Shimoka prefecture.

We hereby present our view against the written reply of the defendant concerning the case of claim for the withdrawal of the administrative disposition; case number 22 of 1949 between the above mentioned parties.

1. The defendant insists that the disposition for the notification addressed to the mayor of Fujinomiya city, assembly chairman of said city and the chairman of returning officers, to the effect of "the separation problem of Tomioka district from Fujinomiya city was rejected at the prefectural assembly on the 1st August, so it was decided not to carry out the district alteration", is only the publication of the result of prefectural assembly decision and not at all an administrative disposition, which brings the result of non-alteration of district. He also insists that the Supplemental Regulation of Local Autonomy Law Art 2 paragraph 5 only requires administrative disposition in case of area alteration is necessiated, otherwise not required.

The prefectural assembly, however, is the organ to decide the will of Ken, (prefecture) the person, who expresses the said will to others is the defendant. When so expressed by the defendant's action, it takes effect on outsiders.

And the publication of non-alteration in this case is not a mere publication of non-alteration, but is the disposition to put an end to the special procedure concerning district alteration per Supplemental Regulation Art 2 and to attribute formal effect to abolish the result of vote.

We, therefore, believe that this is clearly an administrative disposition.

2. The defendant insists, moreover, that it is a disposition of alteration of area, which is a functional element of the city, even though if it were administrative disposition, and has no direct concern with the right of residents. There is, therefore, no violation of the right of residents. Consequently, the plaintiff has no right of action.

This assertion is, however, due to the miscomprehension of defendant's position and misconception of ideal administrative litigation under the new constitution.

Supplemental Regulation Art. 2 is the provision, which provides the area alteration procedure by the direct democratic administration of residents of the concerning district of towns or villages, which was somehow forced into annexation during the war.

Vote was conducted. The number of votes in favour of separation has obtained the majority over the total number of voters and also over the number of valid votes. This result was reported by the returning officers to the defendant. Consequently, the body, which has been functioned by the residents of the concerning district, is the maternal body of Tomioka villagers, i.e. former-self of the village, which can be safely said in legal sense similar to a cooperation without judicial personality or judicial person during the procedure for its establishment. Thereby, its legal position is guaranteed correspondingly, which should be protected. "Tomioka Village Re-establishment League", which is organized by 2,256 residents of former Tomioka village district, is a body of said nature in the concerning district, which would be separated per the Supplemental Regulation of Local Autonomy Law, Art. 2. The plaintiff has brought the action as the representative of said body.

And concerning the effect of vote per the special procedure for separation, legal dispute being permitted, we believe that legal dispute is granted about the non-separation disposition of the defendant, namely about the manifestation of intention according to the decision of prefectural assembly and also about the decision it-self, which has individual relation with vote; in other word, for the abolishment disposition of valid vote (There was a question arisen, if the provision of Local Autonomy Law Art. 66 concerning litigation, could be applied to a person, who was once recognized as elected by returning officers, but afterward became non-elected person by some reason, when so publicly proclaimed. The leading case indicates (Judicial precedent of Supreme Court No. 3, Item 9, p. 338) that since the enforcement of new Constitution, the Court should adjudicate upon any legal dispute. The dispute, whether the said proclamation is lawful or not being a legal dispute, the Court, therefore, has the duty of handling the case when it is filed.

3. The defendant, furthermore, insists, comparing the procedure of area alteration per Local Autonomy Law Art. 7 and the procedure per Supplemental Regulation Art. 2, that the difference between the two is the recognition of direct demand system per the latter concerning separation demand, and the final decisive right is executed by the defendant after the decision being taken at the prefectural assembly.

The above opinion is due to the history of enactment of Supplement Regulation Art. 2 being ignored and also to his misconception of its idea.

7 July 1937 was the day of outbreak of China Incident and 2 September 1945 the day of signature for surrender. Throughout the period between those

two days, there was no end of oppression and interference of the militaristic government under the pretext of execution of military operation. Democratic administration was entirely mopped out.

Supplement Regulation Art. 2 provides a procedure for the liberation of the residents of concerning district, town, village or city, which was annexed during the said period, from the enchainment of war time, respecting the will of the residents of the district as the first consideration according to the ideal of new Constitution Art. 92 and 95. This special separation procedure should be, therefore, considered strictly different from the separation procedure per Local Autonomy Law Art. 7.

The notification of the chief of Autonomy Section of Prime Minister's Office "The result of the area alteration of city, town or village is still existing after the surrender, which was partially forced for the military purpose during the war.

The special procedure is temporally enacted with due enforcement term for readjustment of unreasonable situation in case the relief is impossible by ordinary procedure per Local Autonomy Law Art 7 owing to the reflecting influence in the assembly is recognized by the defendant.

Nevertheless, the defendant insists that the ordinary and special procedures should be interpreted under the same conception and the right of decision rests on the defendant in 60th cases. Art 7 mentions "Prefectural Governor decides according to the application of city, town, village". Supplement Regulation Art 2 "Residents can alter the boundary according to the former district dispute the provision of Art. 7" Supposing this is not the provision for direct democratic administration, we would like to know how to word a provision for direct democratic administration.

Moreover, the principle the Constitution Art. 95, which provides that a special law, applicable only to one public entity, cannot be enacted by the Diet, which represents the whole nation, without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law, has the common legislative conception to the enactment of Supplement Regulation.

Namely, the forced annexation during the war for the military purpose should be readjusted by the vote of residents according to the spirit of new Constitution.

The demanding right is, therefore, not at all, a special favour as pointed out by the defendant: - "The meaning of Supplement Regulation Art. 2 is to give a chance for separation demand directly to the residents of concerning district who cannot obtain the purpose per Local Autonomy Law Art. 7 This is sufficient and indispensable as the interest, given to the residents concerning disposition of area alteration."