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E.O. 11652, Sec 3(E) and 5(D) or (E) NND# 760050

894.041/1-145--12-3146-47-48-49



THE FOREIGN SERVICE  
OF THE  
UNITED STATES OF AMERICA

American Embassy  
Manila, Philippines, September 4, 1946

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DEPARTMENT OF STATE  
DIVISION OF FOREIGN  
REPORTING SERVICES  
OCT 9 - 1946  
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DEPARTMENT OF STATE  
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REPORTING SERVICES  
OCT 9 - 1946

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SUBJECT: Appointments to the Supreme Court for Collaboration Cases.

THE HONORABLE  
THE SECRETARY OF STATE,  
WASHINGTON.



I have the honor to inform the Department of changes in the composition of the Supreme Court of the Philippines necessitated by collaboration cases (the Laurel case in particular) which are being brought before it.

Nothing could more clearly illustrate the dilemma in which the Republic finds itself than the difficulty encountered in hearing the collaboration cases. The situation reveals to what an extent public officials of today have been puppet officials of yesterday. Delay has been added to delay in these cases by the Supreme Court impairment. Confusion has been added to confusion by legal technicalities which are as difficult to justify as they are to understand. Laurel himself became so disgusted by delays of his own making that he withdrew the habeas corpus proceedings which had been placed on the Supreme Court docket but which could not be heard until Court vacancies were filled. (See Embassy's despatch No. 134, August 27, 1946.)

As the Department is aware, seven justices disqualified themselves from sitting on collaboration cases because they had served under the occupation government. The result was that the Court was left without a quorum in such cases.

The pertinent Section of Commonwealth Act No. 682 establishing the People's Court is as follows:

"Sec. 14. Any Justice of the Supreme Court who held any office or position under the Philippine Executive Commission or under the government called Philippine Republic may not sit and vote in any case brought to that Court under section thirteen hereof in which the accused is a person who held any office or position under either or both the Philippine Executive Commission and the Philippine Republic or any branch, instrumentality and/or agency thereof.

"If, on account of such disqualification, or because of any of the grounds of disqualification of judges in Rule 126, section 1 of the Rules of Court, or on account of illness, absence or temporary disability the requisite number of Justices necessary to constitute a quorum or to render judgment in any case is not present, the President may designate such number of Judges of First Instance, Judges-at-Large of First Instance, or Cadastral Judges, having none of the

disqualifications

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American Embassy, Manila  
September 4, 1946

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disqualifications set forth in said section one hereof, as may be necessary to sit temporarily as Justices of said Court, in order to form a quorum or until a judgment in said case is reached."

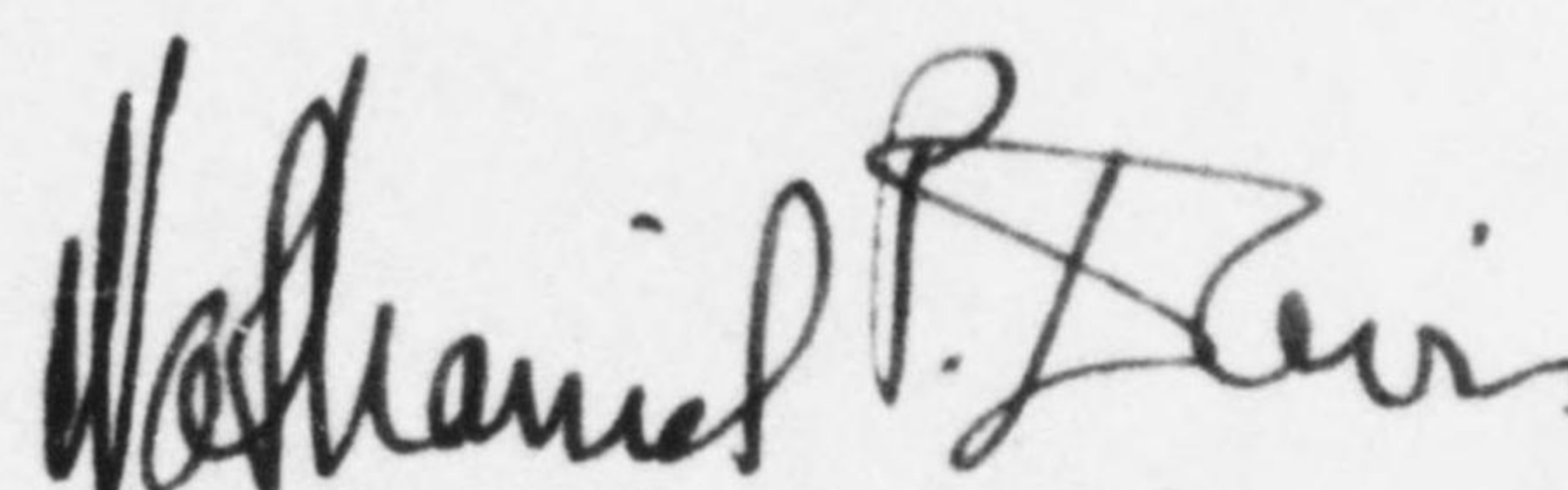
The justices disqualified under the above quoted legal provisions are: Chief Justice Manuel Moran; Associate Justices Ricardo Paras, Cesar Bengson, Jose M. Hontiveras, Sabino Padilla, Pedro M. Tuason, and Manuel Briones.

To meet this situation, President Roxas designated on August 27, 1946 the following judges of First Instance to sit temporarily on collaboration cases: Mariano de la Rosa of Manila; Ambrosio Santos of Batangas; Eugenio Angeles of Pangasinan; Anacleto Ramos of Tayabas; Emilio Benitez of Samar; Nicasio Yatco of Laguna and Hermogenes Concepcion of Manila.

The appointment of Judge Concepcion is reportedly being questioned in legal circles because he was a member of the national assembly from Nueva Ecija under the occupation government. As yet, however, there has been no overt move to prevent his sitting on the Supreme Court bench.

Very respectfully yours,

For the Ambassador:

  
Nathaniel P. Davis  
Minister-Counselor

Original and Hectograph to Department

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Paul A. Miller:vw

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## Department of State

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DEPT of Justice advises FBI investigating Clyde Dewitt for appointment attorney to represent US interests in Philippines.

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By *TG/CY* NARS, Date *8.23.28*

UNITED STATES POLITICAL ADVISER  
FOR JAPAN

LEGAL ADVISER  
SEP 7 1947  
T-58  
DEPARTMENT OF STATE  
Tokyo, July 8, 1947

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UNCLASSIFIED

No. 1158

DIVISION OF  
NORTHEAST ASIAN AFFAIRS

SEP 16 1947

DEPARTMENT OF STATE

SUBJECT: Amendment to Previous Directive to the Japanese Government concerning the Exercise of Criminal Jurisdiction.

*347*

The United States Political Adviser has the honor to enclose five copies of a directive to the Japanese Government (SCAPIN 1740) dated June 27, 1947, subject: "Amendment to Exercise of Criminal Jurisdiction", issued by this Headquarters. On the reverse side of the directive is shown a copy of a self-explanatory letter dated June 27, 1947, from this Headquarters to the Commanding General of the United States Eighth Army providing instructions in connection therewith.

*Handwritten notes:*  
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Amendment to Directive

This directive to the Japanese Government, amending one of February 19, 1946 (SCAPIN 756), transfers from military occupation courts to the Japanese courts jurisdiction over offenses having to do with unauthorized possession, receipt, or disposal of property belonging to the Occupation Forces or to any person attached thereto. According to a Headquarters press release, such cases previously constituted 83 per cent of the work of Allied provost courts. A provision of the original directive, that United Nations nationals or organizations are exempt from trial in Japanese courts, remains unaltered. The chief of the Legal Section of this Headquarters stated in the press release mentioned above that "The amendment will provide additional facilities in combating the black market by permitting Japanese law enforcement agencies to prosecute non-United Nations nationals previously exempt from their jurisdiction".

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Enclosure: 4

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Enclosure to Despatch No. 1158 dated July 8, 1947 from the United States Political Adviser for Japan, Tokyo, on the subject "Amendment to Previous Directive to the Japanese Government concerning the Exercise of Criminal Jurisdiction."

AG 015 (27 Jun 47)LS-L

APO 500  
27 June 1947

SUBJECT: Amendment to Exercise of Criminal Jurisdiction

TO : Commanding General, Eighth Army, APO 343  
Commander Naval Forces, Japan

1. Delete par. 3c(4) of Letter Order, AG 015(19 Feb 46)LS, subject: "Establishment of Military Occupation Courts," dated 19 February 1946, as amended by Letter Order, AG 015(19 Sep 46)LS-L, subject: "Amendments to Exercise of Civil and Criminal Jurisdiction."

2. For your information, the Japanese Government has been directed to delete par. 2c of SCAPIN 756, 19 February 1946, and to prosecute violations for unauthorized possession, taking, receipt or disposal of property of the occupation forces, or any member thereof, or of any person attached to or accompanying such forces, pursuant to the provisions of Imperial Ordinance No. 311, 11 June 1946.

3. The effect of the deletions directed in paragraphs 1 and 2 above will be to remove from the exclusive jurisdiction of military occupation courts the offenses of unauthorized possession, taking, receipt, or disposal of certain property and permit the Japanese criminal courts to exercise concurrent jurisdiction thereof. This will be accomplished through the use of Imperial Ordinance 311, which provides that the Japanese authorities must prosecute any act prejudicial to the objectives of the occupation. The Ordinance defines such act as a violation of a SCAP directive to the Imperial Japanese Government, and all orders issued by army, corps or division commanders to implement such directive. Consequently, since unauthorized possession, etc., of certain Allied property has been prohibited in a directive to the Japanese Government, any violation thereof by non-United Nations nationals must be prosecuted by the Japanese, pursuant to Ordinance 311, unless jurisdiction over a particular case is assumed by military occupation courts. The directive to the Japanese Government on the subject is designed to enable it to proceed as outlined herein and, for that reason, it was necessary to order the deletion of a portion of the Letter Order, referred to in paragraph 1 above.

4. As a result of the action taken herein, it is contemplated that the bulk of these cases will be tried by the Japanese authorities, requiring only such supervision thereof by the occupation forces as is necessary to ensure Japanese compliance with the terms of the directive. In exceptional circumstances, the military occupation authorities may, if they deem it advisable, assume jurisdiction over these cases. It is, therefore, desired that your forces utilize the provisions of Imperial Ordinance 311 to its fullest extent, thereby relieving the occupation courts of an exclusive responsibility which, at this time, could be shared with the Japanese Government.

5. The Japanese Government has been directed to submit monthly reports of cases tried under Imperial Ordinance 311 to this Headquarters, through your military government units. This procedure should keep all echelons of occupation authorities informed of the situation, as well as facilitate supervisory measures.

BY COMMAND OF GENERAL MacARTHUR:

s/ R. M. Levy  
t/ R. M. LEVY  
Colonel, AGD  
Adjutant General

C O P Y

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

AGO 500  
27 June 1947

AG 015 (27 Jun 47)LS-L

SUBJECT: Amendment to Exercise of Criminal Jurisdiction

TO : Commanding General, Eighth Army, APO 343  
Commander Naval Forces, Japan

1. Delete par. 3c(4) of Letter Order, AG 015(19 Feb 46)LS, subject: "Establishment of Military Occupation Courts," dated 19 February 1946, as amended by Letter Order, AG 015(19 Sep 46)LS-L, subject: "Amendments to Exercise of Civil and Criminal Jurisdiction."
2. For your information, the Japanese Government has been directed to delete par. 2c of SCAPIN 756, 19 February 1946, and to prosecute violations for unauthorized possession, taking, receipt or disposal of property of the occupation forces, or any member thereof, or of any person attached to or accompanying such forces, pursuant to the provisions of Imperial Ordinance No. 311, 11 June 1946.
3. The effect of the deletions directed in paragraphs 1 and 2 above will be to remove from the exclusive jurisdiction of military occupation courts the offenses of unauthorized possession, taking, receipt, or disposal of certain property and permit the Japanese criminal courts to exercise concurrent jurisdiction thereof. This will be accomplished through the use of Imperial Ordinance 311, which provides that the Japanese authorities must prosecute any act prejudicial to the objectives of the occupation. The Ordinance defines such act as a violation of a SCAP directive to the Imperial Japanese Government, and all orders issued by army, corps or division commanders to implement such directive. Consequently, since unauthorized possession, etc., of certain Allied property has been prohibited in a directive to the Japanese Government, any violation thereof by non-United Nations nationals must be prosecuted by the Japanese, pursuant to Ordinance 311, unless jurisdiction over a particular case is assumed by military occupation courts. The directive to the Japanese Government on the subject is designed to enable it to proceed as outlined herein and, for that reason, it was necessary to order the deletion of a portion of the Letter Order, referred to in paragraph 1 above.
4. As a result of the action taken herein, it is contemplated that the bulk of these cases will be tried by the Japanese authorities, requiring only such supervision thereof by the occupation forces as is necessary to ensure Japanese compliance with the terms of the directive. In exceptional circumstances, the military occupation authorities may, if they deem it advisable, assume jurisdiction over these cases. It is, therefore, desired that your forces utilize the provisions of Imperial Ordinance 311 to its fullest extent, thereby relieving the occupation courts of an exclusive responsibility which, at this time, could be shared with the Japanese Government.
5. The Japanese Government has been directed to submit monthly reports of cases tried under Imperial Ordinance 311 to this Headquarters, through your military government units. This procedure should keep all echelons of occupation authorities informed of the situation, as well as facilitate supervisory measures.

BY COMMAND OF GENERAL MacARTHUR:

s/ R. M. Levy  
t/ R. M. LEVY  
Colonel, AGD  
Adjutant General

C O P Y

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 015 (27 Jun 47)LS-L  
(SCAPIN 1740)

APO 500  
27 June 1947

MEMORANDUM FOR: JAPANESE GOVERNMENT

THROUGH: Central Liaison Office, Tokyo

SUBJECT: Amendment to Exercise of Criminal Jurisdiction

1. Delete paragraph 2c of Memorandum for the Imperial Japanese Government, AG 015 (19 Feb 46)LS, subject: "Exercise of Criminal Jurisdiction," dated 19 February 1946, (SCAPIN 756), as amended on 19 September 1946, (SCAPIN 1218).

2. The possession, taking, receipt, or disposal of property of the Occupation Forces or any member thereof, or of any person attached to or accompanying such forces, is prohibited, unless duly authorized.

3. Violations of paragraph 2 above will be prosecuted pursuant to the provisions of Imperial Ordinance No. 311, 11 June 1946.

4. Any provision of law in conflict with the contents of this Memorandum will be amended to conform therewith.

5. Monthly reports on the cases tried under Imperial Ordinance 311 will be submitted to this Headquarters, through local military government units, indicating, in each case, the location of courts, docket number, gist of offense, number of accused, pleas, sentence if found guilty, and other remarks deemed appropriate.

FOR THE SUPREME COMMANDER:

s/ R. M. Levy  
t/ R. M. LEVY,  
Colonel, AGD,  
Adjutant General.

C O P Y





UNITED STATES POLITICAL ADVISER  
FOR JAPAN

LEGAL ADVISER

SEP 15 1947  
T-56  
DEPARTMENT OF STATE

Tokyo, August 28, 1947.

UNCLASSIFIED

No. 1253

SUBJECT: United States Eighth Army Directive Concerning the  
Establishment of Military Occupation Provost Courts.

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894.041/8-2847

The Counselor of Mission has the honor to refer to this Mission's despatch No. 1158 of July 8, 1947 with which were transmitted copies of a directive to the Japanese Government concerning the exercise of criminal jurisdiction (SCAPIN 1740).

There are enclosed five copies of Operational Directive (No. 29/4 for 1946) issued by the United States Eighth Army on August 18, 1947, providing instructions for the commanding officers concerned, regarding the interpretation of SCAPIN 1740 and the supervision of Japanese courts under the provisions thereof.

NOTICE 1/  
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Enclosures:

- Five copies of Operational Directive No. 29/4 for 1946, August 18, 1947.

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UNITED STATES POLITICAL ADVISER FOR JAPAN

LEGAL ADVISER  
SEP 15 1947  
T-56  
DEPARTMENT OF STATE

Tokyo, August 28, 1947.

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UNCLASSIFIED

No. 1253

SUBJECT: United States Eighth Army Directive Concerning the Establishment of Military Occupation Provost Courts.

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HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Commanding General  
APO 343

OPERATIONAL DIRECTIVE)  
NUMBER..29/4 for 1946)

18 August 1947

ESTABLISHMENT OF MILITARY OCCUPATION PROVOST COURTS

TRIAL OF OFFENSES PREJUDICIAL TO  
THE OBJECTIVES OF THE OCCUPATION

1. References

a. Imperial Ordinance 311, effective 15 July 1946, inclosure 1.

b. Memorandum for the Japanese Government, GHQ, SCAP, APO 500, AG 015 (27 June 47) LS-L, subject: "Amendment to Exercise of Criminal Jurisdiction," 27 June 1947, (SCAPIN 1740), inclosure 2.

c. Operational Directive 29, this headquarters, 11 March 1946, subject: "Establishment of Military Occupation Provost Courts".

2. Amendments. Operational Directive 29, this headquarters, referred to in paragraph 1 c, above, is amended as follows:

a. Delete paragraph 4 c (4).

b. Delete paragraph 4 c (3) and substitute therefor:

" (3) Acts prejudicial to the objectives of the occupation, upon prior approval of the Commanding General, 8th Army "

3. General. Imperial Ordinance No. 311 was promulgated by the Japanese Government to implement the Supreme Commander for the Allied Powers' policy of entrusting to the Japanese people and government the responsibility for executing his directives. Offenses enumerated in Article 1, paragraphs 1 to 3 inclusive and 5 to 8 inclusive are not within the jurisdiction of Japanese courts and will not be tried by them. These offenses continue to be within the exclusive jurisdiction of military occupation courts and will be disposed of under the provisions of Operational Directive 29, as amended. SCAPIN 1740, 27 June 1947, nullifies paragraph 4, Article 1, Ordinance 311, thereby restoring

Operational Directive No. 29/4 for 1946, Hq Eighth Army 18 Aug 1947, contd.

to Japanese courts concurrent power to try cases involving unauthorized possession, taking, receipt or disposal of property of the Occupation Forces or any member thereof, or of any person attached to or accompanying such forces; SCAPIN 1740 also prohibits such possession, taking, etc., thus bringing such cases within the scope of Ordinance 311 as acts prejudicial to the objectives of the occupation.

4. Definition. Acts prejudicial to the objectives of the occupation are defined as acts which violate any directive, formal or informal, issued to the Japanese Government by the Supreme Commander for the Allied Powers or Japanese regulations or laws issued pursuant thereto, or which violate any orders or instructions issued by subordinate commanders to implement SCAP's directives. These last-named orders and instructions normally take the form of operational directives issued by this headquarters. Copies of these instructions, when pertinent and unclassified, will be furnished to the Japanese Government whose responsibility it will be to disseminate the information therein contained. The necessity for subordinate commanders issuing administrative instructions to implement further the operational directives of this headquarters or SCAP directives will be infrequent and confined to emergencies. In this connection, attention is invited to paragraph 5 of Annex 8 to Administrative Order 20, this headquarters, 18 July 1947.

5. Dissemination. Care is essential in the distribution discussed above, in order that the Japanese people may be fully informed of all orders and instructions for the violation of which they may be prosecuted and that Japanese juridical officials will have no excuse for failure to prosecute violations. In all cases where such administrative instructions are issued and in which prosecutions for violations thereof under the terms of this directive may be expected, the subordinate commander issuing them will furnish copies to the Japanese Government in sufficient time for distribution to all areas affected by such instructions and will furnish this headquarters with information copies. The Japanese liaison officer at the headquarters of the subordinate commander is the proper agency to receive and distribute these instructions. All operational directives and administrative instructions so issued, will make specific reference to the SCAP directives and/or to the operational directives of this headquarters which they are intended to implement.

6. Jurisdiction. Acts and offenses prejudicial to the objectives of the occupation, committed by persons subject to the jurisdiction of Japanese criminal courts, may now be tried and disposed of only as follows:

a. By Japanese courts under the provisions of Article 2 of Imperial Ordinance 311 (inclosure 1), as outlined in this directive, or

Operational Directive No. 29/4 for 1946 Hq Eighth Army 18 Aug 1947, contd.

b. By military occupation provost courts under the provisions of Operational Directive 29, referred to in paragraph 2 c, upon prior approval of this headquarters, or

c. By military commission appointed by this headquarters.

7. Policy. This directive and Ordinance 311 do not alter general principles of Japanese criminal law or criminal procedure. The discretionary right of the public procurator not to prosecute is changed. This right may now be exercised only after the procurator has presented the case which he believes should not be prosecuted for consideration of the appropriate local Occupation Force court authority and obtained from him permission to waive prosecution. Upon receipt of report of cases, the appropriate local Occupation Force court authority will determine whether they will or will not be tried by the Japanese courts and will communicate promptly such decisions to the Japanese procurators. In authorizing the procurator to drop prosecution, the appropriate local Occupation Force court authority will consider the nature of the offenses charged, the age and the status of the offenders, extenuating circumstances and similar factors. It is believed that through the exercise of sound judgment, the trial of petty offenses and cases in which there is insufficient evidence will be avoided. The Ministry of Justice has been advised that procurators must present for consideration of the appropriate local Occupation Force court authority, all cases within Article 2 of the Japanese ordinance, which they believe should not be prosecuted. These officers will insure that this direction is observed by local procurators.

8. Designation of Local Occupation Force Court Authority. The commanding general of each corps and Kobe Base, and the General Officer Commanding, British Commonwealth Occupation Forces, will immediately designate for each area within his command, the local Occupation Force court authority for the purposes of this directive. The area of exclusive responsibility of each such authority will be clearly delineated, and to avoid confusion, all military and Japanese authorities concerned will be informed as to the sole local Occupation Force court authority in their respective areas. It is expected that the provost court judges will be designated as local Occupation Force court authorities in areas where permanent provost courts are established, and that local military government unit commanders will be so designated in other areas.

9. Disposition of Offenses Prejudicial to the Objectives of the Occupation. All offenses falling within the purview of this section will be processed as follows:

Operational Directive No. 29/4 for 1946 Hq Eighth Army 18 Aug 1947, contd.

a. Cases investigated and prepared by Japanese authorities will be brought directly to the attention of the Japanese procurator, who will:

- (1) In cases warranting trial and for which the penalties provided in Ordinance 311 are adequate, bring the case to trial before the appropriate Japanese court. If there is any question as to advisability of trial of any case by Japanese court, the procurator will consult the appropriate local Occupation Force court authority before taking any action.
- (2) In cases which are deemed too serious to be tried under Ordinance 311, transmit a complete report to the appropriate local Occupation Force court authority for instructions.
- (3) In cases in which prosecution is not believed warranted, submit a complete report to the appropriate local Occupation Force court authority for instructions. Prosecution may not be waived by the procurator without concurrence of the appropriate local Occupation Force court authority.

b. Cases which are investigated and prepared by military authorities will be brought to the attention of:

- (1) The appropriate Japanese procurator, or
- (2) The appropriate local Occupation Force court authority who will make final determination as to which cases will be prosecuted in Japanese courts and which cases will not be prosecuted. This alternative will be followed in cases where it appears advisable because of unusual circumstances, or merely more expedient.

10. Trial by Military Occupation Court. The appropriate local Occupation Force court authority will investigate and forward to this headquarters for instructions, a complete report of any case in which the penalties provided in Ordinance 311 are deemed inadequate, or in which, for any other reason, trial by military court is deemed advisable.

11. Witnesses. The appropriate local Occupation Force court authority will arrange for the appearance in Japanese courts of witnesses not subject to Japanese process by reason of nationality, status, location or otherwise.

Operational Directive No. 29/4 for 1946 Hq Eighth Army 18 Aug 1947, contd.

12. Penalties. The penalties provided for in Imperial Ordinance 311 will take precedence over all other Japanese penal provisions except where the specific SCAP directive violated or the specific Japanese law or regulation approved by SCAP to implement the directive provides for a specific penalty. In such cases, the specific penalty shall have precedence over the general penalty provisions of Ordinance 311. No administrative instructions which may be issued by subordinate commanders as provided in paragraph 5 above will provide any penalty for violations thereof.

13. Disposition of Property. Appropriate local Occupation Force court authorities will make appropriate disposition of all property of, or wrongfully procured from, the Occupation Forces, or any member thereof, when such property is involved in cases tried by Japanese courts.

14. Effective Date. This directive shall take effect 25 August 1947.

15. Surveillance. Appropriate local Occupation Force court authorities will exercise such surveillance over Japanese authorities as is necessary to insure compliance with the terms of Ordinance 311, SCAPIN 1740, and this directive.

16. Rescission. Operational Directive 29/2, this headquarters, 17 August 1946, subject: "Trial of Offenses Prejudicial to the Objectives of the Occupation by Japanese Courts", is hereby rescinded.

BY COMMAND OF LIEUTENANT GENERAL RICHELBERGER:

CLOVIS E. BYERS  
Major General, GSC  
Chief of Staff

OFFICIAL:

Chazal  
CHAZAL  
Actg G-1

2 Incls:

1. Imperial Ordinance 311
2. SCAPIN 1740

DISTRIBUTION: "A" plus "Z"  
All Military Government Units  
Yokohama Liaison Office

IMPERIAL ORDINANCE NO. 311

Article 1. There will be no public prosecution with reference to the following criminal cases:

1. Crimes committed by United Nations Nationals (including juridical persons belonging to United Nations).
2. Acts prejudicial to the security of the Occupation Forces, or any member thereof, or any person attached to or accompanying such forces.
3. Killing or assaulting any member of the Occupation Forces, or any person attached to or accompanying such forces.
4. Unauthorized possession, taking, receipt or disposal of property of the Occupation Forces or any member thereof, or of any person attached to or accompanying such forces.
5. Interfering with, or hindering the arrest of any person sought, or assisting in or furthering the escape of any person detained, by the Occupation Forces or by others pursuant to the direction of the Supreme Commander for the Allied Powers or his authorized subordinates.
6. Interfering with, refusing information required by, making any false or misleading statement orally or in writing to, or defrauding in any manner, any member of the Occupation Forces or any person attached to or accompanying such forces in a matter of official concern.
7. Acts on behalf or in support of any organization dissolved or declared illegal by the Supreme Commander for the Allied Powers or dissolved or declared illegal by order of the Supreme Commander for the Allied Powers.
8. Conspiracies to commit, or acts which abet or aid the commission of, any of the foregoing offenses.

Article 2. Exceptive the crimes prescribed in the previous article public prosecution must be had in cases of crimes consisting of acts prejudicial to the objectives of the Occupation. Public prosecution of such crimes will only be waived when jurisdiction of a particular case is assumed by Military Occupation Courts.

Acts prejudicial to the Occupation objectives in this Ordinance are defined as all acts which are violations of directives to the Imperial Japanese Government issued by the Supreme Commander for the Allied Forces, and all orders issued by Occupation Force Commanders of Army, Corps or Divisions to implement the Supreme Commander for the Allied Powers' directives and all ordinances or laws promulgated by the Imperial Japanese Government in implementation of these directives.

Incl 1 to O.D. 29/4, Hq 8th Army, 18 Aug 1947



IMPERIAL ORDINANCE NO. 311 (CONT'D)

Article 3. Chief of Prison shall detain persons designated by Military Occupation Courts of the Allied Forces, for imprisonment or for specified alternative imprisonment in lieu of payment of fines, in accordance with the directives of such courts.

In the treatment of those persons who have been detained for imprisonment or for a specified alternative imprisonment in lieu of payment of fines under the provisions of the preceding paragraph, the provisions of the Prison Law shall be applied mutatis mutandis except in those cases where the courts shall direct otherwise.

Article 4. Violations of this Ordinance, and commission of acts which are prejudicial to the objectives of the Occupation as defined herein will be punishable by imprisonment not exceeding 10 years with hard labor or a penalty in money not exceeding ¥75,000 or custody or fine.

Those mentioned in the previous paragraph can be punishable by both penal servitude or monetary penalty according to circumstances.

The provisions prescribed in the previous two paragraphs cannot be applicable in cases where specific provision for punishment has already been made by Supreme Commander for the Allied Powers' directive or by orders of the Imperial Japanese Government supplementing such directive.

Supplementary Provisions:

The present Ordinance shall come into force as from July 15, 1946.

The following amendment shall be made to the Imperial Ordinance No. 274, 1946:

The terms "Article 1" shall be deleted and Article 2 shall be deleted.

Underscoring supplied.

Incl. 1. to O.D. No. 29/4, Hq 8th Army, 18 Aug 1947

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERSAG 015 (27 June 47)LS-L  
(SCAPIN 1740)APO 500  
27 June 1947

MEMORANDUM FOR: JAPANESE GOVERNMENT

THROUGH: Central Liaison Office, Tokyo

SUBJECT: Amendment to Exercise of Criminal Jurisdiction

1. Delete paragraph 2c of Memorandum for the Imperial Japanese Government, AG 015 (19 Feb 46)LS, subject: "Exercise of Criminal Jurisdiction," dated 19 February 1946, (SCAPIN 756), as amended on 19 September 1946, (SCAPIN 1218).

2. The possession, taking, receipt, or disposal of property of the Occupation Forces or any member thereof, or of any person attached to or accompanying such forces, is prohibited, unless duly authorized.

3. Violations of paragraph 2 above will be prosecuted pursuant to the provisions of Imperial Ordinance No. 311, 11 June 1946.

4. Any provision of law in conflict with the contents of this Memorandum will be amended to conform therewith.

5. Monthly reports on the cases tried under Imperial Ordinance 311 will be submitted to this Headquarters, through local military government units, indicating, in each case, the location of courts, docket number, gist of offense, number of accused, pleas, sentence if found guilty, and other remarks deemed appropriate.

FOR THE SUPREME COMMANDER:

s/ R. M. Levy  
t/ R. M. LEVY,  
Colonel, AGD,  
Adjutant General.

Incl 2 to OD 29/4, Hq 8th Army, 18 Aug 1947



UNITED STATES POLITICAL ADVISER  
FOR JAPAN

LEGAL ADVISER

SEP 20 1947

DEPARTMENT OF STATE

Tokyo, September 12, 1947

~~DC/L~~  
DC/L  
DC/L

UNCLASSIFIED

No. 1271

SUBJECT: GHQ, SCAP, Memorandum Concerning Civil  
Actions in Japanese Courts.

The Counselor of Mission has the honor to refer  
to this Mission's despatch No. 1253 of August 28, 1947,  
regarding a United States Eighth Army directive concern-  
ing the establishment of military occupation courts, and  
to previous correspondence on this subject.

There are enclosed five copies of Staff Memorandum  
No. 55 of August 11, 1947, concerning civil action in  
Japanese courts.

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Enclosures:

Five copies of GHQ, SCAP,  
Staff Memorandum No. 55,  
August 11, 1947

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GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS  
AND  
FAR EAST COMMAND

AG 015 (8 Aug 47)LS

STAFF MEMORANDUM )

NO.....55 )

Enclosure	to Report No.
	Despatch No. 127PP 500
From	Embassy at Tokyo 11 August 1947
Date	Sept 12, 1947
Report Despatch forwarded to	DCK
on	(SCAP & FEC) Oct 3, 1947

CIVIL ACTIONS IN JAPANESE COURTS

1. Rescission. Staff Memorandum 39, General Headquarters, Supreme Commander for the Allied Powers and United States Army Forces, Pacific, 30 October 1946.
2. Japanese Courts have been divested of all jurisdiction in civil claims against United Nations nationals or organizations (including corporations) attached to or accompanying the Allied Armed Forces.
3. Japanese Courts will retain jurisdiction in civil cases affecting other United Nations nationals, subject to review by Legal Section, General Headquarters, Supreme Commander for the Allied Powers.
4. The Commanding General, Eighth Army, is responsible for supervision of Japanese Courts exercising civil jurisdiction over United Nations nationals and organizations, including authority to suspend proceedings at any time in order adequately to protect their rights, but not including authority to remove unacceptable court personnel. This authority is retained by the Supreme Commander for the Allied Powers.
5. Government Section is the staff section within General Headquarters, Supreme Commander for the Allied Powers, responsible for advising the Supreme Commander on matters relating to the supervision of civil cases involving United Nations nationals or organizations.

BY COMMAND OF GENERAL MacARTEUR:

PAUL J. MUELLER,  
Major General, General Staff Corps,  
Chief of Staff.

OFFICIAL:

*R. M. Levy*  
R. M. LEVY,  
Colonel, AGD,  
Adjutant General.

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Rec'd  
Sept. 23, 1947

Tokyo, September 12, 1947

ACTION UNCLASSIFIED  
LE-enc. No. 1271INFO  
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DS-enc.M-O-O-O SUBJECT: GHQ, SCAP, Memorandum Concerning Civil  
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The Counselor of Mission has the honor to refer to this Mission's despatch No. 1253 of August 28, 1947, regarding a United States Eighth Army directive concerning the establishment of military occupation courts, and to previous correspondence on this subject.

There are enclosed five copies of Staff Memorandum No. 55 of August 11, 1947, concerning civil action in Japanese courts.

## Enclosures:

Five copies of GHQ, SCAP,  
Staff Memorandum No. 55,  
August 11, 1947

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THE FOREIGN SERVICE  
OF THE  
UNITED STATES OF AMERICA

United States Political Adviser  
for Japan

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*G* DIVISION OF  
NORTHEAST ASIAN AFFAIRS

Tokyo, March 31, 1949.

APR 13 1949

DEPARTMENT OF STATE

*No action required*  
*April 23, 1949*  
*MG*

No. 193

RESTRICTED

Subject: The Supreme Court of Japan.

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The Honorable  
The Secretary of State,  
Washington.

Sir:

I have the honor to submit a summary of the work of the Supreme Court of Japan, particularly as publicized during the popular review of the appointment of judges conducted along with the recent general election of members of the House of Representatives. This election served both to test the value of review as a political experiment and to bring the accomplishments of the Court to the attention of the general public. In this connection reference is made to this Mission's despatch no. 114 of February 21, 1949, which transmitted a Headquarters report on the general election; this report contains a brief resumé of the review of judges of the Supreme Court.

The Japanese Constitution provides for the review of appointment of judges of the Supreme Court in Article 79: "...The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter." By establishing a popular check on executive appointment of judges, this provision, which is novel to Japan, recognizes that the supreme judicial organ of Japan has a political character under the new Constitution.

The review of appointment of judges of the Supreme Court of Japan conducted simultaneously with the general election of January 23, 1949 for members of the House of Representatives was the first such review under the Constitution of Japan. A simple voting procedure was established. The names of the judges were

listed on

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Tokyo's Despatch No. 193,  
March 31, 1949.

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listed on a separate ballot with a single space above each name in which the voter was, according to the instructions on the ballot, to insert an X if he desired a judge to be dismissed. Insertion of an unmarked ballot into the ballot box constituted a vote for retention. Voters who wished to abstain did so by casting no ballot. If any judge received more votes for dismissal than for retention, he would lose his seat on the Court. By an overwhelming and remarkably uniform vote, the appointments of the fourteen judges now on the Court were confirmed. (There was one vacancy on the Court at the time of the review.)

The names of the judges and the number of votes cast for and against each judge are as follows (the figures given are those released by the Supreme Court Review Management Commission, which administered the review):

NAME OF JUDGE	VOTES FOR	VOTES AGAINST
SHIMOYAMA Seichi.....	28,776,879.....	1,450,750
SAITO Yusuke.....	28,854,314.....	1,363,474
KOTANI Katsushige.....	28,849,400.....	1,378,268
IWAMATSU Saburo.....	28,898,182.....	1,330,603
TSUKAZAKI Naoyoshi.....	28,898,406.....	1,319,548
KURIYAMA Shigeru.....	28,867,298.....	1,340,594
HASEGAWA Taichiro.....	28,886,062.....	1,331,698
INOUE Noboru.....	28,921,287.....	1,296,697
MIBUCHI Tadahiko.....	28,540,426.....	1,677,616
KAWAMURA Matsuke.....	28,978,863.....	1,239,270
MANO Tsuyoshi.....	28,972,152.....	1,244,854
SHIMA Tamotsu.....	28,958,151.....	1,259,669
FUJITA Hachiro.....	29,001,954.....	1,217,055
SAWADA Takejiro.....	29,104,952.....	1,213,100

These statistics show that the average percentage of votes cast against each judge was 4.41% of the total number of valid votes, that the total number of valid votes (31,051,735) was but 116,890 less than the total valid votes for members of the House of Representatives, and that the number of invalid votes was 859,291 or 2.84% of the total. The relatively high number

of invalid

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of invalid ballots is said to have reflected some uncertainty as to voting procedure consequent upon the Review Management Commission's failure to explain clearly how a vote of approval was to be registered.

The uniformity of the voting for the members of the Court, although it may be discounted somewhat because of uncertainty in voting procedure, would appear to indicate that no judge had made a distinct impression on the electorate and that the voters tended to think in terms of the entire Court. Chief Judge MIBUCHI, who received the smallest number of votes in favor of his retention and the largest for dismissal, attracted the greatest attention among the electorate both because of his position as head of the Court and because of his ailing physical condition.

Review of the appointments of Supreme Court judges did not become a major political issue during the political campaign. The Supreme Court has received little public notice since its reorganization under the new Constitution. The novelty of the review provision and uncertainty as to what was expected of the judges and the voters contributed to the general lack of interest. Most of the press articles written prior to the election in regard to review of the Court sharply criticized the apathy of the public but were unable to provide any stimulus. The members of the Court were interviewed by the press on several occasions, but confined themselves to general statements about the virtues of the Constitution, their previous experience, their hobbies, and similar innocuous subjects. It is understandable that the electorate did not become excited at the prospect of review of the Court: establishment of the judiciary as a separate branch of government is a recent innovation in Japan (the Court having been inaugurated in July 1947) and hence the work of the Supreme Court and its importance have not yet had time to progress significantly. Nor has the political character of the Court and of the views of the various judges yet developed. The fact that, in the absence of outstanding decisions by the Court, the electorate found little to criticize does not of course mean that the voters will remain apathetic if issues arise.

Communist opposition to retention of the entire Court raised the only political issue of note in connection with review. Aside from ideological objection to the Supreme Court on the apparent ground that it is a capitalist tool, the communists' specific grievance was that the Court refused to declare unconstitutional the Government ordinance of July 31, 1948 which prohibited strikes by public workers (this Mission's despatch no. 503 of August 10, 1948). The Japanese Government prosecuted a number of workers,

who were

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who were almost certainly of leftist persuasion, for going on strike in violation of the ordinance; the legality of the Government order was upheld, however, and conviction of the striking workers was affirmed. Railway and communications workers were particularly incensed by this decision, and the Communist Party took an official stand against retention of judges of the Supreme Court.

An interesting observation on the strength of the Communist Party can be drawn from its opposition to the Supreme Court. The number of votes received by the Communist Party candidates in the general election of members of the House of Representatives was about 2,980,000. The average number of votes cast against retention of the judges of the Supreme Court was about 1,330,000. The difference between the two figures is 1,650,000 votes, which would seem to offer some indication of the number of independent voters who voted communist as contrasted with the number of dyed-in-the-wool communists who voted the straight party line. This figure of 1,650,000 votes goes a long way toward accounting for the increase of 2,000,000 communist votes as contrasted with the communist vote in the general election of April 1947. The Communist Party did not, of course, make a major political issue of its opposition to the Supreme Court, but it seems safe to assume that all good communists knew of their party's stand and adhered to it in the review voting.

Using its power of judicial review conferred by Article 81 of the Constitution, the Supreme Court has considered other cases involving the constitutionality of government laws, notably in upholding regulations in regard to food rationing. The Court has yet to pass upon regulations in regard to land reform and the purge, although there are several pending cases on these matters. In the field of civil liberties the Court's most notable decision has been that a confession made after 120 days' detention in prison was not admissible in evidence for the reason that it violated Article 38 of the Constitution, which provides that "Confession made...after prolonged arrest or detention shall not be admitted in evidence." The Court has also held that capital punishment is not illegal within the meaning of Article 36 of the Constitution, which provides that "The infliction of torture by any public officer and cruel punishments are absolutely forbidden." The Supreme Court has to date handled a total of 4,016 cases in the eighteen months of its effective operation; 3,625 of these have been appeals of decisions by lower courts in criminal cases prosecuted by the Government, and the

remainder

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remainder appeals in civil cases. The Court has also had considerable responsibility for formulating rules for the reorganized judiciary system necessitated by revision of the codes of procedure.

It is too early to measure the value either of the work of the Supreme Court or of the review provision of the Constitution. Development of the Supreme Court of the United States as an effective third branch of government with definite political powers took many years, and transformation of the Supreme Court of Japan from an agency of the executive branch into an independent organ of government will under favorable conditions probably also take considerable time. Many commentators deplored the apparent ignorance and apathy of the voters in the recent review of judges and suggested variously that review be abolished, that the period of time between reviews be reduced, that review be conducted independently of Diet elections, and that the Supreme Court be split into two courts, one handling constitutional cases and the other having final authority in all other cases. It would appear, however, that, like many other innovations in postwar Japan, the Supreme Court has not yet had an opportunity to acquire sufficient effectiveness to make it possible for its value to be appraised by the general public in popular review.

Respectfully yours,

*W. J. Sebald*  
W. J. Sebald

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