

GHQ/SCAP Records(RG 331)
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The following statement is hereby issued:

STATEMENT

In view of the highest position in the judiciary and the seriousness of the current situation, the position of the justice of the Supreme Court should not be left vacant even for a moment. Supreme Court Justice Tsukazaki tendered his resignation on the 10th of last month in order to open the way for the promotion of his juniors, and his resignation was accepted on the 14th of the same month. It is an extreme neglect of duty on the part of the Government not to have appointed his successor to this date.

Civil and criminal cases are accumulated in the Supreme Court, and no progress has been made for a long time. Furthermore, Supreme Court Justice Hozumi has been absent from work because of illness since January. We understand that he is not able to work for a while yet. Every judge is so busy in writing up the decisions that he is forced to stay up all night long.

To expedite court proceedings, in accordance with the SCAP directive, is an important duty imposed upon the Japanese Government. At the time when everybody is doing his best to achieve this end, even a single post of the supreme court justice, which is the source to expedite court proceedings, should not be left vacant.

Nothing is so serious as the Government's lack of understanding in the judiciary as manifested by the fact that Government has not yet

appointed the successor to Supreme Court Justice Tsukazaki to this date. It discloses the insincerity of the Government toward measures expediting court proceedings.

The Chief Justice of the Supreme Court should demand the Government to appoint the successor to the supreme court justice without delay, and the Government has the responsibility to decide on the personnel immediately. In an attempt to realize the appointment as soon as possible, the association urges the Government to make serious reconsideration.

Japan Lawyers' Association

Supreme Court

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

21 February 1950

MEMORANDUM FOR: General Whitney

SUBJECT: Attorney General UEDA's Statement Re New Chief Justice

1. Attorney General UEDA says that he is advising Mr. YOSHIDA in both an official and a personal capacity concerning the nomination of the successor to Chief Justice of the Supreme Court MIBUCHI who will retire 2 Mar 50. According to Mr. UEDA, no definite decision has yet been made, and Mr. UEDA made particular reference to newspaper reports that Chief Procurator FUKUI would be appointed, saying that the newspaper reports were pure fabrication and that, as a matter of fact, YOMIURI, the newspaper which first broadcast them supported Mr. FUKUI for the appointment.

2. UEDA said that he had discussed the qualifications of various persons eligible for appointment with Mr. YOSHIDA during a number of conferences including a conference of more than two hours on 18 Jan 50. Previous to this conference, according to Mr. UEDA, the appointment had been offered to KOIZUMI Shinzo, former President of Keio University and present tutor of the Crown Prince. However, Mr. KOIZUMI declined on two grounds: first, that he felt he was performing a valuable public service as tutor of the future emperor; and second, that because of burns suffered during an air raid in the war, his appearance in such a public position would be a source of constant embarrassment to him.

3. Prime Minister YOSHIDA is considering the following named candidates, Mr. UEDA said:

FUKUI Morita, Procurator General;

HOZUMI Shigeto, Supreme Court Judge and former Dean of Law at Tokyo Imperial University;

KATAYAMA Tetsu, lawyer and former Prime Minister;

MANO Tsuyoshi, Supreme Court Justice;

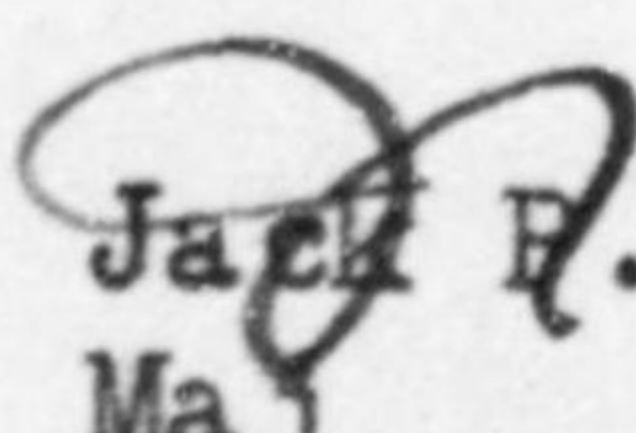
TANAKA Kotaro, member of the House of Councillors, and former Minister of Education in the first Yoshida Cabinet;

TSUKAZAKI Naoyoshi, Supreme Court Justice.

Mr. UEDA says that the Prime Minister considers all of these men qualified. However, Mr. KATAYAMA is not being considered very seriously in

Memo to General Whitney (Cont.)

view of the political situation, and Mr. FUKUI, although personally liked by the Prime Minister, is not considered an outstanding candidate. Mr. MANO and Mr. TANAKA are the persons Mr. UEDA believes the best possibilities for selection, although he remarked that since Mr. TANAKA was an extremely ardent Catholic, there might be some criticism that he would represent a minority. Mr. UEDA did not ask for any comment, and none was volunteered.


Ma J AGD
Executive Officer

Confidential

Jack,

This might be of interest to General Whitney. I think if the Impeachment Court would remove the four judges because of that technical mistake, it would be disastrous

PW

C O P Y

Supreme Court
Confidential file

31 October 1949

Dear Dr. Oppler:

I think by this time you will have read the English full text of our press statement published in newspaper of yesterday morning. In order to tone down our statement, I did not refer to the line of thought in which the decision of the majority of the judicial assembly of the Supreme Court has been made. As for myself, my conviction is that I have assumed the position of a judge of the Supreme Court to defend the fundamental liberties of our people. That is the reason for which we are called guardians of the Constitution. We are not here to defend the cheap prestige of the Supreme Court by complying with the feudalistic and anachronistic ideas regarding the mystic moral responsibility which we are supposed to assume when we misapply or ignore by mistake some rules of the court. In his press interview regarding our statement, the chief justice pointed out that it is the moral responsibility of four judges which was asked by the decision of the judicial assembly.

As you know, in former times, an army officer of a battalion who misread the imperial rescript given to the soldiers, committed suicide. It is too clear to say that such a moral standard does not comply with the spirit of the most democratic type of a constitution which is ours. I think it is the supreme duty of the judges of the supreme court not to mystify themselves. What would mean if the impeachment committee, in following the same line of thought as the decision of the judicial assembly dares to indict. It would indicate that the background, feudalistic and egotistic is still prevailing in Japan. This background was the real cause of this disastrous war into which Japanese people were lead to plunge themselves as the "moutons de Panurge". It would mean that we have been building our fortress of liberty on sand. The question is indeed a very serious one. I wish you to point out the serious character of the question to Colonel Carpenter and if necessary to the Supreme Commander.

Yours very sincerely,

/s/ C. Kuriyama

9 November 1949

General MacArthur's message to Chief Justice Mibuchi, of the Supreme Court of Japan, on the occasion of the opening of the newly reconstructed building for the Supreme Court, 11-12 November 1949:

"The ceremony dedicating the new home of Japan's Supreme Court presents a most fitting occasion to extend my heartfelt congratulations and best wishes to the highest legal tribunal in the land as it achieves another great milestone on the road to democratic ideals.

"This occasion, emblematic of the growth of the third great element of free and popular government in Japan, merits the attention of the nation at large. Just as the Constitution brought forth the great principles of humaneness and dignity for all, so will the highest temple of justice become the medium of vitalizing and protecting these principles in the interests of the new Japanese way of life.

"It is, indeed, a moment of great significance for the judiciary of the country. The execution of your duties in these halls cannot but serve as an inspiration to you, as well as achieve the respect and admiration of the citizens. This imposing edifice, a stately symbol of the dignity and prestige of the judiciary, gives marked proof of the Japanese devotion to those lofty concepts of law and justice as postulated in your Constitution. Within these walls lies Japan's future for generations and the future of her people forever."

DOUGLAS MacARTHUR

Supreme Court

GOVERNMENT SECTION

27 January 1949

FINAL RETURNS VOTE CAST FOR
SUPREME COURT JUDGES REVIEW

TOTAL VOTE CAST IN FAVOR OF JUDGES - 403,155,891

TOTAL VOTE CAST AGAINST JUDGES - 18,613,885

PERCENTAGE OF VOTES CAST AGAINST SUPREME COURT JUDGES - 4.4

To Approve the Application for My Sanction
to Indict Mr. Nishio, Minister of State.

Statement by
Attorney-General
SUZUKI.

Today I've approved the application for my sanction to indict Mr. Nishio, Minister of State on charge of violation of the Cabinet Order and taken steps to ask for the consent of the Prime Minister.

Ever since I was appointed Attorney-General, I've paid respect to the independence of prosecution and never violated it. It was true indeed of Nishio case as well. It is true that there can be many different views on this Nishio case because the point of contention in it is entirely of legally technical nature. Nevertheless I believe it proper for this case to be brought to trial and judged fairly, since there is suspicion from the nature of the case. Therefore I've ever expressed my view in favour of the indictment of the case.

However, I thought I had to be very careful to decide when to indict the case. It goes without saying that to decide the time of indictment against a suspect is one of the most important functions of prosecution. It is obvious that if such a leading figure as Mr. Nishio who occupies important position in the political circles were to be indicted on any charge whatsoever, it would be sure to cause a disturbance and let the political circles fall into utter confusion. But probably I should not mind even about that. It was on the 10th. inst. (June) that the application was brought to me for my sanction

to indict Mr. Nishio, which was two days after the Government submitted this year's budget to the Diet. The Attorney-General should not, as I received the documents, I wanted to ask a few questions for a matter of course, decide whether to indict or not by taking into consideration any political change and the like. He may naturally disregard the destiny of a particular party, faction or of the Cabinet, but he must always consider the interest of the nation and the people in performing his duties. The situation is that three months have already gone with provisional budget, and if I gave the good cause of troubles to the political circles at this moment when the discussion of the regular budget is about to be finished, there might be little hope of the budget being approved by the Diet. If any political change were to take place without the budget being passed, our people would surely suffer a severe blow which could be immeasurable. Although things would be quite different if this Nishio case need a speedy solution from the national viewpoint, actually the case took place last spring, I cannot believe that this is so urgent a problem that we should spare five or ten days now for its immediate solution, holding up the solution of the budget. The point at issue in the case can even be simplified to either the contributions being made to the party or its being made to the individual. I think every problem has, in itself, different weight and priority from the national viewpoint and believe that the Attorney-General, who assumes the highest responsibility for prosecution, should take up the point like this seriously before he

disposes of the case. In fact, I have been looking for good time for indictment, always judging from the general situation. When I received the documents, I wanted to ask a few questions for clarification, and so I asked them. I have just received the reply thereon. Fortunately we can now see the possibility of the budget getting through, which all the people have been impatient for so long. I believe that, even if any disturbance might arise in future, its blow which would inflict upon the people would be nothing to that which would surely have arisen on about ~~July~~^{June} 10. This is the reason why I gave my approval to the indictment today and allowed its procedure to go ahead.

SECRETARIAT OFFICE
SUPREME COURT OF JAPAN, TOKYO

June 16, 1948

Dear General,

After receiving your letter of 10 June, 1948, in which you expressed your deep consideration over the present situation, whereas the trial of cases for violation of certain Imperial Ordinances issued for the implementation of Supreme Commander Directives have been unfortunately very slow, and you desired the Supreme Court through its constitutional rule-making power to remedy this, the Supreme Court at once took steps to make Rules to remedy this situation, and on June 16, the Judicial Assembly of Supreme Court Judges decided on a Rule of twelve provisions, that will greatly contribute to the rapid and final adjudication of these cases, and at the same time, still protect the rights of the accused and the ends of justice. (copy of these Rules is included)

The Supreme Court sincerely hopes that the Rules decided will adequately remedy the present situation, and comply with the wishes of the Supreme Commander for the Allied Powers.

Yours Truly,

Tadahiko Mibuchi.

Tadahiko Mibuchi,
Chief Justice
Supreme Court of Japan.



SECRETARIAT OFFICE
SUPREME COURT OF JAPAN, TOKYO

Supreme Court Rule No.

June , 1948

Rule concerning the special treatment of the trial of a criminal case, etc., involving violations of the Orders relating to the exclusion, removal, etc., from public offices and public services, and the Order relating to the abolition of certain political parties, associations, societies and other organizations shall be determined as follows:

Supreme Court

Rule concerning the Special Treatment of the Trial of Criminal Cases, etc., involving Violations of the Orders relating to the Exclusion, removal, etc., in respect to Public Offices and Public Services, and the Order relating to the Abolition of Certain Political Parties, Associations, Societies and Other Organizations.

Article 1. Pursuant to the Potsdam Declaration the present Rule aims at expediting the trial of criminal cases involving violations of the Orders relating to the exclusion, removal, etc., from public offices and public services, and the Order relating to the abolition of certain political parties, associations, societies and other organizations, under the Orders to be issued in consequence of the acceptance of the Potsdam Declaration (Imperial Ordinance No.542, 1945) (henceforth, referred to as "these cases.").

Article 2. The court shall conduct the trial of these cases prior to all other cases, regardless of order of the cases.

SECRETARIAT OFFICE
SUPREME COURT OF JAPAN, TOKYO

Article 3. In the Court of First Instance and the Court of "Kese" Appeal, the date of the first day of public trial, shall not be later than 10 (ten) days from the day when public action is brought or from the day of receipt of a record of proceedings transferred.

Article 4. The Court of "Jokoku" appeal, shall designate on the same day of the receipt of a record of proceedings transferred, or at the latest not later than three days, the date of the first session of public trial, which shall not be later than twenty-five days after the receipt of a record of proceedings transferred.

The Court of "Jokoku" appeal, taking into consideration the distance between the location of the residence of the accused, and the location of the Court of "Jokoku" appeal, and other Unavoidable circumstances, when it deems it not appropriate to follow the provisions of the previous paragraph, regardless of the provisions of the previous paragraph, may appoint as the date of the first session of public trial, a day within forty days of the receipt of a record of proceedings transferred. In this case, the inferior court shall forthwith inform the Supreme Court thereof.

The Court of "Jokoku" appeal, on designating the date of the first session of public trial, shall notify this date at once to the "Jokoku" appellant and the other party.

The "Jokoku" appellant, shall present to the Court of "Jokoku" appeal, a written statement of reason for "Jokoku" appeal, at the latest not later than seven days before the primarily designated date of the first session of public trial.

SECRETARIAT OFFICE
SUPREME COURT OF JAPAN, TOKYO

The other party in the "Jokoku" appeal, may bring an incidental "Jokoku" appeal, not later than seven days before the primarily designated date of the first session of public trial.

The provisions of Article 428, in the Code of Criminal procedure shall not be applied.

Article 5. The date of the session of public trial shall not be changed.

Article 6. Where there are unavoidable circumstances, the provisions of the two preceding articles shall not apply. In this case, the provisions of the last sentence of the second paragraph of Article 4 shall apply *mutatis mutandis*.

Article 7. If the trial of these cases is not finished at the date of the first session of public trial, they shall be heard at trial sessions held as continuously as possible.

Article 8. The trial proceedings shall not, even where a motion to challenge a judge or judges is filed, be suspended, provided that an exception shall be made when the collegiate body of which the challenged judge or judges are its member or members, or a single judge of the District Court or a judge of the Summary Court who has been challenged, deems there are grounds for the motion.

Article 9. The Presiding Judge, where the questionings or statements of the parties concerned in the case are repetitions or matters not connected with the case, or otherwise where they are not appropriate, shall limit them as far as possible.

SECRETARIAT OFFICE
SUPREME COURT OF JAPAN, TOKYO

Article 10. Where a "Kōso" appeal or "Jokoku" appeal has been filed, the original court shall take steps to forward the record of proceedings and exhibits (only in case of "Kōso" appeal), within five days of the day of the filing.

On receipt of the record of proceedings and exhibits the public procurator shall take steps to forward them within two days of the day of receipt thereof.

Where there are unavoidable circumstances, the provisions of the two preceding paragraph shall not apply. In this case, the original court shall forthwith inform the Supreme Court of the circumstances under which the provision of Paragraph 1 could not be observed.

Article 11. The provisions of Articles 2 to 9, inclusive, where these cases are to be tried jointly with other cases, and the preceding Article, where these cases were tried jointly with other cases, shall apply mutatis mutandis.

Article 12. When a judge or judges act against the provisions or spirit of these rules, the Supreme Court will take necessary action to see that these rules are strictly observed.

Supplementary Provision.

The present Rule shall come into force from July 1, 1948

Tokyo, Japan.

10 June, 1948.

Dear Mr. Chief Justice:

As you know, the responsibility for the enforcement of the directives of the Supreme Commander of January 4, 1946 (SCAPINS 548 and 550) with the consent of the Supreme Commander has been assumed by the Japanese Government. In discharging this responsibility, the Japanese Government has issued ordinances in the implementation of those directives which contain criminal provisions including penalties for the violation thereof.

The executive branch of the government has established, in accordance with the statute enacted at the last session of the National Diet which created the Attorney General's Office, a special examining bureau under the Assistant Attorney General in charge of prosecutions. As a result of the activity of that bureau, in cooperation with the Procurator General's office and various district procurators, numerous persons have been indicted, some of whom have been brought to trial, others of whom are still awaiting trial, and a few of whom have been convicted and sentenced. However, the delay in the adjudication of these cases is a matter for concern in which I know you fully join. Accordingly, it is felt that measures should be taken by the Supreme Court through its constitutional rule-making power, to bring cases of this character involving violations of directives of the Supreme Commander to as rapid a final adjudication as the ends of justice will reasonably permit.

I would appreciate being advised on the measures the Court proposes to take to rectify this situation as promptly as possible.

Very truly yours,

COURTNEY WHITNEY,
Brigadier General, U.S. Army,
Chief, Government Section.

The Chief Justice,
Supreme Court,
Tokyo, Japan.

GEN WHITNEY'S FILE

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Tokyo, Japan.

10 June, 1948.

Dear Mr. Chief Justice:

As you know, the responsibility for the enforcement of the directives of the Supreme Commander of January 4, 1948 (SCAPINS 548 and 550) with the consent of the Supreme Commander has been assumed by the Japanese Government. In discharging this responsibility, the Japanese Government has issued ordinances in the implementation of those directives which contain criminal provisions including penalties for the violations thereof.

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I would appreciate being advised on the measures the Court proposes to take to rectify this situation as promptly as possible.

Very truly yours,

/s/t/ COURTNEY WHITNEY

Brigadier General, U. S. Army
Chief, Government Section.

The Chief Justice,
Supreme Court,
Tokyo, Japan.

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Check Sheet

Judges' and Procurators' Salaries CW/CLK/rh

Government Section

Chief of Staff

8 April 1948

1

1. In accordance with your request the following comments are submitted upon the Checksheet from Economic and Scientific Section, dated 5 April 1948, subject: "Request for Withdrawal of SCAP Clearance," copy of which forwarded to Chief of Staff by Economic and Scientific Section is enclosed herewith as Tab "A".

a. The subject matter refers to two bills intended to readjust the salaries of judges and procurators in the light of the existing high cost of living, to assure their incorruptibility and a decent standard of living. The bills were drafted on the initiative of the Supreme Court of Japan and the Japanese Procurator General with the approval of the Japanese Cabinet, and were submitted to this headquarters for the sole purpose of securing permission for their introduction on bills for the consideration of the Japanese National Diet.

b. On 1 April 1948 the Government Section reported to the Chief of Staff that on 31 March 1948:

"The Japanese Cabinet was informed that two bills submitted by the Cabinet, jointly with the Japanese Supreme Court, for fixing the compensation of judges and procurators under the revised judicial system of Japan could be introduced into the Diet during the current session, it being purely a matter of internal concern to the Japanese Government."

c. This was not a subject requiring coordination with ESS within the purview of GHQ SCAP - FEC Staff Memorandum #8 (10 January 1948), since it does not involve "proposed Japanese Government revenues and expenditures on programs on which it (Government Section) has primary interest" within the meaning of Para. 2 of said Staff Memorandum, nor is it an action by Government Section "affecting the expenditures or revenues of the Japanese Government" within the meaning of Para. 3 of said Staff Memorandum. Even though the bills in question do not involve either the Japanese budget or Japanese Government financing, which is the sole subject of said Staff Memorandum, they were coordinated with the Finance Division of Economic and Scientific Section, which was informed in great detail of the purpose, nature and content of the said bills. It was only after Economic and Scientific Section had been fully informed that the proposed bills were returned to the Japanese Government with no objection.

d. Since the Japanese Government fully understands the Supreme Commander's announced policy that the budget must be balanced, the mere consideration and even enactment by the Diet of these bills into law would not in any way jeopardize faithful compliance with this policy, as they did not in themselves constitute any appropriation of public funds.

Judges' and Procurators' Salaries CW/CLK/rh

Govt. Section

Chief of Staff

8 April 1948

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(cont.) e. When, as and if the Japanese National Diet does enact the proposed bills into law and when, as and if budgetary provision is made for the payment of judges' and procurators' salaries, at that time the budget will, of course, be examined by ESS Finance Division as to whether it complies with the Supreme Commander's policy. Until that time the question of judges' and procurators' salaries is purely an internal legislative matter for determination by the Japanese National Diet.

f. The Supreme Commander has repeatedly declared it to be his policy that in the matter of fiscal appropriations he requires only two things; i.e., (1) that the sums required for maintaining the Occupation be provided for in the budget, and (2) that the budget as a whole must be balanced. Otherwise the decisions of the Japanese Government as to the sources of its revenues or the purposes or amounts of its expenditures are left to its discretion. It has never been the Supreme Commander's policy, either expressed or implied, that General Headquarters or any Section thereof should dictate in detail every item to be included in or excluded from the National budget.

g. The issue presently raised by the Economic and Scientific Section in subject Check Sheet (Tab "A") was raised once before and the position taken by that Section was unequivocally rejected after consideration by the Supreme Commander. This occurred in connection with the issuance of SCAPIN 1080 (23 July 1946) which returned the Japanese budget to the Japanese Government. At that time Economic and Scientific Section proposed to approve certain items of the budget and disapprove certain other items; and this Section objected to such action on the ground that it constituted a direct and wholly arbitrary intervention in the internal operations of the Japanese Government. The position taken by this Section was sustained and the directive of the Supreme Commander to the Japanese Government (SCAPIN 1080) contained in Para. 2 those unequivocal statements of policy:

"The Supreme Commander has no objection to the submission of the general account budget for the fiscal year 1946-47 to the Diet. The Supreme Commander neither approves nor disapproves of any items in the budget, but reserves the right at any time to require the Japanese Government to provide funds necessary to carry out policies of the Occupation, and to prohibit the expenditure of funds for purposes inconsistent with such policies."

h. It is not believed that Staff Memorandum #8 (TAB "A") was intended directly or indirectly to abrogate, change or even to modify this fundamental policy of the Supreme Commander not to approve or disapprove the operational

Judges' and Procurators' Salaries CW/CLK/rh

Govt. Section

Chief of Staff

8 April 1948

1 minutes of budget formulation. Accordingly, this Section neither approved (cont.) nor disapproved the judges' and procurators' salary bills, and any directive from the Supreme Commander to the Japanese Government, oral or written, prohibiting consideration thereof by the Japanese National Diet would be wholly uncalled for and totally incompatible with the very essence of the firmly established relationship between the Supreme Commander and the Japanese Government in the governing of Occupied Japan. To interfere to the extent of forbidding the Japanese National Diet to consider such detailed measures as these two bills would be to impose upon the Supreme Commander responsibility which he should not assume in the affairs of government in Japan. To illustrate that the policy of the Supreme Commander has not changed since he issued SCAPIN 1080, only just recently on 1 April 1948 the Supreme Commander, in reply to a letter from the Chief Justice of the Supreme Court regarding the comparative salary schedules of judges and procurators, advised that though he sympathized with the increase in the salaries of judges and procurators, the question as to the relative scales should "be decided by the Japanese National Diet as the highest organ of state power." (Copies of this correspondence are enclosed as Tab "B").

2. To illustrate the sensitivity of the government to this type of detailed SCAP control, the last Cabinet crisis was precipitated by conflicts within the Japanese Cabinet over the supplemental budget, after the Japanese Diet and Cabinet had been directly instructed by the Economic and Scientific Section that they were not to take certain measures which would have resulted in the transfer from the Cabinet to the Diet of the power to raise railway and postal rates. The revocation of this instruction at the eleventh hour came too late to prevent the fall of the Katayama Cabinet. It is also a well known fact that had the Prime Minister not directly interceded with the Supreme Commander last week to permit the inclusion in the budget of part of the appropriations for education and flood control program, the Ashida Cabinet might have been similarly toppled over a budgetary issue created by the direct interference of a Section of this headquarters. Similarly, the Economic and Scientific Section's attempt in this case to judge the timeliness of the proposed bills is an unwarranted usurpation of the right to make political decisions which should be left entirely to the Japanese Government. Furthermore, there is not the slightest excuse for injecting the labor angle into this matter, as attempted in Para. 5 of subject Checksheet, for it is the height of absurdity to say that labor policy is involved in the salary scale of judges and procurators, any more in Japan than it is in the United States.

Judges' and Procurators' Salaries CW/CLK/rh

Govt. Section

Chief of Staff

8 April 1948

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(cont.)

3. It seems only reasonable to conclude that Tab "A" is, in effect, an effort to concentrate in one Division of a single Staff Section of SCAP what amounts to a strangle-hold upon the operation of the Japanese Government through absolute control of all fiscal policy and operations. This attempted arrogation of power has gone to such an extent that only within the last week this Section was requested by ESS Finance Division to instruct the Japanese National Diet that it should not consider the question of cancellation of interest on certain war bonds to which the Social Democratic Party, an integral part of the present coalition government, is committed in the political platform recently adopted at a national convention of that party. Such a proposal demonstrates complete disregard for internal political policies in Japan which threatens destruction of every gain SCAP has made toward the development of a strong political party system and governmental structure and would inevitably result in every detail of the political and legislative processes being brought under positive SCAP control. The progress made in thirty-one months of Occupation toward establishing in Japan "in accordance with the freely expressed will of the Japanese people, a peacefully inclined and responsible government" as required by the Potsdam Declaration will be forfeited and every gain thus far made destroyed.

4. Were the basic policy of the Supreme Commander to be interpreted in accordance with the position taken by the Economic and Scientific Section, the entire concept underlying the Occupation of Japan should be radically revised and many Section, including this one, re-oriented from the course which has been followed since the Occupation began.

2 Incls.

- Tab A: Copy of ESS Checksheet
to GS, dtd 5 April 48
Staff Memo #8, dtd 10
January 1948
- Tab B: Copy of Letter from Chief
Justice to Gen. MacArthur
dtd 29 March 48
Copy of Letter from Gen.
MacArthur to Chief Justice
dtd 1 April 48

-----C.W.-----

8
Supreme Court

4 February 1948

Dear Mr. Chief Justice:

This will confirm our conversation of even date wherein I pointed out that the removal of undesirable persons from public service is required by directive of the Supreme Commander of January 4, 1946; that the machinery and procedures for its implementation have been established with the approval of the Supreme Commander; that the Prime Minister is directly responsible to the Supreme Commander for all action taken pursuant thereto; that the Supreme Commander, while leaving these matters generally to the governmental process, reserves his inherent authority to intervene in any stage of any proceeding thereunder; and that as a consequence the Japanese courts are without jurisdiction over any removal or exclusion proceedings in implementation of the aforesaid directive.

Very sincerely yours,

COURTNEY WHITNEY,
Brigadier General, U.S. Army,
Chief, Government Section.

The Chief Justice,
Supreme Court of Japan,
Tokyo.

November 28, 1947

Brig. Gen. C. Whitney
Chief of Government Section,
G.H.Q. SCAP.

I beg to inform you of the following matter:-

At 11 a.m. November 28, in the President's room of the Supreme Court, we held the ceremony of taking an oath by Temporary National Personnel Commission, and Kiyoshi Asai, Chairman of the said Commission, Oki-ie Yamashita and Yōichi Ueno, both Members of the said Commission, signed in my presence the written oath after the fixed form on the annexed paper and submitted it to me in accordance with Article 6 of the National Public Service Law.

Tadahiko Mibuchi

Tadahiko Mibuchi,
President of the Supreme Court.

(Annexed paper)

Oath

I hereby solemnly declare that I will support and protect the Constitution of Japan under which the people are sovereign.

I firmly swear that I, as a servant of the community, will be deeply conscious of my responsibility of 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.

By _____
(full name)

Member (or Chairman) of
the Temporary National
personnel Commission.

Dated, November 28, 1947.

10 November 1947

Dear Mr. Chief Justice:

I am in receipt of your request for my support in the extension of the Library of the Supreme Court adequately to cover the field of American Jurisprudence. I understand fully the need for this additional reference material and shall be glad to do everything in my power to assist.

Very sincerely,

DOUGLAS MacARTHUR.

The Chief Justice,
Supreme Court of Japan,
Tokyo.

COPY

September 25, 1947.

Dear General of the Army.

The newly established Supreme Court, of which I have the honor to be the President, is engaged in establishing a new library of its own to take the place of the library of the former Highest Court which was burned down during the War.

The greatest obstacle confronting us is the difficulty of obtaining foreign law books for study and reference, which were needed by the Court and its personnel. I venture to appeal to you for help in procuring a sizable collection of American books and journals, including such publications as are enumerated in the attached list.

We shall be infinitely obliged for whatever assistance you may find it possible to afford us in this regard.

Yours respectfully,

(sgd) TADAHIKO MIBUCHI,

(tpd) Tadahiko Mibuchi,
Chief Justice of the
Supreme Court.

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

I. Reports.

United States Supreme Court Reports

Federal Reporter

Federal Supplement

State Reports of National Reporter System (Northeastern,
Pacific, New York Supplement and others)

II. Codes and Statutes.

Constitution of the United States, Revised and Annotated
Statutes at Large

United States Code Annotated (U.S.C.A.)

United States Code (U.S.C.)

Codes and General Laws of the State of California, by
J.H. Deering, newest edition

Revised Statutes of the State of Illinois, by Smith-
Hurd, newest edition

Thompson's Laws of New York, Newest edition

Statutes of other States

State Law Index

III. Other books.

American Digest System

Shepard's Citations

Corpus Juris Secundum

American Jurisprudence

All text-books contained in the Horn Book Series

All case-books contained in the American Case Book Series
Restatements-complete set

IV. Legal Periodicals.

Harvard Law Review vol. 55 -

Columbia Law Review vol. 42 -

Yale Law Journal 1911 -

Journal of the American Institute of Criminal Law and
Criminology vol. 33 -

American Bar Association Journal vol. 28 -

Ditto vol. 1 - 20

Journal of the American Judicature Society 1911 -

Index to Legal Periodicals 1908 -

Federal Register 1935 -

Annual Reports of the Attorney General of the United
States 1941 -

V. Law Dictionary.

Judicial and Statutory Definitions of Words and Phrases.

Government Section

1 July 1947

MEMORANDUM FOR: President of the Central Liaison Office

SUBJECT: Judicial Process Plan

1. In conformity with the Constitution of Japan which provides that it shall be the supreme law of the nation, a preliminary draft of a revision of the Code of Criminal Procedure has been submitted to this Headquarters by the Japanese Government. The purpose of the proposed revision is to eliminate those portions of the Code which, being contrary to the provisions of the Constitution no longer have legal force or validity, and simultaneously to insert into the Code new articles protecting the rights of the people and implementing the principles of democracy embodied in the Constitution. As such, the proposed revision represents a monumental achievement.

2. Consideration of the proposed revision of the Code has raised, however, important issues concerning the administration of justice in Japan which must be resolved quickly if the proposed revision is to operate in effect as is contemplated by its terms. For the strengthening of democratic tendencies in the judicial system of Japan requires not only the revision of procedural rules and regulations but also the reorganization of institutions charged with the administration of justice. The Japanese Government has heretofore recognized the urgent necessity for reconstruction of the judicial system in the Court Organization Law and in the Public Prosecutors' Office Law enacted at the last session of the Diet.

3. Other major issues of organization of the internal structure of instrumentalities in the judicial process still, however, remain unsettled. These include (a) the relationship of the Ministry of Justice to other Ministries and Cabinet Boards; (b) the relationship of the Ministry of Justice to other law enforcement agencies of the national, prefectural and local government; (c) the relationship of the prosecutors and their investigatory staffs to other investigatory and inspecting staffs, including officials having judicial police power; and (d) the relationship of all these governmental instrumentalities to the people in the execution of the judicial process.

4. It is therefore requested that there be prepared for the consideration of the Supreme Commander a judicial process plan. In order that such plan can be considered concurrently with the proposed revision of the Code of Criminal Procedure it should be submitted as soon as possible but not later than 1 August 1947. The judicial process plan should be so designed as to fix and determine the relationships mentioned in the

Memo for President of the Central Liaison Office, subj: "Judicial Process Plan," dtd 1 July 47.

preceding paragraph, and other relevant relationships arising therefrom, in a manner consistent with the principles of separation of the judicial process from the administrative, of local home rule and of personal liberty and individual dignity.

COURTNEY WHITNEY
Brigadier General, U. S. Army
Chief, Government Section

1 Aug 47

FUJITA, Hachiro	August 5, 1892.
1919	Judge.
Feb. 1941	President of the Osaka District Court.
March, 1944	President of the Sapporo Court of Appeal
HASEGAWA, Taiichiro	December 1, 1881.
	Lawyer for many years in Tokyo.
INOUE, Noboru	April 10, 1885
1917	Judge.
1933	Judge in Supreme Court
IWAMATSU, Saburo	December 31, 1893
1919	Judge
Dec. 1944	President of Tokyo District Court
Feb. 1946	President of Fukuoka Court of Appeal
Mar. 1947	According to the enforcement of the Court of Justice Law, became a Judge of Fukuoka Supreme Court.
KAWAMURA, Matasuke	January 1, 1894.
Dec. 1924	Professor of the Tohoku University @ Chair of the theory of the State.
Aug. 1932	Professor of the Kyushu University - Chair of the Constitution.

KURIYAMA, Shigeru	October 6, 1886
1914	Attaché of Consulate
1924-1927	Chief of Second section of Board of Treaties.
1933-1937	Director of Board of Treaties
1937	Minister Plenipotentiary
1939	Ambassador
1940	Retired from the position

MANO, Tsuyoshi	June 9, 1888
	Lawyer
Apr. 1940 -	President of Second Tokyo Lawyers Association
Mar. 1941	

* MIBUCHI, Tadahiko	March 3, 1880
1907	Judge
Feb. 1923	Judge in Supreme Court
June 1925	Retired from the position

OTANI, Katsushige	December 24, 1890
	Lawyer for many years. Office in Osaka

SAITO, Yusuke	May 21, 1892
1924	Judge of the Osaka district and local courts
Feb. 1946	Chief Public Procurator, Hiroshima Appeal Court
July 1946	Chief Public Procurator, Osaka Appeal Court.

* Tentatively selected for position of Chief Justice.

SAWADA, Takejiro	August 2, 1882
July 1918	Judge in the Administrative Court of Litigation
Apr. 1946	President of the Administrative Court of Litigation.
SHONO, Michi	December 20, 1888
	Lawyer for many years, Office in Tokyo.
SHIMA, Tamotsu	August 25, 1891
July 1918	Judge
Apr. 1935	Judge in Supreme Court
July 1938	President of Tokyo District Criminal Court.
SHIMOYAMA, Seiichi	October 15, 1884
Oct. 1912	Judge
Oct. 1924	Judge of Supreme Court
Sep. 1934	President of Sapporo Court of Appeal
Feb. 1939	President of Tokyo Court of Appeal
Sep. 1944	President of Supreme Court
Mar. 1946	Member of House of Peers
TSUKAZAKI, Naoyoshi	May 10, 1881.
Aug. 1910	Attorney
From Apr. 1930 To Mar. 1931	President of Tokyo Bar Association.
Apr. 1947	President of Tokyo Bar Association.

ABE, Hakaru August 4, 1893.
1920 Judge.
Sept. 1940- Vice-President of Highest Court of
Apr. 1943 Mongolian Federated Autonomus government.
Jan. 1945 Councillor for the Yokokawa Prize Court.
Feb. 1946 President of the Yokokawa District Court.

ARIMA, Chuzaburo March 4, 1879.
Doctor of Law
Lawyer for many years in Tokyo.

○ FUJITA, Hachiro August 5, 1892.
1919 Judge.
Feb. 1941 President of the Osaka District Court.
March, 1944 President of the Sapporo Court of Appeal
Feb., 1946 President of the Osaka Court of Appeal.

○ HASEGAWA, Taiichiro December 1 1881
Lawyer for many years in Tokyo

HOSOKAWA, Jan'ichiro Feb., 18, 1892.
Nov., 1918 Judge
1926 Retired from the Position of Judge
From 1926 on Lawyer
President of Asabu Middle School.

○ INOUE, Noboru April 10, 1885
1917 Judge.
1933 Judge in Supreme Court

MORITA, Toyojiro 1916 Feb., 1946	December 11, 1888 Judge Superintendent Judge of Supreme Court.
NAKAGAWA, Zennosuke Spt., 1922 July, 1927	November 18, 1897 Assistant Professor of the Tohoku University Professor of the Tohoku University (Japanese Civil Law)
NAKAJIMA, Tokiji 1918 Feb., 1946 May, 1947	25 May, 1890 Judge President of Hiroshima Court of Appeal Interim President of Hiroshima High Court
○ OTANI, Katsushige	December 24, 1890 Lawyer for many years, Office in Osaka.
○ SAITO, Yusuke 1924 Feb., 1946 July, 1946	May 21, 1892 Judge of the Osaka district and local courts Chief Public Procurator, Hiroshima Appeal Court Chief Public Procurator, Osaka Appeal Court.
SASAKI, Ryoichi 1919 June, 1939 Nov., 1944 May 1947	October 4, 1891 Judge President of the Tokyo district Court President of the Court of Appeal of Nagoya Interim President of Nagoya High Court
○ SAWADA, Takejiro July, 1918 Apr., 1946	August 2, 1882 Judge in the Administrative Court of Litigation President of the Administrative Court of Litigation

