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GOVERNMENTAL ASPECTS OF LAW ENFORCEMENT

I. REORGANIZATION OF THE JAPANESE POLICE

1. Historical Background of the Japanese Police. For 265 years before the Meiji Restoration of 1868, Japan consisted of a loose confederation of clans held together by family ties and the necessities of common defense. Although the Emperor was the titular head of state, the shogun was the real ruler. National law enforcement was a matter of imposing the will of the shogun upon the clan chieftains and collecting tribute from them by the use of military power. The people, having little direct contact with the central government, much less any voice in it, were policed by the sword of the samurai, or professional soldier. These samurai enforced the edicts of the clan chieftain and levied taxes upon the country's food, goods and manpower for the benefit of their feudal lords and the ruling families.

With the arrival of Perry's Expedition in 1853, the opening of Japan to the outside world in 1858* and the overthrow of the Tokugawa Shogunate in 1867, the rulers realized that immediate action was necessary to maintain their entrenched position against encroachment from both within and without Japan. Accordingly, the samurai was converted into a modern soldier or policeman; the feudal oligarchy of the discredited shogun was transformed after long study and careful planning by the Imperial Court into a modern 19th Century monarchy, based upon a highly centralized scheme of government but with an outward appearance of popular participation. The creation of a modern military machine soon attained for Japan a position of strength and equality among the great powers, laying the groundwork

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*The Treaty of Yedo was concluded with Townsend Harris, American Consul General, in 1857, and signed by officials of the shogunate without imperial sanction in 1858. Similar treaties of commerce were signed shortly thereafter with the Netherlands, Russia, Great Britain and France and opened the ports of Kanazawa, Kobe, Nagasaki, Niigata and Hokadate to foreign trade.

for subsequent territorial expansion and aggression. Under the administration of the Home Ministry a modern police state was created which exacted from the people that degree of frightened obedience so necessary to the existence of a totalitarian state.

An agency similar to the Home Ministry existed as early as 649 AD but it was not until 1885, seventeen years after the Meiji Restoration of 1868, that it formally became the most important agency in the executive branch of the new 19th Century Japanese State.* The Home Ministry possessed extensive powers and from its inception held a dominant place in Japanese life - the Police Bureau of the Home Ministry alone controlling every phase of Japanese domestic economy. Through its power to appoint and to remove governors, to discipline mayors, and to administer funds, the Home Ministry, with its army of policemen, inspectors, local agents and secret investigators, extended its influence into every home and maintained constant surveillance from birth to death over the intimate daily details of the life of every individual in Japan.

The Police Bureau was first established as an agency of the executive branch of government in 1874 when 6000 samurai from the warrior class of the Choshu and the Satsuma clans were recruited by the government and brought to Tokyo to man the new Metropolitan Police Board. These professional fighting men were soon trained in police duties and in the philosophy of the police state, i.e., to protect the government from the people. They were first used effectively in maintaining the status quo against encroachment from within when they were dispatched to Kyushu to quell the Saigo Rebellion against the Meiji Government in 1877.

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*The Meiji Constitution of 1889 which authorized the legislative branch of government made no mention of the Cabinet Ministries. These had been created by Imperial Ordinance four years earlier and were of equal constitutionality with any agency established by the Constitution.

Their employment was soon extended during the Meiji Era to other fields and ten years later they were assigned the task of administering the first political purge. This was effectively accomplished by the police under the Peace Preservation Law of 1887, when they physically removed all known anti-government subjects from within a nine-mile radius of the Tokyo castle. The records indicate that 470 families were banished from the Tokyo area by the police within a period of forty-eight hours.

Their advent into the field of election corruption occurred with the selection of the first House of Representatives to the Imperial Diet in 1890 and lasted until the coming of the Allied Occupation. It was a common practice during that period for the Home Ministry to be charged with the responsibility of delivering House elections to the regime in power. This responsibility was then further delegated to the prefectural governors, Home Ministry appointees, who were in charge of the prefectural police in a highly centralized chain of command extending from Tokyo. Until the 1946 general election, nationwide election reports were first received in Tokyo through the police communications network.

The viciousness of police participation in elections and the reaction of public opinion thereto were effectively illustrated in the first House election of 1890 when government candidates were actually nominated on the recommendation of police chiefs who were also provided with ample campaign funds from government sources in Tokyo. The reaction of democratic forces to controlled elections was significantly and effectively voiced by the people even at that early date when they rejected corrupt police interference by electing 171 anti-government representatives to the first House of Representatives which was comprised of 255 seats.

By the time of the Manchurian Incident in 1931 the Home Ministry had so ex-

tended and intensifed its control over political activities that the subsequent imposition of a totalitarian system of government was greatly facilitated. This control was exercised principally through the instrumentality of the Special Higher Police. This agency investigated all political or social movements and by the time of World War II it had assumed powers so extensive that it was able to purge from the Home Ministry itself those whose interests and opinions were unsympathetic to its mission.

The activities of the various police agencies were gradually expanded until the end of World War II found the police supervising the administration of nearly every conceivable type of governmental endeavor - many completely foreign to the field of law enforcement.[1]* This absolute domination of the Home Ministry and the police over every activity of the private citizen was ended only by the abolition of the Special Higher Police in October 1945 and the dissolution of the Home Ministry in December 1947.

2. Preliminary Studies on Police Reorganization. Early in the Occupation the Public Safety Division of the Civil Intelligence Section of General Headquarters, Supreme Commander for the Allied Powers, undertook to determine what reforms should be instituted in the public safety agencies of the Japanese Government. Under the direction of the Chief of the Public Safety Division, Mr. Lewis J. Valentine of the New York City Police, and Mr. Oscar G. Olander, Commissioner of the Michigan

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*Two types of routine police reports are worthy of note. KOGI-SHO was a hastily compiled report submitted through channels to the Home Ministry and transmitted in fragmentary form for what it was worth, containing information regarding road-side gossip and rumors circulated in market places. TANSOKU-SHO was a detailed report through channels relating to the diligence and reliability of public officials, current changes in public opinion, condition of administrative control within prefectures and municipalities, relations between the heads of government departments and their deputies, public moods, educational activities, condition of roads and reports on the private lives and off-duty activities of all government servants.

and rural police fields, respectively.

The Valentine report recommended that autonomous police forces, patterned after the New York City Police, be established in all municipalities of over 50,000 population, and that the police force should in each instance be responsible through an appointed police commission to the elected local executive. The Olander report recommended that a National Rural Police System be established to serve rural areas and cities of less than 50,000, with police power to operate anywhere in Japan under the direction of an appointed head responsible to an elected government official and with career personnel under civil service. The relationship between the two types of forces and the relationship between the police authorities and other agencies of the government were not dealt with in these two studies.

On February 28, 1947, the Cabinet presented a draft plan based upon the recommendations of the Valentine and Olander reports and calling for an increase from 93,935 to 125,000 in police strength.[1/] Although this plan had merit, it was not practicable, chiefly because it did not provide sufficient decentralization of authority and would have delayed the organization of local police departments operated by local self-governing bodies until the new local autonomous entities, provided by the new Constitution, had demonstrated proficiency in self government.

3. Principles of Police Reform. Government Section's objections to the Japanese plan and to the principles it recommended for guidance in police reorganization are clearly set forth in a Memorandum for the Record, dated July 17, 1947, most of which is quoted herewith:

1/ Appendix D: 4, Initial Cabinet Draft Plan for Police Reorganization.

"1. It is the intent of the Governments of the Allied Powers that Japan be restrained from establishing any form of government which might in the future be used to regiment the population and to employ the nation's resources for conquest. As an essential feature of this program, it is the desire of the Allied Powers that the conditions necessary for the democratization of Japan be created at the earliest possible moment. These conditions include elimination of restrictions on political and civil liberties, inculcation of respect for fundamental human rights, encouragement and support of liberal political tendencies, reform of the judicial, legal, and police systems, modification of the feudal and authoritarian tendencies of the central government, encouragement of local responsibility in government, and removal of all obstacles to the revival and strengthening of democratic tendencies among the Japanese people.

"2. Democracy and decentralization are not synonomous. Neither are autocracy and centralization. A more exact guide is whether the state exists to serve man or man to serve the state. Nevertheless, man's experience since the city states of ancient Greece has been that the inalienable human rights, social and economic as well as political, have been championed most vigorously and have flourished most hardily where the powers of central governments or of great industrial or agricultural hierarchies have been most carefully limited. Coordination is preferable to centralization; general welfare to individual aggrandizement. Power breeds power and begets lasting contempt for the rights of man.

"3. In America, a country without an early feudal or military tradition, democracy developed swiftly in the formulative years because it was free from attack by anti-democratic forces or traditions. In order that a comparable growth may occur in Japan, the most favorable of situations is being created - both in the destruction of old patterns and in the encouragement of the new. In consequence, the great close-knit concentrations of centralized power - financial, military, political, religious, industrial, agrarian - are being destroyed and local governments, small business, farmers, labor, and the people as a whole are being freed from their thralldom to the central government, the great combines, and the landlords. Complementary to this essentially negative program has been the positive encouragement given to the strengthening of democratic tendencies and processes in the new governmental, economic, agricultural, social, and similar institutions. This policy accords with fundamental directives from Far Eastern Command, Joint Chiefs of Staff and State-War-Navy Coordinating Committee, with the American policy for Germany recently enunciated by Secretary Marshall at Moscow, and with the

views entertained and oft-expressed by the Supreme Commander. It is grounded on recognition of the impossibility of introducing or maintaining an effective and healthy system of democratic government for all Japan unless the central organs of government are supported by strong and democratic local units, deriving their just powers from the consent of the governed. In the field of local government this policy is specifically laid down in the JCS Basic Directive for Post Surrender Military Government of Japan, which directs encouragement of local responsibility for the local enforcement of national policy.

"4. It has not been the policy of the Supreme Commander to carry out these reforms in piecemeal fashion. Ultimate aims have been sought rather than stopping stones on the way. Japan is admittedly racked by monumental domestic problems - by shortages of food, raw materials, shelter, industrial equipment, transportation. The Supreme Commander must necessarily treat many of these on a short term basis. But such a frame of reference cannot be used for the long-term objectives of the Occupation; they must be lifted above the residue of ruined hopes and cities, stripped of ties which would chain them to considerations of a purely ephemeral or military nature, and visualized as components of a final structure which must and will stand the test of history. In consequence positive objections rather than negative objections have guided policy decisions; such sweeping legislation as the Constitution, the Local Autonomy Bill, the Farmland Reform Bill, the Purge ordinances have in a few months brought to Japan reforms won in other nations only with the passage of centuries. All change leaves dissatisfaction in its wake and may also at times lead to excesses on the part of those who have benefited the most. In Japan, however, it has been felt that the tremendous inertia of local tradition, custom, mores, and patterns of political and economic thought and behavior would serve to hold in check both possible disaffection arising from the new system as well as any tendency to extremism or radicalism in the exercise of the newfound liberties. The results of the recent elections have clearly illustrated that this analysis is correct; as the Supreme Commander has pointed out:

> 'The basic issue before the electorate was a selection between political philosophies. That of the totalitarian extreme right had already been discredited and rejected ... On the other hand, that of the extreme left, the communistic philosophy, was still in issue, with its leaders strongly bidding for the popular support. Since the inception of the Occupation.....this philosophy and its leaders had been given the fullest liberty and freedom of political action in open and fair competition

with democratic forces and beliefs. It thus had its full chance and on the merits has failed. The Japanese people have firmly and decisively rejected its leadership and overwhelmingly have chosen a moderate course, sufficiently centered from either extreme to insure the preservation of freedom and the enhancement of individual dignity.'

It is rapidly becoming self-evident, therefore, that though the further shore may as yet be but dimly seen by the Japanese people, the merits of the bold policy which has sought the sweeping and final objectives of the Potsdam Declaration now and not ten years hence have to date far outweighed any possible disadvantage. Decentralization may well be a calculated risk. But so, too, is democracy. America, for example, is prevented by her form of government from launching a surprise attack against a potential enemy. Yet this military disadvantage is a major sacrifice we inherently make in the interest of our democratic way of life; we do not compromise great principles for the sake of expediency.

"5. Any proposal which seeks to disregard these factors - which would retain a centralized organ adapted to the seizure of absolute power while all about were being destroyed, which would call for gradual future changes while all about are being made at once - needs must be examined with the greatest of care. There are, admittedly, certain examples of centralization which have been permitted to exist in Japan: railways, communications, and the like. Should the police be treated as these?

"6. . . .

"7. It is the considered opinion of the Government Section that exemption of the Japanese police force from the principle of immediate decentralization as applied to date by the Occupying Powers is not only contrary to the spirit of Allied policy, but would constitute a grievous and culpable error.

"a. In world opinion the Japanese police, in view of the era of government by assassination and of their undemocratic prewar and wartime activities, fall in the same category as the Gestapo and the NKVD. Past infamies cannot readily be brushed aside; until positive contrary evidence is forthcoming the record of arrogant and arbitrary detention, the cruel and unusual torture which was compiled by the Japanese police will continue to be considered as reprehensible as anything of its kind in the world and to require immediate, thorough, and drastic reform of a system which permitted such brutally outrageous violations of personal liberties, individual dignity and fundamental

human rights. Rightly or wrongly, this situation exists; the Supreme Commander can neither propose nor intend to serve as apologist for the Japanese state police.

"b. Of comparable importance would be the devastating effect on the people of Japan of the continuation of any such system. Although maintenance of law and order was the primary function of the police, the system as it operated in Japan prior to and during the war was not so much in the direction of law and order as such as in the direction of the suppression of all activity deemed by the state, at its own arbitrary discretion, to be dangerous to established law and order. Indeed, perhaps more than any other single agency the state police contributed to the development of that docility and passiveness of the Japanese people which made possible the promotion of aggressive warfare at the behest of a handful of leaders in the Central Government. The continuance of this centralized police force, an hourly reminder of unrepentant militarism and oppression, thus perpetuates a system whose whole history is undemocratic and characterized by duress, coercion, and retaliation against those who failed to conform to the orders of the central government. The pernicious centralization of police power serves to induce a general apprehension of retaliatory measures, inhibiting freedom of speech, religion and thought, and in view of the tradition of governmental paternalism serves to maintain that habitual and conditioned acceptance of minute regimentation from Tokyo which it is the expressed determination of this Occupation to terminate. Terror is the quintessence of tyranny. The state police, past masters of surveillance and intimidation, form an organization whose very continuance is a constant reminder of baleful oppression and whose very existence emphasizes the continued power of the central government to reach into every town, village and hamlet in Japan to probe with sinisterness for intelligence, to support or oppose political parties in consonance with the wishes of the central government, and to exercise powers completely contrary to the principle of local autonomy. Freedom from fear of the national police is an essential prerequisite for the flowering of local government and for that quickening of the mind and independence of spirit which alone can guarantee the continued development of democracy in Japan.

"c. Again, where a police state exists, control of the police may mean control of the state. In Japan, as in many a central European country, he who controls the police may become more powerful than the Premier - the office becomes a primary target for minority zealots who by such control would set selves and party above nation. An example in point is present day Hungary where a Communist Minister of the Interior, representing a party which won 17% of the vote in the last election, staffed the national police force with Communists and placed Communist chiefs of police in 96% of Hungary's counties and 100% of her municipalities, and thus made possible seizure of the government by the Communist party. A central police system is a basic device of totalitarian regimentation, a ready-made instrument of aggression for control of the population or

the development of a clandestine army; through the forces of reaction, terrorism and militarism may now be stilled in Japan, the continuance of such a system is a constant reminder of the ease of regimentation and a vicious and ever-beckoning invitation to seizure of power by unscrupulous party leaders, by demagogues, or by terrorists. In the last analysis, a centralized police system thus provides not only a weapon by which control of the population could be readily seized by undemocratic forces in the future but also a method by which the regimentation of the Japanese people, spiritual and mundane, could be maintained against such a day.

"d. Recent national legislation has assigned to local chief executives a two-fold role: that of enforcing both national and local legislation in their areas of responsibility. Without power to enforce these laws, dependent for such enforcement entirely upon the whims of a central police force and a central government whose bureaucracy has stubbornly resisted the enforced transfer of powers from national to local governments, local chief executives will soon find themselves bereft of the very powers necessary to assert and maintain their new position in the governmental structure of Japan. The very weakening of government which a central police force is asserted to forestall would thus be encouraged and accelerated. That major local echelons of government should have the right to enforce laws is scarcely an unusual privilege; it will be recalled, for example, that the Olander Report . . . . . specifically notes that if and when prefectures elect their own governors and legislatures they may desire to supervise their own police, and provides a method therefor. This, indeed, is a matter recognized by the Japanese government itself; the Government's 28 February memorandum on police reorganization notes that the police system should 'be decentralized as far as possible' and that police administration should 'be entrusted, in principle, to the local public bodies.' Further, the status of the police is not an isolated matter, but one which impinges on nearly every aspect of government. Each agency of government must dovetail with all others; each agency in a decentralized program must further accord with the three and only three echelons of government in Japan: national, prefectural, and local. . . . . The decentralization and division of other designated agencies have already taken place, keeping pace with the effectuation of the Constitution. The police alone have lagged behind, remain the last strong agency by which the central bureaucracy continues to thwart those provisions of the Constitution which establish the principle of local autonomy. The retention of a strong central police force provides an irresistible temptation to any central executive to use the police rather than more democratic means for the solution of many of its problems affecting local areas.

It is imperative that the central government come to operate through other and more democratic agencies, in particular that it come to rely upon enforcement by the courts rather than interference by the police. Should present conditions continue, the result in the near future can only be to thrust unnecessary stresses and strains upon the new structure of government, which was conceived on the principle of decentralization and will thus be torn between conflicting Occupation ideologies. As for the local governments, like the American Union, they cannot well exist half slave and half free.

"e. The necessity for a strong central police force to provide insurance against widespread unrest or the development of undesirable ideologies is a point frequently raised in support of a state police. The history of the Occupation to date justifies the assumption that no central police force designed to cope with such eventualities will be required during the period of the Occupation. Insofar as later years are concerned, the Allied powers are under no obligation to lay the groundwork for a quasi-military police force for use by the central government in the post-Occupation period; indeed, the Far Eastern Commission policy statement of 19 June 1947 specifically forbids the retention of a gendarmerie. Continued insistence upon the need of a strong central police force for the sake of security and to counterbalance newly-won liberties thus cannot fail to raise questions in Japanese minds both as to the sincerity of American democratic pretensions and the actual compatibility of full civil liberties with the post-Occupation maintenance by Japan of a reasonably orderly society. It will be recalled that no device for the perpetuation of centralized autocracy is more familiar than that which postulates a continuous state of emergency in order to assure the outright delegation to the central government, for day to day administration, of powers normally required only for emergencies. The proposal to maintain in status quo the entire institution of the Japanese state police, in complete repudiation of the principles of the Occupation, in order to provide for a possible future emergency, is a comparable case in point. A more appropriate solution would be to provide for the delegation of emergency powers to the national government if and when it should require them. Further, as long as the police force of Japan stays centralized there will remain in the minds of men, Japanese as well as Occidental, the lurking suspicion that the state police have been pointedly exempted from the application of existing Occupation policies for purposes possibly obscure but hardly democratic. America has nothing to conceal in this respect, but there could be few means better calculated to raise doubts as to the intent of the Supreme Commander to encourage the full and spontaneous democratization of Japan or to adhere to the terms of the Potsdam Declaration and other controlling documents insofar as they apply to the withdrawal of Allied forces in Japan. It would not be long before critics would imply the central police force was tolerated as the principal instrument of post-Occupation American control of Japan. It is imperative in this respect that American policy in Asia be identical with American policy in Europe, of which Secretary Marshall could recently say, without fear of rebuttal:

'No conditions were attached to . . . withdrawal . . . No political parties . . . have been left behind in European countries to attempt conquest of governments from within. No American agents have sought to dominate the police establishments of European countries.'

"8. . . . This Section recognizes that certain functions can best be handled nationally - standards, identification, communications, training, scientific crime detection, and the like, and that the Prime Minister should possess certain exceptional police powers in the event of grave emergencies, as defined by law. This Section recognizes that certain specialized national police agencies are necessary, such as railway police and customs guards. It is believed, however, that other matters should be handled locally . . . . Because of its understanding and interpretation of the philosophy of the Potsdam Declaration, FEC papers, JCS and SWNCC Directives, the American position at the Moscow Conference, and for the many reasons given above, Government Section will be unable to concur in any proposal with respect to the Japanese police which does not recognize:

"a. That the maintenance of a centralized police force is complete repudiation of the basic tenets of the Occupation and of the basic principles of the new Constitution and is not in conformity with those standards by which the fulfillment by Japan of its obligations under the terms of surrender must be accomplished;

"b. That decentralization of the police force must come without delay and not at the expiration of any period of probation;

"c. That decentralization must be full and final - neither mere lip service to an ideal nor an arbitrary method which does not conform to the structure of Japanese government as it exists today;

"d. That continued failure to act on this matter is a reproach to claims of the democratization of Japan and a very real and continued threat to the future of a democratized Japan."

4. Preparation of the Reform Plan. From February 28, 1947, until July of that year there was very little formal activity on the government's part leading to the development of an acceptable police reorganization plan. This inactivity may be attributed to a combination of circumstances. For one reason, it was felt that no decisive steps could be taken until the new Constitution was in full force. Also, in February General MacArthur had called upon Prime Minister

Yoshida to hold national and local elections during April. Throughout the early Spring and until the Katayama government was formed in June, the political situation was not conducive to creative thinking along police lines by responsible government officials. Cabinet ministers and Diet members had not only been participating in election campaigns and lengthy negotiations leading to the formation of a new government, but had also been extensively active in the executive and legislative branches of government preparing for the enforcement of the new Constitution on May 3, 1947, as well as in the formulation and adoption of legislation considered as indispensable to the implementation of that document.

Included among the important laws that became effective with the new Constitution was the Local Autonomy Law which passed the Diet on April 17, 1947.2/ In consonance with the provisions of this law and the new Constitution, the decentralization of police activities in local government, and the reorganization of the institutions charged with the administration of justice became matters of urgency. Accordingly, as soon as the Katayama government was formed, action was accelerated and discussions with government representatives on police reorganization were held. At the request of General Whitney, the Prime Minister in July appointed a Judicial and Police System Committee in the Cabinet. Government Section's interests in the national field were based upon the reorganization of the administration of Justice, including the law enforcement agencies, their place in the governmental structure, and the safeguarding of the principles of local autonomy in any reorganization that took place.

The Judicial and Police System Committee was headed by Yoshio Suzuki, Minister of Justice, and included the following Ministers of State: Nishio,

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2/ Appendix H: Local Autonomy Law; Law No. 67, April 17, 1947

Hitotsumatsu, Kimura, and Saito. It was their task to make studies and recommend reform legislation on the following issues:

a. the internal organization of the Ministry of Justice;

b. the relationship of the Ministry of Justice to other ministries and Cabinet boards;

c. the relationship of the Ministry of Justice to other law enforcement agencies of the national, prefectural and local government;

d. the relationship of the procurators and their investigatory staffs to other investigatory and inspecting staffs, including officials having police power; and

e. the relationship of all these governmental instrumentalities to the people in the execution of the judicial process.

The Cabinet Committee submitted various reform recommendations to the Prime Minister on August 26, 1947, which included a revised police reorganization plan. The Prime Minister forwarded this police plan to General MacArthur on September 3, 1947, accompanied by a letter in which he stated that it represented a compromise between two divergent schools of thought, opposed for the most part on the issues of decentralization and the maintenance of a constabulary available to the national government to meet emergencies. He explained that he was thus submitting it informally and would appreciate General MacArthur's opinion and comments.3/

The Prime Minister's letter to General MacArthur typifies the relationship that existed generally between the government and the Headquarters in reaching solutions to Japanese problems. Here was a situation in which there were two

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3/ Appendix D: 6, Prime Minister's letter Concerning Police Reorganization, September 3, 1947

opposing trends of thought in the minds of cabinet members on an issue of vital importance to the future of Japan. An honest difference of opinion existed. It was one of several instances when, in the process of arriving at major decisions, the cabinet sought the advice of the Supreme Commander.

The plan as officially proposed by the Japanese provided only for limited and gradual decentralization and retained many of the principles that were objectionable in the old highly-centralized structure. The local police, in effect, would have been auxiliary to a national force. General Headquarters, on the other hand, stood for a policy that would guarantee the principle of local autonomy embodied in the Constitution as well as one that would prevent the re-emergence of a police state by effecting the immediate decentralization of police power accompanied by the institution of civilian control under officials responsible to the electorate.

5. SCAP Outlines Police Reform Policies. G-2 representatives and General Whitney, with various members of his staff, held a series of joint conferences on the bill for the purpose of arriving at policy recommendations to present to the Supreme Commander. After thorough coordination between the two sections, G-2 being responsible for the technical and operational phases of the police system and Government Section for the relationship of the police to the entire governmental structure, the following letter was dispatched by General MacArthur to the Prime Minister on September 16, 1947:

"Dear Mr. Prime Minister:

> "I have given careful consideration to your letter of September 3rd and to the plan for the reorganization of the police system submitted therewith. I fully understand your difficulty in reaching an

acceptable compromise between the two divergent schools of thought of which you speak - a compromise which will prove adequately effective to meet the requisites for the preservation of law and order within Japan, and yet at the same time not impinge upon the ideal of human liberty to which the people of Japan are now committed, nor upon that fundamental principle indispensable to a democratic society so aptly stated in the Preamble of the Constitution of Japan, 'Government is a sacred trust of the people, the authority for which is derived from the people, and the benefits of which are enjoyed by the people.'

"I am in full accord with the proposition that the realities of the situation require the maintenance of a national rural police unit to maintain law and order in the rural areas and available to the National Government to meet emergency conditions with which police forces available to the several local governments may be unable adequately to cope, and your suggested increase in the overall authorized police strength to 125,000 men to provide for such a national rural police meets with my full approval. I am not in accord, however, with the idea of, nor the necessity for, delaying the decentralization of the police power now existing, as I feel that the preservation of that power in its present centralized form is wholly incompatible with the spirit and intent of the new Constitution and inimical to democratic growth.

"It has been a dominant characteristic of modern totalitarian dictatorships, as it was in Japan's feudalistic past, to establish and maintain a strongly centralized police bureaucracy headed by a chief executive officer beyond the reach of popular control. Indeed, the strongest weapon of the military clique in Japan in the decade prior to the war was the absolute authority exercised by the national government over the thought police and the Kempei Tai, extending down to the prefectural levels of government. Through these media, the military were enabled to spread a network of political espionage, suppress freedom of speech, of assembly, and even of thought, and by means of tyrannical oppression to degrade the dignity of the individual. Japan was thus in the fullest sense a police state.

"It is in recognition of this condition that the police system must be so reorganized as to provide what you so clearly describe in your letter as a 'fundamental remedy of the misuse of the police by the state power as in the past.' In the achievement of this objective, the potentiality of a police state inherent in centralized control must scrupulously be avoided. It should never again be possible for anti-democratic elements, either of the extreme right or the extreme left, to enmesh the freedom of the people in a web of police terrorism.

"This basic objective can best be accomplished by the thorough decentralization of the police system in accordance with the principle of local autonomy embodied in the Constitution. Each city and

town should be responsible for the preservation of law and order within its boundaries through its own local police system independent of the central government and headed by a police chief to be appointed and removable by a commission composed of three civilian members appointed by the mayor of the city or town with the consent of the local assembly and holding office for a fixed term of years. At the prefectural level there should also be a corresponding commission similarly appointed which will exercise operational control over the national rural police operating within the boundaries of that prefecture, reserving to the national government administrative authority over such national rural police wherever stationed.

"Such a reformation of the Japanese police system would be in consonance with the general pattern of the reorganization of the Japanese governmental structure, integrating police officials and services as agencies of the people at the appropriate levels of government. Action toward such end should proceed immediately upon enactment of the appropriate statute.

"The national government should allocate the necessary funds until such time as local financing is possible. So long as it is necessary for the national government to make allocations of funds, the strength of the police in the various localities should remain fixed at the present number, but after provisions have been made for the localities to assume the financial burden, the responsibility for determining the necessary numbers within their respective borders should belong to the cities and towns, in accordance with local requirements.

"The necessary legislation should, of course, be enacted at the present session of the Diet. If vigorously prosecuted, I believe that completion of the plan may be accomplished within a period of ninety days thereafter.

"As to an appropriate organization on the national level, I believe that there should be created directly under the authority of the Cabinet a Public Safety Commission composed of five members who have not been career officials, either in the police or the civil service. Such commission should be appointed by the Prime Minister, with the consent of the Diet, and should hold office for a fixed term of years.

"To prevent the resurgence in disguised form of a centrally controlled national police network no channel of command should exist between the national rural police unit and the local police forces, but technical channels of communication should, of course, be permitted in the interest of overall efficiency and to facilitate a relationship of mutual assistance, liaison and coordination. The

intervention by the national government into control over prefectural or local police affairs should temporarily be provided for, however, in the event of a national emergency, when, upon the recommendation of the National Public Safety Commission, the Prime Minister might assume operational control over prefectural units of the national rural police force, subject to ratification by the Diet within twenty days. In this way the authority of the prefectural governor may be protected against arbitrary police interference by the national government, at the same time affording adequate safeguard for the national interest.

"In the past, one of the ill-conceived aspects of the Japanese police system was the exercise by police officials of numerous administrative functions not related to the task of investigation and apprehension of criminals or the preservation of public order. All such functions should be exercised by non-police representatives of the particular ministry having responsibility for such matters, and wherever proper should be decentralized to local public entities in accordance with the provisions of the Constitution conferring upon such entities 'the right to manage their property, affairs and administration.'

"Closely related to the law enforcement process is, as you have specifically pointed out in your letter, the subject of reform in the judicial administrative system. Under the Constitution of Japan, the Supreme Court is now vested with the administration of judicial affairs and the rule-making power. With the establishment of an independent judiciary, the Ministry of Justice no longer is responsible for the determination of rules of procedure and of practice, the internal discipline of the courts, or other attributes of the judicial process. Moreover, with the diminution of the role of the procurators in the administration of justice, and their subordination to the rule-making power of the Supreme Court, the basic attributes of the procuratorial system under the Ministry of Justice have been radically revised.

"On the other hand, to the Cabinet, as the executive branch of the government, is expressly delegated the responsibility for executing the provisions of the Constitution and of the laws enacted by the National Diet, as well as for determining questions of amnesty, commutation of punishment, and restoration of rights. To reflect adequately this constitutional separation of powers, it would seem desirable that the Ministry of Justice, within which authority over adjudicative functions has been traditionally intermingled with executive power, be replaced by an Attorney General, sitting in the Cabinet as a Minister of State and serving as the chief legal advisor to the executive branch of the government.

"To administer the laws effectively requires the closest coordination between police officials charged with the apprehension of offenders against the national laws, and public attorneys charged with the prosecution thereof. The establishment of an Attorney General's Office with the responsibility of conducting all litigation, criminal and civil, in which the government has a direct interest, and of furnishing all legal advice to the Prime Minister and other Ministers of State in the discharge of their duties, would, I believe, provide a mechanism for such close coordination, facilitate the faithful execution of the laws, and support the independence of the judiciary as the bulwark of the liberties of the people. Consistent with this concept of an Attorney General, the present Legislative Bureau of the Cabinet can be dispensed with in the interest of governmental efficiency and economy.

"Within the framework of the plan outlined in your letter, modified in the manner I have indicated, I feel confident that a law enforcement system may be evolved in Japan which will satisfy all requirements of public safety, which will provide for the definitive separation of the administrative from the judicial process, and which at the same time will comply meticulously with the underlying principles of the Constitution. In this connection it should be borne in mind that, in the final analysis, police power in the preservation of law and order in a democratic society does not attain its maximum strength through oppressive controls imposed upon the people from above, but rather does it find infinitely greater strength in the relationship of a servant of, and answerable directly to, the people. Thereby, and thereby alone, may it encourage respect for the people's laws through confidence and paternalistic pride in the police as the law enforcement agency of the people themselves.

"I am hopeful that the legislation necessary to give effect to these programs in the reorganization of government can be completed in time for consideration at the current session of the National Diet. To such end do not hesitate to call upon this Headquarters for any assistance which you believe would be helpful."

Based upon the principles laid down in General MacArthur's letter, the Japanese authorities, with the cooperation of G-2 and the Government Section, drafted and submitted a bill which was enacted into law by the National Diet on December 7, 1947. The law wisely provided for a ninety-day transitional period which enabled the government, under the guidance of the Public Safety Division of the Headquarters, to place its provisions into effect on March 6, 1948.

6. Analysis of The Police Reform Law.[4] The principle of decentralization is very well applied in this new Police Law by the unique method of specifically delineating two types of control of the police: operational and administrative. Operational control is defined as the process of enforcing law and order, including (1) directing of police forces in legal police activities, (2) planning and carrying out of law enforcement procedures before and during situations prejudicial to law and order, and (3) use of police power in areas of responsibility as defined by law. It might be termed tactical control. Administrative control is the management of all police matters not included in operational control, such as pay, promotion, supply, training, personnel management and like activities.

a. Provision Made for Central and Local Police.

(1) The National Rural Police. A central police force of 30,000 was established by the law and is called the National Rural Police. It has jurisdiction in the rural areas and in municipalities of less than 5,000 inhabitants only, regardless of whether the urban community concerned is officially designated as a city, town or village. Its unique feature is that it functions under the administrative control of the National Public Safety Commission and under the operational control of the respective prefectural Public Safety Commissions. All police personnel of the national force are appointed and dismissed for cause in accordance with the Civil Service regulations of the National Public Servants Law.

4/ Appendix H: 30, The Police Law; Law No. 196, December 17, 1947

(2) The Local Municipal Police. In municipalities of 5,000 or more the local public entity is responsible for the maintenance of police and the enforcement of law and order. These municipalities have independent police forces which function under the operational and administrative control of municipal Public Safety Commissions. The law limits the total number of local police to 95,000.

b. Central and Local Police Administration.

(1) Public Safety Commissions Established. The act provides for policy-making civilian Public Safety Commissions at the national, prefectural and municipal levels to administer one or both of the two types of control. This feature properly delineates the chain of command, particularly in the National Rural Police. The latter are administered from Tokyo by a National Public Safety Commission composed of five members responsible to, and appointed by, the Prime Minister with the consent of the Diet for staggered terms of five years. Appointees must never have been in career police or career public service, and must not be officers of a political party. Not more than two commissioners may belong to the same party. With the approval of the Diet they may be removed by the appointing authority.

(2) Administration of the Rural Police. Administrative control of all National Rural Police is provided by a vertical chain of command which starts with the Prime Minister and

descends through the National Public Safety Commission, the Headquarters of the National Rural Police, the intermediary level of the National Rural Police Region, the National Rural Police Division (in each prefecture) down to the National Rural Police District and then to the individual policeman himself. However, it must be emphasized that this chain of authority is for administrative control only. On the other hand, the elected governors of the forty-six prefectures exercise operational or tactical control over the National Rural Police through the prefectural Public Safety Commission, a body composed of three civilian members within each of the respective prefectures, who are appointed and removed by the governors with the consent of the prefectural legislative bodies.

The law establishes six intermediate Regional Headquarters of the National Rural Police with each regional director responsible to the Director General in Tokyo. He coordinates the prefectural Police Divisions in matters relating to administrative control and promotes uniformity of activity and procedure; he maintains close liaison with prefectural governors and police commissions, cooperating with them in consonance with national policies, laws, rules and

regulations in carrying out local police problems, but there is no operational chain of command between the region and the prefecture.

Each prefecture, with the exception of Hokkaido which may have fourteen, has one National Rural Police headquarters with a complement of one troop of National Rural Police. The chief of the prefectural National Rural Police is appointed and administered by the Director of the National Rural Police Region.

The National Rural Police Headquarters maintains the national police communications system and operates a police education and training system for all police. The Headquarters in Tokyo embraces the executive office of the National Public Safety Commission and the National Rural Police. The Director General is appointed by the National Public Safety Commission, controls the affairs of the Headquarters, exercises administrative control of all National Rural Police echelons and supervises a centralized national criminal identification and criminal statistics system and the operation of criminological laboratories.

(3) Administration of the Municipal Police. The autonomous municipal police forces are administered by three-member commissions who have qualification requirements similar to those of the national commission, serve staggered terms of three years and whose appointment and removal by the

local elected executive must be approved by the local assembly. Under their own operational control these commissions may at their discretion secure the assistance of rural policeman whenever the municipalities require it. Liaison and coordination are mandatory between the National Rural Police and municipal police forces at all times.

Thus the Japanese policeman, national or municipal, at all levels of government, is answerable directly to the people through an elected official held responsible by his constituents for police behavior. Also, the elected executives must select capable administrators who are acceptable to the legislative branches of government - national, prefectural and local.

c. Jurisdiction and Functions. In cases where individual criminal operations have been conducted within the area under the jurisdiction of one type of police force and extend into the area under the jurisdiction of the other type, the mutual extension of authority beyond normal jurisdictional boundaries is authorized. This feature conforms to "fresh pursuit" laws found in the United States.

The Police ~~Reorganization Act~~ Law limits the police function to the protection of lives, persons and properties of the people, detecting crimes, apprehending suspects and maintaining public safety. These are functions recognized throughout the world as normally belonging to the law enforcement agency of a self-governing people. Noticeably absent are such

extraneous duties* as sanitation, inspection, fire protection, census enumeration, administration (as distinguished from enforcement) of economic controls and the former police duty of maintaining surveillance over the private lives of citizens.*

d. Emergency Police Mobilization. Emergency control rests in the Prime Minister who, upon recommendation of the National Public Safety Commission, is authorized by the law to proclaim the existence of a state of national emergency for the country as a whole or any part of it. He must designate the area, outline the emergency situation and establish the effective date of the proclamation. When the proclamation is issued he temporarily assumes complete operational and administrative control of any or all police forces in Japan, both National Rural Police and the police forces of local autonomous entities. The proclamation must be ratified by the National Diet within twenty

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*In his letter of Sept. 16, 1947 to the Prime Minister on the subject of police reorganization, the Supreme Commander observed that "in the past one of the ill-conceived aspects of the Japanese police system was the exercise by police officials of numerous administrative functions not related to the task of investigation and apprehension of criminals or the preservation of public order. All such functions should be exercised by non-police representatives of the particular ministries having responsibility for such matters and wherever proper should be decentralized to local public entities in accordance with the provisions of the Constitution conferring upon such entities 'the right to manage their property, affairs and administration.'" In conformity with the above principle, the administration of economic controls is now a function of the Economic Stabilization Board which employs the police only in case of known violations and after obtaining the necessary warrants of search, seizure or arrest as prescribed by the Constitution and the Code of Criminal Procedure. Local and national public health agencies enforce sanitation and health regulations calling on the police only to arrest violators. Fire fighting and prevention are now provided locally in all municipalities of over 5,000 inhabitants and are no longer a police or national government function. The police have been removed entirely from the labor field and any interference or supervision is expressly prohibited except only where the criminal laws have been violated or the public peace disturbed. Census enumeration has been decentralized to prefectural authorities. The above examples are illustrative but not all-inclusive of former police functions that are now exercised by other agencies.

days or it loses its effect. The Prime Minister must rescind this proclamation when the emergency no longer exists, or when so ordered by the Diet.

These restrictions on the Prime Minister's emergency police powers provide an effective safeguard against any attempt to reconcentrate control of the police in the hands of the Central Government on the pretext of a continuing state of emergency.

e. Appraisal of the Police ~~Bureau~~ Law. The Japanese police organization described above represents a compromise between an ideally decentralized system responsible to the local electorate and the realities of Japan's present domestic and international situation. At this time the tax structure of Japan is such that local entities have not gained complete fiscal autonomy. Since they are not, therefore, able to employ local constabularies the nationally-supported Rural Police force under prefectural operational control is a satisfactory alternative. In addition Japan's demilitarization and the constitutional prohibition against the maintenance of armed forces leave the police as the sole remaining agency for quelling civil disorders. The National Rural Police force and the provisions for reinforcing it with local police in time of emergency enable the Central Government to cope effectively with domestic disturbances of too serious a nature to be dealt with by local authorities alone.

7. Implementation of the Police Law. After the passage of the law on December 7, 1947, immediate steps were taken to institute trial decentralization on a progressive basis throughout the various prefectures in order to effect a complete reorganization at the end of the transitional period provided for by the law. In this manner the various police headquarters and units which were to be officially established on March 8, 1948 were afforded a preliminary

opportunity to practice the new methods of organization and operation before they became mandatory upon complete implementation of the law. This technique of experimental decentralization on a step-by-step basis eliminated most of the difficulties in the process and when the date for final reorganization arrived the plan went into effect quietly and efficiently. So smoothly did this change-over take place that although the reform of the Japanese police system represented the achievement of an important Occupation objective and had vital significance not only to Japan's millions of citizens but in a broader sense to the peace of all Asia it took place almost unnoticed.

An editorial in the Nippon Times of March 10, 1948 is illustrative of the reception of the Japanese people to General MacArthur's concept that police power "does not attain its maximum strength through oppressive controls imposed upon the people from above, but rather does it find infinitely greater strength in the relationship of a servant of, and answerable directly to, the people." The editorial referred to is quoted herewith:

> "Yesterday the age-old institution of a single nationally-controlled police system finally formally came to an end, and in its place there have come into existence a national rural police force and more than 1,600 independent local police forces. The revolutionary significance of such a change can hardly be exaggerated. And yet, the event passed almost unnoticed by the general public.
>
> "If this lack of popular excitement over the change had been the result of public apathy, it would have been something to worry about, for it would have meant a dangerous indifference to one of the fundamental reforms in the democratization of Japan. Fortunately, however, the lack of excitement apparently was not the result of any lack of interest. For when the matter of police reorganization was first taken up soon after the surrender, and particularly when the recommendations of the late Commissioner Lewis J. Valentine were released in the Spring of 1948, there was the keenest public interest throughout Japan.

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"The quiet way in which the climax of this reorganisation was received by the public cannot, therefore, be laid to indifference. It can only be attributed to the fact that preparations for the change in the police system had been carried out so thoroughly and successfully over such a long period of time and the Japanese people had come to regard the benefits of the new system as being so incontrovertible that they took it for granted there was nothing to get excited about.

"The smooth way in which the change was effected demonstrates how well the new concept of a democratically-controlled local police has taken hold. When the experiments with the new type of organization were first started locally in some areas last November, there were some misgivings even among the police officials. But as the result of the lessons learned in the experiments and as the result of the gradual extension of the experiments, doubts had been removed, so when the time for the final change-over came yesterday, the actual transition was so easy as to pass almost without notice.

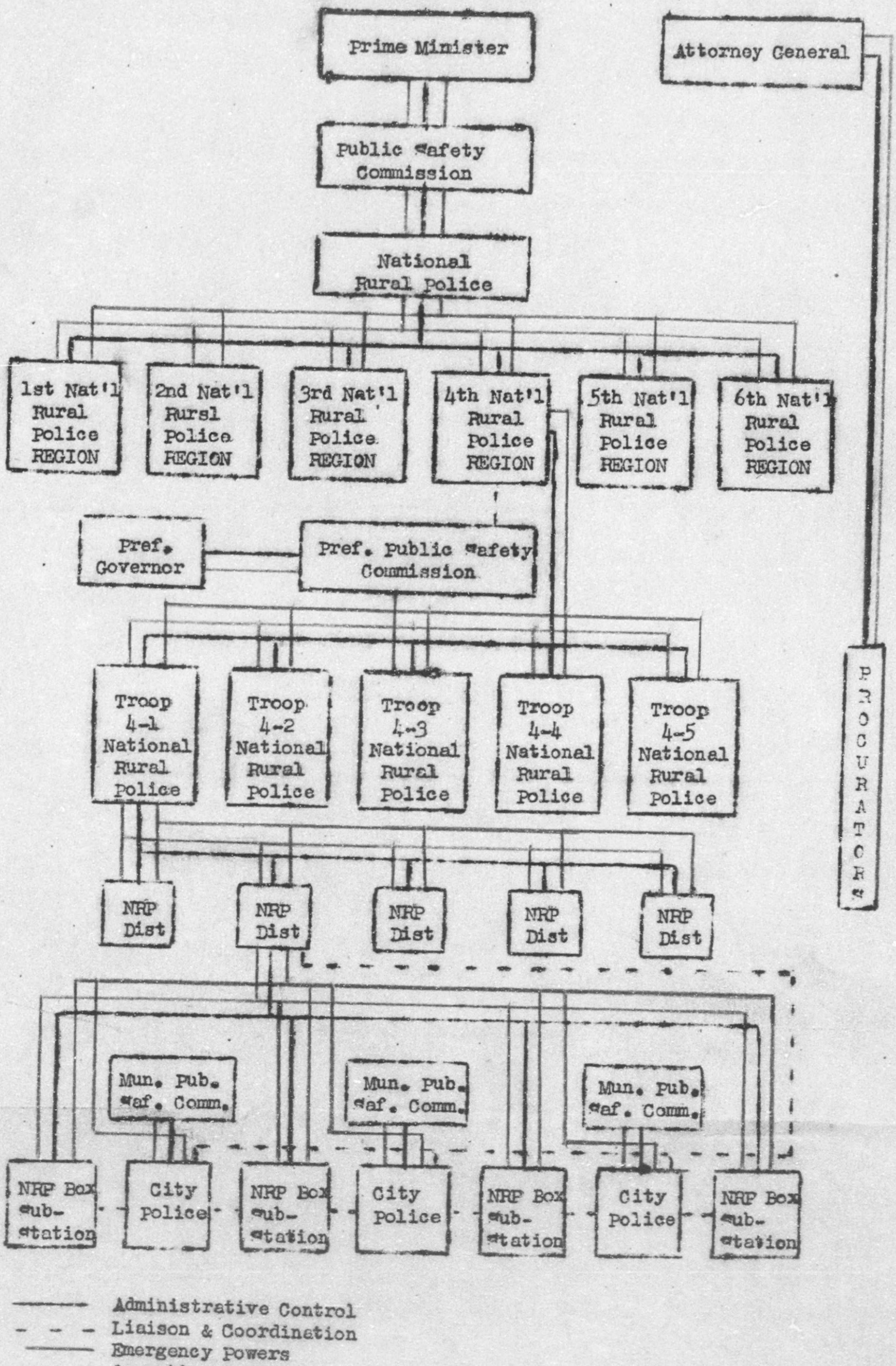
"Now that the change has been effected so smoothly, the task which remains is to see to it that the new police system lives up to expectations. The prospects are now rosy. Not only is it certain that the people now fully realize how much better the democratically-controlled police forces responsible to the local communities are than the autocratically-controlled centralized police system of the past, but the selection of the members of the Public Safety Commissions which will control the police have in the main been wisely made so that the interests of the people will be adequately safeguarded.

"It must be recognized, however, that there are still some imperfections to be ironed out. Although the membership of the Public Safety Commissions in most communities represents an unusually high level of competence and public spirit, it cannot be denied that there are some localities, particularly in backward rural areas, where the local police may fall under the undue influence of local political bosses. This danger must be fully recognized and adequately coped with.

"There are also technical problems to be worked out to the end that there will be efficient cooperation and coordination between the police of the different communities and with the national rural police force. Every possible provision seems to have been taken to this end, but a certain period of practical experience may be necessary before the results become fully satisfactory.

"But in any case, the major aspect of the task of transforming Japan from an autocratic police-state into a democratic community where the police are the servants of the people has been successfully concluded. Quiet as this change has been, it is a change whose significance is all the greater for having been taken in stride."

POLICE REORGANIZATION PLAN



II. CREATION OF A JAPANESE COAST GUARD

In September 1947 when Prime Minister Katayama requested General MacArthur's opinion and comments on the Japanese police decentralization plan, the decision was made to divorce water police functions in harbors and bays from the category of normal civil police activities. This decision, coupled with the destruction of the Japanese Navy, and the adoption of a provision in the new Japanese Constitution which prohibited the maintenance of armed forces, virtually deprived the nation of any agency to enforce Japanese laws upon the high seas and in the coastal waters and harbors of Japan.

1. Preliminary Survey Undertaken. Early in the Occupation the Japanese Government requested authority to expand the water police activity of the Japanese civil police forces. Officers of the Public Safety Division of the Civil Intelligence Section, SCAP, seeing the necessity for a detailed study of Japanese maritime safety and law enforcement facilities recommended that an intensive survey of the subject be undertaken. The man chosen for this assignment was Captain Frank M. Meals of the United States Coast Guard who initiated the survey in 1946 and completed it the following year. On the basis of his study Captain Meals recommended that all Japanese maritime law enforcement and safety activities be combined in a single agency with functions similar to those of the Coast Guard in the United States.

The survey revealed that divided, overlapping and dual, or complete absence of responsibility existed among the eight national, three private, and forty prefectural and city agencies then charged with the administration and operation of maritime activities. The existing law enforcement agencies were unable to cope with widespread smuggling and illegal entry. Unrestored, improperly maintained navigation aids and unmarked wreckage continuously endangered both Japanese and

Allied shippings widely divergent maritime laws, port regulations and enforcement methods precluded the existence of consistent policy while a majority of the agencies concerned with maritime safety and law enforcement were inexperienced in maritime matters.

While the survey was in progress both Occupation and Japanese authorities were confronted with serious smuggling and illegal re-entry problems, particularly in that area of Honshu and Kyushu facing on the Japan Sea. This problem was partially solved in April 1947 when SCAP authorized the Japanese Government to use thirty-eight vessels for the expansion of maritime safety and law enforcement activity. Prior to that time during the Occupation U. S. Navy vessels had provided the off-shore patrol.

2. Maritime Safety Authorities Law Drafted. In the creation of a maritime safety authority the Public Safety Division coordinated preliminary discussions with the Japanese and guided the technical planning phase, basing the handling of the problem on its recommendation of July 1947 that the Japanese Government be authorized to establish a maritime safety and revenue marine service which would operate on the high seas and in navigable waters of Japan and which would combine under one agency all government activities related to:

a. Enforcement of maritime law.

b. Protection of customs revenue and prevention of smuggling and illegal entry.

c. Establishment of standards of maritime safety.

d. Maintenance of aids to navigation.

e. Inquiry into marine disasters.

f. Provision of sea-rescue facilities and other related government maritime safety functions.

Government Section's interest in this field was based upon its responsibility for the reorganization of national and local organs of government, including

the law enforcement agencies, their place in the governmental structure, and the safeguarding of principles of the new Constitution in any reorganization that took place.

Early in October 1947 the Japanese Government presented for the approval of the Supreme Commander a draft bill for the establishment of a Maritime Safety Authority of the nature recommended by Public Safety Division. All interested SCAP staff sections concurred on the need of an organization of the type recommended, but Government Section was opposed to the particular bill submitted, principally because it authorized:

a. The establishment of an organized, trained, uniformed, armed force possibly forming the nucleus of a navy, without limitation as to size (U. S. post-surrender policy for Japan authorized adequate civilian police forces but prohibited "the restoration even in a disguised form of any anti-democratic and militaristic activities.")

b. Use of ships up to 1,500 tons displacement without limitation as to speed or armament and with authority to operate on the high seas.

During the Fall of 1947 Public Safety Division and Government Section representatives held a series of joint discussions with the Japanese which resulted in the preparation of a draft bill that received the official approval of the Headquarters and was subsequently adopted by the Ashida Government in March, 1948 and passed by the Diet on April 15, 1948.

3. Provisions of the Maritime law[5/] The Maritime Safety Authorities Law establishes a Maritime Safety Board under the Ministry of Transportation for the purpose of preventing, detecting and suppressing violations of the law in harbors, bays, sounds and on the high seas adjacent to Japan. The Board consists of those agencies previously located in the Ministry of Transportation which had maritime

5/ Appendix H: 35, Maritime Safety Authorities Law, April 15, 1948

functions and such additional administrative agencies as may be necessary to implement law enforcement maritime functions.

The duties of the Board include the establishment and enforcement of navigation regulations and safety rules, salvage of human life and cargo at sea, maritime disaster investigations, removal of navigation menaces, licensing and supervision over ships' officers and pilots, anti-smuggling patrol, arrest of criminals at sea, survey of waterways and other hydrographic matters, maintenance of lighthouse and navigational aids, care of ex-naval vessels, minesweeping, and matters of a similar nature.

In addition to these specific duties, the Board serves as the responsible enforcement agency for any ministry or executive department charged with the administration of particular maritime laws and is subject to the rules and regulations promulgated by them with respect to the enforcement of such laws. This includes, for example, such activities as enforcing customs regulations of the Finance Ministry, and the rules of the Agricultural and Forestry Ministry relative to Japanese fishing craft operating at sea. The Board is also required to provide "water taxi" service for all administrative officials on state business.

The law authorizes a maximum strength of 10,000 personnel, most of whom will be uniformed maritime safety inspectors carrying sidearms. The strength is in balance with the estimate of the number of ships that will eventually be employed and is in proportion to the limitation placed on tonnage by the law. When the law was passed only 3,000 persons were engaged in activities which it envisaged and these were assigned to shore duties such as lighthouse tending and hydrographic functions. The increase of 7,000 is a long-range estimate of the number that will eventually be required to restore and operate damaged lighthouses, other aids to navigation, and to man and operate the authorized patrol vessels. Maximum strength will be gradually attained as such vessels become available and as more personnel

will be trained in coast guard duties than can be immediately and effectively utilized. To insure control over the training program a provision was inserted in Article 3 of the law stating that "nothing in this law is to be construed as an authorization for the employment of additional personnel, over and above those presently employed, to carry on the functions and activities enumerated in this law until funds are provided in the budget."

The act contains additional safeguards against utilizing the Coast Guard as the possible nucleus of a restored Japanese navy.

a. It specifies that "nothing in this law shall be construed as to permit the Maritime Safety Board or its personnel to be trained or organized as a military establishment or to function as such." Armed vessels are not authorized.

b. Vessels are limited to 125 in number, harbor craft excluded, and to 50,000 gross tons total tonnage. No individual vessel is to exceed 1,500 tons, but some ships of this displacement will be required for the purpose of installing and maintaining heavy buoys and lighthouse and hydrographic equipment. As to the types of vessels which made up the 125 mentioned above, it was determined that, in view of the practical considerations involved in attempting to forecast what shipping will be available to Japan in the future, the exact type should not be specified in the law.

c. Vessels are also limited to those unable to exceed fifteen knots in speed.

d. The Board and all its personnel are appointed, promoted, disciplined, dismissed and otherwise managed under, and in conformity with, the provisions of the National Public Servants Law.

e. The Board has no connection with the National Public Safety Commission, but the law does provide for liaison and coordination with the police and

permits the mutual extension of assistance when requested. It should be noted that the Japanese Civil police forces have no jurisdiction on waters outside their normal boundaries. The National Rural Police are even prohibited from having boats.

f. Operation on the high seas is limited to "the high seas adjacent to Japan." In conformity with the concept of international law that a nation enforces its laws on vessels of its registry operating on the high seas--that is, that the law of the waters in which the vessel is sailing is the domestic law of her country, it was decided that the determination of the distance from the Japanese mainland within which these vessels should eventually be authorized to operate in order to enforce domestic law is an issue which will have to be settled later. Accordingly, terminology was used in the act that will permit reasonable interpretation.

Any further safeguards not appearing in the law, which are deemed necessary in order to comply with post-surrender policy, may be invoked by SCAP directive. It is the purpose of the law to establish a reasonable and workable set of regulations for operations of a maritime safety service both during and after the Occupation. Even though it is presently premature to authorize unrestricted operation of Japanese vessels upon the high seas, the law advisedly permits limited operation on the high seas adjacent to Japan because, as long as the Occupation continues, that authority as well as all domestic law, is subject to control by the Allied Powers.

By assisting the Japanese Government to maintain law and order on its own authority in its own coastal waters and by preparing it for the assumption of this responsibility under international law the Maritime Safety Authorities Law attempts to meet the situation which will exist after the Occupation. In creating an agency which is urgently needed now it also established a blueprint for the future.

III THE GROWTH OF POLITICAL MORALITY

1. Significance of the Hoarded Goods Probe. In the search for hoarded military supplies and in the investigation of political corruption with which it was closely allied there could be seen encouraging signs that in post-war Japan both appointed and elected officials were beginning to recognize their responsibility as servants of the people. The illegal disposition of Japanese military supplies and stockpiles both in the vast amount of wealth involved and in the extent of its political ramifications was unquestionably the greatest scandal to be uncovered during the Occupation. In the course of their efforts to grapple with it the procurators changed their basic concept of their place in the legal and law enforcement system of Japan. At first they adhered to the traditional limitations of the procuratorial system and concerned themselves only with the obvious criminal aspects of the hoarded goods fraud. Later as further investigation revealed the widespread ramifications of the scandal and indicated that the corruption which it nurtured extended to high places in the government the procurators played an increasingly predominant part in exposing this threat to the national welfare. Following the example of district attorneys in the United States they no longer waited for police action but with increased personnel and appropriations they initiated and conducted their own investigations. Encouraged by SCAP the procurators, once themselves mere officials of the central bureaucracy, now dared to invade the highest circles of government in their determination to protect the people's interests, and when they had secured sufficient evidence asked for and obtained the indictment of the Deputy Prime Minister himself.

No less conscious of the public responsibility were those members of the Diet whose work on the Hoarded Goods Committee paralleled and supported that of the procurators. Primarily concerned with the corruption which resulted

from the use of hoarded supplies for political purposes this Committee focused national attention on the problem Furthermore, on the basis of perjured testimony before the Committee the procurators were able to bring charges against prominent politicians who were deeply implicated in the scandal.

2. Background of the Scandal. The great hoarded goods scandal had its origin in the uncertain and chaotic days when Japan was suing for peace but had not yet formally surrendered. Faced with the fact of defeat the cabinet of Admiral Suzuki met hurriedly on August 14, 1945 and agreed upon the hasty disposal of all war goods possessed by the Army and Navy. The cabinet decision specifying that these goods which included food, clothing and raw materials should be distributed to local government agencies and control associations was implemented by secret military orders issued on August 15, 17 and 23. Although the Supreme Commander's General Order No. 1 which was handed to the Japanese surrender mission at Manila on the 20th of August included the provision that all such supplies were to be preserved intact, the secret disposal orders remained in effect until rescinded by the Higashikuni Cabinet eight days later.6/ By that time according to Japanese estimates approximately seventy percent of the supplies formerly held by the army and navy had been dispersed as a result of failure to comply with General Order No. 1. Those goods which had not been disposed of were surrendered to the Occupation forces shortly after their arrival in Japan. Legal title to goods of this sort immediately vested in the Allied Powers at the moment of surrender.

As early as September 24, 1945 the Japanese Government was notified that surrendered goods, including scrap iron, suitable for civilian relief purposes and for use in the restoration of the Japanese economy would be returned to the Japanese Government for those purposes only.7/ At the same time the government was directed to maintain adequate records of property so received in such form that its disposition could be traced to the ultimate consumer. The Japanese

6/ Appendix B: Ia, General Order No. 1. This Order was reissued as SCAP Directive No. 1 on September 2, 1945

7/ Appendix E: 6, Materials, Supplies and Equipment Received and to be Received from Japanese Armed Forces, SCAPIN 55, September 24, 1945

Government was also charged with providing adequate protection and maintenance of such stocks and for keeping detailed records indicating the disposition of funds accruing fromthe sale of these items. The materials and goods returned to the Japanese Government under this program were estimated by a Diet Investigating Committee to have had a value of approximately 100,000,000,000 yen.

When it became evident early in 1946 that large-scale attempts had been made between the dates of August 14, 1945 and September 2, 1945, secretly to dispose of huge quantities of former military supplies, the Japanese Government was notified that such actions were contrary to the spirit of the Potsdam Declaration and the Shidehara Government was directed to account for the goods so diverted and to supply the Headquarters with the names of the officials responsible therefor. The government replied that every effort would be made to supply the desired information but pointed out that the previous hasty scattering of supplies by the surrender government made rigid control and accurate statistical accounting difficult. Various reports have been submitted to the Headquarters listing the equipment and materials on hand at the termination of the war, amounts sold after August 14, 1945 and the balance surrendered to the Occupation forces, but since they have relayed only in fragmentary form data derived from the various local agencies of distribution consolidation into one comprehensive report was a practical impossibility. It is worthy of note that these reports list such equipment as trucks, cars, tents, steel and lumber as actually having been turned over to the Allied forces in substantial quantities, while the more readily concealable or movable materials such as fuel, clothing, cloth, leather, fibers, yarns and foods were reported to have been entirely sold or otherwise disposed of to prefectural offices, control associations and like agencies. This inability of the Japanese Government to render a complete accounting was not surprising in view of the methods employed by government officials from the very beginning of the Occupation in handling former stockpiles

of the armed forces--methods characterized by unrecorded lump transfers to local entities, quasi-public bodies and private concerns and by loose delegation of responsibility all along the line.

3. Role of the Public Procurators. In July 1947 it was reported that large sums derived from the sale of hoarded military supplies in the black market were being used to corrupt political parties and to bribe public officials. It was further charged that the proceeds from these transactions had been used to finance campaigns for the House of Representatives in the 1946 and 1947 elections. Recognizing that this condition posed a threat to the entire program of political reform which SCAP had undertaken the Chief of the Government Section suggested to the Procurator-General of Japan that an investigation of hoarded and illegally handled ex-military goods be initiated.

a. Investigation of the Seko Case. The investigation was started by inquiring into the activities of Koichi Seko, a Liberal Party House of Representatives member whose name was constantly in the Japanese press at that time as a result of an independent investigation in the hoarded goods field that he had initiated while concurrently serving as Vice Home Minister and of his allegations that large quantities of illegally hoarded goods were still flowing into the blackmarket and impeding economic recovery. As Vice Chairman of an informally appointed Cabinet committee headed by Finance Minister Ishibashi (later purged), and with questionable authority he had issued approximately 140 "official" orders over his signature concerning the disposition of such goods at a time when he had no official status in the executive branch of the government.

The activities of Mr. Seko which received the widest publicity in the press and on the radio had to do with a "Seko Order" ostensibly signed by him and purporting to release 600,000 army uniforms to agricultural and mining associations throughout Japan on payment of 20,000,000 yen by the latter. A part of the money was paid, but no uniforms were delivered. Four unsuccessful

candidates to the Diet were also involved and were indicted for their part in defrauding the agricultural associations. One of them, Ikutaro Nakasone, is alleged to have given 2,500,000 yen to Koroku Tsuji, the Liberal Party "wire-puller" who has an ultra-nationalistic and underground background and who, under questioning, admitted making large campaign contributions to the Liberal Party. Also, a part of this money is alleged to have been used to build a house for Ichiro Hatoyama, the wellknown purgee and former President of the Liberal Party. To date the procurators have been unable to obtain sufficient evidence in this case to obtain indictments other than the four mentioned above.

Shortly after, at the Prime Minister's request, the Diet for the first time permitted the arrest and indictment of one of its members while the legislature was in session when the Procurator General charged that Susumu Hara, a Liberal Party Diet member, had secured funds indirectly derived from the existence of hoarded goods when he allegedly defrauded the National Federation of Repatriates out of some 2,000,000 yen with the understanding that he would procure from the government calico cloth for the use of repatriates.

b. Investigation of the Arms Disposal Committee. One of the most scandalous offenses alleged to have occurred in connection with the disposal of ex-military supplies was apparently perpetrated by the irregularly created Arms Disposal Committee, ostensibly established for the purpose of functioning as the government's agent in the sale and distribution of surrendered goods and materials returned to the government by the Occupation Forces to relieve want and distress. This "committee" was created by an agreement concluded between the head of the Investigation Bureau of the Home Ministry and Takeshi Kokatsu of the Japan Steel and Tube Co., sometime during 1945, and illegally ratified by the Home Ministry in a formal contract dated May 16, 1946. The "committee" actually constituted a profit-making syndicate of five Zaibatsu companies—Japan Steel and Tube Co., Japan Iron and Steel Co., Furukawa Electric

Co., Sumitomo Metals Co., and Kobe Steel Works, and had a capital of 1,000,000 yen. Its contract did not provide for open bidding or any method for payment or delivery. Rather, the "committee" was to pay the government the net proceeds of sales after deducting expenses. The Home Ministry transferred the property to the "committee" without determining its value or imposing any limitations whatsoever as to its selling price or method of sale, delegating to the "committee" full powers to act in the government's behalf.

The Diet Hoarded Goods Investigating Committee in its first interim report made public in December 1947, estimated that the total value of goods re-transferred to the Arms Disposal Committee approximated 100,000,000,000 yen. Up to the end of April 1948, the Japanese Government had not received any income from the "committee", the latter's excuse being that the expense of disposal had exceeded income derived from the sale of goods—a statement which appeared to be prima facia fraudulent and misleading and which resulted in the initiation of a searching investigation.

The government's Board of Audit, in its report for the fiscal year 1946 submitted to the Diet in April 1948, disclosed the impossibility of compiling either a complete list of goods turned over to the Arms Disposal Committee by the Home Ministry or the total value of such goods, confirming that no record was ever made by the Home Ministry of the goods disposed of to the "committee".

After conducting a preliminary investigation throughout Japan lasting over three months, the Procurator General on April 15, 1948 ordered a full scale, nation-wide investigation of the Arms Disposal Committee. Simultaneously, the District Procurator's offices impounded all books and property of the "committee" extending from Hokkaido to Kyushu. It is difficult to estimate the number of individuals possibly involved, but in mid-May 1948 the Procurator General concluded that sufficient evidence would shortly be made available to justify the criminal indictment on charges of fraud of many government officials and

prominent businessmen.

c. Expansion of the Procurators' Functions. During August 1947, while the Seko and Hara cases were being investigated, numerous conferences were held by government officials with General Whitney and representatives of Government Section and at the request of Yoshio Suzuki, Minister of Justice, and Seita Fukui, Procurator General, arrangements were made for Government Section to aid and advise the Minister of Justice and the Procurator General in the investigation of cases involving illegal transactions in former military supplies.

On November 5, 1947 a conference was held by representatives of Government Section and ESS Finance Division of General Headquarters with representatives of the Finance Ministry, the Ministry of Justice, and the Procurator General's Office, at which time a budget of 74,138,000 yen was agreed upon for investigation purposes and subsequently appropriated by the Diet. As a result of these combined efforts, funds were available to increase the procurators' staff by 157 second-class procurators and 1,399 assistant procurators. On September 30, 1947, the procuratorial strength consisted of 695 procurators and assistant procurators, 2,943 second and third-class clerks and investigators. This relatively small number of procurators had each handled on the average of 1,134 cases involving 2,320 people from September 1946 to September 1947. Although concern was expressed as to the advisability of increasing the personnel in this agency, the necessity of bringing to justice those who dealt in and profited from hoarded goods was considered as justifying the additional expense and personnel involved.

Equipped with sufficient funds the Procurator General was enabled to organize a central prosecution committee for hoarded goods cases, consisting of a chairman and seven members. In the seven higher procurator offices located

in Osaka, Nagoya, Hiroshima, Fukuoka, Takamatsu, Sendai and Sapporo, committees consisting of a chairman and three procurators were established. Mobile inquiry squads consisting of twenty public procurators and one hundred assistants were established in Tokyo and Osaka. Inquiry squads of ten procurators and fifty investigators were organized in Nagoya, Hiroshima, Fukuoka, Takamatsu, Sendai and Sapporo. Inquiry squads of two procurators and ten investigators were organized in the forty remaining district procurators' offices throughout Japan. Outdated procedures were eliminated as far as practicable to create efficient and expeditious investigating and prosecuting agencies.

SCAP assistance to the procurators even extended to such details as supplying motor vehicles through the Looted Property Division, Civil Property Custodian, and securing railroad passes through the Transportation Section.

As part of Government Section's cooperation in this program, on February 5 and 6, 1948, the Deputy Chief, Government Section, addressed a national conference of procurators called by the Procurator General, in which he stated in part that,

"...The United Nations are watching to see whether only the words of Japanese Society have changed but the melody remains the same. The world is watching to see whether it is true under the new Constitution, as it also was under the Meiji Constitution and as it was actually enforced by the Tokugawa Shoguns, that courtesy should not be extended to the 'commoner' and punishment should not be administered to the 'gentleman'.

"...Because democracy is rooted in equality under the law, the law in a democracy becomes the great leveler of society. The procurators, whose only client is the people can, therefore, render no greater service to Japanese democracy than by prosecuting vigorously and courageously, those hitherto privileged politicians and industrial barons who have flaunted public decency

and public morality by selling the economic heritage of the Japanese people for a mess of blackmarket profits."

To date the procurators and the Diet investigation committee have made commendable progress resulting not only in substantial recoveries of misappropriated public properties but in the indictment of a number of persons responsible for the fraud including some important and powerful political figures. Passage and application of the New Code of Criminal Procedure now in the Diet will go a long way toward making "Equality under the law" a reality.

4. Diet Investigation of Hoarded Goods. The Diet also took an active part in the investigation of the hoarded goods scandal. In July 1947 the Speaker of the House of Representatives appointed a special inter-party committee under the chairmanship of Kanju Kato, left-wing Social Democrat, to investigate the Seko affair previously mentioned in these pages.

a. Findings of the Kato Committee.[8] In its interim report of November 1947 to the Speaker of the House of Representatives, the Kato Committee disclosed that:

(1) Vast quantities of goods formerly owned by the Japanese Army and Navy were disposed of to local authorities, businessmen and brokers, and that the blackmarkets had been flooded with such goods to the detriment of honest business.

(2) All attempts to channel these goods into legitimate channels had been frustrated by a combination of fraud and technical legal barriers abetted by the uncooperative attitude of local authorities.

(3) Existing legislation empowering the government to investigate hoarded goods was inadequate.

8/ Appendix E: 11, Kato Committee Report on Hoarded Goods

(4) The authority to investigate was scattered and ineffectual, being divided among the Ministry of Commerce and Industry, the Ministry of Agriculture and Forestry, and the Economic Stabilization Board.

(5) Insufficient investigative authority was granted to economic inspectors.

(6) Responsible officials failed to keep adequate records, particularly of war goods which were returned to the Japanese by the Allied Forces.

In this interim report, the committee reached the following conclusions:

b. Recommendations of the Kato Committee.

(1) The Suzuki Cabinet's resolution of August 14, 1945 authorizing the secret disposal of government property was an act of bad faith; the Higashikuni Cabinet failed to rescind this act but actively carried out its purposes until August 28 (eight days after it had received General Order Number 1 from SCAP in Manila which made it clear that the equipment and supplies of the Japanese Armed Forces were to be held intact); subsequently, no effective measures were taken to recover the assets thus dissipated.

(2) The disposal of war materials after the surrender was tainted with favoritism and fraud.

(3) Local governments and police officials interfered with investigations initiated by the government and conspired to legalize fraudulent transactions; even the "special goods" returned to the Japanese Government by the Allied Forces under the disease and unrest formula, were improperly distributed and no accounting was rendered.

(4) Goods were still in concealment, possibly including arms and munitions, held on the theory that the holders may escape detection until after the Occupation.

(5) Legislation for uncovering hoarded goods was inadequate.

(6) Whatever agency might assume the task of uncovering goods still hidden should be granted adequate authority.

(7) The Diet should confine itself to providing adequate legislation and undertaking legislative investigations of individuals and executive agencies, and the executive branch of the government should enforce the laws.

Based on the above conclusions and in close cooperation with representatives of Government Section, the chairman of the House Investigating Committee drafted an oath and testimony law which passed the Diet on December 9, 1947 and enabled the committee to subpoena records and witnesses and required the latter to testify under oath for the first time since the establishment of legislative committees in the Diet.

c. Second Diet Hoarded Goods Committee. With the expiration of the First National Diet on December 9, 1947 the tenure and authority of the first committee ended. No marked accomplishments were attained by this committee. A House resolution recreating the non-partisan special committee for the same purpose was drafted with the aid of Government Section and was adopted by the House of Representatives on December 11, 1947.9/ It armed the committee with sweeping investigatory powers as well as an appropriation of 250,000 yen.

According to the Speaker of the House, the passage of the resolution stunned Zaibatsu business interests and leading politicians including both Diet members and lobbyists who had associated in furthering the activities of "big business" interests.

9/ Appendix E: 10, House of Representatives Resolution Regarding Committee on Hoarded Goods, December 11, 1947

On convocation of the Second National Diet on January 21, 1948, the Speaker appointed the members to the new committee with Mr. Kato retaining the chairmanship. This was accomplished after long consultations with representatives of all the major political parties in a not too successful effort to recruit a committee which would place public welfare above party interests and bring an end to the post-war era of corruption in government-business relationships.

Mr. Kato retired from the chairmanship of the committee when he accepted the post of Labor Minister in the Ashida Cabinet formed on March 10, 1948. His successor, Mr. Ichiro Kuto, was not appointed until April 3, 1948.

Equipped with the power to examine witnesses under oath the second Diet Hoarded Goods Committee, under Mr. Kuto's chairmanship, accomplished more during the first month of its existence than the predecessor committee had during its entire tenure. The new committee devoted its efforts during that period to questioning Diet members and unsuccessful candidates as to the source of campaign funds allegedly derived from irregular transactions in hoarded goods. The examination of witnesses was based chiefly upon testimony previously given in court incidental to the prosecution of the Seiko Army Uniform Case, and also upon the results of investigations made and statements previously received from the same witnesses by the procurators as to the source of their campaign funds. Some forty witnesses were subpoenaed during this period by the Committee. Since perjury was not customarily considered a serious offense in Japan, the testimony of many witnesses as to the source or payment of campaign funds was inconsistent with official procuratorial and court records. Wide public interest was directed towards these proceedings in the Diet as the result of splendid coverage by the Japanese press. The Attorney General and the Procurator General of Japan, recognizing that perjury by witnesses before the Diet Committee had been the rule rather than the exception, instituted criminal proceedings in the courts against those alleged to have given false testimony.

The first arrest for perjury before the Diet Committee was made on May 2 when Ichiro Kono, a purged leader of the Liberal Party and an ex-Diet member, was taken into custody for denying his receipt and disbursement of campaign funds derived from hoarded goods transactions. This significant development was immediately followed by the filing of charges against several active members of the Diet for similar falsification. The effect of this action in party circles and upon the public was characterized by a well-informed Japanese political writer who stated that the possibility of the courts meting out ten-year jail sentences under the new Diet Oath and Testimony Law would necessarily result in a revolutionary concept of the formerly innocuous crime of perjury in Japan and will no doubt accomplish much toward reorienting Japanese in all strata of society to the basic principle that the successful democracy thrives only through government by law instead of government by men.

As early as April 30, Chairman Mute in his first interim report of the new committee's activities, pointed out the serious implications of the conflicting testimony mentioned above and recommended to the Diet the enactment of necessary laws to stamp out political corruption by the use of secret funds.

d. House Resolution of Confidence. When at the end of May it became apparent that Deputy Prime Minister Suehiro Nishio of the Social Democratic Party was involved in the scandal the Investigation Committee was faced with necessity of indicting one of the most powerful figures in the government. When the issue came to a vote, however, the committeemen under pressure from their respective parties voted along partisan lines, with the government parties voting against the indictment and the opposition for it. Though for a while prevented by party loyalties from taking definitive action as indicated by the evidence revealed at the hearings, the committee later took action to insulate itself against such influences in the future. As a result, the House of Representatives by resolution on June 22, 1948 expressed its confidence in

the committee and resolved that political parties should not influence the actions of their members serving on the committee. It was further resolved that the membership of the committee should not be determined by party but in accordance with the regulations of the House.[10]

This action by the House of Representatives, itself subject to the stresses and strains of political party interests, betokens a growing sense of public responsibility and is one of the most encouraging events in the development of representative government in Japan.

10/ Appendix E: 13, House of Representatives Resolution on Character of Hoarded Goods Committee, June 21, 1948