# Session One: Effective Administration of the Police

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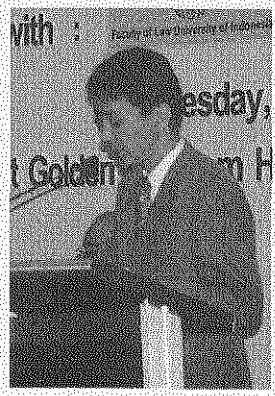

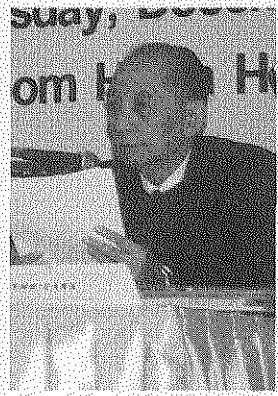

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# CRIMINAL INVESTIGATIONS IN JAPAN

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## I. INTRODUCTION

Recently, public security in Japan has been severely challenged by the sudden increase in the number of offenses and the remarkable decrease of the clearance rate.

For example, according to the latest "White Paper on Police 2002", the number of Penal Code offenses known to police in 2001 was 2,735,612, which shows a significant increase of 57.0% (993,246) over the last ten years. This is the highest level since the Second World War.

On the other hand, the number of Penal Code offenses cleared in 2001 was 542,115, that is to say, the clearance rate was 19.8%. This is the lowest level since the Second World War. In Japan, until the 80's, the clearance rate had been kept at about 60%, but in the 90's, it decreased to about 40%.

We can say that such circumstances threaten the myth that "Japan is the safest country in the world".

Of course, the general crime situation in Japan is not so serious compared to other countries. For example, the rate of homicide was only 1.1 in 2001 (compared to 5.7 in the United States in 1999) and the clearance rate for homicide is 94%. The number of police officers killed on duty is about 10 per year (including traffic accidents) and the number of cases of a police officer firing his gun on duty is only about 10 per year.

Moreover, in my eyes, Japanese police still maintain good investigation techniques in spite of the changing environment surrounding criminal investigations.

In this presentation, I would like to talk about the environment and the background to police criminal investigations (Part1). After that, I would like to look at the characteristics of criminal investigations by the police (Part 2).

## II. THE ENVIRONMENT AND THE BACKGROUND TO POLICE CRIMINAL INVESTIGATIONS

### A. Limited Legal Competence

In Japan, the legal competence of the police is strictly limited compared with other foreign countries.

For example, we don't have any competence to "arrest without warrant with probable cause" like in the United States or other common law countries. We also cannot take measures, such as identity control detention in European countries or other continental law countries. There

is no "plea bargaining" nor "immunity" like in the United States. Concerning telecommunication interception (wiretapping), a law was not enacted until 1999, but because of the very strict requirements of the law, there have only been two cases until now. We don't have any special laws against terrorism. The suspect has the right to remain silent and to communicate with defense counsel whilst in detention.

This situation makes the investigation difficult, especially investigations against organized crime. In order to further investigations into the structure of criminal organizations, we often have to arrest suspects for conspiracy with their subordinates. But it is generally difficult to get confessions from both high-ranking members and subordinates without measures such as plea-bargaining or immunity. In Japan there are still about 84,400 members of criminal organizations (Japanese mafia, Yakuza, Boryokudan). In order to fight against them, it is necessary to introduce new legal or investigation measures.

### B. Minute Justice (*Seimitsu Shiho*) and the Pressure from Society

In Japan, the examination of evidence during the trial process is extremely strict and severe. This situation is often called "Minute Justice"(*Seimitsu Shiho*). At the same time, Japanese society and the mass media blame the police in cases of not guilty or non-prosecution by reason of insufficiency of evidence. In 2000, the percentage of suspects found not guilty stood at only 0.04%, and the rate of non-prosecution for reason of insufficiency of evidence was about 6%. Once a not guilty verdict is pronounced, major newspapers often go on a campaign to blame the police. In such a situation, for most people in Japanese society, arrest means guilty. So, the Japanese police very carefully execute their powers of arrest. In 2000, the total number of cleared penal code offences was about 309,000, but the number of arrested offenders was only about 86,000. This is to say, about 72% of total cleared offenders were not arrested. In those cases, only documents were sent to the prosecutors.

### C. The Burden of the Police Criminal Investigation

On the whole, the Japanese police must collect a lot of evidence in spite of their limited legal competence, and in many cases, without arresting suspects. In 2000, the National Police Agency researched 4 police stations about the quantity of documents in an investigation of larceny (such as reports by investigators, written statements of suspects and witnesses, forensic reports, etc). The average quantity of documents was about 96 pages per offence. For arrest cases, the average was about 163 pages per offense. This number is not per offender but per offence. Generally one thief commits several larcenies, so police must prepare hundreds of pages of documents for one offender. Of Course, for more serious crimes such as homicide or big white-collar crimes, the police must prepare many more documents.

Under such circumstances, the Japanese police have developed investigative abilities, such as techniques of interrogation, forensic investigation and analysis of criminal data, etc. Investigations by the police in Japan are sometimes criticized for having too much interrogation (a suspect's maximum term of custody before indictment is 23 days). But we must not forget that a high level of verification is necessary under Minute Justice (*Seimitsu Shiho*) in spite of the limited legal competence of investigations.

### D. Cooperative Attitude of Citizens

This is another important point. One reason for the success of investigations by the police

is the cooperative attitude of citizens. For example, in many cases, even if suspects are not arrested, they accept questioning by investigators, and furthermore, many suspects confess because of remorse.

Within this situation, it is true that the police have generally kept the confidence of the citizens.

In 1977, Kyoto University did a survey. The question was "who are the defenders and who are the aggressors of human liberty and human rights? ". Among the 12 choices (police, courts, government, local government, political parties, mass-media, big business, trade unions, trade associations, influential persons in the community, neighbours and family), respondents could choose two answers. Police were the first as the defenders! The second was the family and the third were the courts. The police came ninth as aggressors (the first was the mass-media and the second was big business).

In 2001, the average success rate in the recruitment examinations for constables (policeman) was about 8%. The number of candidates was about 159,300 and the success rate was about 13,200. Among the successes, about 9,300 (70%) have university degrees.

The average salary of a police officer (42 years old) is about 532,000 yen (4,360 US dollars) per month, it is relatively high (about 20% more) when compared to public officers or school teachers.

## E. Honest Handling of Citizens' Requests by the Police

With such a good relationship between the police and citizens in general, the police can honestly treat complaints and requests from citizens impartially. Once the police receive complaints from citizens, they must execute the necessary investigation, and the documents of the investigation must be kept.

Even if police officers in uniform receive complaints or requests about offences, the documents are sent to the investigation section. That's the same for an emergency call (Dial 110). In 2001, the number of Dial 110 calls received was about 8,716,000 and the average "response time" was 6 minutes 22 seconds. If the intervention of investigators is necessary, we send officers from the investigation section. Of course, all the records (documents) of Dial 110 calls must be kept. Such efforts have been one of the reasons for the high clearance rate in Japan.

But in 1999 and 2000, several big police scandals occurred. For example, in a case called the "Okegawa incident", a young university woman who had been stalked made a complaint several times to the nearest police station. But the investigators at the police station did not adequately investigate in spite of her and her mother's requests. Finally, this young woman was killed by the stalker. In another case called the "Ishibashi incident", a high school boy was taken away by his friends and for two months detained and assaulted by them. The parents of the boy often asked the nearest police station to search for their son and complained about their anxiety. But the investigators at the police station also did not adequately investigate. Finally, the boy was killed. The public strongly condemned the police for the neglect of their duties.

After several police scandals, in 2000, we decided to reform the police in several ways. For example, Police Station Councils were organized at every police station. The purpose of the council is to reflect the opinion of community residents in the police administration. Also, with

this reform, when citizens make a complaint or a request by documents, the police must treat it honestly and respond in a way which is documented.

The police have to do a self-examination and sincerely review the relationship between police and citizens. I hope that a similar case never occurs in Indonesia.

## F. The Changing Circumstances

### 1. The Increase in the Number of Offences

At the beginning of the 21st century, the circumstances surrounding investigations by the police are changing remarkably. Concerning the number of penal code offences, the situation is as follows:

| *Year* | *Number of penal code offences* | *Crime rate* |
|---|---|---|
| 1975 | 1,234,307 | 1,102 |
| 1990 | 1,636,628 | 1,324 |
| 2001 | 2,735,612 | 2,148 |

And the number of offenses cleared is as follows:

| *Year* | *Number of offenses cleared* | *Clearance rate* |
|---|---|---|
| 1975 | 713,031 | 57.8% |
| 1990 | 692,593 | 42.3% |
| 2001 | 542,115 | 19.8% |

But we must pay attention to the fact that most of the offences are larceny. In 2001, 85.6% of the total penal code offenses were larceny.

As regards serious offenses (homicide, robbery, arson, rape), the situation is as follows:

| *Year* | *Number of offenses* | *Crime rate* |
|---|---|---|
| 1975 | 9,702 | 8.7 |
| 1990 | 5,930 | 4.8 |
| 2001 | 11,967 | 9.4 |

We kept the clearance rate of serious offenses at about 80%, but in 2001, it decreased to 61.2%. However, the number of offences cleared and offenders cleared is increasing for serious offences. That is because the police attach more importance to such serious crimes. Especially, concerning homicides, we still have a very high clearance rate of about 95%.

At the moment, the police cannot cope with the increase in offences. Because of the sudden increase in offences, our government has decided to increase the number of police by 10,000 as an emergency measure, but this is still not enough. The number of police officers is

limited, so we have to shift our attention to serious crimes.

2. New Requests from the Public

The "Okegawa incident" (stalking case) was a major reason a new law was passed in 2000 to control stalking. In addition to this law, a new law to prevent child abuse was passed on October 2000 and a new law to prevent domestic violence on April 2001. Sometimes the police thought such cases were civil cases and did not treat every case as a serious offense. But recently, the public's requests took shape in these laws. The police must properly enforce these laws not only with criminal investigations but also by various administrative measures like warnings or cessation orders, etc.

The citizens can also ask for counseling or consultations with the police for their complaints, troubles and various other needs. We call these "Police Security Consultations". The number of these consultations has increased remarkably recently. In 1999, it was 343,663, in 2000, it was 744,453 and in 2001 it was 930,228. In general, we must respond adequately to these requests. Such activities are the basis of the strong relationship that exits between the police and the public. But in reality, there are many cases which are not always suitable for the police (for example, stray dogs, noises, bees' nests, etc). This situation poses a difficult question for the police administration.

3. Victim Support

Recently, victim support was become important during the process of investigation. In 1996, the National Police Agency adopted the "Guidelines on Relief Measures for Crime Victims". Under these guidelines, the Japanese police have developed many victim support programs in the field of investigations.

I would like to show some examples. Police:

(i) Provide crime victims with a brochure produced for crime victims which includes useful information such as an outline of the criminal procedure, victim assistance programs, etc;
(ii) Inform crime victims of results of the investigation under the victim liaison system;
(iii) Promote police counseling services to crime victims, such as the establishment of a nationwide hot-line telephone (the number is the same everywhere, #9110) for counseling of crime victims and the assignment of specially trained officers and counselors who have knowledge and skills in psychology or counseling;
(iv) Remodel interview rooms to help victims relax, especially victims of sexual offences (for example, setting up sofas, changing the lights and changing the color of walls, etc);
(v) Improve the investigation of sexual offences by assigning female officers who specialize in such offences;
(vi) Develop networks with administrative authorities, medical institutions and private victim support groups.

We also have a compensation system for crime victims which was established in 1981. For example, survivor benefits are paid to the bereaved family of victims who lose their lives. The maximum amount is 15,730,000 yen (about 129,000 US dollars). There are two other benefit systems for disabled victims (18,492,000 yen maximum) and injured victims (payment of medical expenses for up to 3 months).

## III. THE CHARACTERISTICS OF CRIMINAL INVESTIGATIONS BY THE POLICE

### A. Organized Investigations

#### 1. The Important Role of Higher Ranking Police Officers

In Japan, the role of higher ranking police officers such as police inspectors or police superintendents is very important. For example, only designated police officers whose rank is above police inspector can directly ask for warrants of arrest from judges. Just after the Second World War, all police officers had such competence, but the abuse of this competence of arrest was severely criticized by the people. So, in 1953, we changed the system of asking for warrants. Since that time, higher ranking police officers have carefully examined the reason (sufficient evidence) and the necessity (possibility of escape or destruction of evidence by suspects) before asking for warrants of arrest.

#### 2. Investigation by Teams

Higher ranking officers also play the role of commanders and coordinators of investigations. We generally do not leave each investigation to one police officer. Small teams are organized for investigations (for example, the chief is the police inspector, and under his command, several officers such as assistant inspectors, sergeants, senior policemen and policemen work on the same incident.).

#### 3. The Ad Hoc Investigation Headquarters

In cases of important, serious or complicated crimes like homicide or big white-collar crimes, ad hoc investigation headquarters are set up. Several, tens or over one hundred investigators are mobilized, and during a short period, an intensive investigation is executed. About one hundred and thirty or one hundred and sixty investigation headquarters are set up for homicides per year. For such important crimes we do not leave it up to the police station - the investigation section of the prefectural police headquarters commands and coordinates the investigation.

#### 4. Mobile Investigation Group

It is very important to collect evidence and interview witnesses just after a crime incident occurs, that is to say, at the very beginning of an investigation. For this, mobile investigation groups are organized to execute 24 hour and quick investigations. About 2,700 investigators are assigned to this group throughout the country.

#### 5. Emergency Deployment Orders

When a serious crime occurs, police officers in uniform are also mobilized. The communication command center issues an emergency deployment order. Police officers are mobilized to conduct searches, interviews and surveillance. In 2001, the police cleared about 3,000 incidents by emergency deployment orders.

6. Advice and Guidance to the Frontline

The National Police Agency and each prefectural police headquarters play the important role of giving advice and guidance for investigations. At the sections such as the investigation planning section, police officers who have good legal knowledge and enough experience in the frontline are assigned to this mission. They give advice to the frontline in order to maintain the legitimacy and adequateness of the investigation. They also analyze the cases where there is a not guilty verdict and non-prosecution for the reason of insufficient evidence, in order to correct the problems of investigation.

## B. Forensic Investigations

Japanese police have highly developed forensic investigation techniques and have accumulated various data for analysis. The National Research Institute of Police Science attached to the National Police Agency and the Criminal Investigation Laboratory organized under each prefectural police headquarters, conducts research and development of scientific investigations. I would like to pick some examples.

1. Crime Scene Identification

It is imperative that there is careful and persistent examination of the crime scene using the latest identification techniques and equipment, and the execution of a forensic investigation of the physical evidence and traces left by a suspect at the crime scene.

At each prefectural police headquarters and police station, specialists are assigned for this mission with expertise and skills in fingerprinting, foot printing, photographing, forensic medicine and physicochemical analysis.

Mobile identification task forces are also deployed in each police headquarters in order to provide 24-hour, quick and efficient examination and analysis.

2. Identification of Minute Objects

It is very important to collect all possible evidence left at a crime scene and to carry out a forensic investigation to prove the case.

To aide this investigation, in 1986, the National Police Agency established the Material Identification Center. This center contributes to the analysis of detailed evidence by;

(i) collecting advance specimens of fibers, paint chips, agricultural chemicals, medicines and other materials;
(ii) creating databases of the specimens using precision analysis and manufacturer's product information;
(iii) specifying objects and manufacturer's of minute materials by reciprocal comparison of analysis data of minute objects and databases.

By these efforts, for example, we can identify the type and the manufacturer of clothes from minute fiber.

We have also developed DNA identification methods, which make it possible to identify

an individual with a high degree of accuracy from a tiny piece of material (for example, from a strand of hair).

3. Fingerprint Identification

The National Police Agency has developed an automated fingerprint identification system (AFIS) based on highly precise and computerized pattern recognition technologies. It is a powerful tool in identifying suspects from fingerprints lifted at crime scenes.

We introduced this system in 1982 and began registering fingerprints of criminals into the system at that time. Before then, specialists identified fingerprints visually. But by this system, we can rapidly process large volumes of fingerprint data. In order to attain real-time processing of fingerprint registration and inquires, in 1997, the police launched a program to fit every police station throughout Japan with an optical scanner, which is able to quickly read fingerprints and match them with fingerprint data stored in computer databases. This program was completed in 2000. The prefectural police headquarters terminals connect on-line with the National Police Agency's Fingerprint Identification Center via satellite communication.

At the moment, every year, about 10,000 fingerprints (fingerprints left by suspects, corpses, etc.) are identified with the fingerprints stored in databases using this system. This year, the police have also introduced the same system for palm prints. This system is also very helpful for the investigation of crime.

4. Automatic Vehicle License Plate Number Reading System

The police occasionally stop cars at checkpoints in search of crime-related and stolen cars. However, it takes time for checkpoint preparation and implementation, and it causes traffic congestion. The police have developed an automatic vehicle license plate reading system that reads the license plate number of a vehicle and checks it against stolen or wanted vehicle data.

5. Methodical (MO; *modus operandi*) Investigations

The Japanese police have a long history in methodical investigations since 1936. We have already over one million methods mainly for larceny, robbery and sexual offences. For example, for larceny, 27 methodical points are registered for one thief. Examples of these points are as follows;

(i) From where does he/she enter? Entry door, window of the bathroom, etc.
(ii) What tools does he/she use? Screwdriver, wrench, etc.
(iii) The characteristics of ransacking (searching). Scattering or littering, put back items as before, etc.
(iv) What time does he/she steal? Early in the morning (from sunrise to 9), afternoon (from 13:00 to 1 hour before sunset), etc. (there are 8 patterns)

This methodical investigation is very helpful especially for habitual offenders. The National Police Agency has established databases on optical disks, so investigators on the frontline can easily search for the necessary information.

6. The Criminal Information Management System

This is a 24 hour on-line and real-time computer system. By using this system, police officers on the frontline can obtain the necessary information (the name of the wanted person, the number of the wanted vehicle, etc) in real-time by telephone, radio or the computers installed in police stations and patrol cars.

## C. *Countermeasures Under the New Criminal Situation*

Recently, various new criminal phenomena such as high-tech crime, international terrorism and the increase of crimes committed by foreigners threaten Japanese society. But here, I would like to point out a few things.

1. The Establishment of a Cyber Force

It is necessary for the police to equip themselves with high technology against cyber terrorism and other high tech crimes. For this purpose, in 1999, the National Police Agency established a High-Tech Crime Technology Division and opened a High-Tech Crime Technological Support Center in the division as a national core unit of high-tech criminal investigations. Moreover, in 2001, the police created Cyber Force as a mobile technical unit for high-tech criminal investigations. There are about 60 specialists in this force. They work 24 hours to watch and monitor signs of cyber terrorism and also develop new preventive technology by accumulating the latest information about high-tech crime.

At each prefectural police headquarters, a project is organized to coordinate the various activities against high-tech crime. For example, the police go on Cyber Patrol (watching illegal information on the internet) and assign an Information Security Advisor who gives support and advice to the public. In 2001, the police cleared 810 high-tech crimes such as child pornography on the internet, and received 17,277 counseling calls about high-tech crime.

2. The Sting Operation (Undercover Operation) in Criminal Investigations

In Japan, the sting operation has not been so popular although it has been judicially authorized. However recently, due to the increased smuggling of stimulants, the police have begun to use this method. This year, the Metropolitan Police Department arrested 8 Iranian drug dealers by this method.

## IV. CONCLUSION

This presentation sketched only an outline of the characteristics of criminal investigations by the Japanese police. This is just one aspect of the wide-ranging countermeasures against crime. There are many other activities such as crime prevention, community policing, security police, etc., but unfortunately I do not have enough time to talk about this.

I hope that this paper helps you understand the efforts of the Japanese police in criminal investigations. I also hope that my presentation is a little helpful for our colleagues in the Indonesian police.

## V. APPENDIX

### A. The number of police officers, police stations, police boxes (2002)

In the National Police Agency; 1,524 police officers, 5,101 administrative officers
* The National Police Agency plays the role of policy making, coordination, support for various systems and the budget, etc.

In the Imperial Guard; 920

In the Prefectural Police; about 238,000 police officers, 29,126 administrative officers
* The Prefectural Police (Tokyo Metropolitan Police Department and another 46 prefectural police) are law enforcement offices.
* The biggest one is the Tokyo Metropolitan Police Department with about 41,000 police officers, and the smallest one is Tottori Prefectural Police with about 1,100 police officers.

→We have one police officer per 541people, on average.

The number of women police officers; about 9,400
The number of woman administrative officers; about 12,200

The number of police stations; 1,269
The number of police boxes (*Koban*); 6,623
The number of residential police boxes (*Chuzaisho*); 8,070

### B. Ranks of Police Officers

Commissioner General of National Police Agency
* This title is not a rank, but it is the highest position in the Japanese police.

Superintendent General of the Tokyo Metropolitan Police Department
Superintendent Supervisor
Chief Superintendent
Senior Superintendent
* Only 0.3% of police officers have a rank above Senior Superintendent.

Police Superintendent (about 3%)
Police Inspector (about 7%)
Assistant Police Inspector (about 30%)
Police Sergeant (about 30%)
Senior Policeman and Policeman (about 30%)

### C. Amount of Equipment

Police vehicles (cars, motorcycles, etc); about 35,000
Police boats; about 200 (from 5 to 23 meters in length)
* In Japan, the Coast Guard is mainly responsible for policing the waterways and ocean.

Police helicopters; about 80

# EFFECTIVE ADMINISTRATION OF THE POLICE

**By**
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Within the context of Indonesia today I think it will better if the title of this paper read "Effective Administration of the Police in an Age of Transition". This paper comprises of an introductory part, a short description of the present situation in Indonesia, the withdrawal of the police from the military, the administration of the police in urban and rural communities, and finally the problem of riot control.

Indonesia today is in the midst of a grave transition. This country has decided to embark on a process of recovery after being governed by an authoritarian *cum* repressive government. Indonesia is now a country heading towards a more democratic society. Following this process, the administration of the police carries a heavy charge in order to achieve the successful accomplishment of the process. POLRI (the Indonesian police force) is now challenged to police a society being reformed and transformed towards a more democratic country. The process has its own dark side. For instance, people are getting more bold and fearless in challenging the police, even physically. This is usually called "the syndrome of euphoria of freedom". Besides all that, at the same time, the police as an institution are also facing a huge task of transforming themselves to become a genuine and authentic police force. No previous experience can function as a guide.

Especially for our foreign guests, it will be in order to give a short explanation why the police are now engaged in doing their utmost to become a genuine police force. There can be no question of an effective police administration without first having a genuine police force. By genuine police force I mean a distinct public agency called the police. There is no police force without a distinctive police task. This distinctive task is to protect and to serve people which amounts to the special task called policing.

Since the mid 1960's POLRI has gradually been integrated into the Indonesian military force. The police have since been a part of the military force. This was a heavy blow the police had to suffer, since an independent, distinct and professional police force was slowly fading away. To be a policeman, the would-be personnel of POLRI had to follow military training. This was the course the police academy also had to follow. Forty percent of the curriculum was composed of courses on military skill. No wonder that in the past the police performed their job more as military than as a genuine police force.

It's only since 1999 that POLRI has been withdrawn from the military force and thus regained their independence as a distinct force different from the military. Thus the Indonesian police of today are in the midst of a grave period of transition to move away from military behavior and culture. The most difficult and important task is changing the old military performance into a more protecting, serving and caring police behavior, which means introducing a new police culture.

Even though POLRI has been separate from the military since 1999, the process of withdrawal has not yet been completed. The police still do not enjoy the full freedom to organize and administer the job of maintaining order in the country. Up until today the Indonesian police

still do their work too much in the shadow of the military. Although Indonesia is not a country in a state of war, the territorial police commander has to, to some extent share the task of maintaining order with the local military command. And it is common knowledge that the military commander usually has the upper hand.

I am very much aware that as a legacy of the past administration, the army have had far more say than the police, even in the administration of law and order, it is far from easy to complete a rapid and total reform. After more than thirty years under the administration of a quasi-military regime the transition toward civil order will take a lot of time. Some estimate a time period of not less than three generations. Apparently we have to be patient and POLRI must wait until that moment comes to become the real master of the administration of law and order in this beloved country.

As an outcome of the discussion above, we may conclude in this part of the paper, that we have to change our focus from the effective administration of the Indonesian police to the question of developing the Indonesian police to become an independent and distinct police force. So the most important thing if we want to talk about the effective administration of the police in Indonesia today is to help accelerate the above mentioned transition.

In the following part of this paper allow me to talk about the question of the effective administration of the police in relation to the structure of society in Indonesia.

Indonesia is a plural society not only because it is constituted of different ethnic and cultural groups, but also in terms of the different levels of development of the islands constituting the archipelago. Java is considered to be the most developed region compared to the other islands. Since the colonial period Indonesia (at that time, "*de Nederlands-Indie*") was divided into Java and the outer islands.

Another social portrait of this country is a structure divided into the urban and rural sector, which sometimes takes an extreme form. Jakarta is the most modernized part of Indonesia, while some other parts still live in a pre-modern state or condition, like most parts of Irian Jaya. Up until independence the Indonesian economy was described as a dual economy, constituted of the urban capitalist sector and the traditional rural sector.

Today it is still important to take the urban and rural sectors into consideration when we talk about the effective administration of the police, especially because of the serious difference between the two types of social structures mentioned above.

In relation to the urban sector we can easily talk about the necessity that the police should perform their job effectively. It will be different if we talk about policing in the rural areas. We will be confronted with different questions other than just the effective administration of the police.

In the urban sector the performance of the administration of the police will be mostly measured by the rule of effectiveness. Police performance is measured by things like the ability of the police to quickly respond to calls for help.

In the rural community the police will be confronted with a life far from being individual and rational as in the urban community. The structure of a rural community is far more collective than individual. Consequently the police are expected to employ a different kind of approach than

the rational one. Affection and closeness to the people are considered to be more important than effective administration of the police. I think people in the rural community like to keep close and friendly relations with the police rather than seeing the police doing their job effectively.

And now we come to the final part: POLRI facing the mounting incidence of rioting. As we mentioned at the outset of this paper the police have to deal with the uncertain outcome of the country's struggle for democracy. At the grass roots level this political process takes form in the outburst of freedom of speech and to do whatever you like. These freedoms of action are also expressed in the form of acting fearlessly in disrespect of the authorities and challenging the public institutions, among others, the police. Indonesia has no precedent for this kind of behavior. And of course the police also don't have experience in managing these sudden outbursts by people having no deference or fear towards them. These are not the same as handling the "normal riots" the police are used to.

To make things worst, the police do not really know what to do since they are also reminded to guard the process toward democratization, which means that they should employ the use of force carefully. The police have to face the intense scrutiny of the human rights community. All those factors taken together throw the police in some kind of a state of frustration.

Despite all of these challenges and difficulties, I think the police are beginning to rethink what they have done so far. They know that violent policing or relying merely on force can no longer be considered a good or proper way of policing. History has told them to develop a humane type of policing. This is a trend lending more toward protagonistic policing. People should be considered as an important factor in pursuing the success of policing. Effective administration of the police is not the same as considering the lot of people as a necessary cost for achieving successful policing. People are also genuine stakeholders in the effective administration of the police. But to strike a balance between people and police is the most difficult thing for humane policing.

# FEFECTIVE ADMINISTRATION OF THE POLICE FOR THE IMPROVEMENT OF AN INTEGRATED CRIMINAL JUSTICE SYSTEM

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A discussion as to the effectiveness of the Indonesian police administration today is really important and urgent because the Indonesian Police (POLRI), in this reformation era, are facing a heavy and challenging duty. This is a consequence of major changes in the Indonesian police' duties and the demand for reformation.

As we know, during this reformation era in Indonesia, there has been a change in the government and the administration environment. Starting from this complex change, in my opinion, there are at least two things that strongly influence the Indonesian police' job. They are to realize the existence of the demands of the civilian police and the demands for regional autonomy.

Firstly, to fulfill the demands of the civilian police, it is necessary to separate the Indonesian Police (POLRI) from the Indonesian Armed Force (ABRI/TNI), based on the TAP MPR No. 6 and No. 7, 2000. This separation has a profound effect on the management of the police administration. It is a complicated problem, in that it is not only a matter of the structure of an organization, or the regulation of police duties, but the most important thing is to change the Indonesian Police's culture which is embedded in the era of POLRI when it was still a part of ABRI/TNI. On the other hand, the separation of POLRI from ABRI/TNI has also doubled the Indonesian Police's work.

Secondly, we can see that the reformation has also pushed a demand for regional autonomy, and re-management of the police department that during this time is centralized. It is considered urgent to change it to become a regional police force as regional autonomy demands.

Arguments on a centralized system as opposed to a regional system need to be considered in order to re-manage the police administration. Both of these problems will become the main ideas for the discussion on the effective administration of the police in Indonesia today. But to consider a wide area of police duties to handle public order and law enforcement, the discussion will be limited to the problem of police administration due to the integrated criminal justice system. The focus of discussion will be more about repressive action. Public order and crime prevention will not be discussed here.

In the criminal justice system, POLRI is the sub-system that plays the role of investigator, the police stand in front to any linked justice process. They consist of investigation, prosecution, judicial proceedings and sentencing.

The division of POLRI that handles investigation is *Badan Reserse Kriminal* POLRI. It could be said that the capability of the police investigator in handling criminal cases could be the measurement of success of an effective police administration.

## A. Transforming POLRI into a Civilian Police Force

POLRI was formed as an organization that is centralized with a head chief (KAPOLRI) who controls all of the police regions through a hierarchy. With the principle of "one command", it is a very familiar sound during the era of POLRI still under the structure of the Indonesian Armed Force (ABRI/TNI) and its organization is similar to a military organization, so that it could not avoid military custom and it was a big influence on the POLRI environment. The difference between military culture and police culture, briefly, can be shown as follows:

| | Military | Police |
|---|---|---|
| Motto | - To kill or to be killed | - Put the criminals in jail |
| Value System | - Corps honor is the main priority | - Law enforcement is the main priority |
| Work Method | - Commander responsible<br>- Wait for an order/a command | - Individual responsibility<br>- Discretion |
| Main Tools | - Weapons/Machinary | - Investigation equipment |

The examples above show how the police duties/jobs, (which consist of a value system, work method and main tools needed) are very different to the military's.

If the Indonesian Police are still following a military approach, it will go against the demands of the reformation.

Being aware of how necessary efforts to change that culture are, POLRI in this reformation era has applied three strategies that consist of the cultural aspect, the structural aspect and the instrumental aspect. The cultural aspect is likely to take the longest time to change.

To change the old culture that has been embedded in POLRI, in the era of democracy and human rights protection, we need more time to understand and build new values. We also need to change the education curriculum and the recruitment system (especially to decide the selection criteria of new staff of POLRI) etc. All the processes need a long enough time for the transition to proceed.

The changes cannot be realized immediately, a part of society is not aware of this. Some of them assume that POLRI will be much better after the separation from the TNI. Unfortunately some people still do not understand that to build a good POLRI takes a long time. This high expectation may cause demands on POLRI to show big successes after the separation. This factor also will be a big disappointment to the people. Slower development and improvement to the capability of POLRI is also caused by a bigger burden of duties on POLRI after the era of separation. POLRI must now handle all the problems and duties which before were shared with TNI.

This situation demands a more intensive effort in the POLRI environment itself in order to manage its own organization, and to seek the understanding of society about this transition that may need more time. Through this understanding we hope there will be participation from all sides to help speed the change to a civilian police force as required by all the people.

Having a big burden of crime during the era of reformation could become a consideration

to any effort to increase the effective police administration. From the criminal data reported (crime total), during the year, there were 250,000 cases while the amount of investigators who were handing cases was only about 20,000 persons. That means the crime load for every investigator is more than 12 cases per year.

According to experience, the average time to process a simple case handled by four investigators is at least a month. This means an investigator in Indonesia may finish three cases per year, so the total number of cases finished per year is only 60,000. Thus, the capability of investigators is only 25% of the reported cases. We also could explain that handling a case may take time since receiving the report, checking witnesses, chasing the suspect until filing a report. What we mean by a simple case is a case that has only one or two suspects. A case that needs more investigation, has more suspects and requires chasing out of town or the country may take more time. Many other big cases need more investigators, for example a bomb case like in Bali, or a mass crowded conflict in cities etc. In that case we need to add more investigators and an improvement of our capability has become a main priority in order to develop the POLRI Investigations Division.

Being aware of how important it is to recruit more investigators and to improve their professional capability, the POLRI headquarters has applied a strategy to develop and enlarge the *Badan Reserse Kriminal*. It is projected that later on POLRI will be divided into a uniformed branch and a plain clothes branch. Each division will be led by a three star senior general. It is expected that they will increase the capability of the investigators and the uniform police equally.

To enable the above changes the following is necessary:

(i) Restructure the investigation organization with a principle: To enlarge the basic capability in the regional offices and improve the special capability in headquarters. The improvement of the quantity and the quality of the investigators regionally and to focus on the capability of handling traditional cases and criminal cases that commonly happen in that region. While in the headquarters, the investigators capability is to focus on serious crime, interregional crime, national crime and trans-national crime.

(ii) Adding more investigators through a distribution system proportionally. The distribution of investigators now is not based on the standard requirements but is appropriate to the burden of jobs for each region.

(iii) To improve and enrich the professional capability through special training in and outside the country. It is expected that every branch of specialist investigators will later on be able to develop and recruit experts due to the more complicated modus operandi of new crimes.

(iv) To improve staff and any necessary equipment by getting finance from in or outside the country. Usually support from other countries is in the form of trainers, these are mostly offered by advanced countries.

An operational strategy such as;

(i) Revising operational methods to suit the era of reformation: There are many old application methods that still tend to use the power and authority approach. It is not appropriate any more. The methods of investigation must be revised in order to guarantee human rights protection.

(ii) An optimal operational duty application with a reward and punishment system. Operational order is improved with a reward system for achievements and punishment for anyone who breaks the rules.

(iii) Maximizing scientific investigation through cooperation with police departments in other countries. Maximizing technical capability through training either in or out of the country with the support of sufficient staff.

(iv) Intensive coordination with elements of CJS. Coordination will be invaluable in helping to solve complicated legal problems and the implementation of new and advanced operational methods.

(v) Increasing cooperation with Interpol and using international forums and meetings in order to gain cooperation amongst other police departments in handing trans-national crime, like ASEANPOL, SOMTC/AMMTC, Asean Regional Forum, etc.

**B. Response to the Idea of a Regional Police Force**

As mentioned above, a spirit of regional autonomy has forced the development of the idea of change from a national police system to a regional police system. According to this idea, the regional police are under the head chief regional government. It is expected that the development of police capability will be guaranteed under the regional government compared to a centralized system that requires more bureaucracy. It is believed that all the police needs may be fulfilled easily under the regional government system, besides the application of this system makes it quicker, and easier to do operational police work by the regional government, and it reduces bureaucracy.

It is possible to speed the development of a police department especially in a region that has a high enough income. However, the capability of each regional government is not the same, and many regional governments have little income so the regional government system may not be promising for police development.

Operationally the application of a regional police system is quite effective at speedily assigning staff for public orders. This system is only applicable to local crime, while a crime that is inter-territorial would create serious problems. Moreover nowadays, crime tends to happen inter-territorially among countries. It has been proven that the regional government system of police may cause serious problems. These conflicts may occur between two regional governments in regard to resources and other areas. A conflict may also erupt between regional government and central government.

In my opinion the idea of a regional police system is effective enough for public order management, but however may not be effective in regard to crimes that have a fast rate of growth in regional or inter-territorial areas that have tended to arise lately. Besides, the authority for this type of crime is national law and it would be impossible to control regionally. There is some concern that if all police authority were put in the hands of the regional government this would lead to abuse of power by the local administration. This situation, will be detrimental to any effort to build an autonomous police force.

To anticipate the agenda of reformation and regional autonomy, and for the sake of effective police administration the following strategy may be applied:

(i) For the sake of speeding the development of police capability in the regional area together with the regional autonomy program it is expected that the head chief of each region could have a bigger opportunity to take responsibility for the development of the capability of the regional police.

(ii) The regional head chief has authority to control and manage the police department in their jurisdiction especially to manage public order.

(iii) The regional head chief has authority to control the activities and job assignments and take action to enforce the law locally.

(iv) Controlling the police staff in the regional area is fully under the control of the police regional chief who is responsible to the head chief police at headquarters (*Kapolri*).

Closing my short description, may I state in conclusion that to create an effective administration of police in this the reformation era, a transition time is required that we all must accept and be understood by the people and the police. In regard to a regional police system, in my opinion a national police system is still more effective, even though we need more modifications in order to adapt and create other ideas that are suitable for regional autonomy.

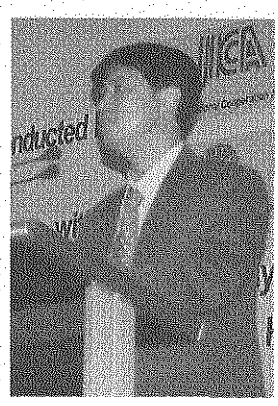
That is the main idea I would like to share at this seminar. Hopefully it will be discussed in order to increase the effective police administration of the integrated criminal justice system in the era of reformation.

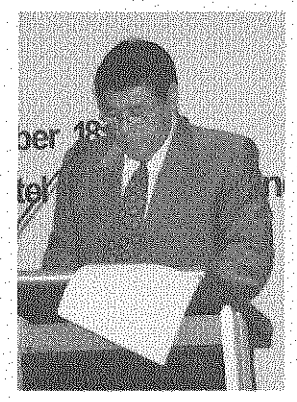
# Session Two: Restoring the Integrity of the Criminal Justice System - Elimination of Corruption in the Criminal Justice System

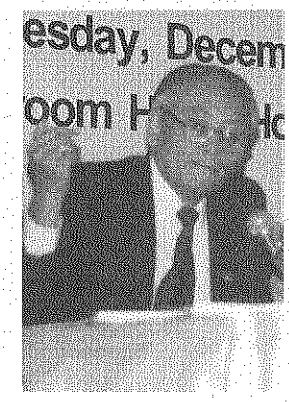
*Paper- Prof. Y.Tachi, UNAFEI*

*Paper- Prof. Dr. Muladi, UNDIP, Indonesia*

*Paper - Mr.Y. S. Sabda, Attorney General's Office, Indonesia*





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# RESTORING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM ELIMINATION OF CORRUPTION IN CRIMINAL JUSTICE

**By**
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## I. INTRODUCTION

Corruption by public officials undoubtedly disrupts their integrity and neutrality in performing their official duties. It also breeds feelings of distrust and unfairness toward the national or local government among the public. As a consequence, corruption by public officials can ultimately weaken or collapse the national or local ruling government and the economic structure of a country.

Along with the growing reluctance of international investors and donors to allocate funds to countries lacking adequate rule of law, transparency and accountability in government administration, especially in the justice field; corruption has the greatest impact on the most vulnerable part of a country's population, the poor.

Why corruption develops, varies from one country to the next. Among the contributing factors are: faulty government and development policies; programmes that are poorly conceived and managed; failing institutions; inadequate checks and balances; an undeveloped civil society; a weak (corrupt) criminal justice system; inadequate civil servants' remuneration; and a lack of accountability and transparency.

One of the most important tasks for the criminal justice system is to expose corruption and to punish the wrongdoers effectively. However, the covert and consensual nature of corruption obscures the ability of investigators to detect and expose it. Other obstacles include difficulty in securing the cooperation of people involved in the case during investigation and trial. In many countries, there is some concern as to whether the current criminal justice system works properly and effectively to expose and punish corruption.

A serious impediment to the success of any anti-corruption strategy is a corrupt judiciary. A corrupt judiciary means that the legal and institutional mechanism designed to curb corruption, however well-targeted, efficient or honest, remains crippled. Unfortunately mounting evidence is steadily surfacing of widespread judicial corruption in many parts of the world. Insufficient attention has been given to the integrity of the judiciary and the broader criminal justice system.

Criminal justice officials are required to appeal to policy-makers to re-examine and amend domestic legal systems, if necessary, to counter the phenomena of corruption. Moreover, the management systems for personnel should be improved in many aspects, such as recruiting, improving the labor conditions of personnel, internal inspections, and disciplinary measures. It is also imperative that a code of conduct for public officials be enacted. Additionally, it is desirable to introduce an auditing system conducted by an outside organization or ombudsman. Promotion of further cooperation and coordination between the criminal justice system and other public organizations at the national and local level is also important.

## II. THE INVESTIGATIVE ORGANIZATIONS IN JAPAN

In Japan we have several investigative organizations. One is the police and the other judicial police officers. Judicial police officers are the special investigative sections or departments which belong to administrative organizations e.g. prison officers who investigate offences in prisons. The other is the public prosecutors office. The public prosecutors in Japan investigate by themselves.

In Japan attorneys, judges and public prosecutors have the same qualifications, therefore, the status of public prosecutors is equivalent to that of judges and they receive equal salaries depending on the length of time they have held their positions. Their independence and impartiality are also protected by law. Aside from disciplinary proceedings, they cannot be dismissed from office, suspended from the performance of their duties, or be forced to accept a reduced salary.

The duties of public prosecutors include carrying out investigations, instituting prosecutions, ensuring that the courts apply the law correctly, and ensuring that judgments have been carried out. In addition, many public prosecutors are assigned to key positions in the Ministry of Justice, for example, as Vice-Minister of Justice and Director-General of the Criminal Affairs Bureau.

Prosecutorial functions are part of the executive power vested in the Cabinet, and the Cabinet is responsible to the Diet in their exercise. The Minister of Justice should have the power to supervise public prosecutors to complete his/her responsibility as a member of the Cabinet. However, prosecutorial functions have a quasi-judicial nature, inevitably exerting an important influence on all sectors of criminal justice, including the judiciary and the police. If the functions were controlled by political influence, then the whole criminal justice system would be jeopardized. To harmonize these requirements, the Public Prosecutors Office Law Article 14 provides that "The Minister of Justice may control and supervise public prosecutors generally in regard to their functions. ("generally" means, for example, to set up general guidance for crime prevention, the administrative interpretation of laws and how to dispose of affairs related to prosecution to maintain their uniformity.) However, in regard to the investigation and disposition of individual cases, he/she may control only the Prosecutor-General." This control was practiced only once in 1954. I will touch upon this case later. Anyway, the Minister of Justice cannot control an individual public prosecutor directly.

In identifying the overall role of prosecutors and their responsibility toward society, prosecutors are regarded as representatives of the public interest. They exercise their prosecutorial power for the purpose of maintaining law and order, based on the principle of strict fairness and impartiality, and with respect for the suspects' human rights.

The police are primarily responsible for criminal investigations and carry out the initial investigations of more than 99 percent of criminal cases. Following their investigation they must refer cases to a public prosecutor together with relevant documents and evidence, even when the police believe that the evidence gathered is insufficient. The police have no power to finalize cases, except for minor offenses.

The relationship between the police and public prosecutors in Japan is based on cooperation in general. But the police and public prosecutors belong to different organizations independent of each other. They maintain a competitive relationship especially with regard to the

detection of corrupt cases. However, public prosecutors have their own power to investigate and monopolize the decision to prosecute upon all the criminal cases, public prosecutors have important functions, or rather duties to check on police investigations.

Public prosecutors may also investigate cases themselves and often carry out supplementary investigations, that is, they interview victims and the main witnesses directly, and instruct the police to collect further evidence, if necessary. Moreover, public prosecutors may initiate and complete investigations without police assistance, and may do so in complicated cases, such as bribery or large-scale financial crimes involving politicians, senior government officials, or executives of large corporations.

In three major cities - Tokyo, Osaka, and Nagoya - the public prosecutors offices have special investigation departments where a considerable number of well trained and highly qualified public prosecutors and assistant officers are assigned to initiate investigations. The special investigation departments in the Tokyo and Osaka offices have a long history and have investigated many cases involving bribery, breach of trust, tax evasion, securities exchange violations, and the circumvention of laws such as those governing the prohibition of private monopolies and the maintenance of fair trade.

When the public prosecutors decide to start their investigation into corruption cases, they sometimes investigate not only corruption cases but also other related crimes, such as a violation against the Law for Oath, Testimony, etc. of Witnesses at the Diet, a violation against the Political Funds Control Law, an obstruction of an auction, fraud, breach of trust and so on which are stipulated in the Penal Code. An investigation against corruption is probably the most difficult among other crimes due to the fact that it is by nature a secretive crime, that often only involves two satisfied parties. Therefore, they investigate other related crimes which are easier to prove and prosecute. During the investigation, they try to find evidence of corruption e.g. a confession of bribery, material evidence which is found in the suspect's dwelling and so on.

## III. THE HISTORY OF INVESTIGATIONS AGAINST CORRUPTION COMMITTED BY POLITICIANS – AND ENACTING OR REVISING THE LAWS IN JAPAN

As I mentioned above the public prosecutors have been combating corruption committed by politicians, especially in the Special Investigation Department of the Tokyo District Public Prosecutors Office. That Department was established in May 1949 for the purpose of investigating the theft or concealment of property owned by the Government. Soon after that the purpose of the Department was changed to the investigation against corruption, related crimes of corruption and white-collar crimes. The public prosecutors in the Department have been challenged to investigate a lot of corruption cases.

### A. Shipbuilding Scandal (*Zosen-Gogoku*)

In 1954 it was discovered that in order to lobby for a 1953 law which allowed shipbuilding companies to borrow below the market rate, huge bribes were paid to high-ranking politicians and leading bureaucrats. During the investigation of this case involving several politicians, they tried to arrest the Secretary-General of the majority party, but the Minister of Justice, who belonged to the same party, ordered the Prosecutor-General not to arrest him. Consequently this lead to the termination of the investigation. Thus only one person was convicted and sent to prison, out of 71 people arrested. However, since it produced severe public criticism through the mass media, the Minister of Justice had to resign quickly. After that Ministers of Justice never

practiced this type of control.

### B. Lockheed Scandal

One of the best known cases involving a special investigation department may be the 1976 Lockheed scandal. In this case, the public prosecutors of the Special Investigation Department, Tokyo District Public Prosecutors Office, found that Lockheed Aircraft Corporation had paid millions of dollars (more than 500 million yen) to Japanese government officials through a Japanese agency, Marubeni Trading Corporation, to smooth the way for the sale of Lockheed's airplanes to a Japanese airline corporation, All Nippon Airways. Besides many executives of Marubeni and All Nippon Airways, the former Prime Minister, Kakuei Tanaka, the former Minister of Transportation, and the former Parliamentary Vice-Minister of Transportation were arrested and prosecuted for giving and receiving bribes. The former Prime Minister was sentenced to four years imprisonment with forced labor. The Tokyo High Court rejected his appeal. He died while the case was in the Supreme Court, and so the case against him was dismissed in 1993.

### C. The impact of the Lockheed Scandal

This case was one of the most sensational cases in the history of Japan. The impact was very large and the people wanted to change the money politics and eliminate the money-brokering politician. However, even after arrest and prosecution, Tanaka had immeasurable power in the Diet. He had been a kingmaker for several years. Therefore, the political reform did not go smoothly.

### D. Recruit Scandal

Another noted scandal was the Recruit scandal. This was another large-scale corruption case that the same department handled in 1988. In this case, executives of Recruit Cosmos Corporation, a real estate company, and its mother company, Recruit Corporation, sold the rights to buy stocks (that had been scheduled to be offered for public subscription and were sure the rights value after that) to high-ranking government officials as bribes. These officials included the Chief Secretary to the Prime Minister, the Vice Minister of Education, the Vice-Minister of Labor, and the President of Japan Telephone and Telegram Corporation. All were arrested and prosecuted by public prosecutors. Some cases have been closed, while others are still being contested.

### E. Cabinet Decision Regarding the Enforcement of Official Discipline

After the Recruit Scandal surfaced, a Cabinet Decision Regarding the Enforcement of Official Discipline was made in December 1988. It states that government officials should refrain from acts, which could invite public suspicion, such as contacting business people who have an interest in official duties. A Notice by the Chief Cabinet Secretary to each Ministry and Agency was issued in this regard. Further, in April 1989 the Administrative Vice-Ministers' Council decided on an Agreement Concerning Official Disciplinary Inspections. Based on this agreement, an inspection of the state of the enforcement of official discipline was implemented in each Ministry and Agency in addition to establishing an official discipline inspection committee.

### F. Introduction of a Single-Member Constituency System

One of the reasons for accepting bribes in the Recruit Scandal was that the suspects

wanted to fund their election. At that time to be a successful candidate for the Diet it was very costly. Therefore, the Government considered changing the election system so that an election campaign would not be so expensive. One of the ideas to change the system was to introduce a single-member constituency system. After serious discussion at the Diet, this system was introduced and it revised the Public Offices Election Law in March 1994.

### G. Kyouwa Scandal

Yet another case involving the Tokyo Special Investigation Department was the Kyouwa scandal. This affair involved bribes amounting to approximately 80 million yen to Abe Fumio by Kyouwa, a firm that manufactures steel girders. When the scandal broke, Fumio was the Secretary-General of the Liberal Democratic Party, the ruling party. Prior to that he had been head of the Hokkaido and Okinawa development agencies. In exchange for bribes he disclosed important government secrets to Kyouwa. Amid accusations of corruption, he resigned in December 1991. He was arrested in January 1992, and in May 1994 was sentenced to two years imprisonment with forced labor.

### H. Sagawa Kyubin Scandal, 1992-93

The Sagawa Kyubin parcel service firm donated generous sums of money to politicians of the Liberal Democratic Party (hereinafter "LDP") responsible for transport matters as well as to other influential politicians in other parties. A rapidly expanding firm, Sagawa Kyubin had high hopes of thus obtaining the licenses for a nationwide parcel service. What was special about this affair was the fact that monies had not only been paid to politicians but also to one of the syndicates of organized crime (*Yakuza*). The fact that Kanemaru Shin, the Deputy Secretary General of the LDP, had actively sought such contact while engaged in the election campaign of Takeshita Noboru, greatly damaged confidence in the LDP.

### I. Law Concerning Disclosure of Assets of the Members of the Diet for the Purpose of Ensuring Ethics in Politics

The above two cases showed that these politicians received large amounts of money due to their position. To ensure the transparency of their income and property, the Law concerning Disclosure of Assets of the Members of the Diet for the Purpose of Ensuring Ethics in Politics was enacted in December 1992. Therefore, all members of the Diet have to make public their real estate, money deposited at financial institutions, valuables, loans and debts etc.

### J. The Tax Evasion Scandal by Kanemaru Shin

While the other scandals involved the financing of political activities, this was arguably a case of personal enrichment and thus rather different, especially when it emerged that the extent of the tax evasion was quite enormous. During a house search, valuables worth 3,600 million yen were seized. In March 1993 he was arrested and prosecuted by the public prosecutors of the Special Investigation Department in the Tokyo District Public Prosecutors Office.

### K. General Contractors (Genecon) Scandal

In connection with payments to politicians by large enterprises in the building and construction industry (general contractors "Genecon"), the Mayor of the city of Sendai was arrested and prosecuted in 1993. The scandal soon widened, involving also the Governors of the

Prefectures of Ibaraki and Miyagi. Both of them were also arrested and prosecuted; all of them were convicted.

## L. Nakamura Scandal

In 1994 the former Minister of Construction was arrested and indicted by the public prosecutor of the same department on a charge of receiving bribes in exchange for using his influence on behalf of a major construction corporation, Kajima. He was sentenced to 18 months imprisonment with forced labor in 1997. The Tokyo High Court rejected his appeal and the case is still being contested in the Supreme Court.

## M. Okamitsu Scandal

In December 1996, Okamitsu a former Vice Minister of Health and Welfare, was arrested for receiving 60 million yen and other contributions in kind in bribes from the head of a welfare business group in return for favors regarding the construction of special subsidized nursing homes. In June 1998, the Tokyo District Court sentenced him to two years in prison. This case is now being tried in the Supreme Court.

## N. Strict Internal Directive

Soon After the Okamitsu Scandal surfaced, in December 1996, the Administrative Vice-Ministers' Council agreed to establish an internal structure at every Ministry and Agency to ensure civil servant discipline. Based on this agreement, Ministries and Agencies prepared their internal directives on how to deal with the private sector and public officials of different organizations as well as set up their internal committees on discipline. The internal directive regulates all the officials and stipulates "must-not" items in detail. For example, any official must not have lunch with any interested contractor. Any official who violates the regulation of the directive may be reprimanded under the National Public Service Law.

## O. Wining-and-Dining Scandal by the Elite Bureaucracy in the Ministry of Finance

The Wining-and-Dining Scandal by the Elite Bureaucracy in the Ministry of Finance (hereinafter "MOF") was uncovered in 1997-98. The investigation revealed hundreds of MOF officials engaged in illegal unseemly acts and one official on the elite career track was charged with corruption, acceptance of bribes. Internally, MOF itself disciplined at least 112 officials who accepted entertainment from financial institutions and insurance companies.

## P. The National Public Service Ethics Law

As I mentioned above, even after every ministry and agency established an internal structure to ensure discipline by government officials, inappropriate incidents involving central government officials (e.g. Wining-and-Dining Scandal by the Elite Bureaucracy in the Ministry of Finance) were uncovered one after another including some bribery cases. It seemed that self-disciplinary measures by each ministry and agency itself had their limit. Therefore, a different approach was adopted. With a view to stamping out unethical behavior, a study committee on the ethics of government officials was established in February 1998 in accordance with the instructions of the Prime Minister. This committee mainly consisted of the members of the Administrative Vice-Ministers' Council. It pursued a study on the legislation of ethical standards of government officials in close association with ruling parties. As a consequence, the members

of the Diet compiled a bill on the ethics of central government officials and the ruling parties submitted the bill to the Diet in 1998. Finally it was enacted in August 1999. I will explain the details of this law in the next Chapter.

## Q. Political Funds Control Law

This law was enacted, in view of promoting a democratic society, with the aim to keep the flow of political money open and fair by registering the political groups including political parties, disclosing their income and expenditure, and regulating the amount of donations to politicians, public office candidates and political groups. It includes criminal provisions in order to bring violators to justice. It has been revised from time to time when its effectiveness was questioned, especially when the above scandals, such as the Sagawa Kyubin scandal, the Tax Evasion scandal by Kanemaru Shin, the Genecon scandal and so on, were uncovered. As a rule, individual politicians are prohibited from receiving political donations.

Recent revisions of the law banned corporations from donating directly to the fund-management groups managed by individual politicians. Such corporations are allowed, however, to donate political funds, depending upon their size, to political parties to which the politicians belong. The law was revised on 20 December 1999, at the Diet, and was enforced on 1 January 2000. Some political analysts claim that the revision cannot eliminate the scandal-tainted political circle because of the loopholes in the law. Most of the prominent politicians manipulate the local chapters of the political party, which can receive political donations. Violation of the law, especially acceptance of banned political donations does not mean receiving a bribe in the legal sense, but in the common sense.

## R. Nakao Scandal

Former Construction Minister Eiichi Nakao, who allegedly took 30 million yen in bribes from a construction company while he was in office between June 1996 and September 1996, was arrested on 30 June 2000. He was indicted on the charge, and subsequently arrested and indicted on another 30 million yen bribery case. He was sentenced to 2 years in prison and ordered to pay 60 million yen as part of the criminal punishment, the equivalent value of the bribe taken by him. The presiding Judge was reported to have said that Nakao bore a grave criminal responsibility and deserved harsh criticism for damaging the public's trust in politics. During his trial, he admitted his crime, showed his remorse, and apologized to the public for having betrayed their confidence, but could not avoid imprisonment, although usually such defendants who receive prison terms without suspension are few, it is possible if they show remorse towards their past deeds.

## S. Suzuki Scandal

Most recently, Muneo Suzuki, a senior member of the House of Representatives, who was reported to be a most influential figure in several ministries including the Ministry of Foreign Affairs was arrested and indicted on charges of bribery. He is accused of accepting a 5,000,000 yen bribe from a timber company in return for lenient treatment in an illegal logging case. He denies the charge, saying the money was a gift. Now he is under trial.

### T. Law Concerning Punishment for the Receipt of Profit for the Exertion of Influence by Persons in Public Offices

With regard to both cases mentioned above, I have to mention the new law entitled the Law concerning Punishment for the Receipt of Profit for the Exertion of Influence by Persons in Public Offices which was enacted in November 2000. This law was passed by the Diet as a response to the public distrust against politics caused by corruption cases involving members of the Diet, e.g. Nakao Case, and this new law has been in force since March 2001. The penal provisions are directed to members of the Diet, members of the local assemblies, heads of local governments and secretaries of the members of the Diet who receive financial gain in response to a request for exerting influence or having exerted influence based on their official position upon public officials in connection with the awarding of contracts or administrative dispositions. Persons who offer financial gains are also punished. Because of the Suzuki scandal, this law was revised in July 2002 to include private secretaries of members of the Diet.

## IV. NEW MEASURES TO PREVENT CORRUPTION IN JAPAN

### A. An Effective and Strict Rule for Public Officials

As I mentioned in Chapter III a strict law for national public officials to prevent their corruption was enacted recently. They are forced to conform to the National Public Service Ethics Law. It was passed in August 1999 and enacted in April 2000.

The objective of this law is to ensure people trust public services, deterring activities that create suspicions or distrust against the fairness of performance of duties by introducing necessary measures to contribute to retaining ethics related to the duties of national public service officials. It acknowledges that national public service officials are servants of all people and their duties are to fulfill public service entrusted by the public.

In this law many strict regulations are stipulated. For example, a report on the receipt of a gift is obligatory. Senior officials shall report to their heads of ministries or agencies when they receive a gift or hospitality worth more than 5,000 yen and compensation for their labor performed based on the relation between an organization or an entity and their duties the amount of which exceeds 5,000 yen from an organization or an entity. The report described above shall be open to the public upon request (applicable only in regard to gifts, hospitality or compensation exceeding 20,000 yen).

With reference to mandatory reports on the exchange of stocks and income, very senior officials shall report to their heads of ministries or agencies on the annual exchange of stocks, bonds and annual income.

The National Public Service Ethics Board (to be hereinafter referred to as the "Board"), which is responsible for the affairs concerning retention of ethics among public officials, was established within the National Personnel Authority. The Board is composed of a President and four Members, who are appointed by the Cabinet with the consent of the Upper and the Lower Houses of the Diet.

The duties and responsibilities of the Board are to develop a standard of disciplinary actions as punishment against public officials violating this law, or other regulations based on this law, to conduct research and studies concerning retention of ethics in national public services, to

give guidance and suggestions to the heads of ministries and agencies in their efforts to establish and maintain management systems that encourage public officials to follow the law. The Board is also entitled to review the copies of reports sent to the Board described in the above paragraphs, request the appointing officers to investigate the alleged violation of this law, or the other regulations based on this law, and to take necessary actions at the discretion of the Board, impose a disciplinary action as punishment against the employees violating this law, the Code, or the other regulations based on this law at the discretion of the Board.

If an official violates the law, they must be subject to disciplinary action, such as suspension from their duties, a reduction in salary, dismissal from their office or a reprimand.

The impact of this law is very large and has had a good influence on public officials' behavior. Before this law was enacted, high ranking public officials sometimes indulged in entertainment given by interested persons. However, after this law was passed these occurrences have been reduced.

**B. Information Disclosure Mechanism**

In accordance with the principle that sovereignty resides with the people, trying to achieve the aim of maintaining transparency in the authorities, and providing for the right to request the disclosure of administrative documents, etc., the Disclosure of Information Act was approved by the Diet in May 1999. The law went into effect in 2001. The purpose of the law is to strive for greater disclosure of information held by administrative organs, thereby ensuring that the government is accountable to the people for its various operations. Under this Law any person may request disclosure of administrative documents.

At first, information disclosure mechanisms in Japan started to work at the local level. Citizens' groups have utilized information disclosure ordinances in order to check inappropriate use of public money, and achieved some concrete results. Though there is plenty of room for improvement, information disclosure mechanisms in local governments have played a very important role in enhancing their transparency. The enactment of the national law, the Disclosure of Information Act was also significant in achieving greater transparency of the administration.

Under the law, new organs within the Cabinet (the Cabinet Secretariat, the Cabinet Office, etc.), and organs under the jurisdiction of the Cabinet (the National Personnel Authority) etc., as well as the Board of Audit, are established.

The scope is as follows: documents, drawings, and electromagnetic records that, having been prepared or obtained by an employee of an administrative organ in the course of his or her duties, are held by the administrative organ concerned for organizational use by its employees. However, non-disclosure of information is provided by the law and these exceptions are, for instance, information concerning an individual from which a particular individual can be identified.

With regard to the procedure for the disposition of disclosure requests, disclosure decisions shall be made within thirty days of the date of the disclosure request (a maximum thirty days extension is possible). When information relating to a third party is recorded in an administrative document, the third party may be given the opportunity to submit a written opinion. That opportunity shall be afforded when disclosure takes place due to public interest reasons. Documents, etc. shall be disclosed by inspection or provision of copies, and

electromagnetic recordings shall be disclosed by a method to be determined by cabinet order. The fees for disclosure requests and the implementation of disclosure shall reflect the actual expenses to be determined by cabinet order. Consideration shall be given to see that the fees are as affordable as possible.

The Information Disclosure Review Board was established within the Cabinet Office in order to examine and deliberate appeals in response to references from the heads of administrative organs concerning appeals of disclosure decisions. The Review Board consists of nine members appointed by the Prime Minister having been approved by both Houses. The Review Board may request that the reference agency 1) present the administrative documents concerned with the appeal, or 2) produce and submit materials classifying or arranging in a manner specified by the Review Board the information recorded in the administrative documents concerned with the appeal. The Review Board may have a designated member hear statements of opinion from the appellant. The plaintiff may file an information disclosure lawsuit with the district court in the seat of the high court that has jurisdiction over the plaintiff's residence.

The introduction of an information disclosure system changes and is changing the ways things work in the administration, both at national government and at local government levels. One result is that public officials now have more sense of responsibility and they keep the spirit of "accountability" in their mind when actually doing their work. Now public servants try to do their best so that they can do a good job as seen from the viewpoint of the public, rather than as seen from the viewpoint of the administrative insiders.

With an information disclosure mechanism, if public servants believe that they are doing a really good job, they will feel that the public trusts their work more than before, because citizens are watching and scrutinizing them. An information disclosure system itself cannot eliminate corruption immediately, but such systems can create an environment in which corruption is made more difficult.

## V. TRADITIONAL MEASURES TO PREVENT CORRUPTION IN JAPAN - ESPECIALLY FOR PUBLIC PROSECUTORS AND JUDGES

### A. Adequate Remuneration for Public Officials, Especially Judges and Public Prosecutors

In Japan, generally speaking the Government pays an adequate salary to public officials. The amount is enough to maintain a middle class life. Among the public officials, a higher salary is paid to the police, and correctional officers compared with other civil officers. Therefore, recently the most popular occupation among parents for their children is to become a public official. This is because the salary is given until retirement age, there is no dismissal without disciplinary sanctions and it carries a respectable social status. Moreover, they are provided with apartments by the government while they work as public officers. They can expect a stable life until their retirement, and receive retirement money and a life pension afterwards. A disciplinary discharge due to illegal acts such as bribery, disrupts their total life plan.

For your reference, the National Personnel Authority (NPA), an organization under the Cabinet, has responsibility for the issues related to the personnel of the government. The NPA submits a remuneration report and recommendation to the Cabinet and the Diet every year, based on research and a survey of the salaries in Japan including the private sector. The government takes it into consideration when it decides the salaries of public officers for the next year. So as

for public officers, in general, their salary level is maintained, not lower than workers in the private sector.

For the purpose of maintaining the integrity, the status and salary of judges is guaranteed by law and kept substantially higher than other public officers. In the case of public prosecutors who have an equivalent status as judges, the same practice is implemented. Therefore, they receive a much higher salary than ordinary public officials by about 2 or 3 times. When they are transferred to other courts or public prosecutors office, the Government provides appropriate residences for them. Furthermore they are provided with adequate facilities and competent assistants to carry out their work.

## B. Effective Systems to Prevent the Abuse of Power and Maintain the Integrity of Public Prosecutors

### 1. Internal Restrictions

In order to ensure an appropriate disposition and prevent an erroneous or arbitrary exercise of discretion, there are several systems of checks in Japan. The first works as a self-check system. In Japan, each public prosecutor is fully competent to perform prosecutorial work. It can be said that each prosecutor constitutes a single administrative agency. On the other hand, being subject to the control and supervision of senior public prosecutors, their approval is required in making prosecutorial decisions. It is evident that prosecutors themselves are aware that they may easily fall into self-righteousness, leading to arbitrary dispositions, whether intentionally or unintentionally. It is sometimes very useful, especially for young and inexperienced prosecutors, to consult a senior to discuss the best disposition of a case. Accordingly, the prosecutors office has developed some procedures for making their decisions more objective, and a prosecutor, whenever refraining from instituting a prosecution, must show their reasons in writing and must obtain approval from their senior, who in turn is careful to examine whether their decision is well grounded.

### 2. External Restrictions (in cases not to prosecute)

If the prosecutor still makes an arbitrary decision when they decide not to prosecute by use of their discretion, there are three additional restrictions: (1) inquest into prosecution, (2) analogical (or quasi) institution of prosecution and (3) complaint to High Prosecutors Office.

To ensure those systems, the victims should receive the result of the disposition by public prosecutors. Therefore, we have a notification program to victims. In the Criminal Code of Procedure (hereinafter, "CCP"), a public prosecutor should promptly notify the complainant, accuser or claimant of the result of the disposition (CCP article 260). In particular, on request of the complainant, accuser or claimant, a public prosecutor should give reasons why the case was not prosecuted (CCP article 261), for instance "suspension of prosecution", "insufficiency of evidence" etc. However, in order for the criminal justice system to be better understood and receive the cooperation of the public, and to exercise power more appropriately, other efforts are necessary. Therefore, the Notification to Victims, etc. Program was launched on 1 April 1999.

When the victims, a bereaved family or witnesses desire notification, a public prosecutor shall inform in word or writing as follows;

(i) the disposition of the case (e.g. prosecution for formal trial, prosecution for summary

proceedings, non-prosecution or referral to the family court),
(ii) in prosecuted cases, the name of the court and the date of the trial,
(iii) the result of the judgment, sentencing, whether to appeal to a higher court,
(iv) a summary of the prosecuted offences, a heading and a summary of the non-prosecution, whether detained, bailed etc.

a) Prosecution Review Commission

This system's purpose is to maintain the proper exercise of the public prosecutors' power by subjecting it to popular review. There is a Prosecution Review Commission in each district court. The Commission consists of 11 members selected from among persons eligible to vote for members of the House of Representatives of the Diet. It is empowered to examine the propriety of decisions by public prosecutors not to institute prosecution. The Commission must conduct an investigation whenever it receives an investigation request from an injured party or a person authorized to make a complaint or accusation. In some instances, the Commission can carry out investigations on its own initiative, and is competent to examine witnesses in the course of the investigation.

The Commission then notifies the Chief Prosecutor of the District Public Prosecutors Office of its conclusion. If the non-prosecution is found to be improper by the Commission, the Chief Prosecutor orders a public prosecutor from the same office to further investigate the case and to re-examine the original disposition. After the re-investigation and re-examination, the public prosecutor in charge must ask for the approval of the Superintending Prosecutor before making the final disposition.

Although the Commission's verdict is not binding upon the prosecutor, it is highly respected in the re-investigation process. Since Japan does not have a jury system or private prosecution system, "prosecution review" allows the public to participate in the criminal justice administration. Recently, from the point of view of expansion of participation by the people in the justice system, the Justice System Reform Council suggests that the existing system should be changed and a system should be introduced that grants legally binding effect to certain resolutions of the Inquests into Prosecution in order to further expand the role of those Inquests. Therefore, the Council considers the structure, authority and procedures of the Inquests into Prosecution, as well as who files the indictments and conducts the prosecution at trial.

b) "Analogical Institution of Prosecution through Judicial Action" or "Quasi Prosecution"

The sole exception to the monopolization of prosecution by public prosecutors is called the system of "Analogical Institution of Prosecution through Judicial Action" or "Quasi-Prosecution". This system purports to protect the parties injured by crimes involving abuse of authority by public officials. A person, who has made a complaint or accusation and is not satisfied with the public prosecutor's decision not to prosecute, may apply to the court to order the case to be tried. The court, after conducting hearings, must either dismiss the application, or order the case to be tried if well-founded. If the application is granted, then a practicing lawyer is appointed by the court to exercise the functions of the public prosecutor.

c) Complaints to Higher Prosecutors Office

This system is not stipulated in the legislation. However, in practice, those who are not satisfied with the disposition of non-prosecution may appeal to the Higher Prosecutors Office and

urge the exercise of supervisory powers. If necessary, the Higher Prosecutors Office might review the case and sometimes request re-investigation by the original prosecutors office.

3. External Restrictions (in cases to prosecute)

On the contrary, if public prosecutors abuse their power to prosecute when they do not have enough evidence, at the trial, judges will announce not guilty and criticize the indictment and the procedure of the investigations. This will cause a sensation in Japan and the mass media will be sure to criticize it. This works to prevent abuse of power by public prosecutors and is one of the ways to maintain the integrity of public prosecutors in Japan.

### C. Effective Systems to Prevent the Abuse of Power and Maintain the Integrity of Judges

In Japan the judicial system itself works to prevent corruption of judges. Firstly, the judgment is announced in an open court and it is printed soon after the announcement. Enough reasons are requested in the judgment. Furthermore, the documents are open to the people after the case is completely finished. So it is easy for the parties involved and the mass-media to criticize the judgment. Therefore, if the judges are corrupt, the people soon recognize it according to that system.

Secondly major cases are judged by three judges on a bench and the parties have the right to appeal. This acts as a check because each judge can "supervise" the other.

On the other hand, if judges commit corruption, investigative organizations, especially the Special Investigation Department of the District Public Prosecutors Office will start investigations. As I mentioned before, there have been no judges prosecuted for corruption but a judge was arrested for corruption about 20 years ago. He was an assistant judge and his name was Taniai. He received two golf clubs, a golf bag and two business suits from a private lawyer whose case was handled by Taniai. However, the amount or value of the bribery was not enough to be prosecuted and he was released after detention. He was dealt with by suspension of prosecution. However, he was soon dismissed by the Court of Impeachment, a legislative body composed of Representatives and Councillors drawn from the Diet.

## VI. RESTORING THE INTEGRITY OF PUBLIC PROSECUTORS AND JUDGES

### A. Two Serious Cases Committed by Public Prosecutors

Frankly speaking, the Japanese believe in the integrity of judges and public prosecutors. The trust in them by the people is really high. In actual fact most Japanese people do not believe these persons accept bribes. However, I have to introduce two serious cases committed by public prosecutors and in the first case there is also some concern about a judge.

(i) Yamashita Case

A suspect, Ms. Sonoko Furukawa, a former judge's wife, began harassing the victim, a girlfriend of her lover, out of jealousy in late 2000. She sent many harassing messages to the victim, some of them, reading, "I will kill you." Not only that, the suspect made more than 1,200 silent calls to the company of the victim's husband and distributed defamatory handouts at the elementary school of the victims son.

During the investigation by the police, Eiji Yamashita, a former deputy chief public prosecutor at the Fukuoka District Public Prosecutors Office leaked investigative information to the suspect's husband, Mr. Furukawa. Because Yamashita wanted him to stop the suspect's conduct. So Yamashita advised him to warn his wife not to further harass the victims. Yamashita's intention was not wrong but his conduct possibly violated some laws even though he never received a bribe from anyone. Finally Yamashita was not prosecuted but forced to resign in March 2000 after being suspended from duty for three months.

Soon after uncovering this case, the Minister of Justice apologized to the people through the mass media and explained about new education and training programs for public prosecutors. The details of this program will be introduced later.

(ii) Mitsui Case

The next case is also a very serious bribery case which was committed by a Senior Public Prosecutor in April 2002. His name is Tamaki Mitsui and he was the Director of the Public Security Department of the Osaka High Public Prosecutors Office. He accepted hospitality from a gang member in return for providing him with information on police investigations. When he attempted to buy real estate in Osaka Prefecture in 1994, he used the name of an assistant public prosecutor to obtain inside information about the land from a credit union to which it had been mortgaged. This is a case of abusing power and it is prohibited as it is defined as corruption by the Penal Code. Moreover, he had been on friendly terms with Tadamitsu Tomari, a gang member, and Mitsui had personally thanked Tomari for setting him up with a prostitute and giving him 50,000 yen. In return, Mitsui offered to help Tomari when he was in trouble. Furthermore, Mitsui was wined and dined by Tomari at expensive nightclubs in June and July of the previous year in return for providing him with information about police investigations and the criminal record of another gang member who was on the run. Mitsui's total entertainment bill reportedly ran to 280,000 yen. He also used false documents last July to receive a tax reduction on the purchase of an apartment in Chuo Ward, Kobe in Hyogo Prefecture. This is a fraud case. Mitsui's case is the only one which has been committed by a public prosecutor since World War II.

Regarding the investigation process, the first step was that information was sent to the Osaka High Public Prosecutors Office in an anonymous letter. The letter said that Mitsui had a relationship with gangsters and it was believed that he had received money from the gangsters. Then, the Osaka High Public Prosecutors Office started the investigation with two or three assistant officers who were former members of the Special Unit in the Special Investigation Department of the Osaka District Public Prosecutors Office. They had to ensure total secrecy because the suspect, Mitsui worked in the same office.

They already knew that Mitsui was very fond of investing and making deals in real estate. Therefore, they went to the Nishinomiya Municipal Administrative Office to look into the real estate registry books which are made for taxation purposes. They looked at the books to find the real estate which was owned by Mitsui. They tried to investigate all of Mitsui's real estate dealings and ways he bought real estate. At first they went to real estate registry offices to look at the registry books. These showed who owned the real estate and who sold it to the present owner and so on. They found one property, an apartment, was sold from Mitsui to Tomari. It revealed the relationship between Mitsui and Tomari. They inquired into the dealing, especially the tax. Because if Mitsui bought the room as his own residence, he did not need to pay tax, but if he bought it for investment, he had to pay tax. Mitsui sold the room soon after he bought it to Tomari, but he applied for an exemption from taxation to the Nishinomiya Municipal

Administrative Office because he pretended the room was his personal residence. Consequently, they found Mitsui had falsified documents to receive a tax reduction on the purchase of the apartment.

They also interviewed the officers in the Osaka High Public Prosecutors Office in confidence in regard to Mitsui's activities and found that Mitsui had ordered an assistant officer to retrieve the criminal record of a related gang member of Tomari.

After this investigation, the Osaka High Public Prosecutors Office decided to transfer the evidence to the Special Investigation Department of the Osaka District Public Prosecutors Office. Then, the Head of the Department decided to start a compulsory investigation immediately. A public prosecutor of the Department called up Tomari at his office and arrested and questioned him. At first he denied it but finally he confessed to everything. Another public prosecutor also called up Mitsui and arrested him. Mitsui denied all of the cases and never confessed. Despite this, the Head of the Department decided to prosecute Mitsui. Mitsui's trial is now proceeding but Tomari has already been sentenced to 5 months imprisonment. Although the trial has not yet concluded Mitsui has been already dismissed for disciplinary reasons.

Soon after uncovering this case, the Minister of Justice apologized to the people through the mass media and promised to establish a new system to prevent such crimes by public prosecutors. The Minister of Justice ordered the Prosecutor-General to reform the system. One of the reformed systems is a reporting system of private economic activities by public prosecutors. The details of the new system will be introduced later.

## B. Restoring the Integrity of Public Prosecutors

Due to these cases, the Prosecutor General had to restore the integrity and confirm the confidence of the people. The most important thing to restore integrity and confidence is to deal with each case appropriately. People watch the disposition of each case and they consider what the public prosecutors are going to do. If public prosecutors are corrupt, the people and the mass media will soon find the dispositions inadequate and criticize them very severely. On the contrary, if public prosecutors perform their task adequately, the people trust them. This is the most important basic principle of Japanese public prosecutors.

Additionally, new systems are adopted for restoring the integrity of public prosecutors. These are as follows.

### 1. Training and Education Programs for Public Prosecutors

For the purpose of cultivating the integrity of each public prosecutor, the Supreme Public Prosecutors Office provides new programs for young public prosecutors. In general training programs, new ethics programs are provided such as listening to victims of crime. Some of the young public prosecutors are sent to private lawyers offices or private companies for several months to learn about ordinary people's lives.

For a senior public prosecutor (defined by length of service - 22 years experience) the Supreme Public Prosecutors Office provides new training programs on how to manage a public prosecutors office with integrity and how to be trusted by the people. In the programs they are lectured to by victims, mass media representatives, police officers and so on.

2. New Strict Regulations on Public Prosecutors Concerning their Private Economic Activities

The Supreme Public Prosecutors Office instructed all public prosecutors to maintain integrity not only in their work but also in their private life. Because to maintain the trust of the public all public prosecutors have to lead upstanding lives even in private matters. Therefore, the Supreme Public Prosecutors Office made strict new rules for public prosecutors regarding their private economic activities. If a public prosecutor buys or sells real estate or stocks, he/she has to report it to the Prosecutor-General via his/her direct bosses.

## C. Restoring the Integrity of Judges

1. The Real Situation of Judges in Japan

In the Yamashita Case, the judge, Mr. Furukawa also harmed the public's confidence in Judges. However, the integrity of Japanese judges is generally very high. There have been no judges prosecuted for a corruption case since World War II. I think that Japanese judges are one of the most decent professionals in the world. I would like to show two cases of how Japanese judges are clean and honest. Therefore, there are no discussions on how to prevent the corruption of judges in Japan.

The first case is the so called "Judge Yamaguchi Case". In the 1950's Japanese markets were under control by the Government because of the confusion after World War II. The people needed a kind of ticket which was issued by the Government to buy goods in the market. However, it was not enough to live and the people bought food or other goods on the black market. It was a violation against the economic control laws but they had to do it to survive. However, Judge Yamaguchi did not violate the laws and he did not buy anything on the black market. Finally he died from malnutrition. For him to comply with the laws was more important than his life.

The other case is the experience of a judge who participated in a UNAFEI training course. He and his wife are both District Court judges. His wife handles civil cases. They have a daughter who goes to kindergarten. About a year ago the father of their daughter's friend came to their residence. (The reason why he came was that he was a party in a case which the female judge handled) He never offered a bribe or favorable treatment of his case. It's possible he hoped for favorable treatment because of the good relationship between his daughter and their daughter. After his visit, the female judge asked the Chief Judge of the District Court to remove her from the case immediately. Of course, he did not commit any crime and the female judge did not act inappropriately. However, the people might think she treated him favorably because of his courtesy visit. She worried about that situation. Maybe she was over anxious but most judges want to avoid being thought of suspiciously by the people.

As I mentioned above, Japanese judges are very ethical. Therefore, they do not want to develop dubious relationships not only regarding the parties in their cases but also regarding their private lives.

2. Measures to Prevent Corruption by Judges and to Restore the Integrity of Judges

As I mentioned above, Japanese judges are very decent, but it may be the result of good strategies in the justice system. There are two measures to ensure their integrity: (1) Control by the Law for Impeachment of Judges (2) Control by the Law concerning Status of Judges.

(i) Control by the Law for Impeachment of Judges

In Japan no executive organ or agency can take disciplinary action against a judge. This power is vested only in the Court of Impeachment, a legislative body composed of Representatives and Councillors drawn from the Diet. The Court of Impeachment may dismiss a judge if he/she neglects his/her duties to a remarkable degree, or if there has been misconduct, whether or not it relates to official duties.

With regard to the procedure of impeachment of judges, the Committee of Impeachment, a legislative body composed of Representatives and Councillors drawn from the Diet should prosecute a suspected judge in the Court of Impeachment. There are about 200-300 complaints which are received by the Committee every year. However, owing to strict screening by the Committee, only a few cases have been prosecuted since World War II. There are about 8 cases. One of them is the Taniai Case which I introduced earlier. This system plays a role of restraining judges from receiving bribes.

(ii) Control by the Law Concerning Status of Judges

In Japan each High Court can take disciplinary action against judges who are under its jurisdiction. The disciplinary sanctions are only minor fines (under 10,000yen) and reprimands. These sanctions seem light but the effect of a warning is enough. This system is also thought to contribute to the prevention of corruption by judges.

## VII. CONCLUSION

Preventing corruption is important, yet it poses many difficulties. In order to restore the integrity of public officials and maintain the people's trust in the public administration and in the judicial field, the Government should take various and comprehensive measures to curb corruption and enforce strict official discipline. Apart from that, it is very important to have a positive, effective and strong political will to eradicate corruption.

For the purposes of eradicating corruption, public support is indispensable. In order to mobilize public support, the Government is encouraged to initiate public awareness campaigns and implement educational programs on the dangerous of corruption.

Ensuring good governance in the public sector is a prerequisite for containing corruption. Therefore, we should introduce the following: careful selection of staff with competence and integrity for public service; adequate remuneration; an establishment of a code of conduct, including rules concerning conflicts of interest and incompatibilities; strict internal and external controls including random audits and independent anti-corruption bodies and so on.

The highest possible degree of transparency of the public sector should be maintained to promote integrity and to fight corruption. The mass media and NGOs play an important role in ensuring transparency. The Government should ensure a public right of access to information. Disclosure of assets of certain public officials should be considered.

Penalties for corruption offenses should be effective, proportionate and persuasive. The fact that an offender has acted for the benefit of an organized criminal group should be treated as an aggravating circumstance in sentencing. Bribes should be subject to confiscation. Bribery

offenders could also be deprived of privileges and proceeds derived from the offense.

I believe such comprehensive measures will establish a society without corruption.

# RESTORING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM: ELIMINATING CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM

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## I. INTRODUCTION

In a democratic society, the integrity of the criminal justice system is very important because every element within the system has a close connection with the so called index or indices of democracy, in particular the existence of an open, accountable and responsive government, the promotion and protection of human rights (specifically civil and political rights) and the character of its civil society as a society of self-confident citizens. (Beetham, 1999, pp.162-169). The meaning of integrity includes commitment to the values of honesty and totality or wholeness of the criminal justice system in achieving its goals as well as, the consistency of the system to uphold the basic values of the system.

As a system, the criminal justice system consists of a physical system - namely the network of the judicial system which utilizes the enforcement of substantive criminal law, law of criminal procedure and law of the implementation of criminal sanctions - and an abstract system - namely a system of philosophy and values which control all efforts in the attainment of the aims of the system. The aims of the criminal justice system cover three stages namely the short term stage (rehabilitation of the offender); the medium stage (crime prevention); and the long term stage (social welfare).

Furthermore, the term "restoring integrity" has a special meaning for Indonesia, more so since 1998, when Indonesia began its ongoing process of reforms and transformation towards becoming a democratic society.

Reforms themselves should be interpreted as an organized effort of the nation to actualize the indices of democracy. In this case, the major problem of the criminal justice system is not only limited to the frustration caused by the massive volume of cases (overworked and understaffed) and the severity of overcrowding in the correctional institutions. In the transition to becoming a democratic society, there are several difficult problems to overcome. These problems hamper efforts to restore the integrity of the criminal justice system. These serious complications include, practices of obstruction of justice, miscarriages of justice, politicization of the criminal justice system and corruption; these problems are more often than not interrelated.

Obstruction of justice consists of: (a) The use of physical force, threats or intimidation, or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences; (b) the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences. (Palermo Convention, 2000, Art. 23).

Miscarriage of justice occurs whenever suspects, defendants or convicts are mistreated by the State in breach of their rights, whether because of, first, deficient processes or, second, the

laws which are applied to them or, third, because there is no factual justification for the applied treatment or punishment; fourth, whenever suspects or defendants or convicts are treated adversely by the State to a disproportionate extent in comparison with the need to protect the rights of others; fifth, whenever the rights of others are not effectively or proportionately protected or vindicated by State action against wrongdoers or, sixth, by State law itself. (Walker and Starmer, 1999, 99. 31- 33).

Politicizing the criminal justice system involves perverting the judicial or criminal justice process in order to achieve particular political ends. These ends are generally to punish enemies of the regime in power or to deter others from joining those enemies. A politicized criminal justice system may also involve an attempt to get publicity for causes that are supported by a regime's opponents. (Fairchild and Dammer, 2001, p. 12).

According to substantive law, the crime of corruption has been defined very comprehensively, but in terms of the criminal justice system the crime of corruption should be defined as the crime of bribery which includes several unlawful acts, as follows:

(i) The promise, offering or giving to a justice or law enforcement official directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the justice or official act or refrain from acting in the exercise of his or her official duties;
(ii) The soliciting or acceptance by a justice or law enforcement official, directly or indirectly, of an undue advantage, for the official himself or herself or other person or entity, in order that the justice or official act or refrain from acting in the exercise of his or her official duties. (Palermo Convention, 2000, Art. 8).

## II. BASIC VALUES OF THE CRIMINAL JUSTICE SYSTEM

The integrity of the judiciary as well as the criminal justice system is central to the maintenance of a democratic society. Through the judiciary and the criminal justice system the rule of law is applied and human rights are protected. Without an impartial judiciary and the criminal justice system, the democratic character of a society will be destroyed. To adequately fulfill this rule, the judicial system and the criminal justice system must be independent and impartial.

A democratic government requires a system of checks and balances to prevent one branch of government from abusing its authority and taking away rights provided by the Constitution. So we have the "executive branch" which enforces the law; the "legislative branch" which makes the law and the "judicial branch" which interprets the law.

The judicial branch consists of the courts, which includes the district courts, the high courts (courts of appeal) and the Supreme Court and are all protected by the universal principle of the independence of the judiciary. An independent judiciary is essential in a democracy, but as a part of the (criminal) justice system, the independent judiciary should be supported by other essential elements such as police and a public prosecutor with sufficient independence from political process and other interferences (i.e. bribery) that allows the agencies to aggressively enforce the laws. Consequently, the character of being independent and impartial is not only implemented in terms of the judiciary, but also includes other elements of the criminal justice system. This concept is very important to understand because the police public prosecutors are part of the executive branch which have a close relationship with executive power. (Horton, 2000, pp. 2-3).

The values of any system of justice may be classified as professed values and underlying values. Professed values are those that are proclaimed as values by the participants in the system. For example, equal justice under law, independence of the judiciary, fair and impartial trial, non-discrimination, human rights etc. - the ideal that most established systems of justice aim for is to treat all individuals equally and according to an existing rule, regardless of social status or background. Underlying values are those that are not openly proclaimed but that nevertheless govern actions within the criminal justice system. Efficiency, or expeditious handling of cases, is one such value. Affirmation of local culture is another underlying value in the criminal justice process. (Fairchild and Dammer, 2001, pp. 11).

Public service ethics in crime and justice are another such underlying value which should be upheld by police officers, public prosecutors, correctional officers, judges and legal professionals. According to the Josephson Institute of Ethics, these kinds of ethics consist of the following principles:

(i) *Public Service*. Public servants should treat their office as a public trust, only using the power and resources of public office to the advantage of public interests, and not to attain personal benefit or pursue any other private interest incompatible with the public good.
(ii) *Objective Judgment*. Public servants should employ independent objective judgment in performing their duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.
(iii) *Accountability*. Public servants should assure that government is conducted openly, efficiently, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.
(iv) *Democratic Leadership*. Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.
(v) *Respectability*. Public servants should safeguard public confidence in the integrity of government by being honest, fair, caring and respectful and by avoiding conduct creating the appearance of impropriety or which is otherwise unbefitting a public official.(Pollock, 1998, pp. 5).

## III. THE NATURE OF CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM

Corruption is an old affliction, and no corruption is more damaging than the corruption among justice and security officials, those pledged to uphold the law. Official corruption can speed environmental destruction, accelerate the drug trade, even encourage the smuggling of biological, chemical or nuclear weapon materials.

Economically, corruption represents an arbitrary, exorbitant tax. It can lead to wasteful government spending, higher deficit, greater income inequality, and a crisis of confidence that cam spark capital flight, crash the economy, destabilize governments, and put people half way around the world out of work. The crisis has been aggravated by corruption. Robert Klitgaard, Dean of the Rand Graduate School in Santa Monica California, has developed a formula to gauge the likelihood of corruption. He describes it: $C = M + D - A$ or "Corruption equals Monopoly plus Discretion minus Accountability." If you have a monopoly, you are far likelier to become corrupt. (Al Gore, 1999).

In Terms of discretion, the chief administrators of the criminal justice system have a

responsibility to ensure that officers under their command exercise sound, mature and thoughtful discretion. In the framework of the criminal justice system, limits on the use of discretion vary from element to element of the system. The following chart further defines who within the judicial system uses discretion and how they use it.

USE OF DISCRETION WITHIN THE CRIMINAL JUSTICE SYSTEM

| Type of Justice Official | When Discretion Is Used |
|---|---|
| Police | When investigating crimes<br>While searching for people<br>While enforcing laws<br>While detaining or arresting |
| Prosecutors | When seeking indictments<br>When investigating specific crimes<br>While detaining<br>While filing charges<br>While dropping cases<br>While reducing charges |
| Judges | When dismissing charges<br>While detaining<br>While imposing sentences |
| Correctional Officials | When assigning to a correction facility<br>For disciplinary matters<br>When awarding privileges<br>When determining remission<br>When determining conditional release |

(Trautman, 1988, pp. 43-44).

The Declaration of the Global Forum on Fighting Corruption: Safeguarding Integrity Among Justice and Security Officials (Washington DC, 1999) asserted that corruption of justice and security officials, especially-betrays their trust. Corruption cannot long co-exist with democracy and the rule of law. Corruption misallocates resources, hurts the poor, and weakens economies and societies.

The UN Palermo Convention Against Transnational Organized Crime (2000) also criminalizes acts of corruption, which in some countries have greatly aided the rapid growth of organized crime, besides criminalization of participation in an organized criminal group, laundering of proceeds of crime, and other serious crime, where the offence is transnational in nature and involves on organized criminal group.

The judicial and criminal justice system is corrupted when any act or omission is intended to result in the loss of impartiality of the judiciary and other elements of the criminal justice system. Specifically, corruption occurs whenever a judge and other criminal justice officers seeks or receives a benefit of any kind or promise of a benefit of any kind in respect to an exercise of power or other action. Such acts usually constitute criminal offences under criminal law. Examples of corrupt criminal conduct are:

- bribery;
- fraud;
- utilization of public resources for private gain;
- deliberate loss of court and criminal justice process records; and
- deliberate alteration of court and criminal justice process records.

Corruption also occurs when, instead of procedures being determined on the basis of evidence and the law, they are decided on the basis of improper influences, inducements, pressures, threats, or interferences, directly or indirectly, from any quarter or any reason including those arising from:

- a conflict of interest;
- nepotism;
- favoritism to friends;
- consideration of promotional prospects;
- consideration of post retirement placements;
- improper socialization with members of the legal profession, the executive or the legislature;
- socialization with litigants, or prospective litigants;
- predetermination of an issue involved in the litigation;
- prejudice;
- having regard to the power of government or political parties. (CIJL, 2000).

## IV. POLICY AND STRATEGIC FRAMEWORK FOR THE ELIMINATION OF CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM

Recognizing the corrosive and negative impact of corruption in the criminal justice system, particularly on the maintenance of a democratic society, the rule of law and the legal protection of human rights, the government should be implementing policies and strategic frameworks based upon a triple-track approach that could prevent, detect and combat corruption in the criminal justice system.

### A. The Preventive Approach :

(i) Increasing criminal justice system officials' awareness and compliance to the basic values of the criminal justice system (professed values and underlying values), public service ethics (public service, objective judgment, democratic leadership, accountability, and respectability);
(ii) Encouraging criminal justice officials, including lawyers to assist in preventing and eliminating corruption;
(iii) Creating a culture of intolerance to corruption in the criminal justice system;
(iv) Encouraging the consideration of the corruption of the criminal justice system as an impediment to the protection of human rights;
(v) Ensuring the independence, integrity and impartiality of the criminal justice system, among others by criminalizing the obstruction of justice ;
(vi) Requiring that the selection, appointment, education and promotion of criminal justice officials be based on merit and provide protection against appointments or promotion for extraneous reasons or improper motives;
(vii) Improving the overall conditions of service in the criminal justice system including adequate funding and salaries;
(viii) Basic legal training of criminal justice officials, associations of lawyers as well as academic

institutions should include the teaching of ethics intensively;

(ix) Formulating and socializing a Code of Conduct for the criminal justice officials based on international standards;

(x) Developing international cooperation to prevent, detect and investigate corruption in the criminal justice system, such as joint training and technical assistance programs, harmonization of law, joint investigations on a case by case basis, mutual legal assistance, extradition, exchange of information, etc.

**B. The Detection Approach:**

(i) Increasing public awareness and providing encouragement to the public to participate in the process of detecting, exposing, preventing and eliminating corruption in the criminal justice system, and therefore, increasing public confidence in the criminal justice system and in the judiciary;

(ii) Encouraging participation of the public, civil society coalitions and the independent media, by a synergy of efforts in reporting and criticizing corruption in the criminal justice system;

(iii) Protecting informants, complainants and witnesses thereby ensuring they are not victimized. This scheme could include examples of the type of measures which may be employed such as confidentiality, anonymity, safe conduct (limited immunity from prosecution) and the use of a video-link in cases where the victim is unable or unwilling to be present. The existence of a "Whistleblower" law should also be considered.

**C. The Repressive Approach:**

(i) Complaints and allegations of corruption against criminal justice system officials should be investigated promptly, consistently according to the rule of law;

(ii) Bar Associations should provide strong and effective professional mechanisms and sanctions to be imposed on members of the legal profession who engage in or assist corruption in the criminal justice system;

(iii) Provide an independent mechanism for the investigation and prosecution of corruption committed by criminal justice officials;

## V. GENERAL CONCLUSIONS

Since May 1998 upholding the supremacy of law and maintaining the principle of good governance by combating corruption, collusion and nepotism have been top priorities of the Government of Indonesia. The existence of People Consultative Assembly Decree No. XI/1998, Law No. 28/1999, Law No. 31/1999 Jo., Law No. 20/2001, Law No. 15/2002 on Money Laundering which stipulates that corruption is a predicate offence, the creation of a Judicial Commission in the New Constitution to safeguard the dignity and honor of judges, the existence of an Anti Corruption Commission in the near future, all demonstrates the sound political will of the government to eliminate all kinds of corruption, collusion and nepotism systematically.

Nevertheless, the success or failure to eliminate and combat corruption will actually depend on three factors namely, political will, a comprehensive strategy - either preventive, by detection or a repressive strategy - and last but not least public participation and public pressure to fight against corruption.

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