

# UNIVERSAL PRINCIPLE

- Human Rights Newsletter from JCLU -

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## WOMEN

### U.S. Mitsubishi Sexual Harassment: NOW Vice President Speaks Out

On June 27, 1996 -- while shareholders of various companies were holding general meetings throughout the nation -- the JCLU held a lecture featuring Ms. Rosemary Dempsey, Vice President of the National Organization for Women (NOW), based in Washington, D.C. The meeting, entitled "Japanese Firms in the U.S. and the Rights of Female Workers," was held at the Tokyo Women's Plaza in Aoyama, Tokyo.

Since April 9, 1996, when the U.S. Federal Equal Employment Commission brought a class-action suit against U.S. Mitsubishi Motors on account of sexual harassment, NOW has been pursuing a campaign criticizing Mitsubishi. Ms. Dempsey scheduled her visit to Japan to coincide with the general meeting of Mitsubishi Motors shareholders.

As Ms. Dempsey's visit was arranged on rather short notice, the JCLU had relatively little time to publicize the coming lecture. Despite the short notice, however, about 70 people were in attendance, demonstrating the high level of public concern over the issue. Strikingly, not only were there women present but many men in corporate positions, who actively participated in the discussion. The meeting was covered by several media organizations, which recorded the lecture and interviewed the audience.

Ms. Dempsey began by describing how NOW had been addressing the issue of sexual harassment at Mitsubishi. She mentioned that Mitsubishi was extremely defensive at first. It was only later, she said, that company representatives began to acknowledge the significance of the accusations, and she recognized that working conditions for women at Mitsubishi had not been static, but had actually been improving gradually. During her visit to Japan, Ms. Dempsey was able to meet with the Tokyo representatives of Mitsubishi. She noted the rapid increase in concern regarding the problem of sexual harassment at the company and called attention to the great success of the picket outside the Mitsubishi shareholders' general meeting in raising awareness.

Ms. Dempsey emphasized the realities of the sexual harassment and sexual discrimination that had taken place at Mitsubishi and rejected the notion that the accusations of harassment were just another example of American "Japan bashing." The problem could not be properly addressed, she said, if viewed as something caused by a negative climate between two countries.

When asked if the problem could have been caused not by sexism but by cultural differences between Japan and the U.S., Ms. Dempsey admitted to the existence of "difference" in general and went on to elaborate on specific differences between the two countries. In particular, she stressed differences in the legal frameworks of the U.S. and Japan. She maintained that while U.S. corporations have had to follow the country's stringent laws and regulations, Japanese corporations have existed in a system that lacks legal safeguards and an appropriate settlement system. While the U.S. system has contributed to corporate sensitivity to sexual harassment, the Japanese system has, she said, greatly hindered the appropriate disposition of harassment cases like this one.

Ms. Dempsey concluded her lecture by mentioning that her visit to Japan was a success insofar as she was able to meet with various Japanese women's groups and human rights groups, thus expanding the international network for women's human rights.

*\*The idea for the lecture was proposed by Mr. Hiroshi Kashiwagi, International Director of the Japan Pacific Resource Network. The JCLU Human Rights Consulting Committee was in charge of organizing the lecture. It was indeed a precious and timely opportunity to hear from the Vice President of NOW. We would like to thank Mr. Kashiwagi for this proposal and also for translating on the day of the lecture.*

[Jinken Shimbun, July 25, 1996, No. 301]

### Article 24 of the Constitution after 50 Years: with the Drafter, Ms. Beate Sirota Gordon

by Ms. Masako Kamiya  
JCLU Board Member  
Professor at Gakushuin University

Ms. Beate Sirota Gordon appeared before us with a gentle and sweet smile, a figure I had a hard time reconciling with my image of a person responsible for

drafting sexual equality into the Japanese Constitution and so significantly impacting the lives of postwar Japanese women. As a member of the Government Section of the occupation GHQ/SCAP (Supreme Commander for Allied Powers), she took part in the drafting of the so-called MacArthur Draft Constitution, working immediately under Colonel Charles Kades. Had it not been for knowledge of her important role in the promotion of women's rights, the meeting would simply have been a chance to get to know a respectable woman who is familiar with pre-war Japan, the daughter of pianist Leo Sirota. Instead, it was an impressive opportunity to talk to a great historical figure.

Ms. Sirota Gordon was twenty-two years old when she landed at the Atsugi Air Base on December 24, 1945. She had lived in the United States for a period of five years prior to that trip. Her visit coincided with the moment at which the Constitution of Japan was to be revised in preparation for the country's democratization.

While the Japanese government's Constitutional Problem Investigation Committee (Matsumoto Committee) -- headed by Minister of State Mr. Joji Matsumoto -- examined a draft of the new Constitution, several civil groups had formulated and publicized a model Constitution on their own. At this stage, the GHQ/SCAP had little intention of involving itself in the drafting process.

Women's suffrage had been achieved in postwar Japan with the revision of the Election Law of the House of Representatives on November 17, 1945. However, this development did not necessarily mean that the government had a specific interest in promoting women's rights:

Ms. Sirota Gordon's involvement in the drafting process started on February 4, 1946, when *the Mainichi Shimbun* reported an exclusive story of the draft Constitution prepared by the Matsumoto Committee. The GHQ/SCAP, having noticed that the principles of the Matsumoto Committee were incompatible with its own, started working on a model draft of a democratic constitution to serve as a guide for the Japanese government. The draft was to be completed in one week.

This new work at the Government Section of the GHQ/SCAP was certified as top secret. For this reason, Ms. Sirota Gordon explained, she remained largely silent about the drafting process, even after the GHQ made it

public. She was particularly apprehensive of revealing that the clause on women had been drafted by a young woman, as well as that the GHQ had consulted the constitutions of Weimar Germany and the USSR. She thought that these facts, should they be disclosed, might give the conservative movement -- which was already gaining popularity and strength in the 1950s -- the opportunity to make reactionary revisions to the new Constitution.

In the drafting session, Ms. Sirota Gordon tried to include quite detailed provisions, including social security for women. These attempts were made in order to safeguard Japanese women's rights -- which had been largely ignored in the past -- by stipulating specific constitutional rights that the law would have to follow accordingly. The study committee, however, rejected her ideas as being too specific for a constitution and argued that they should be covered by laws instead. Her original provision was simplified to the provision of legal protection for families and marriage, the latter of which was to be based on agreement and cooperation between the sexes. In the end, reference to family was deleted and her draft provision took the present form of Article 24:

*Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.*

*With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.*

Among the elements of Ms. Sirota Gordon's original draft that were excluded from the final Constitution were certain social provisions to which Japanese women today are still denied easy access: public assistance and protection of pregnant and breast feeding women; free medical care for children; and non-discrimination against children born out-of-wedlock. Ms. Sirota Gordon expressed regret that she had not been more insistent. However, I believe the situation would have been worse had it not been for her knowledge and insights about the realities of Japanese women at that time. Surely, I am not alone in this belief.

Lieutenant Colonel Weed once said that Japanese women "owe a little appreciation" to Ms. Sirota Gordon. During the hour-and-a-half meeting with her, I became convinced of her words. Except for one thing -- the



adjective "little" should be deleted.

[Jinken Shimbun, July 25, 1996, No. 301]

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**"The External Genitals of Japanese Women": A Scholarly Work?**

by Hitoshi Kawai, M.D.

Representative Director, Kyoto JCLU

A Kansai Joint Regular Meeting, organized this year by the JCLU Kyoto, was held at the Kyoto Rakuyo Kyokai on November 2, 1995. The topic of the meeting was a book entitled *The External Genitals of Japanese Women*. The reporters were Mr. Kinoue Inoue and Ms. Keiko Okada, representatives of a group organized to protest the book's publication.

Misgivings over the book, published by the Free Press Service, were first raised when the book was advertized on the front page of *the Asahi Shimbun* in September 1995. Shortly afterward, the book was also introduced in various weekly magazines, such as *Shukan Bunshun*.

Concerned citizens started a protest against the author -- Mr. Hiroshi Kasai, Assistant Professor of Gynecology at Shiga University of Medical Science -- and the publisher. They also requested an investigation by the Hygiene Department of the Shiga Prefecture, the Ministry of Health and Welfare, and the Ministry of Education. In addition, claims have been filed with the Public Prosecutor's Office, the Ministry of Justice, and other relevant bodies for the alleged obscenity of the book.

Shiga University of Medical Science has formed its own investigative committee regarding the allegations. The University seems, however, to have put forth only a token effort. At the moment, the University has admitted that in the past, the author has indeed taken pictures and measurements of his patients' genitals and printed this material in his other books without patient consent. However, the University is denying responsibility by maintaining, "The pictures included in this specific book were, according to the author, taken outside of the University hospital and with the consent of his patients. As the author says that he has destroyed pictures taken inside the University hospital, we no longer have authority to investigate this matter."

The author is said to have collected pictures of 8,330 cases. Since he has worked at Shiga University of Medical Science for fifteen years, most of these pictures were, in all probability, taken from patients he had treated while at the University. Furthermore, several facts indicate that his practice of unconsented documentation has long been known inside the University. Despite its significant role in the matter, the University has simply disposed of the case by issuing a written warning against the author and accepting his voluntary retirement at the end of March 1996.

Both the author and publisher insist that *The External Genitals of Japanese Women* is a scholarly book. Such an assertion, however, does not seem to be supported by the fact that the book has been sold to the general public and has enjoyed such rare popularity that three additional printings have been produced.

In addition to the above facts reported by the protest group, an element of sexual harassment has been introduced by a participant who claims to have been misdiagnosed by Dr. Kasai, the author. She has expressed that the newly revealed allegations regarding the publication of the book and invasion of patients' privacy have multiplied her original pain and anger, to the extent that she feels raped.

This case involves, on one hand, a human rights violation within the context of medical practice and, on the other, the issue of obscenity. The two elements converge on the issue of sexual harassment. At the moment, however, it would be more effective to approach this problem within the context of the former two elements: medical ethics and obscenity.

With regard to medical ethics, it is evident that the author, Dr. Kasai, violated the contract of treatment (unauthorized measurement and picture-taking which were irrelevant to treatment). It is also evident that he violated the patients' privacy by publishing the pictures without consent.

The author and the publisher maintain that the book was solely a scholastic endeavor. However, as stated in the Declaration of Helsinki, adopted by the World Medical Association, studies irrelevant to treatment should not be permitted. A mere assertion of "scholarly work" cannot justify such a book. *The External Genitals of Japanese Women* must indeed be scrutinized under this internationally recognized standard.

The book ostensibly maintains the appearance of a scholarly work. When closely examined, however, the displays of the photos and descriptions in the book cannot avoid suspicion of pornographic intention. Foremost, the book is openly available to the general public, while most academic works have restricted access. These facts substantiate the suspicion that the book's primary nature is obscene, rather than scholarly.

Other books and publications by Dr. Kasai suggest that his work contains elements that are not purely scholarly. Before this controversial work, he had published such books as *Science of Excellent Genital Organs*, *Introductory Skills to Please a Woman in Bed*, and *Fitness of Women*. These books, as well as his regular columns in a weekly magazine written after he had retired from the University, seem indicative of his non-scholarly intentions.

There is the potential that this case will be trivialized into a sexual scandal involving just another gynecologist, soon be forgotten. In order to avoid such irresponsible "yellow journalism," this case must be approached in a deliberate, strategic manner. It is important, at the outset, to focus on the issue of the patients' human rights violations, then to question the responsibilities of the author, Shiga University of Medical Science, the publisher, and other concerned parties.

It is evident that this is a case which has been caused and condoned by medical practices in Japan, where the rights of medical patients are hardly considered.

[*Jinken Shimbun*, November 25, 1996, No. 303]

*Editors' note: Prior to the above joint meeting in Kyoto, the JCLU held a meeting in Tokyo in July 1996 on the same issue, and invited members of a group protesting the book. Additional information concerning the above article -- provided by Ms. Machi Nishizawa and Ms. Keiko Tada, both from Niigata prefecture, and Ms. Keiko Okada from Shiga prefecture -- is as follows:*

#### **Actions Taken by the Group**

The group was formed two months after the book's publication under the claim that the work is a product of medical malpractice. The book contains seven hundred pictures of female external genitals.

The publisher insists that access to the book is limited only to those in the medical field. However, the

book is in fact available to the general public at bookstores without any restrictions.

The group sent a protest letter to the author, the publisher, and Shiga University of Medical Science requesting the retrieval of the book from bookstores, the curtailment of any additional sales, and a meeting with the author.

Shiga University of Medical Science established an inquiry commission in November 1995. In January 1996, it submitted a report to the Shiga prefecture. The report admits that the author had taken pictures of patients' external genitals without consent during his stay at the University Hospital. The report also asserts that the author and University exchanged a correspondence confirming the following points: 1) the submission of all the pictures taken and their negatives to the professor of gynecology at the University; 2) the abstinence from future publication of the pictures taken without consent; and 3) a request to the publisher to limit future sales to scholars of gynecology only.

The group has also taken legal measures. In April 1996, it filed a request with the Japan Federation of Bar Associations that the human rights violation be remedied. On June 3, 1996 it also submitted a request for the indictment of both the author and the publisher with the Otsu District Prosecutors' Office, where the request was received for consideration.

#### **Possibility of Civil Lawsuit**

The group has examined the possibility of filing a civil lawsuit as well. However, one substantial obstacle is the difficulty in identifying the victims. In addition, even if the victims could be identified, it would be still more difficult to persuade them to come forward as plaintiffs.

#### **Additional Approaches**

After the protest group's report, several suggestions were made by participants on possible future approaches. A civil suit might be feasible, but it would require elaborate and specific goals in order to be successful. In addition, the academic society and medical associations could be other targets against which to file a claim. Lastly, responsibility of Shiga University of Medical Science should also be questioned for the institution's inaction over the author's malpractice.

[*excerpts from Jinken Shimbun*, July 25, 1996, No. 301]

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**Eugenics Protection Law, Criminal  
Abortion, and Human Rights**

*On May 12, 1996, the JCLU held a commemorative symposium titled "Eugenics Protection Law, Criminal Abortion, and Human Rights" to coincide with its general assembly at Kuramae Kogyo Kaikan Hall in Shinbashi, Tokyo. The panelists were Ms. Keiko Higuchi, member of Machida city parliament and member of DPI Handicapped Women's Network, Mr. Takashi Wagatsuma, gynecologist, and Ms. Kiyoko Kinjo, JCLU Representative Director and Professor at Tsuda Women's College. This panel of experts was moderated by Mr. Yoshinori Nakanishi, a lawyer and member of the JCLU Committee for Mental Patients' Rights.*

**Commentary: Transformation of the Eugenics Protection Law into the Maternal Protection Act**

The Eugenics Protection Law, which was discussed heavily at the May Symposium, underwent a major transformation in June. Drafters of the amendment openly asserted that eugenic thought is the source of discrimination against the handicapped and therefore should be deleted from the Law. A statement on the reason for the amendment clearly read that the objective and some provisions of the Eugenics Protection Law discriminate against the handicapped because they contain elements that seek to prevent the birth of children who are deemed "defective."

The major reforms were the following:

- 1) Change the name of the law from Eugenics Protection Law to Maternal Protection Act.
- 2) Eliminate from the provision on the objectives of the law the term "the prevention of the birth of children deemed "defective."
- 3) Change the name of the operation from "eugenic operation" to "sterility operation."
- 4) Eliminate the article forcing the mentally handicapped to undergo coercive eugenic operations.
- 5) Under former legislation, the list of people not needing permission to undergo sterilization or abortion included the mentally ill and those with hereditary disease. Eliminate this part of the legislation.

These points are in accordance with the proposition, "Eugenic operations and abortions based on eugenic thought must be abolished," made by the JCLU

Committee for the Mental Patients' Rights. Although there remain questions as to why such obviously necessary reforms were enacted so late, these reforms must still be applauded.

Some women's groups, however, point out that these reforms are insufficient. First, the focus of the new law became the article giving permission for abortion. Thus, the name of the law seems inappropriate. "Maternal protection" generally means the protection of a woman's body during pregnancy and right after childbirth. As a result, this name does not coincide with the content of the law, which regulates abortion and sterilization, both of which involve deciding not to give birth. Besides, the name reinforces the traditional notion that women must give birth to children.

Furthermore, there was severe objection to the fact that a criminal law that punishes an abortion in certain circumstances still exists. While reproductive health/rights are clearly confirmed in the Platform for Action of the Beijing World Conference on Women, this reform does not consider this internationally recognized women's rights. We must note that a Senators' board on health and welfare adopted a resolution attached to the reformed bill that states, "To take full advantage of this reform regarding reproductive rights, there should be a general investigation of policies concerning women's health. Proper measures should be taken in the future."

Although the proposed reform is obviously necessary, there are many issues that are insufficiently addressed. Such shortcomings were also explored at the May symposium.

Issues that will become the focus of attention in the future are legislation that guarantee a woman's right to choose, and the abolition of the criminal abortion. The JCLU must utilize the unique strengths of its members in facing these problems.

**Lifestyle that Accommodates the Handicapped  
by Ms. Keiko Higuchi**

When I became aware of myself as a young child, I already had a handicap. Since I became ill when I was one-and-a-half year old, I received various messages about being handicapped from the society around me as I grew up. As a result, I identified myself as handicapped even before I identified myself as a woman or human being. I did many activities in the hope of a changing society and asserting the rights of the handicapped.



Women's opinions must be expressed by women, so we started DPI Handicapped Women's Network. As women with handicaps, we have been active in such areas as enhancing our own independence, trying to abolish the Eugenics Protection Law, and exchanging information with other people with disabilities. We view our situation in a positive light. We must choose our own way of living and achieve a lifestyle that is possible only for those with disabilities. But society has not progressed very much. Fifty years have passed since the war, yet the Eugenics Protection Law still exists.

In 1995, twenty-some members of DPI attended the Beijing World Conference on Women and held a workshop. The opinion was expressed that the Eugenics Protection Law trivialized people with disabilities, viewing them as inferior. Because of this, people with disabilities cannot have pride in this society and are forced to give up their hopes and aspirations. Furthermore, privacy is not considered in facilities for the handicapped. Thus women with disabilities have been made unaware that their privacy should be protected. Some members who have mental disabilities asked, "Why should our wombs be taken away? We want to choose what to do with our own bodies."

We cannot tolerate the forced use of women's bodies to control the population and manipulate lives. Due to this belief, we want to change the Mother-Child Health Law, and believe that we must appeal to the people to abolish the Eugenics Protection Law and criminal abortion.

#### **Seeking More Effective Birth Control by Mr. Takashi Wagatsuma**

Abortion is morally acceptable or not -- these distinct opinions seem to divide the world in two. From the standpoint of human rights, there are cases in which the reproductive rights of women and the rights of the fetus conflict. Each country has different laws concerning abortion. Many laws state that abortion is acceptable early in the pregnancy, if the woman chooses. During the mid-period of the pregnancy and afterward, many laws state that the fetus can no longer be aborted. In Japan, we have an application with conditions, meaning that women can have abortions after the mid-period of pregnancy for economic and health reasons.

We must define whether sterilization is a medical act or not. There are about five methods of contraception internationally recognized as safe. In Japan, however,

virtually none of those five methods are recognized. About twenty years ago, medical experts tested all varieties of contraceptive "rings," yielding very positive results. The Ministry of Health, however, has not approved this contraceptive method.

From our point of view, Japan is a very backward country when it comes to contraception. It seems that women are ill-informed regarding this situation.

Needless to say, it is important to support the right to choose and the abolition of criminal abortion in the Penal Code. I am not opposed to that. However, it is necessary to campaign for a "safer, more effective, better form of contraception." So often, couples use the rhythm method, the woman gets pregnant, and she must get an abortion. We must change this pattern. But I feel that changing it will be very difficult under current circumstances.

#### **Requesting the Formation of Pro-Choice Abortion Law**

**by Ms. Kiyoko Kinjo**

Many women around the world have become concerned about the legal nature of abortion and contraception.

When I am asked about these legal issues, I tell people, "In Japan we have a provision of criminal abortion and abortion is legal under certain conditions outlined in the Eugenics Protection Law." When foreign women hear this, they are outraged: "How can you have a law like the Eugenics Protection Law?" "The laws that are supposed to guarantee women's right to choose discriminate against the handicapped. Why do Japanese women allow such laws?" Women's right to choose has recently been recognized internationally, and in Japan the handicapped are taking leading, vocal roles in the crusade to abolish the Eugenics Protection Law. Under such circumstance, I believe that it is time for women in general, not just handicapped women, to grapple with this issue.

Since the purpose of the Eugenics Protection Law is the "prevention of the birth of defective children," it is impossible to correct the problem merely by reforming the wording of the law. We must abolish it altogether. Furthermore, I believe that the criminal law of abortion must be abolished.

I think it is necessary to create a law addressing

the artificial termination of pregnancies similar to the law that exists in England. This law dealing with the artificial termination of pregnancies should be limited to the regulation of terms within which a woman can have an abortion upon request. It should not allow or disallow abortions based on the economic situation of the mother.

In addition, when we consider the human rights of women, we realize that it is very important to guarantee reproductive health/rights. When we explain Japan's situations abroad, the next issue that is criticized by foreigners is the banning of the birth control pill. They ask me, "Why don't Japanese women vigorously pursue a campaign to lift the ban on the pill?" But my real feeling is that the pill has side-effects. Regardless of this, the nation should not ban the pill, but should allow women to choose whether or not to use it. Enough information should be provided to allow them to make educated decisions on this matter.

[Jinken Shimbun, March 25, 1997, No. 305]

### ▼ Lectures and Training for Aspiring Human Rights Trainers

The JCLU's Human Rights Consulting Committee (HRCC) held a twelve-hour intensive workshop for human rights trainers entitled "Lectures for Aspiring Human Rights Educators" on March 5 and 6, 1997. The workshop featured a lecture by Ms. Yuri Morita, chief analyst of affirmative action at University of California. About fifteen people who deal with human rights issues and belong to the personnel sections of private firms gathered at the Tokyo Women's Plaza, where the workshop was held. There, they wrestled with an intensive program that is quite unique in Japan.

Taking up the theme of sexual harassment, the first day of training dealt with the theories and practices of "diversity." The lecture covered the role of trainers and the skills necessary for them, as well as how to prevent sexual harassment. The second day focused on role-playing intended to help the aspiring trainers cope with and respond to sexual harassment. The HRCC is planning to make this program into a lecture series.

The HRCC will continue to coordinate the program and create curriculums for individual firms.

[Jinken Shimbun, March 25, 1997, No. 305]

### ▼ Seminar: Enlightening Working Men

*The JCLU held a serial lecture titled "Enlightening Working Men" on March 3 and 18, 1997. The lecture meetings were funded by the Asian Women's Fund, under its program to support activities addressing contemporary issues for women's human rights. The objective of the lectures was to create better circumstances for both working women and men by correcting the biased aspects of male-centered society, which nevertheless used to be dubbed "women's problems."*

#### Sexual Harassment

The first lecture featured Attorney Ms. Kazue Akita, a JCLU member, who reported on the issue of sexual harassment.

At the outset of the lecture, an American video was shown to the audience which takes up cases of sexual harassment at the workplace. It was an impressive video as it took note that men are barely aware of what women take as sexually offensive, and then elaborated on the way to persuade the male counterpart in a way that would make them understand.

Ms. Akita, then spoke on actual incidents of sexual harassment which she experienced herself as a legal trainee and at the workplace, and also on legal cases she has handled.

At the workplace, women who would attempt to protest sexual harassment would often suffer enormous "punishment." In many cases, her seniors would pressure her to resign, not directly, but by involving the concerned party at her work.

A standard regarding undesired actions, Ms. Akita suggested, be measured by the average women's sensitivity. She also proposed to set up an organ to handle complaints where women's privacy is protected and which guarantees that they will not be disadvantaged by filing the case.

The lecture was followed by an active discussion. On her remarks that she was offended that female hostesses were hired for a bar association's party, male participants asked whether she objected to the profession of hostesses as a whole. In response, Ms. Akita



commented that the point was the rather public, for lawyers, nature of the occasion while their presence would not have mattered had it been a private gathering.

### Child Prostitution

The second lecture featured the issue of child prostitution. Speakers were Mr. Shiro Yoshioka from ECPAT Tokyo, and Mr. Masanobu Usami, secretary to Senator Sumiko Shimizu.

Mr. Yoshioka reported on the current situation of child prostitution. Child prostitution has increased dramatically in the Philippines, Thailand and other Asian countries. There are Japanese men who have been arrested in these countries for engaging in alleged child prostitution or sexual abuse. There is the possibility that some of them may be found guilty under the domestic laws of the countries concerned.

He also referred to legal measures established in various countries. Some forty countries have banned the production and sale of child pornography. In addition, more than half of which punish the mere possession of the product. The movement to ban child pornography has intensified worldwide since the mid 1990s. Whereas in Japan, legal regulation has not materialized at all.

Following Mr. Yoshioka's report, Mr. Usami updated us on the domestic movement for legal regulations. Being a secretary to a senator, he has been involved in drafting a law to regulate commercial and sexual exploitation of children. From his studies, he pointed out shortcomings found in current domestic laws and ordinances.

Then he suggested an amendment to existing laws: lower the current age of 13 in establishing forced obscenity and rape without physical assault; dispense with the condition of complaint in establishing rape or extend the period of complaint. Mr. Usami also mentioned an idea to enact a law separately which solely handles prostitution.

Regarding child pornography, the concept itself is simply missed in Japanese laws. Therefore, concerned people has begun studies on eradication of production and sales of child pornography, starting with establishing a definition for such.

The two reporters agreed that there has been an improvement in the Japanese government's attitude which

had been extremely inactive before the 1996 World Convention on Elimination of Commercial and Sexual Exploitation of the Child. Although the government is still reluctant to amend or enact domestic laws, it nevertheless took an initial step with a campaign against child prostitution. Ten of the ministries and agencies involved made a poster to advocate eradication of child prostitution and child pornography.

The serial lectures resulted in a quite valuable experience as participants explored relatively new areas for JCLU activities.

[Jinken Shimbun, March 25, 1997, No. 305]

## RIGHT TO KNOW/ MASS MEDIA

### Forum: Information Disclosure and Mass Media/JCLU Model Outline of Information Disclosure Law

*On June 15, 1996, the JCLU held a forum entitled "Information Disclosure and the Mass Media" at Kanda Pensée Hall in Chiyoda-ku, Tokyo. The Forum was held immediately after the release of the government midterm report for the enactment of Information Disclosure Law. The government was also holding hearings from civil groups regarding the newly issued report. The Forum attracted more than 200 participants and featured quite an active floor discussion, an indication of the high level of interest in information disclosure among Japanese citizens.*

*The JCLU published the Model Outline of Information Disclosure Law in December, 1995. At the Forum, JCLU Secretary General Mr. Hiroshi Miyake suggested that the audience use the Model Outline to further advocate information disclosure for the people.*

*In response to the government's midterm report, the JCLU issued an opinion letter to the Administrative Reform Committee on July 8, 1996. The letter is composed of twenty articles that set out concrete proposals. The Model Outline of December, 1996, in Japanese, is available at the JCLU secretariat for 500 yen per copy.*

*The following are excerpts from the forum.*

### On Legislation Enabling Citizens to Watch Over their Government

**by Mr. Seiichi Kanise, Newscaster**

Asahi Television newscaster Mr. Seiichi Kanise, quoting that "information is the currency of democracy," predicted that with the advent of the Information Disclosure Law - which gives freelance journalists and nonfiction writers greater access to government information - the mass media will in turn have more access to such materials and be able to broaden coverage for the public at large. Mr. Kanise emphasized the importance of this development to Japanese citizens, as such legislation granting freedom of information would enable them to monitor legislative, administrative, and judicial activity.

In addition, offering an example from his own journalistic experience, Mr. Kanise said that the lack of public disclosure in former communist countries caused environmental pollution in the Black Triangle Zone, located on the borders of former East Germany, Poland, and former Czechoslovakia.

Based on his experience as an AP journalist, Mr. Kanise also discussed the U.S. Freedom of Information Act (FOIA). In 1966, when the law was first enacted, many of the public agencies were reluctant and passive in their release of information. However, with the outbreak of the Watergate scandal, the FOIA was revised and strengthened. Mr. Kanise emphasized that the main points of the FOIA are 1) that the government has the burden of proof to demonstrate that disclosure should not be made and 2) that the overriding principle is to have all information made public.

**Information Disclosure to Change a Closed Society**

**by Mr. Toshio Hara, Journalist**

Mr. Toshio Hara, a journalist, spoke of three situations that made him appreciate the great importance of an information disclosure system to the mass media. These situations took place during his three-year experience as head of the editing department (his term beginning in 1977) of Kyodo News Service.

The first example was the Three Mile Island nuclear reactor accident. The U.S. government's Power Regulation Committee had published the minutes of its meetings daily. This response to the accident was entirely different, Mr. Hara said, from the response given by the Power Reactor and Nuclear Fuel Development Corporation during the "Monju" fire incident which took place in the Niigata prefecture in January 1996, when

there was no apparent attempt made to share information with the media.

The second example was the case of Sweden, which established an information disclosure system as early as 1766. This system allows newspaper journalists free access to letters sent to the Stockholm City Mayor's office.

The third example was the Kyodo News Service Washington bureau's 1979 exposure of the KCIA's (Korean Central Intelligence Agency) involvement in the Kim Dae Jung Incident of August 1973. The KCIA's involvement was proved by an official telegram sent from the U.S. Embassy in Seoul to the U.S. government. The Kyodo's Washington bureau obtained the document by filing a request under the FOIA.

Mr. Hara stressed that for a closed society like Japan, the Information Disclosure Law will bring about a kind of civil revolution that will change the basic structure of society. He also emphasized the great impact that information disclosure will have on journalists.

**Voice of the People to the Government  
Midterm Report**

**by Mr. Hiroshi Miyake, JCLU Secretary  
General, Attorney-at-Law**

Based on the two journalists' reports on public disclosure of information, the JCLU Secretary General Hiroshi Miyake introduced the organization's Model Outline of Information Disclosure Law in December, 1995. On April 24, 1996, the Subcommittee on Administrative Reform of the government's Administrative Reform Committee introduced the Outline of the Information Disclosure Law ("Midterm Report"). The speaker compared the recent report by the government board with the JCLU's suggestions, and elaborated on its shortcomings.

According to Mr. Miyake, the problem with the Japanese Government's Midterm Report is that it has no restrictions to the privilege of declining to answer on the existence of requested documents. In the U.S., in contrast, common law holds that when the government is petitioned as to whether it has information, a disposition declining to answer is permitted only when the information is related to criminal records, national security, or is considered non-pertinent to the issue at hand.

Mr. Miyake also considered problematic the fact that information obtained from private industries by government officials with promises of confidentiality is certified as a non-disclosure item. Especially in Japan -- where administrative guidance is favored over strict adherence to laws and ordinances when obtaining non-mandatory private industry information -- there is a danger that large amounts of industry information will never be disclosed.

JCLU Board Member Mikio Akiyama, who is also an expert member of the government board, spoke from the floor and shared with the audience the principles which guided it in drafting the Midterm Report. The Report includes in its general provisions that "[I]n accordance with the principle of sovereignty of the people, this law shall provide for the right of the people to request disclosure of administrative information." This clause was inserted in order to clarify that the basis of the law resides in the Constitution.

In response, Dokkyo University Professor Mr. Masahiro Uzaki remarked that the Information Disclosure Law should not only include an objective but also an explicit guarantee of the "right to know." In this way, he added, it further clarifies the nature of the Law as not merely an abstract ideal based on people's sovereignty but as a more substantive instrument to promote human rights.

Of the over 200 participants, most were students. Indeed, this turnout seems to suggest that the future of the movement is highly contingent on attracting the commitment of the younger generation.

[*Jinken Shimbun*, July 25, 1996, No. 301]

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### **Government Final Report on Information Disclosure: JCLU Manifesto**

In response to the Draft Outline of the Information Disclosure Law, released by the government's Administrative Reform Committee on December 16, 1996, the JCLU submitted an opinion letter to the Prime Minister, Director General of the Management and Cooperation Agency, and major political parties. The letter, while acknowledging positive aspects of the government's Draft Outline, made amendments and proposed to expedite the enactment of the Information Disclosure Law.

The opinion letter gave a positive evaluation on the following points: 1) every person is entitled to file a claim for disclosure, 2) all national administrative organs are included as enforcement organizations, 3) applicable documents are not limited to those authorized or prepared for display, but include those "held by the administrative organ concerned for systematic use by its employees," and documents whose implementation has not started. Some of these stipulations exceed the standard practices implemented by the municipal governments.

The features, therefore, most sought after by the JCLU in its proposed amendments are: 1) an explicit statement on the people's right to know government information, 2) inclusion of special public corporations as organs involved in enforcement, 3) absolute disclosure of information regarding the title and full names of public officials in public posts, 4) disclosure of individual information granted with personal agreement to disclosure, 5) no non-disclosure of information concerning a corporation merely because the information is requested to an administrative organ that promises not to make it public, or usually engages in the practice of not making such information public, 6) more specific grounds for non-disclosure when national security, diplomacy, and crime are concerned, and 7) more specific grounds for the refusal to reveal the existence or non-existence of the information requested.

The opinion letter, in Japanese, is available from the JCLU office for the cost of printing and postage.

[*Jinken Shimbun*, March 25, 1997, No. 305]

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### **Forum: Government Final Report on the Information Disclosure Law**

On November 1, 1996, the panel of administrative information disclosure of the government's Administrative Reform Committee released the Draft Outline of the Information Disclosure Law (Final Report.) In response to the Final Report, the Action for Public Access, of which the JCLU is an affiliate, held a forum on administrative information disclosure.

The first report was given by Mr. Taizan Maezato from the planning bureau of Naha City, Okinawa Prefecture. Naha is known for its advanced practice of information disclosure. He reported on the city's victory in a court case filed by the central government to void the



city's disclosure of draft materials concerning the construction of the Self Defense Forces facilities. The City of Naha has been true to the ideal of its Information Disclosure Ordinance, he said, as exemplified by its full disclosure of the Mayor's social expenses. Social expenses of the municipality have grown into a major concern in the country for its confidentiality, the revealed irrelevance to work, and extraordinary amount.

Next, Attorney Hiroshi Miyake, the Secretary General of the JCLU elaborated on the Final Report. Many of the shortcomings of the Final Report includes: 1) exclusion of special public corporations, 2) unlimited non-disclosure provisions given to several categories, and 3) provisions which allow rejection to reveal either existence or non-existence of the documents requested. However, some stipulations in the Final Report contain improvements compared with the average ordinances of the local governments. In particular, the Final Report entitles "everyone" to request disclosure, and it holds documents that are not yet authorized or not prepared for display to be disclosed.

Despite the fact that the Forum took place on a weekday evening, the audience numbered more than one hundred, demonstrating citizen's keen interest in the administrative information disclosure.

[*Jinken Shimbun*, November 25, 1996, No. 303]

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**Japanese Embassy Hostage Incident:  
JCLU Statement on the Administrative  
Response of the Media**

The hostage crisis which occurred in Peru in December 1996 has brought forward several questions concerning the manner in which the media conducts its investigations and reports. Especially the Kyodo News Service (Kyoto) and Asahi TV (Asahi) whose reporters entered the Japanese Ambassador's residence and interviewed the guerrillas without permission of the Peruvian authority, incited a heated debate among many people. Various opinions have been presented about 1) whether this unauthorized interview with guerrillas could be justified under certain circumstances and 2) the problems that were inherent with the regulation of media by the Ministry of Foreign Affairs (MOFA) and the Ministry of Posts and Telecommunications (MPT).

On February 24, 1997, the JCLU submitted an

official statement to the Minister of MPT and to the president of Asahi which reads: 1) Any information Asahi received through the interviews must be open to the public as is reasonably possible, 2) The government must not intervene in media activity in any matter.

There are those who argue that such interviews might hinder the ongoing negotiations between the Peruvian government and the guerrillas, and thus adversely effect the lives of the hostages. However, since it is generally recognized that negotiations could take longer than expected and that the hostages are treated fairly well, Kyodo and Asahi judged that the interview would not have such negative repercussions. In regard to the fact that a wireless set was left inside the residence, such conduct is not problematic as the instruments could be useful in maintaining communications with the guerrillas, not to mention the fact that other media groups had already been using such devices.

However, it is troubling that Kyodo and Asahi have not released any of the information as of yet, even though it is speculated that the content of the recordings is newsworthy.

Meanwhile, the MPT has requested that every broadcasting company refrain from reporting and the MOFA has rejected every interview from the media. This attitude on part of the government towards the media illustrates that interference on its parts can hinder and daunt media activity in the future. Consequently, it is clear that such government regulations cannot be permitted under any condition.

[*Jinken Shimbun*, March 25, 1997, No. 305]

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**Prior Notice of the Date of Supreme Court  
Ruling**

On December 17, 1996, the Supreme Court promulgated the new Regulations of Civil Procedure. On the same day, the JCLU issued a statement on the new Regulations, giving a positive evaluation to a revision by which the Supreme Court will make a prior notice of its ruling day to the concerned parties.

The problem of Supreme Court's no announcement of the ruling day had long been pointed out by those who brought cases before the Supreme Court. In the 70s, the JCLU also studied this issue when

the Supreme Court judgement of the Naganuma Nike Incident, a case that questioned the legality to construct facilities of the Self Defense Forces, was given without a notice. Recently, the issue was brought again to the JCLU committee by a request from a member, who appealed to the Supreme Court with a claim to rectify disparities in the seat allocation of the House of Representatives. Despite his request to notify the date of the ruling, the Supreme Court delivered it without notifying the plaintiffs.

The JCLU Supreme Court Studies Committee conducted a series of probe and reached a conclusion that the current practice of no-notice of its ruling day is merely a custom without any basis in legal regulations. Furthermore, the committee said, it might even contravene the Code of Civil Procedure.

The view of the committee was upheld by the JCLU members who attended the monthly public lecture of April 1996. At the lecture, some members predicted that the forthcoming revision to the Code of Civil Procedure, which would limit Supreme Court ruling only to cases with major argument, will lessen their clerical procedures and thus create better circumstances to accept prior notice system.

Later, views shared at the meeting was actively lobbied to the advisory board of the Legislation of Civil Regulations by a JCLU member attorney, who was also a member of this board. Finally, prior notice has come to be provided in the new Regulations of Civil Procedure. It was an achievement resulted by a team work of the JCLU, reflecting efforts at various fields of the members concerned.

[Jinken Shimbun, No. 304, January 30, 1997]

## RIGHTS OF FOREIGNERS

**Foreigners' Human Rights in Japan:  
Lecture by Professor Hiroshi Tanaka  
by Mikiko Otani, Attorney-at-Law, JCLU Member**

*The JCLU held a seminar in Shonan, Kanagawa, on October 5 - 6, 1996. Professor Hiroshi Tanaka, also JCLU board member, gave a speech concerning human rights and Japan's policy on foreigners.*

Recently, legal magazines such as *Horitsu Jiho* and *Jurists* featured the 50th anniversary of Japanese Constitution as a special issue. While they elaborate on Constitutional arguments based on various specific cases, discussions on human rights of foreigners in Japan are entirely lacking.

The ban on nationality-based discrimination was issued as early as in 194\* through SCAPIN (one of the memoranda issued by the Supreme Commander for the Allied Powers to the Japanese government) No. 360. It ordered the Japanese government to abolish the practice of nationality-based discrimination in employment and other labor policies. A chronology of the government managed pension insurance for corporate employees shows that its nationality clause concerning the recipients was deleted due to SCAPIN 360. SCAPIN 360 also contributed to formulating Article 3 of the Labor Standard Law and the Employment Security Law which provide equal treatment for foreigners.

However, Article 9 of the Military Pension Law stipulates disqualification upon losing Japanese nationality. This article may contradict SCAPIN 360, which prohibits any nationality discrimination against all workers under government projects or private corporations. Why did a nationality clause remain in the Military Pension Law while it was deleted from stipulations concerning private corporations? Furthermore, nationality clause of the Military Pension Law has assimilated into all laws concerning aids for war victims, causing enormous problems to this day.

### **Discriminatory Nationality Clause**

Having realized the needs to eliminate discrimination and prejudice against Koreans in Japanese society, the Occupation Forces put in Article 16 of the MacArthur draft constitution that "Aliens shall be entitled to the equal protection of law." The first revision by the Japanese board, although modified in more Japanese ways, still retained equal protection of foreign nationals: "all natural people are, *irrespective of being a Japanese national or not*, equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status, family origin, or *nationality*." However, the draft was finalized into the present Article 14, deleting "*irrespective...*" and "*nationality*."

Article 25 of the Constitution provides a basis for social security. In practice, "(A)ll people" in this Article

appears to designate only those who hold Japanese nationality. On the other hand, the duty of the "people" to pay taxes provided in Article 30 has been applied to "residents" in Japan.

Textbooks of the Constitution say that social rights are to be guaranteed by a state of nationality. However, they do not hold the exclusion of the Child Allowance Law to Japanese children abroad unconstitutional. Consequently, "the social rights that are guaranteed by a state of nationality" is employed to exclude foreigners, and disregard Japanese who do not live in Japan.

#### **Only the External Pressure Can Change**

Out of all the social security mechanisms, employees' health insurance is the only system that is applicable to foreigners both in legal provisions and in practice. However, in reality, Korean nationals face enormous difficulties when trying to find employment at companies that can afford the health insurance system. The occupation government lifted the exclusion of foreigners from pensions for employees. However, after Japan restored its sovereignty, it once again excluded foreigners from the new national pension law. The law has come to include foreigners only after Japan reluctantly participated in the Refugee Convention in 1978, when it was urged by the climate of international community. Only international pressure can mobilize Japanese legal system to improve its treatment of foreigners.

In fact, drastic changes have taken place only after Japan participated in the Refugee Convention and International Covenants of Human Rights. In order to conform with these international instruments, nationality clause was entirely lifted from laws concerning public housing and social security. Before such incentives had been introduced, no arguments came forth to rectify an irrational structure where taxes are collected from foreigners but entirely exclude them upon distribution. It was the arrival of refugees that induced drastic changes. Maybe the legislators are not motivated by legal justice but by what they think as "mercy."

#### **Double Standard: Equality in Penal Execution**

The Law for Relief to Invalids and the War-Bereaved (1952) was enacted after the effectuation of the San Francisco Peace Treaty. This is the first social security law that was enacted after Japan regained sovereignty, and it has caused problems for the following

decades, until today. At the time this law was effectuated, April 1, Japanese nationality was valid for nationals from former colonies. Since it was impossible to exclude them by a "nationality clause," the law deliberately stipulated a retroactive effect and employed the Census Registration Law of 1947. Appendix 2 of this relief law states that those to whom the Census Registration Law is not applicable will be suspended from the application of this law. Applicability of former colony nationals to state compensation was therefore shuttered. Shortly after, on April 28, Japanese nationality of the Koreans was made void. Thereafter, a series of postwar compensation laws were made and directed to Japanese people only. A simple nationality clause made it possible.

Regarding penal execution, the Japanese government promised in Article 11 of the San Francisco Peace Treaty to succeed the execution of sentences delivered to "Japanese" war criminals. War criminals of former colonies requested an elucidation with the Tokyo District Court, based on the Habeas Corpus Law, claiming that they should be free from this provision as it concerns only the "Japanese" people. The case was brought straight to the Supreme Court, which rejected their claim by ruling that changes in nationality did not affect the penal execution by a state to which the person's nationality belonged at the time of the judgement.

Article 9 of the Military Pension Law stipulates disqualification of certain criminals and those who lost Japanese nationality. Regarding the former, the government continues to pay pension for those who were convicted as war criminals, on the basis that there is no applicable domestic law to disqualify "war criminals." However, the government did not dare to find a basis in domestic law to nullify the nationality of former Japanese. It swiftly employed international law, Article 2 of the San Francisco Peace Treaty, as a basis to deny their applicability to this domestic Military Pension Law.

#### **Postwar Compensation**

The biggest issue of Japan's postwar compensation is the double standard employed for Japanese people and foreigners. It has been fifty years since the last war, and the Japanese government still pays to bereaved families of officers and soldiers. Recently the government featured an ad on a newspaper that it will make a payment of 400,000 yen in national bond to a certain category of the war-bereaved. On the contrary,



the government cannot pay, for example, to former "comfort women". While making domestic payments for decades, the government insists that those payments to foreign nationals have terminated completely.

As the Law for the Medical Treatment, Etc., of Atomic Bomb Victims does not have a nationality clause, there is a united movement among Japanese and Korean people. The initial incident for this unity was a case of one Korean survivor. He was victimized in Hiroshima and returned to South Korea after the war. He travelled illegally to Japan for medical treatment and was arrested. He won on all claims at the District Court, High Court, and the Supreme Court. The Supreme Court ruled that, since there is no nationality clause in the Law for the Medical Treatment, Etc., of Atomic Bomb Victims, it should be applied to everyone in the country even if the person is an illegal traveler. The case opened ways for Korean survivors to have treatment in Japan by travelling on a tourist visa. Later, the Japanese government paid four billion yen for treatment of survivors in South Korea.

In 1995, the government implemented special condolence payment of 100,000 yen to Japanese victims who were killed by Atomic bombs or by related diseases. Equivalent measures should be considered for Korean parties to rectify unequal payment to Korean survivors.

#### **Contemporary Issues on Nationality**

The Administrative Appeal Law and the Administrative Procedure Law entirely lack provisions concerning immigration and naturalization. However, commentaries of the Administrative Procedure Law generally state that "people" in this law denote those who are involved in the administrative procedure and not restricted to those of Japanese nationality. Why, then, do these laws dismiss such issues as immigration of foreigners, visa extension, etc. ?

Regarding naturalization, the government used to publicize every fiscal year the number of application, recognition, rejection, and pending application. Today, however, they publicize only the number of those who were recognized. Conditions required for naturalization are rather ambiguous, such as upright conduct or capability of independent living. They should be revised so that the guideline is more transparent and specific by, for example, setting the minimum range of income.

Conditions for Japanese nationality should also be

revised. The Civil Code recognizes a retroactive effect by the acknowledgment of fatherhood. However, under the Nationality Law, a child with foreign nationality is no longer entitled to Japanese nationality even when a Japanese man acknowledges himself be his/her father.

[Jinken Shimbun, November 25, 1996, No. 303]

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#### **Police Intervention in Migrant Worker's Labor Dispute: JCLU's Request Letter**

On July 2, 1996, the JCLU had a legal consultation with supporters of Mr. A.B.M. Shajahan, a Bangladeshi worker, who was allegedly assaulted by policemen who came on the scene of a labor dispute and requested him to show his alien certificate.

The JCLU Legal Consultation Committee studied the case and reached a conclusion that it was presumable that the policemen were unjustifiably coercive and violated Mr. Shajahan's human rights. On September 20, the JCLU sent a questionnaire to the chief of the Ebara police station, who was in charge of the case, asking for further clarification of the facts.

Since there had been no response from the Ebara police station, the JCLU Board Meeting of November 12 decided to issue, this time, a letter of request to the Ebara police station. In a letter dated November 12, the JCLU has asked once again, calling attention to their work to protect lives and the physical integrity of individual persons, to respond to the questionnaire, and to take appropriate measures to prevent a recurrence of the same type of incident.

[Jinken Shimbun, November 25, 1996, No. 303]

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#### **Lecture Series: The Human Rights of Foreigners In Japan**

*With its long-time commitment and expertise in the area of human rights, the JCLU has taken up the issue of human rights of foreigners as one of the projects for its 50th anniversary, to be celebrated in November 1997. "White Paper of Human Rights of Foreigners in Japan," as the JCLU report is temporarily titled, will be published in October 1997. In preparation, the JCLU has held a lecture series exploring about various problems*

*facing foreigners in Japan.*

**1. Deportation and Criminal Procedure  
by Mr. Tadanori Onitsuka, Attorney-at-Law;  
Mr. Shoji Yanagawa, Attorney-at-Law**

**Deportation**

The first half of the session was a report on deportation procedure by Mr. Tadanori Onitsuka, a member of a group studying problems of immigration control. In 1995, deported foreigners numbered approximately 5,500. Illegal or inappropriate actions taken by immigration control officers are found at every stage of the deportation procedure, beginning with the initial physical restraint of the foreigner without having asked for the presentation of a passport, and ranging from actions taken during the arrest itself to the examination of the foreigner's objections to being arrested.

The period of physical restraint is limited by law to sixty days before a deportation order is issued. However, there is no limit to the detention period once the order is issued. In some cases, restraint will last up to one or two years due to the general rule requiring self-paying exit.

Facilities and treatment at immigration centers have various problems. When a center is crowded, as many as twenty persons are put together in a single cell of 26.4 square meters. Mattresses are sanitized only twice a year. Blankets are unsanitary, covered with hair and dust from previous users. An isolation cell, used for punishment, is five square meters without windows and is used to detain people under 24-hour surveillance. There have been cases in which a detainee was isolated in the cell for fifteen days while being handcuffed behind his back all the time, even at meals. Assault and injury by immigration control officers have continuously been reported.

Since the Ministry of Justice has been moving toward the amendment of the Immigration Control Law, his group sent the Ministry a paper at the end of 1995 making demands for institutional reform.

In the free discussion following Mr. Onitsuka's report, the opinion was expressed that this problem should be further addressed by an international organization. In addition, it was suggested that an opinion report be written up, based on clear legal grounds found in international human rights instruments, and

comparative studies of foreign laws.

**Criminal Procedure**

In the second half of the session, Mr. Shoji Yanagawa reported on criminal procedure concerning newcomers (foreigners other than permanent residents and refugees). The number of criminal cases involving newcomers has increased sharply since around 1990, and various problems for foreigners have arisen due to 1) differences in customs and legal consciousness, 2) foreigners' lack of familiarity with Japanese criminal procedures, and 3) Japanese criminal laws that are not intended for foreigners, etc.

The number of interpreters available to foreigners involved in criminal cases has increased considerably in the Tokyo area. Nevertheless, since interpreters with good reputations remain limited and in high demand, it is difficult for these interpreters to find time in their schedules to attend out-of-court sessions with detainees or prisoners. Though interpretation in court and during investigations by police and prosecutors should be conducted by different interpreters, even in Tokyo a court interpreter is sometimes not available for pre-indictment detention hearings. Thus, in court foreigners must work with interpreters provided by prosecutors.

At the moment, neither the court nor bar associations have set up explicit standards regarding the qualification of interpreters and their behavioral code (including confidentiality). There must be clear standards for people put in such an important role.

In the case of forged passport with real name unknown, the criminal procedure holds that the identification of the accused is admissible by means of a photo attached to an indictment. While identification at the court is this simple, it is not the case with immigration control. Those who have had their sentences suspended and have been sent to an immigration center are sometimes detained there for long periods of time because their form of identification does not satisfactorily determine their nationality and other characteristics required by immigration control. This problem is caused by a criminal procedure that does not presuppose a situation in which identification of nationality matters. People accused of having overstayed their visas who are released on bail are to be detained at an immigration center. As the immigration office is considered to have no obligation to make the accused appear in court, a prosecutor's assistant must go all the

way to the center with a writ of production to receive the accused. All these problems and inefficiencies are caused by the lack of coordination between the criminal and immigration control procedures.

While international instruments provide for advanced protection of the human rights of detainees, the significance of these international protections seems little appreciated in Japan. In court, defense counsels' claims -- when based on the International Covenant on Political and Civil Rights -- are often dismissed due to the court's conventional interpretation of international law. As the court's understanding of international human rights law seems seriously lacking, high expectations are placed on the shoulders of scholars to formulate decent theses aimed at raising awareness among judges and other concerned parties.

[Jinken Shimbun, September 20, 1996, No. 302]

## **2. Welfare and Labor Problems**

**by Mr. Toshio Takayama, Medical Care for All Foreigners!; Mr. Hisashi Menjo, Attorney-at-Law, JCLU Member, and; Mr. Akira Hatade, CALL Network, JCLU Member**

Mr. Takayama reported on the ever-present shortcomings of the medical care system for foreigners in Japan. The situation is most serious for those who have recently immigrated (newcomers), or who do not hold residency status. For example, in 1990 the application of the livelihood protection system -- which guarantees a minimum standard of living -- was abolished for foreigners who do not have residency status. The Ministry of Health and Welfare abolished this 36-year-old custom by simply having its unit chief give a speech regarding the decision.

Attorney Menjo introduced a case of a foreign woman who gave birth to a child with a Japanese father and was denied access to national health insurance by a local government. Though her marriage to a Japanese man and her registration as a foreigner were valid, the local government did not grant the insurance merely because she did not hold residency status.

Mr. Hatade summarized and analyzed the labor difficulties facing foreign workers in Japan in the last 10 years. He pointed out that the large difference in wages, income, and demand for labor between Japan and the countries of foreign workers create acute structural problems. Noting that South Korea has started offering partial amnesty to "illegal migrant workers," Mr. Hatade

suggested that Japan also consider instituting this measure.

## **3. Women**

**by Ms. Yuriho Fukushima, Women's House Sala**

Women's House Sala was established in 1992 as a shelter for foreign women. Some of its founding members were directly involved in rescuing a Thai woman who escaped trafficking in 1991. The organization's office and shelter are now located on the premises of a Christian church, and the group is funded by membership fees and public assistance.

The shelter was started as a refuge for foreign women, the majority of whom were Thai, who survived trafficking and abuse by their employers and customers. These days, Ms. Fukushima remarked, the majority of the clients of Sala has shifted to women and their children, who fled abusive Japanese husbands or partners.

## **4. Refugees**

**by Mr. Koki Abe, JCLU Board Member, Assistant Professor at Kanagawa University**

Mr. Abe is a member of the Refugee Studies Forum, which in August 1996 submitted "A Proposition for the Improvement of the Procedures of Granting Refugee Status," a compilation of its study from 1994-1995. The Forum, composed of experts in the field including Professor Shigeki Miyazaki of Meiji University, sent the proposition directly to the Prime Minister and the Immigration Office of the Ministry of Justice.

In the lecture, Mr. Abe elaborated on problems with the granting process. He noted the underfunctioning of officers in charge of asylum seekers and the legally ambiguous status of the Advisory Committee to Grant Refugee Status, which is practically the final authority in granting refugee status.

On a more positive note, Mr. Abe reported that the Ministry of Justice has given careful consideration to the Forum's studies and proposals.

[Jinken Shimbun, January 30, 1997, No. 304]

## **5. Human Rights Situations of Newcomers**

**by Mr. Takashi Ebashi, JCLU Board Member, Professor at Hosei University**

Mr. Ebashi summed up the implications of the partial deregulation of foreign workers since the



beginning of the 1980s, and the measures taken by activists during that time. He pointed out that factors such as the diversification of residence qualifications and the increase of foreign residents have resulted in the sudden appearance of a variety of problems. To tackle these problems, victims and NGOs initiated actions and mobilized, first, liberal local governments, and then, the national government. The movement resulted in the formation of networks. He further indicated that the problem now being confronted was the need for reconstructing concepts of human rights to replace former notions of national rights vs. human rights.

#### **6. Naturalization and Nationality**

**by Mr. Hiroshi Tanaka, JCLU Board Member, Professor at Hitotsubashi University**

Mr. Tanaka began his report by indicating his reservations about the situation in the Japanese academic world, where research in nationality law falls within the domain of lawyers specializing in international private law, instead of specialists in public law. He went on to outline developments from the postwar period, when problems with nationality and naturalization arose from measures taken to deal with people from the former colonies, to more recent events such as the rebellion among "Koreans with Japanese nationality". At the root of the human rights situation of newcomers today, he pointed out, were various problems with the "oldcomers." In particular, Japanese authority's traditional conception of nationality as being proof of loyalty to a nation has caused the country's closed policy over nationality.

#### **7. Education and Children**

**by Mr. Shigeto Aramaki, Assistant Professor at Yamanashi Gakuin University;**

**Ms. Mie Fujimoto, JCLU Member, Attorney-at-Law**

The meeting began with a report on education from Mr. Shigeto Aramaki. He focused on problems arising in the study of education and the law in Japan. Debate on the right to education, he pointed out, has been focused on that of Japanese nationals. The problem of foreigners' rights to education has been dealt with only in terms of the ethnic education of Koreans and North Koreans living in Japan, which has brought with it both advantages and problems. He also emphasized the need for changes in both the Constitution and basic education laws, based on rights to education included in international human rights instruments.

Attorney Ms. Mie Fujimoto gave a report on the

rights of foreigners' children, based on several years' research carried out by the JCLU Foreigners' Rights Committee. Behind the recent prominence of the problem of foreign children's rights, she said, was the increasing tendency toward permanent residence. Guarantees to these children's rights, centering on nationality acquisition and residence, have become even more important than they were in the past.

#### **8. Residence**

**by Mr. Hisashi Menjo, Attorney-at-Law**

Mr. Menjo reported that both in terms of the system and in actuality, resident qualifications for foreign spouses was gradually progressing toward the real establishment of rights to residence. He went on to bring forward the problem of an amnesty (or legalization) for so-called "illegal foreign workers".

#### **9. The Present Situation of the Movement for Foreigners' Rights in the Kansai Region**

**by Mr. Masao Niwa, JCLU Member, Attorney-at-Law**

Mr. Niwa gave a report on the actual situation of the movement in Kansai, which was quite different from the situation in the Kanto region. Centering on the activities of RINK (a Kansai network which protects the rights of all foreign workers and their families), he talked about various subjects, including the results of negotiations with the administration and the immigration authorities since 1990, and efforts made in collaboration with minorities (historically outcast population and Korean residents) and migrant workers.

[Jinken Shimbun, March 25, 1997, No. 305]

## NUCLEAR WEAPONS

### **Nuclear Weapons: ICJ Advisory Opinion and Japan**

*The JCLU held the Eighth Kubota Memorial Symposium on December 7, 1996, with a theme "Nuclear Weapons: ICJ Advisory Opinion and Japan," to examine the significance of an advisory opinion given by the International Court of Justice (ICJ) on July 8, 1996.*

*In its opinion, the ICJ found that the use of nuclear weapons, in general, contravenes provisions in the law applicable in armed conflict, and principles of international humanitarian law. However, concerning*

their "use in an extreme circumstance of self-defence, in which its very survival would be at stake," the ICJ stated that "it cannot reach a definitive conclusion as to the legality or illegality."

The symposium had three speakers who reviewed the issue in connection with legal arguments, Japanese diplomacy, and the civil movement.

**The Significance of the ICJ Advisory Opinion by Mr. Hisakazu Fujita, Professor at University of Tokyo**

The advisory opinion of the ICJ is given when requested by the organization of the United Nations (UN). The opinion itself is not legally binding but nevertheless has significant legal authority. While the ICJ rejected the request made by the World Health Organization (WHO), it granted the request from the UN General Assembly regarding the legality of nuclear weapons and gave an advisory opinion.

The ICJ stated that certain treaties cannot be applied on a general basis. Such treaties include the International Covenant on Civil and Political Rights (Article 6: the right to life, in particular), the Convention on the Prevention and Punishment of the Crime of Genocide, and treaties regarding environment. The ICJ avoided judging directly from the above treaties, relying instead on the Charter of the United Nations (UN Charter) and international humanitarian law. Article 2 (4) of the UN Charter stipulates that "All Members shall refrain ... from the threat or use of force." The ICJ did not make a special distinction between the threat and the use, stating that if nuclear weapons are to be used in either way, they are to be deemed illegal.

Concerning international humanitarian law, the ICJ mentioned that although there is no general international law that prohibits nuclear weapons, it is possible to apply general norms -- such as the prohibition of weapons of indiscriminate destruction or the prohibition of the conferment of unnecessary suffering -- to their use. The ICJ stated, however, that it cannot reach distinctive conclusion about legality of the use of nuclear weapons in circumstances in which a nation's security is at stake.

The ICJ came to the following conclusions:

- A) There is no international law that permits the threat and use of force involving nuclear weapons.
- B) There is no comprehensive and universal international law that specifically stipulates the prohibition of the

threat and use of nuclear weapons.

C) The threat and use of force involving nuclear weapons is contrary to Article 2 (4), of the UN Charter and is illegal.

D) Regarding the threat and use of nuclear weapons, the international community must take into consideration the principles of international humanitarian law and the demands made by treaties concerning nuclear weapons.

E) The threat and use of nuclear weapons is in general illegal, particularly in light of the principles of international humanitarian law. However, under extreme circumstances involving self-defense -- when the very survival of a state is at stake -- the legality of the threat and use of nuclear weapons cannot be determined.

F) There lies an obligation to negotiate in good faith in an attempt to achieve nuclear disarmament in all its aspects.

It is evident that there are some problems with the ICJ's opinion. First of all, the ICJ does not make a distinction between the threat and the use of nuclear weapons. In other words, if the use of nuclear weapons is legal, then the threat may as well be legal. This problematic lack of distinction may be due to the lingering influence of the policy of nuclear deterrence during the Cold War.

Secondly, the term "general" illegality is unclear. We cannot discern whether the ICJ means that all threat and use of force involving nuclear weapons -- except in self-defense -- is illegal, or whether there are other situations in which such actions would not go against humanitarian law.

Thirdly, when one considers the concept of an extreme circumstance of self-defense -- in which the very survival of a state is at stake -- it is important to keep in mind that the decision to engage in self-defense must be made by each state. The ICJ's words could be construed to mean that a state can use the term "self-defense" to justify not only its use or threat of nuclear weapons to protect its own borders but to protect allied countries that do not have nuclear capabilities. In contrast to conclusion E), we are given the impression that international humanitarian law may not be applied in such circumstances. If we are to take into consideration the desire for small states to arm themselves with nuclear weapons for self-defense, there is a danger that conflicts will arise with the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and with Conclusion F) as well.

Lastly, we should acknowledge that the ICJ's statement obligating nations to conclude nuclear disarmament treaties is a major step forward, considering that the NPT only stipulates an obligation to negotiate. We must also acknowledge that this decision represents positive steps in judicial law-making.

Though we must not overestimate the ICJ's advisory opinion, it is basically praiseworthy in that it declares the general illegality of nuclear weapons. States with nuclear weapons have also welcomed this opinion. Although it may not alter the policies of various nations, the UN General Assembly's reactions to the views of the ICJ are worth observing.

**Japanese Diplomacy and Nuclear Weapons  
by Mr. Ichiro Kawabe, Newspaper Resource  
Center**

Until the 1980s, Japan had not taken an active role in the nuclear weapons controversy. In the 1980s, however, the Japanese government began to oppose, one by one, resolutions involving nuclear disarmament. This position might be tolerable when Japan was not an economically powerful country, but nowadays its position seems increasingly inflexible and inappropriate. Despite the end of the Cold War, this position has not changed.

In 1990, when the South Pacific Denuclearization Resolution -- opposed only by the United States and supported by Europe -- was voted on, Japan was the only country to abstain, despite the fact that it did not have a vital interest in the outcome. From 1989 to 1991, Japan continued to firmly oppose denuclearization in the Indian Ocean. In addition, when the illegality of nuclear weapons was discussed in the ICJ, Japan was about to submit to the ICJ a government opinion stating that nuclear weapons are not illegal within the context of international law, though in the end it did not. These facts indicate that Japan did not change its position, even with the end of the Cold-War. Japan has taken its position through its own initiative, not because it is being forced by the outside world.

Due to the influence of internal public opinion criticizing Japan's diplomatic position in the Gulf War, as well as the influence of the Diet, Japan changed its position regarding the denuclearization of the Indian Ocean, eventually supporting such a measure. Japanese government changed its official position because denuclearization is one of the areas in which Japan can

afford to be flexible without jeopardizing its diplomatic relationship with the United States.

Not only should the Japanese government be blamed, but the Japanese citizens who ignored the government's irresponsible attitude toward nuclear disarmament. If Japanese citizens paid more attention to government activities and took action, the attitude of the government would certainly change.

The Ministry of Foreign Affairs is in a position to use international public law for the realization of its diplomatic policy. Its position has been to use international law to realize its policies, ignoring it when useless. At present, one of the top priorities of the Ministry of Foreign Affairs regarding United Nations policy is to become the permanent member of the UN Security Council. The fact that nations with nuclear weapons can veto Japan's membership might encourage the Japanese government not to support denuclearization. Only 40% of the member states of the UN General Assembly consented to a request to the ICJ for an advisory opinion regarding the legality of nuclear weapons. This outcome was due to the fact that some African and other states in economic crisis had been influenced by more powerful states not to consent. Even this level of support in the General Assembly will probably not be achieved again.

In the future, the solution will be to collect information, analyze it, and make it public. It is necessary to keep track of which delegations hold which opinions and elaborate on strategies to approach each delegation.

**What the ICJ Means to the Citizen  
By Mr. Masaki Ikeda, Attorney-at-Law,  
International Association of Lawyers against  
Nuclear Arms**

The international movement to make the ICJ address nuclear weapons was first proposed by the International Association of Lawyers Against Nuclear Arms, and started with two other international NGOs. The movement developed unexpectedly fast and led to the resolutions adopted by the WHO and the United Nations General Assembly. It was non-allied nations in the South Pacific, which have been affected by nuclear testing, that composed a driving force to realize these actions of the two organizations. The resolutions prompted civil actions all over the world. In Japan, a-bomb survivors of Hiroshima/Nagasaki and the co-op played a remarkable role.



This was the first time that the civic action movement, in conjunction with NGOs, organized themselves to influence UN organs to request the ICJ for an advisory opinion. Domestically, bringing actions before the court is a commonly used method to attract public attention. But in this case, the citizenry had a recourse to the ICJ, which is normally used to resolve political conflicts between states. It was due to the inaction of the states concerning the legality of nuclear weapons. The main purpose of this movement was to establish a precedent to utilize the ICJ as a means to mobilize public opinion.

Since an advisory opinion is not legally binding, the main purpose of this movement was not to get a judgment per se, but to set a precedent where the ICJ could be used as a means to mobilize public opinion. As the judgement itself had a low expectation, the decision which found the general illegality of nuclear weapons and the obligation to achieve nuclear disarmament came as a pleasant surprise.

The UN has immediately responded to the advisory opinion. The 51st session of its General Assembly adopted a resolution requesting to begin negotiation of nuclear disarmament by a vote of 115 for, 22 against, and 32 abstention. In terms of the movement, the present trend calls for not only banning tests but also abolishing nuclear weapons altogether. Concerned groups already began formulating drafts for the nuclear abolishment treaty, and started organizing an international movement to realize this treaty.

The movement was the first successful case that effectuated a civil right by utilizing the ICJ and will no doubt be a precedent for the future use of the ICJ by civil rights groups. The domestic movement has been active in incorporating the positive aspects of the judgement into their strategy. As a world movement, we should also take the positive aspects of the advisory opinion to counter the nuclear power that may use the opinion to justify keeping nuclear armaments. It is the task of the world citizenry.

In the past, the nuclear powers did not take international campaigns for abolishing nuclear arms seriously or had ever dreamed that the ICJ would be judging the legality of nuclear weapons. The movement was significant in that it involved the ICJ. I hope it will enhance all efforts in abolishing nuclear weapons in the future.

[Jinken Shimbun, January 30, 1997, No. 304]

## CORPORATIONS AND HUMAN RIGHTS

### Human Rights Advertisement Awards: the Second Term by Mr. Shun Hashiba, JCLU Board Member, Attorney-at-Law

*On March 17, 1997, the JCLU held a ceremony for the second Human Rights Advertisement Awards at the Kanda Pensée Hall in Tokyo. The awards were given to three companies and one university. The ceremony included a lecture by Attorney Ms. Mizuho Fukushima, JCLU Board Member, on advertizing apropos gender equality. The following is a commentary on the awards by Shun Hashiba, JCLU Board Member in charge of the Human Rights Consulting Committee (HRCC), which organized the awards.*

#### Award Winners

For the Second Annual Human Rights Advertisement Award, four ads were awarded from the Plus Section and none from the Minus Section.

1. Kyoto Women's University: The University's ad appeals for equality of employment opportunity among female and male students, supporting women who are eager to work.

2. Aderans: This company's ad is revolutionary in that it advocates that men should share in the household responsibilities. It asserts that with family cooperation, women are able to have more free time for hobbies, thus widening their view of life. Reading the ad from a woman's point of view, however, this ad seems to assume that the partners of these men are full-time "housewives." It is a pity that the standpoint of working women is not considered.

3. Boehringer Ingelheim, Japan: Since this is an ad for an international firm, it is only natural that both sexes appear to have equal status. This characteristic made the ad prominent among the many ads that portray work places, because similar ads for Japanese companies tend to show men dealing with important work, with women as their assistants.

4. Matsushita Electric: The company's ad characterizes a rather elderly man as an independent human being, instead of as an object of young people's care. We would like to see similar ads involving elderly women, as well.

#### On the Selection Process

The Second Annual Awards deal with ads published from January through December 1996. Looking back on our evaluations during the year, we find it delightful that our work in awarding Human Rights Advertisements has led to several improvements. For example, a certain airline has stopped using photographs of female crew serving male customers. Now, male customers no longer appear in the photos.

In addition, we have begun making advertisers pay attention to ads that seem problematic by sending them private letters. Fortunately, in many cases, advertisers earnestly explain their intentions in producing the ads and their awareness of discrimination against women. We value the response of those concerned and, through regular contact, intend to help firms publish good advertisements.

Three of the award-winning ads were selected by the equality of both sexes section, which were very seldom seen throughout the year. It is a shame that most ads featuring women continue to contain pictures implying the existence of fixed gender roles such as "men in the workplace, women at home" or "men in the managerial posts, women as their assistants." Nowadays, it is not unusual to see working women in responsible posts or men who are eager to engage in household affairs or raise children. Those who continue to produce ads which take for granted the unchanged gender roles should be criticized.

Moreover, we have continued to find ads which use naked women or women in swimming suits as eye-catchers. In these ads, female bodies are emphasized over the products, which have no relation to naked bodies or swimming suits. They are likely to maintain and promote the sexist consciousness in which women tend to be rated by men only on sex appeal. A February 1996 ad for Bifiten, a stomach medicine from Morishita Jintan, Ltd., exemplifies this phenomenon. The ad uses a picture of a woman naked from waist to neck, revealing the roundness of her breasts. As stomach medicine is being advertised, it is understandable that a belly is shown. The question is, why a woman, naked not only

around the waist, but to the bust? This ad should be reasonably criticized for using a naked woman merely as an eye-catcher.

When this ad was published in an almost identical version in 1995, the HRCC sent a letter to Morishita Jintan. When the ad was published again in 1996, we sent a letter again and made clear our opinion, asking the firm for its point of view. But to our regret and disappointment, the firm made no reply in either case, and continues to publish the same ad. We would like to ask Morishita Jintan to be more sincere in the way it handles human rights issues, especially discrimination against women.

[Jinken Shimbun, No. 305, March 25, 1997]

## CRIMINAL LAW

### Authorized Wiretapping? MOJ Seeks Drastic Change in Criminal Law

It has been reported that the Ministry of Justice (MOJ) has decided to submit proposals for amending the Penal Code and Code of Criminal Procedure to the Diet when it convenes its 1997 ordinary session. At the moment, six areas including the legalization of wiretapping, and plea bargaining are under consideration. This amendment will be an extensive one, and may raise some difficult issues concerning the protection of human rights. The JCLU has also decided to begin examining the proposals.

Also on the agenda for amendments were proposals for 1) increase the length of sentence for such crimes as extortion made on behalf of a criminal organization, and money laundering; 2) confiscation of profits gained from illegal activities and an additional penalty fine, and 3) witness protection.

The reason for such amendments are several: 1) it is maintained that in order to crack down on organized crime, wiretapping by authorities should be legalized and that plea-bargaining should be introduced; 2) there is general agreement among Summit members that money laundering should be regulated and that profits from illegal activities should be seized. It is reported as well that the Liberal Democratic Party and the New Frontier Party are also positive about the reforms.

These amendments, regardless of their "necessity" will most certainly have a significant effect on our lives. For example, wiretapping is currently permitted in narcotic cases with an inspection warrant, but if it is allowed wholesale, there is a danger that none of our conversations are guaranteed privacy. The daunting effect of generalized wiretapping will affect all citizens. Moreover, the Internet, gaining quickly in popular use, may become an object of wiretapping in context of these amendments.

The introduction of plea-bargaining may also have an effect on our basic human rights. Plea-bargaining is a system wherein an accomplice who ranks lower in a criminal organization is given the opportunity to lighten his sentence by testifying and accusing those who are higher positioned and who truly control the organization. However the accomplice's testimony does not grant him absolute immunity but only conditioned one that he/she will not be indicted for what he/she said during the testimony. In addition, there lies a possibility where the testifying person will be convicted on the basis of other evidence. Also, there is a danger where the right to remain silent will be infringed upon by such measures.

If such critical amendments are to be sent to the Diet's regular session next year, time is limited for the citizenry to scrutinize the proposals. The JCLU board meeting of September 1996 decided to begin a study on this issue immediately and examine the necessity of vocalizing an official position from the standpoint of human rights protection.

[*Jinken Shimibun*, September 20, 1996, No. 302]

## FREEDOM OF ASSOCIATION

### Subversive Activities Prevention Act JCLU Statement Against Its Application to "Aum"

On July 11, 1996, the JCLU released a statement opposing to a request of dissolution of the Aum Supreme Truth (Aum), filed by the Public Security Investigation Agency (PSIA) under the Subversive Activities Prevention Act (SAPA). The SAPA had been under strong opposition since its very enactment in 1952. The JCLU also took part in the protest movement because the Act would violate fundamental human rights guaranteed

under the Constitution.

The SAPA had been applied only few sporadic occasions to the individual and is almost extinct in substance. For the first time in 40 years, its organizational application, the Act's original target is about to become a reality.

The announcement by the PSIA for probe was made in the public gazette of December 20, 1995, followed by six explanatory sessions which were terminated abruptly. Soon after on July 11, 1996, the PSIA issued a request to dissolve the Aum. Along with this expedited movement by the PSIA, the JCLU held a public monthly lecture on July 6 on the actual proceedings of explanatory procedures, and problems of the SAPA. Speakers were Attorney Takashi Naito, who represents the Aum, Masaaki Fukuda, professor of Hitotsubashi University and official watchman at the explanatory session, and Hitoshi Serizawa, professor of Aoyama Gakuin University.

Attorney Naito presented investigators' record of Aum members' oral statement. The record provides neither the names nor addresses of the deponents, and many portions of the statements were deleted. For a regular lawsuit, this document would fail to meet the average requirement of the court.

Professor Fukuda held the Aum incidents as an issue over power and individual dignity which reflects the postwar Japanese society. He suggested that particular attention and consideration are due for individual followers of the Aum.

Regarding the SAPA, professor Serizawa pointed out that the dissolution request does not meet any conditions required under the SAPA. "Application of the Act under such incomplete condition would signify that Japan has fallen as an outlaw nation."

Due to lack of information, the JCLU did not issue a statement on problems concerning police search of the Aum. Regarding the organizational application of the SAPA, however, necessity for an opposition statement was strongly shared. The statement was released following the discussions at the public monthly lecture. The JCLU also co-sponsored an Anti-SAPA Meeting held on July 19.

A decision by the Public Security Commission is



expected shortly. Meanwhile, further actions by the JCLU must be considered.

[Jinken Shimbun, No. 301, July 25, 1996]

July 11, 1996  
Japan Civil Liberties Union

**Statement Against the Application of the  
Subversive Activities Prevention Act**

The Director-General of the Public Security Investigation Agency (PSIA) filed a disposition request today to the Public Security Commission (PSC) to designate the Aum Supreme Truth (Aum) for dissolution. The request was filed after six explanatory sessions provided under the Subversive Activities Prevention Act (SAPA).

The PSIA terminated the explanatory session one-sidedly, ignoring the Aum's belief that explanation has not been made enough. This authoritarian conduct by the PSIA is the very embodiment of the intrinsic nature of the SAPA. The JCLU stands in strong opposition to the requested organizational application of the SAPA for the following reasons:

First, an organizational application of the SAPA would bring about the destruction of Constitutional order. It violates essential fundamental human rights of various fields as guaranteed by the Constitution, such as freedom of expression, freedom of association, freedom of religion, and due process. Should the Aum be designated for dissolution, not only "any activities" conducted by the Aum members for the Aum would be targeted for criminal punishment, but activities of non-member citizens could also be widely held punishable by employing accomplice provisions under the Penal Code. It signifies the destruction of the principle of legality of crimes and punishment in Japanese society. Moreover, it indicates the creation of a society in which every citizen's daily speech and activities, irrespective of being an Aum member or not, are held under surveillance of the public security police. In addition, it is easily imaginable that such conditions would enormously affect and impair lawyers' and media reporters' free activities. The postwar Japanese society has constantly developed civil liberties and rights under the Constitution. They are now faced by unprecedented danger.

Next, evidence submitted by the PSIA at the explanatory sessions are tremendously slipshod and hardly

satisfies the requirements of the SAPA. Many of them are "reports" produced by public security officers, which they present as the compilation of oral statements of (former) Aum members. The "reports" do not indicate who made the statements when, and under what circumstances. Likewise, "written statements" of the (former) members neither clarify who, when and under what circumstances it was made. Since the designation procedure for dissolution implicates gross human rights violations as mentioned above, the evidence must be accompanied by corresponding strictness. The review procedure of the PSC, which examines the PSIA's request, is also problematic. Its procedure is limited to the document review in principle, and other aspects as well do not meet the minimum procedural protection provided in the Administrative Procedure Law.

Furthermore, it must be pointed out that the present Aum is incomparably weakened and exhausted than ever before. This is due to criminal procedures charged on its executives, bankruptcy procedures, and an dissolution order by the Religious Juridical Persons Law. Dissolution of such organization by the SAPA would only cause unrestorable violation of civil liberties.

Due to the forementioned reasons, the JCLU declaims against the PSIA's request, and demands that the PSC reject the request in respect of the Constitutional ideal of human rights protection, and in sensible consideration of the present status of the Aum.

*\*Editor's note: The request was rejected by the PSC on January 31, 1997.*

**DISASTER RELIEF**

**The Great Hanshin Earthquake: Public  
Assistance Needed for Livelihood  
Reconstruction**  
by Ms. Ayako Nakajima  
Board Member, JCLU Osaka-Hyogo Branch

Three years have passed since the Great Hanshin Earthquake. Spring has visited the survivors for the third time, but it seems that the long cold winter has not ever left us. As many as 65,000 evacuees still live in temporary housing, where a "lonesome death" (a person who lived alone and because of such condition their death

was not discovered for some time) has been reported every 5-6 days.

The Hyogo Prefectural Police have counted the total of lonesome deaths to be 138. Many of them are men in their 40s or 50s who would have been in the prime of their careers had it not been for the earthquake. Despite the serious conditions surrounding evacuees, mass media no longer attempts to cover them even though it was so enthusiastic about detailed reporting soon after the earthquake.

While national attention has been drawn to such incidents as Aum, HIV/AIDS lawsuits, and O-157 virus, those who died prematurely as a consequence of the earthquake have hardly been noticed. The death toll from the earthquake reportedly numbers 6,425 – a number that only covers immediate death by the disaster. Deaths in the aftermath, including lonesome deaths which are estimated to be 2,000 or 3,000, are not clarified by agencies concerned. Neither the police nor administrative organs seems to be active in obtaining correct data.

People's lives have only relative values. This is a keen realization of survivors. All the media had been so enthusiastic about covering the horrifying damage of a big city hit by an earthquake. Deaths resulting from the earthquake, sometimes three years later, however, are simply regarded as just another death. Contrary to the general perception, a characteristic of an enormous earthquake which hits a big city is found in this lingering damage that lasts years after the disaster.

Many of the survivors are: middle and old age people who lost their jobs by the earthquake and are unemployed; workers who are doubly indebted with loans for their destroyed houses and newly bought apartments; storekeepers who reopened their business in a readjustment area with unfinished residency projects and few customers; old people who lost all their property, spent their meager savings and who are at a loss for future livelihood.

Survivors are still having a hard time reconstructing their lives to normal condition. Three years after the earthquake, it is a reality that confronts many of them. Public assistance is indispensable to those who were deprived of the entire basis of their lives and are struggling to find ways to reconstruct their lives. In an effort to tackle these problems, the JCLU Osaka-Hyogo branch has taken up the issue of reconstruction of

livelihood in the disaster-affected area as a theme of the public monthly lecture.

[Jinken Shimbun, March 25, 1997, No. 305]

## MEDICAL ISSUES

### **Victory for Mentally-Ill Patients: Eleven-Year Court Struggle Wins Compensation from the Hospital and the Government**

#### *The Utsunomiya Hospital Incident*

*In March 1984, the lynching of a patient by paramedics at Utsunomiya Hospital was first covered in the news media. The report was followed by a series of medical malpractice cases at the hospital, including physical abuse of patients by the director of the hospital and treatment by non-qualified personnel.*

*Problems with the Mental Health Act, which led to such "outlaw" conditions in mental hospitals came to be addressed at the United Nations. The Act was finally revised in 1987 into the Mental Health Law.*

On September 30, 1996, the Tokyo High Court delivered its decision on the Utsunomiya Hospital Case, which had been supported by the JCLU. The High Court judgement was a major victory for the plaintiffs because it upheld: 1) responsibility of the government, which had been denied by the Tokyo District Court; 2) one plaintiff's claim, which was rejected by the District Court on account of statutory limitations, and; 3) the amount of compensation claimed by the plaintiffs, which almost doubled the sum decided by the District Court.

The first trial partially acknowledged the claims of all plaintiffs except one. All plaintiffs appealed to the High Court demanding an increase in the amount of compensation.

The District Court rejected the claim of one plaintiff on account of statutory limitations. This former patient was told by the hospital that he could not be discharged unless he worked at the hospital-related company. He escaped from the company in 1974. The District Court held that this plaintiff had been able to file a suit after the escape and that his filing in 1985 exceeded the period of filing.

The High Court contradicted the District Court

and rejected the application of statutory limitations. It reasoned that this plaintiff could bring a suit only after the incidents at Utsunomiya Hospital were uncovered by the media -- once he was convinced of social awareness of the hospital's problems -- because he feared that he might end up re-admitted to the hospital should he claim damages to the hospital on his own. The High Court stated that the count of statutory limitations begins when a filing is made possible and thus certified the start of statutory limitations of this plaintiff on the day the news report was released in 1984.

As for the other plaintiffs, the High Court upheld their claims and almost doubled the amount of compensation. In addition, it acknowledged the responsibility of the government by ruling that some functions at the hospital could be regarded as having been assigned by the central government. The responsibility of the government had been dismissed by the District Court.

In substance, the case was a great victory for the plaintiffs. It was a long-awaited victory for the JCLU, as well, since the JCLU's support cases in recent years have hardly been as successful.

The High Court, however, rejected all claims based on the International Covenant on Civil and Political Rights. On this specific point, there is a need to make further effort to convince judges of human rights, not only through domestic laws but also in light of international instruments.

Since neither party has attempted to appeal, legal settlement has finally been made on the case. Considering, however, that the suit was filed eleven years ago and that the illegal detention has taken place even more than twenty years ago, it is a settlement that came overly late.

Though this case has come to an end, constant vigilance should continue. Even after the revision of the law, similar -- albeit less blatant -- malpractice at mental hospitals is said to exist today.

[*Jinken Shimbun*, November 25, 1996, No. 303]

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**For the Protection of Patients under  
Experimental Pharmaceutical Use**

On January 20, 1997, the JCLU submitted an

opinion letter to the Central Pharmaceutical Affairs Council of the Ministry of Health and Welfare, concerning the Ministry's draft amendment to the standards of good clinical practice. The opinion was formulated at the request of the Pharmaceutical Affairs Bureau of the Ministry which came on December 11, 1996.

The JCLU had once submitted the Ministry an opinion letter concerning an amendment to the Mental Health Act, but never been asked by the Ministry for an opinion. Following this request, the Board Meeting of December 17, 1996 asked member attorneys who had handled a pharmaceutical injury case to formulate an opinion letter. Experts' views from medical doctors were also reflected in finalizing the opinion.

The opinion letter gave a positive evaluation to the Council draft as it recognizes the importance of respecting patients' rights and attempts to guarantee it in practice and in substance. The letter also found major improvement in the draft about human rights. Detailed definitions provided in the outset of the draft has a list of those who are socially weak. In order to secure informed consent, the draft specifies in detail the items necessary in the consent and information forms, and makes it mandatory to issue a photocopy of these forms.

Having given a positive evaluation, the JCLU also made the following ten propositions:

- 1) A public clinical practice review board should be established in each prefecture for review and supervision;
- 2) A legal expert should be included in a clinical practice review board;
- 3) Audit should be done by a clinical practice review board as an independent third party;
- 4) Attention and consideration for the social weak should not be provided abstract but specified as much as possible;
- 5) In accordance with the 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, it should be stated clearly that pharmaceuticals cannot be used experimentally on all detainees, including involuntarily hospitalized mentally ill patients;
- 6) Medical institutions that use pharmaceuticals experimentally are mandated to disclose and notify the patients concerned information regarding the use, including the result;
- 7) Patients should be entitled to file a question, consultation, and complaint with a clinical practice



review board;

8) Patients should be entitled to plain explanation of what the "experimental use of pharmaceuticals" is about, and to be accompanied by a person they wished when explained;

9) In the case where a consent of a patient is hard to obtain, approval should be needed not only from the proxy but also from a clinical practice review board as an independent third party;

10) In the case where a patient was damaged by the experimental use of pharmaceuticals, those who requested the practice are liable to compensation even when there was no negligence. In addition, cause and effect are to be presumed between the use and damage.

Supposedly, inquiry from the Ministry was based on a reputation of the JCLU member attorneys who had handled pharmaceutical injury cases. Opinion writing upon request from a public entity has added another dimension to JCLU activities.

Further vigilance would be necessary to see how this JCLU opinion will be incorporated into future actual practice.

[Jinken Shimbun, January 30, 1997, No. 304]

## VISITORS

### **Representatives from Hong Kong Justice and Peace Commission Visit JCLU**

On March 13, 1997, two representatives from the Justice and Peace Commission of the Hong Kong Catholic Diocese visited the JCLU secretariat and discussed the situation of human rights in Hong Kong pursuant to its handover to China on July 1, 1997. Ms. Magdalene Li, the Chairperson, and Ms. Mary Yuen, the Executive Secretary, were invited by the Japan Catholic Council for Justice and Peace.

The representatives reported their apprehension regarding human rights problems that might surface after Hong Kong's restoration to China. With the shift in sovereignty, Hong Kong will exist under the Basic Law of Hong Kong. The rights once protected under British rule could be denied by the Chinese government should these rights be in conflict with the Basic Law. In particular, under Article 24 of the new law, the NGOs

based in Hong Kong will be prohibited from making contacts with foreign NGOs. Anticipating that their international communication would be halted under the Chinese, various international NGOs have already moved their regional headquarters abroad to Bangkok or elsewhere.

The members of the Hong Kong Justice and Peace Commission also shared current human rights issues with the JCLU, including the abuse of police power, problems surrounding immigrants and refugees, and actions taken for equal opportunity.

The two representatives remarked that they did not know what would happen next but would carry on as before while awaiting future developments. These words make their determination and strength of will readily apparent. The representatives also called for the Japanese people to pay more attention to the future of Hong Kong as fellow Asians working to promote human rights.

The meeting was held with fifteen members from the JCLU Asian Human Rights Committee.

[Jinken Shimbun, March 25, 1997, No. 305]

## ABOUT JCLU

The Japan Civil Liberties Union (JCLU) is an independent non-profit organization which aims to protect and promote human rights for all persons regardless of beliefs, religion or political opinion. The JCLU's work is conducted in accordance with internationally recognized human rights principles, namely the Universal Declaration of Human Rights. The JCLU was founded in 1947, the year the new Constitution of Japan was promulgated. The American Civil Liberties Union (ACLU) played an important role in founding the JCLU. The JCLU is affiliated with the International Commission of Jurists (ICJ) and the International League for Human Rights (ILHR).

Membership is open to anyone who agrees with the JCLU's purposes and is willing to work for the improvement of human rights situations. The JCLU currently has about 800 members, 60% of whom are lawyers engaged in private practice, and others include citizens of various professions such as scholars, journalists, and students. The JCLU is financed by membership dues and unconditional donations from its members and outside supporters. The Board of Directors is comprised of 46 members. Currently, the JCLU is comprised of 18 committees, and has a chapter in Osaka.

The JCLU frequently issues advice, memoranda, and opinions on specific human rights cases relating to activities of the national and local government, the Diet, and the courts of Japan. In addition, it has acted as a leader in movements for new domestic legislation and ratification of the international human rights treaties by the Japanese Government. Member attorneys are active in a broad range of human rights litigations involving the freedom of religion, freedom of information, postwar compensation, environmental pollution, refugees, and serious criminal cases. Recent activities include work on foreigner's rights, freedom of information, mass media/freedom of expression, and proposals to establish a Human Rights Commission in Japan. The JCLU organizes seminars, meetings and symposiums, conducts research, and publishes reports, books and newsletters.

**JCLU Officers** : Representative Directors: Takao Yamada, Takehiro Uchida, Kiyoko Kinjo; Secretary-General, Hiroshi Miyake.

**Committees**: Freedom of Information Committee, International Human Rights Law Committee, Mental Patients' Rights Committee, Asian Human Rights Committee, Supreme Court Study Committee, Criminal Procedure Committee, Taxpayers' Rights Committee, Elimination of Racial Discrimination Committee, Membership Promotion Committee, Mass Media Committee, AIDs and Human Rights Committee, Human Rights Consulting Committee, Foreigners Rights Committee, Legal Consultation Committee, Legal Trainees Committee, Students Committee, Jinken Shimbun Committee (Japanese-language newsletter), Universal Principle Committee (English-language newsletter).

**Universal Principle** (UP News) is a compilation of articles and excerpts from JCLU's Japanese-language newsletters issued over the previous one year. UP News is edited by the Universal Principle Committee and published by the JCLU at 306 Atagoyama Bengoshi Bldg., 1-6-7 Atago, Minato-ku, Tokyo 105-0002 Japan. Telephone: (+813) 3437-6989 or 5466. Facsimile: (+813) 3578-6687. Email: [jclu@mb.infoweb.or.jp](mailto:jclu@mb.infoweb.or.jp)



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