

# Enemies of the State: Free Speech and Japan's Courts

David McNeill

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*Japanese democracy took a large step backwards with the arrest and conviction of three people for posting antiwar fliers.*

By David McNeill

Is Obora Toshiyuki a threat to society? The Japanese state certainly seems to think so. The police arrested the bespectacled, 47-year-old elementary school worker, interrogated him in grueling five-hour stretches and held him in detention for 75 days. "I thought it would never end," says Obora, who claims the arrest came "out of the blue."

After confiscating his computer and rifling through his personal belongings, the police called his workplace from where he was forced to take 10 months leave and a 60 percent pay cut. Prosecutors demanded a six-month prison term. When a district court threw the charge out, the state spent thousands of hours and millions of yen challenging the decision and fighting it in the Tokyo High Court.

Few would feel much sympathy for a teacher embezzling funds or, heaven forbid, molesting children in his care, but Obora was guilty of distributing scraps of printed paper to grown adults suggesting they 'think deeply' about Japan's decision to support a costly and illegal war. The flier, to members of Japan's Self-Defense Forces and their families, asked rhetorically: "Would George Bush or Koizumi Junichiro go to fight a war in Iraq?"

It is perhaps the oldest form of modern political activity - dating back to 17th century pamphleteering, but the High Court decided last December that the danger it posed to SDF members required a conviction for trespassing and a fine of 100,000 yen. Obora and his two co-defendants Onishi Nobuhiro and Takada Sachimi were stunned. "This is like delivering the final blow to Japan's democracy," said Takada.

An overreaction perhaps? "This case is crucial," says Professor Lawrence Repeta, a faculty member of Omiya Law School. "Here we have ordinary citizens being arrested for handing out fliers. This is the most traditional means of free expression. The government must carry a very heavy burden to justify a restriction on people expressing their opinions on an important matter of public policy in this fashion. And in my view they have shown nothing at all to justify their actions."

Obora's team of antiwar activists, Tachikawa Jieitai Kanshi Tendo Mura (Tachikawa SDF monitoring tent village) has campaigned peacefully in the western Tokyo area for quarter of a century. The group was founded in 1972 to prevent the SDF from occupying land vacated by the departing US Military and uses classic antiwar tactics: sit downs, peaceful obstruction and propagandizing.

Over the years, the group has fought, with mixed results, against the SDF occupation, the dispatch of US troops to Vietnam and the construction of a military runway. By the time they were raided on February 27, 2004, Tent Mura was one of the oldest protest groups in Tokyo and had shrunk to seven, mostly middle-

aged activists who shared a cluttered second-story office in Tachikawa.

So on January 17, 2004 when Obora and his colleagues went to the Tachikawa SDF housing complex on Jan. 17, 2004, hoping their fliers would be noticed among the piles of junk advertising that clogs up postboxes all over Japan, it was business as usual. “We had been doing this since the previous autumn,” says Obora. “And we had been distributing newspapers outside bases and sending direct mail since the early 1970s. We stopped for a while because we didn’t think it was having any impact.”

They believed, however, that amongst the hundreds of families in the complex, some were likely to oppose Japan’s first dispatch of troops to a war zone since the Second World War, a belief supported by public opinion surveys. A Nippon Television poll in November 2003, for example, found 71 percent of the population against the deployment, less than two months before the troops left for Iraq.

The activists walked past a small sign banning unauthorized people from entering the complex, just as dozens of other people hawking pizzas, family restaurants and membership in religious organizations did every week. The complex is not part of the SDF base and has no barriers. On February 22, two of the activists paid another visit, the last before they were arrested for trespassing at the end of that month.

Their arrest was troubling enough, but what followed was ‘outrageous’, says Repeta. “The prosecutors said they had to hold these people for 75 days because they needed more information, but the activists admitted what they did.” So why were they being held? Intimidation, he says. “For the authorities to lock up harmless people like this for such a lengthy period is a clear violation of the principles of Japan’s Constitution and of human

rights treaties Japan has entered. This violates any basic standard of due process.”

The prosecution argued that this was a straightforward case of criminal trespass, but Obora says comments by police during his interrogation make it clear that the arrests were political. “One of the police officers said ‘it would be very interesting to survey to what extent the number of antiwar postings to SDF complexes has decreased compared to before your arrest.’ That and other comments by prosecutors convince me that the political intent was to destroy the antiwar movement.”

Has it succeeded? No, says antiwar campaigner and local Kanagawa Prefecture councilor Nishimura Ayako, who nevertheless acknowledges it has had a chilling impact. “Most activists when they hear of a case like this conclude: well, this is the terrible era we’re in so we have to keep up our game.’ We won’t be intimidated so easily. But I’m sure some activists will think twice before setting foot in an SDF complex again.”

The detention of Obora and his colleagues came to the attention of rights groups, including Amnesty International, which labeled them “prisoners of conscience.” To their relief, Hachioji district Judge Hasegawa Kenichi dismissed the charge, calling the arrest “questionable” and pointedly referring to Article 21 of the Constitution, which guarantees freedom of expression.

But as in so many cases in a country that convicts over 99 percent of defendants in criminal cases, the higher the judiciary, the more conservative the ruling. Tokyo High Court presiding judge Nakagawa Taketaka dismissed the argument that the three were exercising their constitutional right to express a point of view, saying such a right did not mean they could “enter (the facility) against the manager’s will.”

The judge rejected Hasegawa’s view that (a)

the no-trespass sign was ‘inconspicuous’ and (b) that any damage caused by the defendants was ‘extremely minor,’ studiously refusing to acknowledge the wider implications of the case. Thus, the apartment building manager’s right was, in Repeta’s words, considered ‘absolute’; “the three-page opinion issued by the Tokyo High Court doesn’t even bother to balance the constitutional right of free speech against the building owner’s property rights.” He adds: “It’s hard to imagine that an appellate court in any sophisticated democracy would simply convict these people without such an analysis.”

The arrest and conviction of the Tachikawa Three is part of a wider crackdown against the pacifist movement in Japan -- directed by the public security police - as the government moves to revise the ‘peace clause’ or Article Nine of the Constitution. One week after the original case against the Tachikawa protestors was thrown out of Hachioji District Court, for instance, Arakawa Yousei, who is head priest at Choeiji Buddhist Temple in Tokyo, was detained for a remarkably similar ‘offence’ under the direction of the same public security official.



Arakawa Yousei

Arakawa was distributing antiwar leaflets produced by the Japan Communist Party in an apartment complex in Katsushikaku, northeast Tokyo, when a man on the third floor challenged him. “He said ‘Are you the asshole

that has been putting that stuff in my door,’” says Arakawa. “So I said if it is causing you trouble I won’t do it again, but he called the police.” Two squad cars and two officers on bicycles arrived within minutes to detain a 58-year-old, 140-lb priest who was eager to explain his activities.

“Somebody had decided this was to be treated as a serious crime, like murder or robbery,” says Arakawa who believes he was set up. “The man who challenged me used police terms like ‘PC’ (patrol car) when he was on the phone.” He was brought to Kameari Police Station where he said that he had been campaigning for 10 years and was not a member of the JCP but a supporter of their antiwar activities. “After two hours of this I said I wanted to go home because I had things to do, but they said, ‘actually you’re under arrest.’ I had no idea you could be arrested for such a thing.” He was held for 23 days.

Arakawa is preparing for his eighth appearance in the Tokyo District Court where his lawyer, Nakamura Ousuke, will ask police witnesses why they did not inform the priest he was being arrested. “They broke the law, but they have higher priorities,” says Nakamura. “For them, people like Mr. Arakawa who distribute information warning people what will happen if they change the Constitution are like a cancer. It grows unless you cut it out.” Says Arakawa: “Today it is me. Who will it be tomorrow?”

Other priests, perhaps; men such as Rev. Kizu Hiromitsu, a well-known pacifist campaigner who was detained outside Kadena Air Base in Okinawa last year. Supporters say he was distributing fliers outside the base when he was stopped by police and handcuffed to a patrol car after he questioned what law was being applied. When the car moved off with him still attached, he protested and was arrested for police obstruction; he was held for 21 days.



Kizu Hiromitsu

“The authorities want to scare people off,” says Obora, who is challenging his conviction in the Supreme Court. “We have a chilling situation where the police are now permitted free reign and can justify even such an arrest as ours.”

The fate of Obora and his colleagues resonates far beyond the confines of the small patch of west Tokyo they have made home for over 30 years. Free-speech advocates see their trial as a crucial test of the limits of constitutional freedom in Japan, one reason why over 100 law professors, including Repeta, have signed a declaration protesting their convictions. “There seems to be no question that this case is part of a broad campaign by government officials to intimidate people who distribute information they don’t like,” he says.

But the ramifications of the case also ripple upwards to the hawkish heart of Japan’s government which gives increasingly clear signals about the country’s future course. Minister of Foreign Affairs Aso Taro, for example, offered this defense for official visits

to the Yasukuni war memorial on TV Asahi’s Hodo Station at the end of January: “If we don’t pay respect to those who died in the war, people will no longer want to fight for their country.”

Pronouncements like this make clear that the Yasukuni visits are part of a coordinated effort by Japan’s leadership to shed the postwar political architecture that has kept Japan out of conflict for 60 years, and do not simply spring from some emotional attachment to the past. They also suggest that the constitutional ban on force is seen as a distasteful anachronism, an impediment, like the bothersome antiwar protestors, to the flowering of the ‘real’ Japan. That this movement is led by politicians like Aso and Abe Shinzo – the grandsons of men who steered the country to such disaster before the Constitution was written -- is an irony worth savoring.

The fates of modest men like Obora, Arakawa and Kizu are small portends of history in a struggle for Japan’s future. That struggle has entered a new phase in moving from outside military bases to inside the law courts. As US Sen. Max Baucus recently said in a criticism of President George W. Bush’s contempt for the rules of parliamentary democracy: “This is the way democracy ends, Not with a bomb, but a gavel.”

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