

## Three Rapes: The Status of Forces Agreement and Okinawa

Chalmers Johnson

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*by Chalmers Johnson*

America's 703 officially acknowledged foreign military enclaves (as of September 30, 2002), although structurally, legally, and conceptually different from colonies, are themselves something like microcolonies in that they are completely beyond the jurisdiction of the occupied nation.<sup>1</sup> The United States virtually always negotiates a "status of forces agreement" (SOFA) with the ostensibly independent "host" nation, including countries whose legal systems are every bit (and perhaps more) sophisticated than our own.

In Asia, the SOFA is a modern legacy of the nineteenth-century imperialist practice in China of "extraterritoriality"—the "right" of a foreigner charged with a crime to be turned over for trial to his own diplomatic representatives in accordance with his national law, not to a Chinese court in accordance with Chinese law. Extracted from the Chinese at gun point, the practice arose because foreigners claimed that Chinese law was barbaric and "white men" engaged in commerce in China

should not be forced to submit to it. Chinese law was indeed concerned more with the social consequences of crime than with establishing the individual guilt or innocence of criminals, particularly those who were uninvited guests in China.

Following the Anglo-Chinese "Opium War" of 1839-42, the United States was the first nation to demand "extraterritoriality" for its citizens. All the other European nations then acquired the same rights as the Americans. Except for the Germans, who lost their Chinese colonies in World War I, Americans and Europeans lived an "extraterritorial" life in China until the Japanese ended it in 1941 and Chiang Kai-shek's Kuomintang stopped it in 1943. But men and women serving overseas in the American armed forces still demand that their government obtain as extensive extraterritorial status for them as possible. In this modern version, extraterritoriality takes the form of heavy American pressure on countries like Japan to alter their systems of criminal justice to conform with procedures that exist in the United States, regardless of historical and cultural differences.

Rachel Cornwell and Andrew Wells, two authorities on status of forces agreements, conclude, "Most SOFAs are written so that national courts cannot exercise legal jurisdiction over U.S. military personnel who commit crimes against local people, except in special cases where the U.S. military authorities agree to transfer jurisdiction."<sup>2</sup> Since service members are also exempt from normal passport and immigration controls, the military has the option of simply flying an accused rapist or murderer out of the country before local authorities can bring him to trial, a contrivance to which commanding officers of Pacific bases have often resorted. At the time of the terrorist attacks on New York and Washington in September 2001, the United States had publicly acknowledged SOFAs with ninety-three countries, although some SOFAs are so embarrassing to the host nation that they are kept secret, particularly in the Islamic world.<sup>3</sup> Thus the true number is not publicly known.

U.S. overseas military bases are under the control not of some colonial office or ministry of foreign affairs but the Department of Defense, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, and a plethora of other official, if sometimes secret, organs of state. These agencies build, staff, and supervise the bases—fenced and defended sites on foreign soil, often constructed to mimic life at home. However, not all overseas

members of the military have families or want their families to accompany them; therefore, except in Muslim countries, these bases normally attract extensive arrays of bars and brothels, and the criminal elements that operate them. The presence of these bases unavoidably usurps, distorts, or subverts whatever institutions of democratic government may exist within the host society.

Stationing several thousand eighteen-to-twenty-four-year old American youths in cultures that are foreign to them and about which they are utterly ignorant is a recipe for the endless series of "incidents" plaguing nations that have accepted U.S. bases. American ambassadors quickly learn the protocol for visiting the host foreign office in order to apologize for the behavior of our troops. Even in closely allied countries where English is spoken, local residents get very tired of sexual assaults and drunken driving by foreign soldiers. During World War II, the British satirized our troops as "over-paid, over-sexed, and over here." Nothing has changed.

### The SOFA as Unequal Treaty

Okinawa, Japan's most southerly prefecture and its poorest, has been the scene since 2001 of a particularly fierce confrontation between Washington, Tokyo, and Naha over the Japanese-American SOFA and its use by American

authorities to shield military felons from the application of Japanese law. To many Japanese and virtually all Okinawans, the SOFA represents a rebirth of the "unequal treaties" that Western imperialists imposed on Japan after Commodore Perry's armed incursion in 1853. On November 15, 2003, in talks with Japanese officials in Tokyo, Secretary of Defense Donald Rumsfeld said that he planned "to press anew for the Japanese government to relent on a long-standing U.S. demand for fuller legal protections for members of its military force accused of crimes while serving in Japan."<sup>4</sup> Most American press accounts avoided details about what this enigmatic comment might mean, including whether the American defense secretary was equally concerned about legal protections for Japanese citizens forced to live in close proximity to American soldiers and their weapons and warplanes.

As of November 2003, the United States had stationed in Japan some 47,000 uniformed military personnel, not counting 14,000 sailors attached to the Seventh Fleet at its bases at Yokosuka (Kanagawa prefecture) and Sasebo (Nagasaki prefecture), some of whom are intermittently at sea. In addition there were 52,000 American dependents, 5,500 civilian employees of the Department of Defense, and 23,500 Japanese working for the U.S. forces in jobs ranging from maintaining golf-courses and waiting on tables in the numerous officers' clubs

to translating Japanese newspapers for the Central Intelligence Agency (CIA) and the Defense Intelligence Agency (DIA).<sup>5</sup> This large contingent was deployed at ninety-one bases on Japanese soil, of which thirty-eight are located in Okinawa, where they occupy some 23,700 hectares or 19 percent of the choicest territory of the main island. Okinawa is host to some 28,000 American troops plus an equal number of camp followers and Defense Department civilians. The largest contingent of U.S. forces in Okinawa consists of 17,600 Marines, followed by Air Force pilots and maintenance crews at the huge Kadena Air Force Base, the largest U.S. military base in East Asia. Even without these unwelcome guests, Okinawa is an overcrowded island with an indigenous population of 1.3 million in a land area smaller than Kauai in the Hawaiian Islands.

The Marines are spread out in huge forbidding enclaves from the headquarters of the 3rd Marine Division at Camp Foster (the 3rd Division is the only one of America's three Marine divisions located outside the continental United States) to Camp Hansen in Kin village, Camp Courtney in Gushikawa, Camp Schwab in Nago, and the Marine Corps Air Station Futenma located in the dead center of Okinawa's second largest city, Ginowan, where it takes up fully a quarter of the city's land area. All have been there since the battle of Okinawa in the spring and summer of 1945 or the height of the Cold War in the 1950s.

There is nothing particularly unusual about this manifestation of American military imperialism in Okinawa except for its concentration. It offers scenes that are easily reproduced in Germany, Italy, Kosovo, Kuwait, Qatar, Diego Garcia, and elsewhere, including more recently Afghanistan, Central Asia, and Iraq. However, one distinguishing feature of the Okinawan bases is how much money the Japanese government pays to support them—some \$4.25 billion a year out of a total annual cost of approximately \$7.6 billion. It does so in part to keep American soldiers well out of sight of mainland Japanese—much as the Tokugawa Bakufu quarantined Dutch merchants on the island of Deshima—because fully enfranchised Japanese citizens would not tolerate them. It also hopes to keep them happy living in the Japanese equivalent of Puerto Rico, a culturally heterogeneous part of the country that Japan forcibly annexed in 1879 and that has long been subject to official and popular discrimination by mainland people and authorities. The Japanese press refers to these base-support payments as the *omoiyari yosan* (sympathy budget), meaning sympathy for the poor Americans who cannot afford their expansive foreign policy. The SOFA covering American forces in Japan says that the United States will cover all costs of the deployments (art. xxiv) but since 1978, when the *omoiyari yosan* came into being, the Japanese government has in fact paid more than half. No other nation offers such lavish "host nation support" to the United

States.<sup>6</sup>

The result is that the Marines, who have not a clue about Okinawa's history or culture and are given little or no instruction by their officers, live far more comfortably than they would in Oceanside, California, home of the First Marine Division's headquarters at Camp Pendleton, or Jacksonville, North Carolina, locale of the Second Marine Division's headquarters at Camp Lejeune. Facilities being built in Okinawa over just the past two years using Japanese money include a "luxury hotel" at Camp Foster, two new family-living towers with 68 two-and-three bedroom apartments each, a 4,700 square foot youth center, a "state of the art" theater complex for the 3rd Marine Expeditionary Force's band, and a 33,024 square foot "community services building" that includes an arts and crafts hobby shop, an "entertainment center," an auditorium, broadcast facilities, and a photo lab.<sup>7</sup>

#### Criminal Law Under the SOFA

The Japanese-American Security Treaty of 1960, which replaced the original pact that was signed along with the peace treaty in 1951, is a short, relatively straight-forward document of ten, normally one-sentence articles. It authorizes the SOFA—"the status of the United States armed forces in Japan shall be governed by a separate agreement" (art. vi)—which is a much longer, extremely complex legal document of some

twenty-eight quite dense provisions. The text of the Security Treaty is readily available, usually as an appendix to books on Japan's international relations; the text of the SOFA is so hard to come by it is virtually classified. Japanese citizens must search widely to find a decent translation. Its official title is "Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Regarding Facilities and Areas and the Status of U.S. Armed Forces in Japan, January 19, 1960." It has never been modified.<sup>8</sup>

Among its salient features is article iv: "The United States is not obliged, when it returns facilities and areas to Japan on the expiration of this Agreement or at an earlier date, to restore the facilities and areas to the condition in which they were at the time they became available to the United States armed forces, or to compensate Japan in lieu of such restoration." To many Japanese and all local government officials this is a deeply resented invitation to the U.S. military to pollute anything it wants to and evade responsibility for cleaning it up. The U. S. military's record on environmental protection is abominable.

Art. ix (2) says, "Members of the United States armed forces shall be exempt from Japanese passport and visa laws and regulations," meaning that American servicemen accused of crimes in Japan can be spirited out of the country

without facing legal obstacles. Article x (1) is truly hated by most Japanese: "Japan shall accept as valid, without a driving test or fee, the driving permit or license or military driving permit issued by the United States to a member of the United States armed forces, the civilian component, and their dependents." Okinawans pay a high price in crashes and hit-and-run accidents because of this clause, especially after 1972, when driving on the left hand side of the road was restored on the island. Art. xiii (1) aggravates art. x: "The United States armed forces shall not be subject to taxes or similar charges on property held, used or transferred by such forces in Japan." The current (conservative) governor of Okinawa, Keiichi Inamine, contends that U.S. military personnel pay less than one-fifth of what Japanese citizens pay for the public services they receive and that if the tax rate on their vehicles were equal to what ordinary citizens pay, Okinawa's income would increase by ¥780 million.<sup>9</sup> It should be noted that none of these clauses exists in any of the SOFAs with NATO countries.

By far the greatest SOFA-related popular outrage in Japan concerns art. xvii, which covers criminal justice. This one article is over two pages long and contains twelve complex subclauses. Opinion in Okinawa is virtually universal that it should be thrown out, whereas the U.S. military clings desperately to its every stipulation and in 2003 even threatened to rescind a slight

concession it made after the abduction and rape of a twelve-year-old Okinawan school girl on September 4, 1995, by two Marines and a sailor from Camp Hansen. The offending words are contained in art. xvii (3) (c): "The custody of an accused member of the United States armed forces or the civilian component over whom Japan is to exercise jurisdiction shall, if he is in the hands of the United States, remain with the United States until he is charged." This means that Japanese authorities investigating a crime committed in their country cannot have exclusive access to a suspect held by the U.S. military until Japanese prosecutors have actually indicted him in court. It also means that the Japanese police are hobbled in carrying out an investigation and that prosecutors may thus be reluctant to indict an American serviceman because of insufficient evidence. Press reports following the September 4, 1995 rape that the three military suspects were lolling around the pool at Camp Hansen eating hamburgers while the child victim (her name has been protected by Okinawa Women Act Against Military Violence, an organization that came into being after her assault) was in the hospital led to the largest anti-American demonstrations in Japan since the Security Treaty was signed in 1960. All servicemen in Okinawa know that if after committing a rape, a robbery, or an assault, they can make it back to the base before the police catch them, they will be free until indicted even though there is a Japanese arrest warrant out for their capture.

Japanese criminal law gives the police twenty-three days during which they can hold and question a suspect before either charging or releasing him. During this period a suspect meets alone with police investigators who attempt to elicit a confession, the king of evidence (*shôko no ô*) in the minds of all Japanese prosecutors and most citizens. The Japanese believe in a lengthy process of reasoning with a suspect to cause him to see the error of his ways and leading him to try to restore the harmony of the society by acknowledging publicly what he has done. Japanese judges treat guilt established in this way much more leniently than it would be in an American criminal proceeding (except for the American practice of plea-bargaining). On the other hand, a suspect in a Japanese courtroom who refuses to cooperate or who continues to assert his innocence in the face of material evidence and witnesses is likely to receive a harsh sentence. During the period of interrogation, a criminal suspect is not permitted to consult an attorney, be released on bail, or seek a habeas corpus hearing. In Japan, a criminal suspect who is arrested and charged is much more likely to be found guilty than in the United States, but the Japanese police and courts are much less likely to arrest or convict an innocent suspect.<sup>10</sup>

The American military contends that these procedures, which are a long-standing part of Japanese culture and apply to all suspects



arrested in Japan, not just American servicemen, could lead American soldiers to make false confessions and thus constitute violations of their "human rights." In refusing to turn over suspects to the Japanese police before indictment, the U.S. military relies on another part of the SOFA's art. xvii, namely clause (9): "Whenever a member of the United States armed forces, the civilian component, or a dependent is prosecuted under the jurisdiction of Japan he shall be entitled: (a) to a prompt and speedy trial; (b) to be informed, in advance of the trial, of the specific charge or charges made against him; [and] (c) to be confronted with the witnesses against him." These requirements do not apply to an investigation prior to an indictment, but the U.S. military contends all the same that Japan does not live up to this clause and that Japanese criminal justice as a whole does not meet American standards. The Americans seem to have resurrected the old defense of extrajurisdiction in China: no "white man"—or American soldier—should be subjected to the laws of an alien society where respect for human rights allegedly differs from ours.

This argument does not carry much weight in Okinawa (or anywhere else for that matter, given the U.S.'s abysmal record of protecting the human rights of foreigners). Every time there is a new instance of a sexually violent crime in which the prime suspect is an American soldier, the victim Okinawan, and the military refuses to turn

him over until a Japanese court has issued an arrest warrant, there are calls from the governor, unanimous votes in the prefectural assembly, and street demonstrations demanding a total rewrite of the SOFA.

Until the rape of September 4, 1995, the United States had never turned over a military criminal suspect to Japanese authorities prior to his being indicted. In the wake of that incident, however, pressure mounted on the United States to become more flexible if it hoped to keep its troops in Okinawa. Even then, after the American ambassador to Japan, former vice president Walter Mondale, publicly denounced the suspects as "monsters," the defendants' American lawyers accused Mondale of making it impossible for the three alleged rapists to get a fair trial in Okinawa. In February 1996, President Clinton and Prime Minister Hashimoto met at an emergency summit in Santa Monica, California, to think of ways to defuse Okinawan anger. Finally, the U.S. made a concession. In a meeting of the Joint Committee authorized by art. ii(1)(a) of the SOFA, the United States agreed in future cases to give "sympathetic consideration" (*kôiteki kôryô*) to Japanese requests that a military culprit be handed over to Japanese authorities before indictment if they are suspected of "especially heinous crimes." The latter category was left undefined but generally means murder and rape cases.

Despite this new "flexible application" of the SOFA, rather than its wholesale revision, the United States has rejected all subsequent requests for early hand-over except one, a 1996 case in which a sailor pleaded guilty to American authorities for the attempted murder (slitting the throat) and robbery of a 20-year-old Japanese woman.<sup>11</sup>

### The Three Rapes

Governor Inamine's predecessor as chief executive of Okinawa prefecture was Masahide Ota, a retired university professor, prolific writer on the history of the Ryukyus, and devoted anti-base activist (he is today a Socialist member of the upper house of the Diet). By contrast, Inamine is a conservative and comes from a deeply conservative, not to say reactionary, background (he was president of Ryukyu Petroleum before standing for office). He ran against Ota's record of protest against the American military occupation and claimed that he could reopen friendly relations with the ruling Liberal Democratic Party and the U.S. military. Nonetheless, in the five years since he was elected in December 1998, Inamine has drawn increasingly closer to Ota's positions and has become well known for browbeating the incumbent Marine lieutenant general in charge of the huge Marine deployments on the island for incompetence in maintaining troop discipline.<sup>12</sup>

In talking about the excessive crime rates among American servicemen in Okinawa, Inamine likes to use the metaphor of points and lines—taken from the title of a well known mystery novel of the same name by Seichô Matsumoto. The American high command always characterizes each rape or murder committed by an American serviceman as an isolated "point"—an exceptional "tragic occurrence" committed by a one-in-a-million "bad apple," for which the American ambassador and commanding general profusely apologize. According to Inamine, Okinawans see not points but lines: the 58-year-long record of sexual assaults, bar brawls, muggings, drug violations, drunken driving accidents, and arson cases all committed by privileged young men who proclaim they are in Okinawa to protect the people from the dangers of political "instability" elsewhere in East Asia. During Secretary of Defense Rumsfeld's visit to Okinawa in November 2003—the first visit of a secretary of defense since Bush I's secretary, Dick Cheney, was there thirteen years previous—he said to the governor, "This region has been at peace during the existence of our bilateral security treaty [which has] greatly benefited our two nations."<sup>13</sup> Rumsfeld evidently overlooked both the Korean and Vietnamese wars, which occurred during this period—and Okinawa's role as a staging area.

For his November 16, 2003, meeting with Rumsfeld, Inamine invited in the Japanese and



foreign press (it was the only open meeting Rumsfeld held during his trip to Japan) and conspicuously delivered a seven-point petition outlining Okinawa's grievances, including a demand for a fundamental review of the SOFA. Inamine later acknowledged that he was deliberately discourteous and that Rumsfeld was "visibly angered," but he explained that since the American and Japanese governments took Okinawa completely for granted, he had to use this "rare occasion" to make the people's case.<sup>14</sup>

The governor's petition included the information that, according to Okinawan prefectural police records, during the thirty-year period since Okinawa reverted to Japan's administration (1972-2002), American troops, Pentagon civilians, and military dependents committed 5,157 crimes in Okinawa, of which 533 were the "heinous" crimes of murder and rape. This works out to 17.7 heinous crimes per year or 1.5 per month.<sup>15</sup> In a famous study comparing rates of military sexual assault leading to court martial around the world from 1988 to 1994, the Dayton Daily News found that Okinawa had a rate of 4.12 per 1,000 U.S. military personnel compared with Camp Pendleton's 2.0, Camp Lejeune's 1.75, San Diego's 1.09, and Norfolk, Virginia's 0.80. Inamine stressed that this situation has not changed. In fact, since fiscal year 1996, just after the major Okinawan rape incident, the number of crimes committed by servicemen grew at a rate of 1.3 times per year.<sup>16</sup>

The transformation of Governor Inamine into a resolute advocate of the need to rewrite the SOFA started the moment he came into office. Three major rape cases that occurred on June 29, 2001, November 2, 2002, and May 25, 2003, hardened his views and precipitated an open confrontation between the Japanese and American governments over the "human rights" of American soldiers in Japan. This dispute has been negotiated at the ministry of foreign affairs/state department level, at the deputy secretary and secretary of defense/chief of the defense agency level, and in a summit telephone call between President Bush and Prime Minister Koizumi. The confrontation may ultimately precipitate the removal of some or all Marines from Okinawa, since the positions of both governments appear unlikely to change.

## JAPAN

### The Sergeant Timothy Woodland Case

Around 2:30 AM, June 29, 2001, in a parking lot within the so-called American Village entertainment and shopping plaza in the town of Chatan, just outside Kadena Air Force Base, several off-duty servicemen observed Air Force Staff Sergeant Timothy Woodland, 24-years-old, of the 353rd Operational Support Squadron at Kadena with his pants down to his knees having sex with a 20-year-old Okinawan woman on the hood of a car. Several of them later testified that

they heard the woman yell "No! Stop!" although they said they thought she was saying no to other men standing around. Marine Lance Corporal Jermaine Oliphant said in court that he saw Woodland rape the woman as she struggled to get away. The defense contended that Oliphant said this because he was a Marine and the Air Force sergeant was his rival. When Woodland finished, he fled the scene in a car with a military license plate.<sup>17</sup>

On July 2, following a complaint by the woman, the Japanese police issued a warrant for Woodland's arrest on suspicion of rape and sodomy. After vacillating for four days, on July 6, the American authorities turned him over to the custody of the Japanese—before prosecutors had obtained an indictment. It was only the second time the Americans had ever surrendered one of their men before indictment, and they were very reluctant to do so. But as Hiroshi Honma, professor of international law at Hosei University, observes, "If the local community's negative reaction is strong, they [the U.S. military] will turn over suspects. And, if not, they won't turn over the suspects."<sup>18</sup>

The local and national Japanese communities reacted strongly to this incident. Numerous groups in Okinawa denounced the licentiousness and lack of discipline of the American troops, and in Tokyo, the Foreign Affairs Committee of the House of Representatives, irritated over the

four-day delay in turning over Woodland, voted unanimously for a revision of the SOFA. It said that the case itself and the U.S. military's response "gave great concern and shock to the people of Okinawa, and the people of Japan are feeling indignation." In response, chief cabinet secretary Yasuo Fukuda said that Japan would not seek a revision of the SOFA but would instead ask for a faster, less contentious application of the existing agreement.<sup>19</sup> The American Embassy had informed Fukuda that the United States was adamantly opposed to opening up the whole SOFA for revision.

The American view was that in turning Woodland over to the Japanese they were violating his human rights, and Secretary of Defense Rumsfeld said that he was afraid of setting a precedent. Thom Shanker of the New York Times reported, "One Pentagon official said the United States was concerned that if Sergeant Woodland were transferred to the local authorities before being indicted, he would have no guarantee of having a lawyer or even an interpreter with him during questioning, and that the authorities could conduct their questioning in any manner and for any length of time."<sup>20</sup>

In fact, Woodland was interrogated by the police for thirty hours without eliciting a confession. He contended that the sex on the morning of June 29 was "consensual" and pleaded not guilty to the

charges. Some observed that Woodland was merely behaving like any suspect in an American court trying to sway a jury, but that he instead infuriated the Japanese court, where judges, not juries, try criminal suspects. Most Okinawans thought it highly unlikely that consensual sex would have taken place on the hood of a car with several other men looking on. But American soldiers did not agree. Several of them argued in print that the victim was merely an "Amejo" (American girl) or a "night owl" and that, as one put it, "Every Japanese girl I have dated or known as a friend has stated that she is intrigued by having sex in public." Another soldier referred to the victim as "a miniskirt-wearing little 'yellow cab' who couldn't remember what her name was. . . . Most of these trashy tramps can't think far enough ahead to order fries with their Big Mac." Even Foreign Minister Makiko Tanaka blamed the victim for having been out so late, drinking in a bar frequented by American servicemen.<sup>21</sup>

Presiding Judge Soichi Hayashida was having none of this. On March 28, 2002, he found Woodland guilty, declaring that the "testimony offered by the victim is highly trustworthy," and sentenced Woodland to two years and eight months in prison.<sup>22</sup> Okinawan residents welcomed the verdict but said the sentence was too light. The Okinawan Prefectural Assembly adopted a resolution seeking revision of the SOFA, demanding that the U.S. military should automatically hand over suspects upon request

from the Japanese government. Woodland went to prison near Tokyo with the fifteen other American servicemen serving time in Japanese prisons. There the dispute over implementation of the SOFA rested until less than eight months later another serious rape case erupted in Okinawa—and this time the Americans refused to turn over the suspect.

#### The Major Michael J. Brown Case

Major Brown is 41 years old, a nineteen-year veteran of the Marine Corps. In November 2002 he was attached to the headquarters of the Third Marine Expeditionary Force at Camp Courtney, a large deployment in central Okinawa of some 4,400 Marines. It was his second tour of duty in the Ryukyus. Brown is a "mustang," that is an officer who came up from within the ranks. He enlisted in the Marine Corps in 1984 from his home in Menard, Texas, advanced to the rating of private first class, and was then selected to receive a university education at federal expense. He attended Texas A&M and was commissioned a second lieutenant on May 29, 1991. He was promoted regularly and achieved the rank of major on March 1, 2001. In 2002, Brown was living off base in the nearby community of Gushikawa with his American wife, Lisa, and two young children.

No one involved in his case can remember an officer being in trouble with the Okinawan police

before, certainly not during the past decade. We know a good deal about his background, attitudes, and opinions concerning the honesty and competence of Japanese police and judges, Okinawans in general, the American ambassador to Japan Howard Baker, President George W. Bush, and others because of a web site he created—"Free Major Brown," [www.majorbrown.org/index.htm](http://www.majorbrown.org/index.htm)—which stores many relevant articles and documents as well as long, rambling diatribes of his from prison.

On November 1, 2002, upon completion of his day's work, Brown went to the Camp Courtney officers club. It was karaoke night and Brown says he enjoys this activity. He spent the evening with fellow officers and their wives (not including his own wife), drinking, playing pool, and crooning into a microphone with recorded accompaniment. When the club closed at midnight he decided to walk to his home two miles away via an auxiliary rear gate to the base. When he discovered that the gate he had in mind was locked for the evening, he had to walk back to the main gate. He had also forgotten his coat at the club and was getting cold. He admits he was intoxicated.

According to his own account, as he was walking to the main gate of Camp Courtney around 1:00 AM on November 2, 2002, he was offered a ride home by Victoria Nakamine, a 40-year-old Filipina barmaid and cashier at the officers club.

She is married to an Okinawan. What happened next is in dispute. Brown says that once they left Camp Courtney in her car they stopped on a quiet road and had a heated argument about the proper route to take. Both agree that he grabbed Nakamine's cell phone from her, apparently in order to prevent her from calling for help, and threw it into the nearby Tengan River.

According to Brown, she was now infuriated with him and in order to get even walked back to the main gate and told the military police that he had twice tried to rape her. The MPs replied that since the incident occurred off base, they would have to call the Okinawan prefectural police. Gushikawa policemen came to the scene and took her complaint that Brown had molested her and tried to rip her clothes off. She said she'd fought him off and gotten out of the car but that when she returned to see if he had calmed down, he seized her phone and again tried to assault her. She claims she fought ferociously to fend off his attack. He then ran away to his home and she drove to the main gate of Camp Courtney to report him. Brown is ambiguous: in some accounts he says they just had a loud and unpleasant argument, in others he claims that Nakamine made sexual advances to him. He has repeatedly claimed that "I was seduced by the woman and when I would not go along with the seduction, she got angry and filed the complaint."<sup>23</sup> American guards at the main gate claim that Nakamine did not appear disheveled

and was fully dressed. On the other hand, Richard DeWald, the American civilian manager of the officers club and Nakamine's boss, corroborates her version of events. He identified Brown to the police as the person Nakamine gave a ride to, since she did not know his name.

Proceeding cautiously, the police delayed for a month before acting on Nakamine's complaint. Finally, on December 3, 2002, the Naha District Court issued a warrant for Brown's arrest on a charge of attempted rape and destroying private property (the cell phone).<sup>24</sup> The Ministry of Foreign Affairs in Tokyo asked the Marine Corps to turn him over. After delaying for two days, the U.S. Embassy curtly announced that it had decided to retain custody of Major Brown, declaring "The government of the United States has concluded that the circumstances of this case as presented by the government of Japan do not warrant departure from the standard practice as agreed between the United States and Japan."<sup>25</sup> The Okinawan press has speculated that the Americans did not consider a failed rape a "heinous crime." This U.S. intransigence did not go down well with anyone except perhaps members of the Marine Corps.

On December 6, a large number of police raided Brown's home and office and carried off anything that looked promising, in the process frightening his wife and children.<sup>26</sup> Prime Minister Koizumi said that the U.S.'s refusal was

all right with him, but his foreign minister, Yoriko Kawaguchi, was less accommodating. She asserted that Japan would have to get a clarification of what was included under the 1995 "sympathetic consideration" agreement and that the case was frustrating because even under a flexible administration of the old SOFA, the United States retained all discretion to cooperate or not to cooperate.<sup>27</sup> Okinawa governor Inamine declared that "Yet more trouble was caused by a U.S. serviceman, despite our repeated requests to the U.S. military for disciplinary and preventive efforts. . . . It is a heinous crime infringing upon the human rights of a woman, and it is unforgivable in that it was committed by a serviceman who is required to act as a leader. It is extremely regrettable and causes me to feel strong indignation." The Okinawa prefectural assembly unanimously adopted a protest resolution demanding that the Americans hand over Brown. Most significantly, a newly formed liaison group of all fourteen governors of prefectures in which American bases are located urged the Liberal Democratic Party "to secure a true Japan-U.S. partnership through a revised Status of Forces Agreement."<sup>28</sup>

Finally, on December 19, 2002, Naha prosecutors indicted Brown and, in strict accordance with the SOFA, the U.S. handed him over the same day.<sup>29</sup> From that point on Brown, with the help of his family, waged an unprecedented campaign of legal maneuvers and inflammatory publicity

charging, among other things, that the Japanese criminal justice system is unfair and that American officials were willing to see him railroaded in order to keep their bases in Japan and obtain Japanese cooperation for George Bush's pending invasion of Iraq.

One of Brown's first acts was to obtain an American lawyer, Victor Kelley of the National Military Justice Group, who on March 7, 2003, filed a petition in federal court in Washington DC for an emergency writ of habeas corpus. Kelley argued that in turning over Brown to the Japanese the U.S. government violated his Constitutional rights as an American citizen "to be free from compulsory incrimination, the right to the effective assistance of counsel, and the right to a reasonable bail." He added, "[In Japan,] due process has no meaning. The Japanese 'conviction' rate is nearly 100 percent. To be indicted is to be convicted. The presumption of innocence is a mockery of justice. Almost without exception, all are convicted; no one goes free." The relief requested was to "order the Respondent [i.e., the United States of America] to . . . request the Government of Japan to give 'sympathetic consideration' [and] waive its right to exercise primary jurisdiction in this matter" and "order the Respondent to exercise primary jurisdiction in this case." This is a perfect example of the logic of extraterritoriality as it was enunciated in China 150 years ago. Needless to say, the Washington court did not grant the writ

but simply by filing it, Brown was building up a case.<sup>30</sup>

Brown also sought to apply political pressure. He obtained the support of Senator Kay Bailey Hutchison (R-Tex.) and of his representative, Congressman Lamar Smith, Republican of the Texas 21st District. Both of them informed the secretary of defense of their deep concern that Brown was not being treated fairly. Brown also raised the political stakes by urging his friends and fellow Marines to write to their elected representatives, suggesting that they say, "It is way past time for President Bush to intervene and no longer allow the Japanese government to persecute this innocent Marine."

Brown's running commentaries from prison were widely distributed to Marines on Okinawa. Among his many points, he alarmed them with the argument that "There has never been a case in Japan where a U.S. serviceman has been arrested and later found to be innocent." As time wore on he began to lash out at everyone he could think of, from Marine Corps legal officers to ordinary Okinawans—viz. "I would love to see the Okinawans get their land and their island back and I would love to see the U.S. servicemen leaving that island and spending their money elsewhere. At least then, the slimy Okinawan officials couldn't get their hands on our guys anymore. This solution would make us all happy, right? The Okinawans obviously don't want us



there. They don't want our soldiers funding their local economy. They don't want the jobs our bases provide. They don't like the exorbitant fees we pay them to rent their lands. They don't want us as a deterrent for their enemies. And, they don't want us as neighbors."<sup>31</sup> This kind of rhetoric was surely more balm for Brown's wounded ego than an effective defense strategy, but it did seem to influence the high command to inform politicians and state department officials of the military's dissatisfaction with the flexible administration of the SOFA.

From Brown's point of view, the big break in the case came May 13, 2003, when in open court Victoria Nakamine testified, "I wanted to withdraw my complaint. I cannot speak Japanese very well. I signed my written statement, but I didn't understand what was written." She said further that on May 1 she had submitted a letter to the court stating, "I said I wanted to withdraw my complaint, but the police officers and prosecutors wouldn't listen to me." This was a serious development. Hiroyuki Kawakami, deputy chief prosecutor at the Naha District Public Prosecutors Office, commented, "This is an offense subject to prosecution only on complaint from the victim, so it's unlikely that a criminal case can be established in defiance of the victim's intent."<sup>32</sup> In response to this development, on May 17, the court released Major Brown on ¥10 million bail but with the provisos that his passport be taken from him, he be confined to

base at Camp Courtney, and that he not try to leave Okinawa. This action was unusual. Japanese courts accept defendants' requests for bail in only 14.6 percent of cases.<sup>33</sup> The court was obviously influenced by Nakamine's recantation.

However, it should be understood that criminal trials in Japan are normally adjudicated by a panel of three judges, not by juries, and that these judges regard themselves—and are so regarded by the public—as highly experienced experts on whether or not someone is telling the truth. They are not subject to American-style rules of evidence, and they can and want to hear anything and everything about a case, including hearsay evidence, gossip, and rumor. One of the admirable elements of Japanese law, compared to American practice, is the judges' rule that the testimony of a woman who claims to be a victim of a sex crime should be given more weight than that of the offender. In the Brown case, presiding judge Nobuyuki Yokota decided that Nakamine's original statement to the police was believable and that she had probably withdrawn it under pressure from her employer and the society in which she lived. He ordered Brown's trial to proceed.

Brown now erupted. In a letter to American Ambassador Baker he charged that "There is collusion between the court and prosecutor" and that the Gushikawa police had framed him by writing Nakamine's complaint for her and

obtaining her signature even though she acknowledged that she does not read Japanese. He also instructed his attorney to appeal first to the Okinawa branch of the Fukuoka High Court and then to the Supreme Court that the three judges in his case be dismissed because they were patently prejudiced against him. Neither appeal succeeded, but it kept Brown's case in the newspapers and contributed to the American Embassy's worries about the cultural conflicts embedded in the SOFA.<sup>34</sup>

By the summer of 2003, Brown's web site had received more than 68,000 hits, and inquiries from Congressional staff assistants about the fairness of Japanese justice were routine at the State Department. Moreover, the war in Iraq was having an influence. Given the rising casualty rate among American troops, the Pentagon increasingly felt it had to protect the "human rights" of military personnel so that their morale would not be damaged. The Asahi Shimbun quoted a U.S. government official as saying, "American soldiers are in Okinawa to defend Japan. They're even prepared to die if necessary. And yet, when something happens, they [the Okinawans] will treat U.S. military personnel as criminals right away."<sup>35</sup>

It was in this context that yet another brutal rape and beating of an Okinawan woman occurred, further inflaming popular sentiment against the bases. The U.S. government knew that it had to

turn over the suspect fast, but it also decided that the time had come to force Japan to modify its criminal procedures in ways that conform more to American norms. This fateful decision produced a Japanese-American deadlock.

#### The Lance Corporal José Torres Case

Kin is a small, central Okinawan village with many once-unspoiled beaches facing south toward the Bay of Kin and the Pacific Ocean. The Marine Corps uses the beaches today to practice amphibious landings and for recreation by the troops and their families. The huge expanse of Camp Hansen and its contingent of 5,800 Marines dominates the village. In 1995, Kin was the scene of the abduction, beating, and gang rape of a 12-year-old schoolgirl that launched the greatest Okinawan movement to date to get rid of the Americans. It is also where, until 1995, the Marine Corps regularly fired 155 mm. shells over the town in artillery practice, denuding and setting fires in the nearby forested hills. They stopped only when all of Okinawa erupted in rage after the 1995 rape. It is inconceivable that the Marines would (or would be allowed to) behave as they do in Kin anywhere in the United States or on the Japanese mainland. At the same time, many elderly residents of Kin are supported by rent payments the Japanese government still makes for land the U.S. military seized at bayonet point in the late 1950s to build Camp Hansen.

In one of his less inspired commentaries, Major Brown gave us his thoughts about Kin on his web site: "The sole purpose of Kin Town is to entertain GI's. It's basically a playground for young, horny men stationed thousands of miles from home. And, even though prostitution is supposed to be against the law in Okinawa, Kin Town exists with the full knowledge and support of Okinawan officials and U.S. Military officials. GI's go to the bars and drink like fish, get into fights, and pay mama-sans for the company of young ladies. Deals are made for hand-jobs, blow-jobs, full, unadulterated sex, and just about anything in-between."<sup>36</sup> As someone who has been in Kin and interviewed local officials about the impact of the base and the military "training" exercises, I should add that this description is true only of the few blocks directly in front of the main gate of Camp Hansen. It is lined with about 200 bars and nightclubs.

At around 3:15 AM on Sunday morning May 25, 2003, a 21-year-old Camp Hansen Marine, Lance Corporal José Torres, left a Kin Village bar with a local 19-year-old woman, had sex with her in a nearby alley, and hit her in the face breaking her nose. A female friend of hers went to the Camp Hansen main gate and reported Torres, whom the MPs at once took into custody. On June 12, the local police opened an investigation, and on June 16, they obtained a warrant for Torres arrest for rape and battery. The same day, the Japanese government in Tokyo asked the U.S. Embassy to

hand him over. The newly arrived U.S. ambassador, Howard Baker, apologized for the incident and urged Marine Lt. Gen. Wallace C. Gregson, commander of all Marine forces in Okinawa, to comply rapidly. Gregson vacillated but he did call on Governor Inamine to express "regret." Inamine replied "I expect that [the United States] will hand over the suspect to Japan as soon as possible, without wasting a minute or even a second."<sup>37</sup> Baker said that he was trying to forestall mounting Japanese demands for a full revision of the SOFA. In Phnom Penh, attending a meeting of the ASEAN (Association of Southeast Asian Nations) Regional Forum, Secretary of State Colin Powell also apologized to Foreign Minister Yoriko Kawaguchi. On June 18, two days after the arrest warrant was issued, the Marines turned Torres over. At first he claimed that the sex was "consensual"—that the victim was a prostitute he had hired—but on July 8, after prosecutors had indicted him, Torres confessed to charges of raping and beating the woman. On September 12, the Naha District Court sentenced Torres to three-and-a-half years in prison for his crime.<sup>38</sup>

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### SOFA Negotiations

This case, as banal and routine as it was in the context of the vast array of military sex crimes in Okinawa, was nonetheless the last straw for both

the Japanese and American governments. It led them into hardened positions that seem likely to be resolved only by some American pretext such as a "global force reform" and the withdrawal of significant numbers of Marines from Okinawa.<sup>39</sup> On the Japanese side, there was a lot going on in addition to the Torres case that kept the issue of the SOFA and Japan's sovereignty before the public. Major Brown's trial was continuing; in March, a drunken Defense Department employee from Camp Hansen drove his car head-on into another, killing the Okinawan driver; on May 7, another Marine was arrested for mugging a store clerk who was walking home; the wife of a Marine assigned to Camp Foster punched and tried to strangle an Okinawan woman in the restroom of an Okinawa City bar; and on May 31—the day after they were paid—five drunken Marines were arrested between 1:00 and 3:00 AM for failing to pay a ¥4,800 cab fare, trespassing on the premises of a private home, and damaging the glass entrance to the civic hall in Okinawa City. Okinawa City lies directly outside Kadena Air Force Base; once known as Koza, the town changed its name in 1972, after the Ryukyus reverted to Japanese administration, because Koza had become synonymous with incessant bar brawls and race riots among Americanservicemen.<sup>40</sup>

During June 2003, Governor Inamine and his deputy governor set out on a "pilgrimage" to the thirteen other prefectures that host U.S. military

facilities and asked each governor to cooperate with his campaign to force the central government to revise the SOFA. All the governors agreed. Inamine's biggest success was gaining the endorsement of Tokyo Governor Shintaro Ishihara, a popular right-wing politician with a long record of hostility to the American bases.<sup>41</sup> Ishihara commented, "America's international strategy cannot be implemented without the bases in Japan. We are doing them a big favor here. . . . A half century has passed since the end of World War II, but Japan remains in an inferior position. It is strange to anyone who looks at it."<sup>42</sup> This kind of remark from a man said to be in line for the prime ministership and mayor of the world's largest city put real pressure on the national government to end its obsequiousness toward the Americans.

However, just as the Japanese side was fortifying its position, the Americans also decided to toughen their stance. In turning over Torres to the Japanese police, the American Embassy stated that it wanted immediate negotiations to ensure that American servicemen "will be treated in a fair and humanitarian manner while in the local police's custody."<sup>43</sup> The U.S. said that when it agreed in 1995 to give "sympathetic consideration" to requests for pre-indictment turnovers, it had asked as a quid pro quo that Japan give U.S. servicemen special treatment because of the differences between the American and Japanese legal systems. The U.S. government

now demanded that Japan quit stalling on new rules governing implementation of the SOFA—and that it do so within 45 days. The Asahi Shimbun said that the Americans were influenced by the Major Brown case, noting that Brown had never wavered from his not guilty plea and that in his on-going trial, he had refused to speak in his own defense because he believed that he could not get justice in Japan.

The Asahi also commented on the refusal of the United States to join the new International Criminal Court, which had just gone into operation in The Hague, as a sign that the Bush administration was determined to set new rules for the world, not just for Japan. It noted the U.S.'s refusal to abide by many international laws it had helped enact, its invasion of Iraq without legal sanction, and its belief that it was so powerful that it could act more or less as it pleased in international affairs. The Asahi quoted Professor Masaaki Gabe of the University of the Ryukyus, probably Japan's best informed commentator on the base problems: "Deputy Secretary of Defense Wolfowitz and other U.S. officials in the present administration believe that American justice will pass muster anywhere in the world, and they do not necessarily give priority to the bilateral relationship with Japan." According to Gabe, the U.S.'s difficult military operations in Iraq and Afghanistan caused it to put a higher priority on its own troops' morale than on Okinawa's endless complaints about

military misbehavior.<sup>44</sup>

The Japanese agreed to the requested negotiations and convened talks on July 2, 2003, in Tokyo. The two delegations were led by Yasumasa Nagamine, counselor of the Foreign Ministry's North American Affairs Bureau, together with officials from the Ministry of Justice and the National Police Agency, and by Brian Mohler, director of the Office of Japanese Affairs at the State Department. The United States asked that a U.S. government official and an American-selected interpreter, for which it was willing to pay, be assigned to every military suspect turned over to the Japanese to ensure that he understood the questioning and was not tricked into confessing. The Ministry of Justice and the National Police Agency said that this request was an impossible interference in Japan's settled ways of investigating crimes. The U.S. replied that in most of its SOFAs with other countries it turns over military suspects only after they have been indicted and that it was already giving Japan "preferential treatment." After two days the talks deadlocked. A second attempt to reach agreement was scheduled for a Pentagon meeting on July 11.

The resumed talks in Washington were no more productive than those in Tokyo. The main issue clearly centered not on the interpreter, since the Japanese already supply foreigner detainees with good interpreters, but on the presence of an

American official, perhaps an attorney, in all interrogation sessions. Japan argues that, "In our country, a lawyer is not allowed to attend investigations under normal circumstances and nothing in the SOFA says that Japan has an obligation to let persons connected with the U.S. government attend investigations by Japanese authorities."<sup>45</sup> Japan's negotiators also said that measures taken by American authorities to maintain discipline and prevent sex crimes in Okinawa had been insufficient. The U.S. side replied that if there was no progress in the consultations, the U.S. government would not agree in the future to turn over U.S. military suspects before indictment. All the two sides could agree upon was to meet and try again on July 24 at U.S. Pacific Fleet headquarters in Honolulu.

In Honolulu, the American delegation was headed by Richard P. Lawless, Deputy Assistant Secretary of Defense for Asian and Pacific Affairs, a former National Security Council staff member in the Reagan administration and before that a CIA operational agent. He is said to speak Korean. The Japanese Ministry of Foreign Affairs made clear that it was prepared to accept the American requests, but that the Justice Ministry and Police Agency were dead set against it. The talks ended in failure, with negotiators on both sides saying that the issue would have to be referred to a higher political level.

Sometime between July 25 and 29, to the great consternation of Japan's Ministry of Foreign Affairs, President Bush telephoned Prime Minister Koizumi and talked over the matter. The result was that Deputy Chief Cabinet Secretary Teijiro Furukawa ordered senior officials in the Foreign and Justice ministries to produce a compromise. At a fourth round of talks in Washington on July 31, Japan therefore agreed to allow a U.S. government representative to be present during interrogations of military suspects, but only in cases of "heinous crimes." Such a U.S. governmental presence would be authorized in the name of Japanese-American "investigative cooperation," not "human rights;" the Japanese side could, at its discretion, ask the U.S. official briefly to leave the room at critical points in the interrogation; and the U.S. side would be involved in the selection of interpreters. The U.S. government rejected this compromise, saying it would not tolerate any conditions being placed on U.S. officials and that it wanted them present for all charges, not just heinous crimes. With the failure of the negotiations, the 1995 agreement on "sympathetic consideration" became a dead letter. A Pentagon source explained that U.S. had no choice in the matter since its military forces would be demoralized if their human rights could not be assured.<sup>46</sup>

In the months since Japan and the U.S. gave up on the SOFA, there have been endless rumors



that the United States is planning a substantial reform of its basing policies in East Asia. In South Korea, possibly the most anti-American democracy on earth today, there have been major street demonstrations calling for a revised SOFA or, more pointedly, for all American forces to leave the country. Secretary of Defense Donald Rumsfeld announced plans to move the U.S.'s Yongsan Base from the old Japanese military headquarters in downtown Seoul to some remote area and to relocate the 2nd Infantry Division, based close to the demilitarized zone with North Korea, to undisclosed locations south of the Han River. Senator Daniel Inouye (D.-Hawaii) hinted to a delegation of LDP politicians that the U.S. might move some Okinawa-based Marines to Hawaii as a way of revitalizing the Hawaiian economy. Many consultations between the Ministry of Foreign Affairs and U.S. Deputy Secretary of State Richard Armitage have dwelt on "streamlining the U.S. military presence in Okinawa." The Japanese press has observed that in the past this subject was usually brought up by the Japanese side in a pro-forma way but that after the United States declared its "war on terror" and invaded Afghanistan and Iraq, it has shown greater interest in doing something about it.<sup>47</sup>

During early November, Secretary of Defense Rumsfeld toured Japan, Okinawa, and South Korea. He noted that the presence of thousands of U.S. troops on Japanese soil was a source of

friction and that "Perhaps the toughest of those tensions is the question of whether to extend fuller legal protections to U.S. service members accused of crimes."<sup>48</sup> On November 27, 2003, President George W. Bush said in an official statement that "Beginning today, the United States will intensify our consultation with the Congress and our friends, allies, and partners overseas on our ongoing review of our overseas force posture."<sup>49</sup> The administration has indicated that nations such as Germany, Japan, and South Korea could see a significant decrease in the U.S. military presence as the Pentagon focuses more on the "war on terror."

It is, of course, difficult to know whether or when any of this will come to pass. Okinawa has been an American military colony for the past fifty-eight years, and throughout that period the rape of local women by American soldiers has been the dominant metaphor of America's imperial presence. It would be deeply ironic if the misbehavior of Sergeant Woodland, Major Brown, and Corporal Torres finally brought about the liberation of Okinawa.

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## NOTES

1. The number of 703 U.S. military bases located in other people's countries is from the Office of

- the Deputy Undersecretary of Defense (Installations and Environment), Base Structure Report (A Summary of DoD's Real Property Inventory) (Washington, DC: Department of Defense, 2003), [www.defenselink.mil/news/Jun2003/basestructure2003.pdf](http://www.defenselink.mil/news/Jun2003/basestructure2003.pdf). The figure for 2001 was 725. For details and analysis of these reports, see Chalmers Johnson, *The Sorrows of Empire* (New York: Metropolitan Books, 2004), pp. 151-60. The figure 703 seriously underestimates the actual number since it omits secret intelligence bases, those disguised by national identities (e.g., Royal Air Force bases in Britain), those omitted in order to avoid embarrassment to foreign governments, and most of the bases in the Balkans, Persian Gulf, and Central Asia acquired in recent American wars.
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16. See Chalmers Johnson, *Blowback* (New York: Metropolitan, 2000), pp. 41-42; and Tomoko Daiji, "Close-up Column: Crimes Committed by U.S. Troops and Information Disclosure," Mainichi Shimbun, January 22, 2003, p. 3.
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This appeared originally as JPRI Working Paper 97. Chalmers Johnson, the author of *Blowback: The Costs and Consequences of American Empire*, is the president of the Japan Policy Research Institute and can be reached at [chaljohnson@jpri.org](mailto:chaljohnson@jpri.org). JPRI publications are available at <http://www.jpri.org/>