

## Justice for Some. Crime, Victims and the US-Japan SOFA

David McNeill

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*Rape victim fights for redress against US military and its Japanese host*

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Around the nondescript Tokyo suburb where she lives with her three children, Jane is a well-known face. Foreign in an area crowded with Japanese, she has taught English for years here among neighbors who greet her warmly on the street. Few know that her life is consumed by a fight against a powerful military alliance and a secret agreement that she says allows its crimes to go unpunished.



Jane speaks at the Foreign Correspondents Club Tokyo

In a room cluttered with the detritus of her seven-year struggle, she tells her story, which began with a violent sexual assault. On April 6, 2002, Jane was raped by an American sailor in a car park near the US Navy Base at Yokosuka south west of Tokyo. Shocked and bleeding, she ended up in the small hours inside the local police station, where what she calls her second violation began.

During a 12-hour interview with a team of male cops that stretched into the middle of the next day, she was “mocked,” refused food, medical aid and water, and treated like a criminal. Her demands for a container for her urine, which she believed contained the sperm of her attacker, were ignored until, crying with rage and frustration, she says she flushed the evidence of her rape down the station toilet. Then she was taken back to the car park where she was forced to reenact the assault for police cameras. The police later took her underwear as possible DNA evidence but because the attacker had removed it, it was useless.

Her ordeal was bad enough to be branded “one

of the worst cases of police re-victimization I have ever seen,” said John Dussich, President of the World Society for Victimology, but it was in some ways just beginning. The alleged attacker, Bloke T. Deans, was quickly found nearby, aboard the giant US aircraft carrier Kitty Hawk, then for reasons that remain murky, released. He was de-mobbed and slipped out of Japan, under the protection, believes Jane, of the military and perhaps the Japanese authorities operating under the cloak of the Status of Forces Agreement (SOFA), which critics say allows US military personnel to avoid arrest for minor and sometimes even serious crimes He lives today as a civilian in the US city of Milwaukee.

“The military deliberately discharged Deans knowing full well that there were charges against him,” she says, drawing on the first of several cigarettes. She believes that Deans was let go to spare the US Navy and its Japanese host embarrassment, forcing her to track him across America. “I’m not ever going to give up until justice is served and that will happen when Deans faces me in court.”

Jane is one of hundreds of women assaulted by US military personnel annually around the world, including in Japan, which is home to over 80 American facilities covering an area roughly half the size of Tokyo City, and about 33,000 troops. The military presence, particularly in Okinawa, has been blamed for over 200,000

mostly off-duty crimes since the US-Japan Security Alliance was created in the early 1950s.

The bulk are petty offenses but in the most notorious, a 12-year-old schoolgirl was raped and left for dead by three US serviceman on the southern island of Okinawa, reluctant home to nearly three quarters of all US military facilities in Japan. That 1995 crime shook the half-century alliance, sparking huge anti-US rallies and cries of ‘never again.’ The pattern of sexual violence continued, and in 2008 a 14-year-old was sexually assaulted by a US Marine after being picked up by him outside an ice-cream parlor, one of several similar assaults against Japanese and Filipino women.

Protests forced the US military in 2008 to set up a “sexual assault prevention unit.” Opponents of the overwhelming US military presence say, however, that the incidents are an inevitable consequence of transplanting young and often traumatized trained killers (many of the soldiers are veterans of the Iraq and Afghanistan wars) among a local population they neither know nor respect. “There will be no peace here until the military is gone,” says Okinawa anti-base campaigner Rev. Taira Natsume.

Tensions between locals and the military are exacerbated by extraterritorial rights enjoyed by US personnel under SOFA. The agreement was

reinforced by a recently uncovered deal between Washington and Tokyo to waive jurisdiction against US soldiers in all but the most serious crimes “of special importance to Japan,” according to researcher Niihara Shoji. “In the majority of crimes committed by US military servicemen here in Japan since the early 1950s, the Japanese government ceded the right to prosecute these crimes to the US,” he asserts.

The deal, struck in 1953, became the template for other SOFA arrangements around the world, says Niihara, quoting Dale Sonnenberg, Lieutenant Colonel, Chief of International Law, US Forces Japan (at Yokota US Air Force Base). In “The Handbook of The Law of Visiting Forces,” Sonnenberg wrote:<sup>1</sup>

“Such provisions (i.e., advance waiver of jurisdiction, pre-trial custody remaining with the US, and specification of due process right in addition to those set out in Art. VII of the NATO SOFA) thus became the standard for ‘modern’ SOFAs. In Japan, the AA (Administrative Agreement) had already been amended by this time, and that amendment did not specifically include these provisions. However, Japan did enter into an informal agreement that it would waive its primary right to exercise jurisdiction except in cases of ‘special importance’ to Japan, and Japan has faithfully carried out this understanding.

“This is despite the fact that both governments declared openly that Japan would have prime judicial rights of all off-duty crimes by US soldiers (here),” he explains. The aim, Niihara believes, was to protect the reputation of the American military, whose costs are underwritten by the Japanese government to the tune of over \$4 billion a year (in direct support and indirect payments), according to a 2004 Department of Defense Report.

Under pressure from increasingly angry citizens, the response to crimes by off-duty American soldiers seems to have been toughened up. The 2008 Okinawa assault was followed by a relatively quick and contrite response from the US military. In 2006, Kitty Hawk airman Oliver Reese Jr. was sentenced to life imprisonment in a Japanese court for a robbery/murder, also in Yokosuka. The court heard that Reese repeatedly stomped on the head and body of Sato Yoshie (56), rupturing her liver and kidney after she refused to hand over 15,000 yen. He spent the money on a sex show.

Sato’s fiancé, Yamazaki Masanori, who was initially treated as a suspect in the murder, welcomes the conviction but points out that Reese was given preferential treatment. “He was eligible for the death penalty but it wasn’t considered.” He wants the Japanese government to deal more harshly with crimes committed by US personnel in Japan. “I believe that in trying to

protect the Japan-US Alliance, the government is not protecting its citizens.”

Last year, bureaucrats from Japan’s Ministry of Defense offered Yamazaki a blank check as compensation for Sato’s death. “They told me to fill in the amount I wanted. But they were going to demand the money from Reese’s family. US military personnel are poor people. It is the Japanese government that loans them the land and the US military that employs them. They are to blame but they have absolutely no sense of responsibility.” Yamazaki refused the money.

The offer of what some victims call “hush money” was made to Jane too, this time from a fund used by Japan’s defense ministry to compensate the victims of US military crimes in Japan. The three-million-yen (approximately \$30,000) check equaled the unpaid amount awarded by a Tokyo civil court, which convicted her attacker in his absence in 2004. In search of further retribution, she sued her police tormentors, fighting all the way to an appeal in the Tokyo High Court, which ruled against her in December. She is liable for all legal costs.

Handing down his ruling, Judge Minami Toshifumi said: “Though it would have been preferable if police officers had paid more consideration to the victim, the lack of consideration was not to the extent of violating the law.” On Dec. 22, she appealed the decision

to the nation’s Supreme Court.

“The financial and emotional burdens have been enormous,” admits Jane who is divorced and raising her children alone. She has repeatedly faced eviction from her house. “With my post-traumatic stress disorder, I’ve lost a lot of students as well. But at what point do you say, ‘I don’t care anymore?’ I just can’t do that.”

Lest she forget why she is fighting, a poster of Deans captioned: “Wanted for Rape,” sits inches away. She knows the precise location of her assailant and the address of his Milwaukee house after being tipped off by a supporter.

In an effort to publicize her case, and banish some ghosts, she has just written a book about her experience. Due for publication in April the title -- Jyu no tobira (Door to Freedom) comes from something a rape victim on Okinawa told Jane after she gave a speech there to an anti-base rally. “She said, ‘I’m going to live my life from today.’ That moved me.” She intends to present a copy to Prime Minister Aso Taro and continues to write letters to Japanese and US politicians, including President Barack Obama, demanding they extradite her assailant and shine a light into a small but dark corner of the Pacific alliance. In a letter to former US President George W. Bush, she charged that the U.S. military deliberately sent Deans home despite its full knowledge that rape charges were pending.

"I do not wish to believe that this is a standard procedure of the U.S. military, that when one of their personnel sexually abuse or rape a foreigner, to place the assailant on a plane and send them not to prison or to their next assignment or to...'discharge' them without accountability. However, Bloke Deans was discharged and was sent somewhere where I could not find him.

"I have been through all channels to find this man who raped me, but to no avail. I have been given no help or support from his employer, the United States government. We are all under the same flag in this war against terrorism, an ideology that America has introduced to the world community. However those who have sworn to protect, have launched a victimization against me and furthermore, every woman, man and child in Japan."

She received no response, but says she is undeterred.

"My No. 1 priority is getting Deans on trial, but I'd also like to think that if I can help one person by somehow turning this horrific experience into something positive, it will be worth it."

"You know, I was guilty until I could prove myself innocent; he is innocent until I can prove him guilty. How fair is that?"

*David McNeill writes for The Independent and other publications, including The Irish Times and The Chronicle of Higher Education. He is a Japan Focus coordinator.*

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### Questions about an alleged rape

#### Letter to The Japan Times. Name withheld by request

Kamogawa, Chiba

Regarding David McNeill's March 3 Zeit Gist article, "Rape victim fights for justice against U.S. military, Japan": McNeill should hire a fact-checker before he submits such an article. The victim's name is withheld probably for privacy, yet the name of her alleged attacker is revealed in full. Why? Seems McNeill has a dual standard. It should be made clear that "Jane" was allegedly raped since it is not an established fact.

Just what is the "secret agreement" that was alleged? Unanswered. What happened to the victim's clothing, which certainly should have had DNA evidence in spite of her urine being flushed down the toilet? Unanswered. What are the "murky" reasons the suspect was released and not charged? Unanswered. What does "demobbed" mean? Unanswered.

The U.S. military does not deliberately discharge

anyone before his enlistment is up, and certainly not when charges are pending. Many have experienced a "legal hold" when charges are pending. Is McNeill certain there were charges pending? What were the charges? Why was the suspect not indicted by Japanese prosecutors? Again, all unanswered (although a Tokyo civil court is said to have ruled against the suspect in his absence and awarded Jane compensation in 2004).

Where does McNeill get his figures? "Eighty American bases" in Japan seems preposterous. It has been reported often that the U.S. military crime rate, including for sexual assault and rape, is well under the rate for the Japanese population.

Of course, it is horrific each time a crime of this nature happens regardless of the nationality of the perpetrator. I pray that Jane receives justice, but no one should play games with, omit or make up facts to fit the situation.

Japan Times, March 12, 2009

#### Reply to "Questions about an Alleged Rape"

It's generally a bad idea to get involved in spats with anonymous letter writers (<http://search.japantimes.co.jp/cgi-bin/rc20090312a3.html>), but this contains such a litany of

accusations, I feel I have to reply.

Jane's attacker was found guilty in a 2004 Tokyo civil suit and therefore can legally be named, as he has been repeatedly in domestic and foreign publications

([http://www.economist.com/world/asia/displaystory.cfm?story\\_id=12756824](http://www.economist.com/world/asia/displaystory.cfm?story_id=12756824)). He has declined to return to Japan and pay the 3-million-yen fine imposed.

On my "preposterous" use of statistics on US facilities in Japan, if anything I erred on the side of

caution. According to the latest Japan Times sketch

(<http://search.japantimes.co.jp/cgi-bin/nn20080325i1.html>) on the US presence, there are 87 facilities "exclusively" used by the US Military in Japan, covering an area roughly half the size of Tokyo. On troop numbers, my figure of 33,000 is considered low by most observers. As the writer surely knows, comparative statistics on crime rates are a highly contested area and would require a separate article to do them justice.

Re, the "secret agreement," I am citing the work of researcher Niihara Shoji, again widely covered in the

domestic and foreign press

(<http://www.asahi.com/english/Herald-asahi/TKY200810250072.html>). Niihara gave a joint press conference

(<http://www.e-fccj.com/node/4103>) at the Foreign Correspondents' Club Japan. I will let Mr. Niihara defend himself, but it hardly seems unlikely that Japan and the US authorities might wish to minimize the impact of the US Military presence in Japan, nor that they would want to keep such an agreement under wraps.

The lack of DNA evidence in the case is indeed puzzling. According to Jane, the police eventually took her discarded underwear as evidence, though they were useless because they were removed during the attack and never put back on. I suggest this and other errors in the investigation support her claims that the police simply didn't take the assault seriously.

The rest of the questions in the letter can only be answered by the Japanese and US authorities: Why was the suspect discharged and allowed to slip out of Japan in 2002? Why was he released and not charged, despite Jane's claim that the authorities must have known he was facing a civil

suit? These questions remain unanswered, hence the "murkiness" of the case.

David McNeill