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Implausible Denial: Japanese Court Rules on Secret US-Japan Pact Over the Return of Okinawa　信じがたい否認––沖縄復帰に関する日米秘密協定への東京高等裁判所裁決

David McNeill

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The long-running fight for full disclosure and official recognition of the secret US-Japan pact on Okinawa reaches a legal dead-end.

A common perception about Japan's justice system is the higher up the court the more conservative the ruling. The most recent decision by the Tokyo High Court in a suit demanding the release of documents proving Japan's secret accord with the US over the 1972 Okinawa reversion did nothing to challenge that cliché. But it did expose the radical legal summersaults required to keep the full truth from seeping out.

In reversing an earlier ruling by the Tokyo District Court that ordered the state to release diplomatic documents on the accord, Presiding Judge Aoyagi Kaoru agreed that the secret pact existed but said it is "highly likely" that papers proving it have been thrown away. Aoyagi accepted that although the government had previously lied, it had since conducted an "intensive search" for the documents and no longer had any reason to conceal them.

Former Mainichi Shimbun reporter Nishiyama Takichi, left, with writer Sawachi Hisae and attorneys in a news conference after the ruling at the Tokyo District Court on Sept. 29. (Mainichi photo)

That ruling pleased the government's Chief Cabinet Secretary Fujimura Osamu, who told *The Yomiuri* newspaper that the decision "accepted our standing position that we don't have the documents we are being asked to disclose." Fujimura added that he takes "very seriously" the allegation that the government dumped the papers, so seriously indeed that it would not reexamine the case.

"The ruling has said there is no evidence to prove the state possessed the papers at the time it was asked to disclose them," he said.

With that washing of judicial and political hands, the legal road to recourse for one of the great postwar cover-ups in Japan is effectively blocked. Nobody is to be punished for shredding of what Judge Aoyagi called documents of the "highest historical value" because they no longer exist and the current government cannot be held responsible for their illegal disposal. The Foreign Ministry's partial disclosure last year - under duress and after four decades of political and bureaucratic mendacity - that the secret deal existed would have to suffice.

In contrast, the Tokyo District Court had put the onus back on the state, not the 25 plaintiffs, when it ruled in April last year that "while it was the plaintiffs' responsibility to prove the state still had the files, it was the state's responsibility to prove it had lost them." Said the *Mainichi* newspaper: "Unless the state could prove the documents had been destroyed, 'it should be effectively assumed that the state still possesses them,' ruled the court.

Taking in the logic of the latest decision afterwards, plaintiff and former *Mainichi Shimbun* reporter Nishiyama Takichi, said he was pleased the court had at least acknowledged the possibility that the government had pulped its files. But he added that disclosure of such documents "is how administrative bodies are subjected to the verdict of history. We can't just say, 'There's no way to solve the problem because the papers have disappeared.'"

Of course, that's exactly what the court was saying. The missing papers would prove that Tokyo secretly absorbed substantial costs of the reversion of Okinawa from US to Japanese rule in 1972, including $4 million to restore farmland requisitioned for bases. Nishiyama uncovered that agreement in 1971, a remarkable journalistic scoop that created a sensation but resulted in his public and professional humiliation.

In 2000 and 2002, declassified US diplomatic documents from the US National Archives and Records Administration proved beyond all doubt that the pact existed. A senior Ministry of Foreign Affairs official concurred. The Democratic Party of Japan announced when it came to power in 2009 that it would search for evidence of the pact at the foreign and financial ministries, but perhaps unsurprisingly the search failed to uncover the legal smoking gun.

According to *The Yomiuri,* the elderly plaintiffs, led by former Rissho University Professor Katsura Keiichi and writer Sawachi Hisae began their own investigation, "going through more than 4,500 pages of documents, cross-referencing with papers obtained from the United States, and compiled a report that recreates the process of the negotiations on the secret accord." The report was submitted to the court, to no avail.

Nishiyama, now 80, will have to continue to wait for a settling of scores in the forty-year struggle to win a vindication, and a long-deserved

journalistic award. The Tokyo High Court ruling means he may well receive it posthumously.

Yomiuri: link.

Mainichi: link.

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David McNeill is a Tokyo-based correspondent for The Independent, The Irish Times *and* The Chronicle of Higher Education. *He is an Asia-Pacific Journal coordinator.*

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