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Spying on Muslims in Tokyo and New York — "Necessary and Unavoidable"?

Asia-Pacific Journal Report

On May 31, 2016, the Supreme Court of Japan dismissed the final appeal of seventeen Muslim plaintiffs who, along with thousands of other blameless members of Japan's Muslim community, had been subject to comprehensive police surveillance. The Court left standing lower court judgments that confirmed the Tokyo police had in fact executed an intensive surveillance program against the Muslim community and ruled that they exercised lawful authority in doing so.[1]

Hayashi Junko, attorney for plaintiffs challenging blanket surveillance of Japanese muslims

The public learned of the existence of the secret police program when 114 police documents totaling nearly 1,000 pages were leaked and published on the Internet in October 2010.[2] The journalist Aoki Osamu has explained that the surveillance program was conducted by a division of Japan's secretive public security police (*kōan keisatsu*) newly created in the aftermath of the 9/11 Incident and charged with protecting Japan from international terrorist attacks. The unit focused on Japan's Muslim community as a terrorist incubator. The documents reveal that the police created files on 70,000 individuals.[3] Especially intrusive features of the program, such as surveillance of individuals entering and departing Tokyo's mosques, were adopted as Japan prepared to host a G8 Summit Meeting held at Lake Toya, Hokkaido, in July 2008.[4]

As Japan now prepares for the vastly greater security challenges to be presented by the 2020 Tokyo Olympics, these court judgments send a bitter message to Muslims and other minorities who reside in Japan and may become targets of police surveillance.

Comparing Legal Limits on Police Surveillance in New York and Tokyo

Details of the secret police programs in Tokyo and New York were nearly identical. Both employed undercover police, use of video cameras outside mosques and other places frequented by Muslim residents, and the compilation of sensitive information in mass databases maintained on Muslim residents. One U.S. case led to an appellate court judgment declaring that such police action violates the constitutional guarantee of equal protection. The other led to a historic settlement in which the New York Police Department (NYPD) accepted new guidelines prohibiting surveillance "in which race, religion, or ethnicity is a substantial or motivating factor." In Japan, on the other hand, the final judgment of the Supreme Court on May 31 confirmed lower court decisions that police surveillance of the Muslim community

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does *not* violate the provisions of Japan's constitution, including the constitutional guarantee of equal treatment, or international human rights treaties.[5]The result delivered by Japan's courts stands in sharp contrast to the response of U.S. courts in similar cases. As described below, the 3rd Circuit Court of Appeals has ruled that such a program would violate the equal protection clause of the U.S. Constitution and the New York City administration of Mayor Bill de Blasio has agreed to adopt measures specifically designed to prohibit this kind of targeting of religious and other minorities. The disparity in the response of government authorities in these cases is especially ironic because Americans have experienced devastating terrorist attacks firsthand while no deadly terrorist attack by violent Islamic extremists or other foreign terrorists has occurred on Japanese soil in the current era. Japan's courts have approved blanket police surveillance of Japan's entire Muslim community on the ground that such attacks *might* be attempted in Japan some day.

The practical result of these cases is that Muslim residents of New York can take some comfort knowing that police surveillance is subject to reasonable restrictions. However, Muslim residents of Japan (along with members of other groups that may become police targets) should be aware that Japan's courts have approved blanket police surveillance of all members of a targeted minority group, even when there is no evidence of criminal activity.

U.S. Appellate Court Judgment

The first suit to challenge the constitutionality of the NYPD Muslim Surveillance Program was filed on behalf of several Muslim plaintiffs in the federal district court for New Jersey on June 6, 2012.[6] The suit was filed just a few weeks after a team of Associated Press (AP) reporters was awarded the Pulitzer Prize for Investigative Reporting for a series of articles that exposed the NYPD program.[7] The series provided extensive detail of the NYPD's surveillance of minority, and particularly Muslim, neighborhoods that began not long after the 9/11 terror attacks. According to the AP accounts, the NYPD program was created with the advice of a CIA veteran and extended beyond city and state borders into surrounding states, especially New Jersey.[8]

The plaintiffs included a decorated Iraq war veteran, current and former Rutgers University students, a coalition of New Jersey mosques, and others. The AP reported that the NYPD New Jersey program employed surveillance of at least twenty mosques, fourteen restaurants, eleven retail stores, two grade schools, and two university-affiliated Muslim Student Associations. The NYPD later admitted that its program did not produce a single lead on terrorist activity.[9]

This case was dismissed by the district court for lack of standing two years later, but the dismissal was overturned and the case reinstated by a federal appellate court on October 13, 2015. The Third Circuit Court of Appeals held that the plaintiffs had standing to sue and had presented valid claims under the Constitution.[10] In reaching its decision, the court applied the "heightened scrutiny" standard, which has been used in the United States for decades in cases that allege discrimination against vulnerable minorities and women.[11]

In order to win such cases, the government must show both that it acted in order to protect a very important public interest *and* that, among the options available to government authorities, they selected the action that causes "the least possible restriction" on the individual rights at issue.[12] The government rarely wins such cases. Persuading the appellate court to allow the case to go forward under this standard was a major victory for the plaintiffs.

Meanwhile, a separate case filed on behalf of

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Muslim residents of New York City led to an even more surprising result.

NYPD Guidelines

One year after the New Jersey suit was filed, a separate action was filed in federal district court in Brooklyn on behalf of Muslim residents of New York City. Named defendants included then-Mayor Michael Bloomberg and Chief of Police Raymond Kelly. The plaintiffs included a community college student who organized a food program infiltrated by an undercover police agent and the *imam* at a mosque who said he was repeatedly questioned by undercover police officers. Both men, Muslim residents of Brooklyn, claimed that fear of the presence of undercover police forced them to reshape their words and actions in order to avoid potential conflict or misunderstanding by police informants and drove potential members away from their groups.

Muslims gather for prayer in New York City streets

This suit led to a historic settlement announced in January 2016.[13] New York City representatives agreed to several important provisions insisted upon by the Muslim plaintiffs. Most fundamentally, the revised NYPD guidelines prohibit investigations "in which race, religion, or ethnicity is a substantial or motivating factor." The settlement limits the NYPD's use of undercover agents and confidential informants to situations in which the information sought cannot reasonably be obtained in a timely and effective way by less intrusive means. It also requires the NYPD to remove a report titled "Radicalization in the West" from its website and to cease using the report as a basis for its Muslim surveillance program. In an especially startling provision, the NYPD agreed to the appointment of a civilian representative to participate in an internal police committee charged with oversight of investigations.[14] According to the revised guidelines, this civilian representative "may attend and participate in the monthly meetings for opening, extension, or closure of investigations" and "the Civilian Representative shall be a lawyer who has never previously been an employee of the NYPD. The Civilian Representative shall be appointed by the Mayor upon consultation with the Police Commissioner."

One very practical term of the agreement requires the City to pay the plaintiffs' attorneys fees. The agreed sum is approximately $1.7 million in fees and costs.[15]

Japan Litigation

Plaintiffs in the Japan litigation relied on very similar constitutional protections. Article 20 of Japan's Constitution guarantees the free exercise of religion, Article 13 is interpreted to prohibit violations of privacy, and Article 14 prohibits discrimination on the basis of religion. Plaintiffs alleged that the Tokyo surveillance program violates all of these rights. The judges disagreed.

The 2010 disclosure of Japan's surveillance program was not the result of investigative reporting by the news media.[16] Instead, it was

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the work of a whistleblower who leaked more than one hundred police files onto the Internet. Suit was filed on behalf of seventeen Muslim plaintiffs residing in Japan, including both citizens and non-citizens in 2011, more than a year before the first suit was filed against the NYPD. A judgment dismissing their claims was issued by the Tokyo District Court on January 15, 2014.[17]

According to the court, the Tokyo Metropolitan Police launched their campaign with the formation of a "mosque squad" composed of forty-three agents in June 2008. The leaked documents showed that police stationed agents at mosques, followed individuals to their homes, obtained their names and addresses from alien registrations, and compiled databases profiling more than 70,000 individuals. The documents also showed that the police obtained bank account information, including balances, income and expenses, and other personal information and stationed agents at Islam-related non-profit organizations, halal shops and restaurants, and other places that might be frequented by members of Tokyo's Muslim community. In some cases, the police actually installed surveillance cameras at mosques and other venues.

Muslims pray in Tokyo mosque

After providing a catalog of the acts of surveillance, a Tokyo district court panel ruled that the actions of the police were "necessary and unavoidable measures" (*hitsuyō yamu wo enai sochi*)[18] and therefore did not violate the rights of the Muslim targets. The plaintiffs appealed to the Tokyo High Court, but the High Court upheld the dismissal on April 15, 2015. Undeterred, the plaintiffs launched their final appeal, to the Supreme Court of Japan, in the hope that the nation's highest court would understand the significance of the issues and rule against police profiling of the Muslim community. They would be disappointed not only by the Court's denial of their appeal, but also by the Court's refusal even to engage in a discussion of the issues.

The dismissal came in the form of a terse, unanimous order issued by a five-judge panel of the Supreme Court on May 31, 2016. The order cited Article 312 of the Code of Civil Procedure, which limits grounds for Supreme Court appeal to cases where a lower court has erred when interpreting a provision of the constitution or a constitutional violation is otherwise present. It is impossible to know what review was conducted by the Court prior to issuing the order, however, we must conclude that the Court agreed with the substantive content of the lower courts' decisions. In other words, the nation's highest court confirmed that mass surveillance of members of the Muslim community does not violate any provision of Japan's Constitution, despite the lack of any evidence of criminal activity.

Standards of Review

The "heightened scrutiny" standard applied by the Third Circuit is familiar to all students of American constitutional law. The notion that the government must meet a higher standard to justify actions that discriminate against vulnerable minorities goes back to a 1938 Supreme Court decision and has been the law of the land ever since. The highest courts of

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other democratic nations have also developed a higher level of protection for such fundamental rights, commonly known as the "proportionality standard."[19] The proportionality standard is also applied by the European Court of Human Rights, which rules on cases that arise from the 47 member nations of the European Convention on Human Rights.

There was a movement among Japan's courts to apply a similar, higher standard in cases that involve limitations on fundamental rights, but this was put to a halt by a 1974 judgment of the Supreme Court commonly known as the "*Sarufutsu*" decision. In that case, the Supreme Court overturned lower court decisions in three cases that had acquitted defendants in criminal prosecutions of political speech cases by ruling that their actions were protected by the constitutional guarantee of free speech. The Court brushed aside the lower courts' application of the higher standard and ruled in favor of government prosecutors.[20]

Since then, advocates and constitutional law professors have repeatedly called upon the Supreme Court to adopt a higher level of scrutiny when reviewing government restrictions on fundamental rights, to no avail.[21]

What About International Law?

Japan has ratified several core human rights treaties, including the Convention to Eliminate Racial Discrimination and the International Covenant on Civil and Political Rights. In addition to filing suit in Japan's courts, attorneys representing the Muslim plaintiffs also brought the case to the attention of review bodies established by each of these treaties. Their efforts were rewarded with recommendations that Japan's police cease the kind of ethnic profiling revealed in the documents.

In its Concluding Observations issued on August 20, 2014, the UN Human Rights Committee cited treaty provisions protecting the practice of religion and prohibiting discrimination in recommending that the Japanese government should "(a) Train law enforcement personnel on cultural awareness and the inadmissibility of racial profiling, including the widespread surveillance of Muslims by law enforcement officials," and "(b) Ensure that affected persons have access to effective remedies in cases of abuse."[22]

Just a few days later, on August 29, 2014, an entirely different treaty body, the United Nations Committee on the Elimination of Discrimination, issued Concluding Observations that urged the government of Japan to "ensure that its law enforcement officials do not rely on ethnic or ethno-religious profiling of Muslims."[23]

Because these recommendations appeared during the pendency of the appeal to the Tokyo High Court, the plaintiffs' attorneys were able to bring them to the attention of that court. But the High Court dismissed their claim that the surveillance program violates Japan's obligations under human rights treaties with the blunt conclusion that the comments of these Committees "did express fears (*kennen*), however it cannot be said that [the UN Committees] declared the information gathering program and information gathering activities of the present case to be in violation" of either of the two treaties.[24]

Thus, the High Court dismissed the substance of the Committees' recommendations without engaging at all in an analysis of the treaty provisions themselves or the reasons behind the Committee recommendations.

This lack of interest in international human rights standards provoked a member of the plaintiffs' attorneys team to write, "although there are various problems with the judgment, these words have brought me the greatest sense of unease."[25]

In contrast to the condemnation of ethnic and

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ethno-religious profiling by the UN Committee on the Elimination of Discrimination, the Tokyo court provided a robust defense of such profiling. Thus, for example, in the portion of its opinion that dismissed plaintiffs' claims that police actions violated the constitutionally guaranteed freedom of religion, the Tokyo judges wrote

> ...the early detection, for the prevention of international terrorism, of terrorists under the guise of ordinary citizens, necessitates an assessment of how Muslims constitute and run their communities. And it follows that there is no other way to discern whether one is a peaceful Muslim or a terrorist belonging to a radical Islamic group other than to make presumptions from various circumstances observable from external manifestations such as their participation, if any, in religious ceremonies or educational activities, and the position they hold in the religious community, which requires the monitoring — continuously to a certain degree — of the state of their activities, through approaching or in some cases entering mosques.[26]

The court applied similar reasoning in dismissing other constitutional claims.

Into the Future

In October 2015, a U.S. federal appellate court issued a historic decision, ruling that the alleged police action amounted to unconstitutional discrimination based on religion. Just seven months later, the Supreme Court of Japan dismissed similar litigation filed on behalf of Muslim residents of Japan, ruling that Japan's Constitution does not apply. Although these courts reviewed nearly identical police actions under nearly identical constitutional principles, they reached opposite conclusions. How can this be?

The American court spoke with a sense of history. It drew parallels between the targeting of Muslims in the post-9/11 era and discrimination against other racial and religious groups in American history, citing Supreme Court Justice Robert Jackson's famous objection to the Court's discredited 1944 decision upholding the internment of Japanese-Americans during World War II. It summarized with these words: "What occurs here in one guise is not new. We have been down similar roads before. Jewish-Americans during the Red Scare, African-Americans during the Civil Rights Movement, and Japanese-Americans during World War II are examples that readily spring to mind. We are left to wonder why we cannot see with foresight what we see so clearly with hindsight — that '[l]oyalty is a matter of the heart and mind[,] not race, creed, or color.'"[27]

By contrast, Japan's court decisions make no reference to historical episodes, including the extraordinary circumstances that led to the adoption of Japan's present constitution. They also provide scant discussion of the burdens imposed on individuals subject to constant government surveillance. Moreover, they give no indication that Japan's Constitution requires any particular solicitude for the rights of minority groups singled out for restrictive government action. In Japan's courts, there is no need for government to justify discriminatory actions by meeting an articulated standard that requires showing of a "compelling interest" and that the measures taken were the least restrictive among the different options available to government actors. Instead, Japan's courts require only that the government articulate some reason for its actions. In this case, the obvious reason is the protection of Japan from violent attacks by Islamic terrorists. Despite the lack of any

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concrete evidence showing such a threat to Japan, the courts simply defaulted to the conclusory declaration that *all* actions of the police before the court are "necessary and unavoidable."

Judges are charged with interpreting and applying the law in specific cases. Ideally, when they do so they provide clear explanations of the reasoning behind their decisions. This enables lawyers, government officials, and others to gain a better understanding of the law to guide their future actions. The two American cases described above delivered valuable guidance to all. One led to a specific set of guidelines to govern NYPD investigations. The other led to a ruling that the plaintiffs' claims indicated that police action had gone too far, with a remand to the district court to allow the case to go forward.

It's hard to know what to make of the Japanese courts' actions. How are we to interpret the "necessary and unavoidable" standard? Was the use of undercover informants "necessary and unavoidable"? The use of concealed video cameras? What about police collecting financial records from banks and other commercial institutions? "Necessary and unavoidable"? Among other things, the courts saw no need to distinguish tailing Muslims on the streets from following them into their houses of worship.

The "necessary and unavoidable" standard was applied against claims to freedom of religion. It was applied against claims to privacy. And it was also applied to dismiss the claim that targeting Muslims violates Article 14 of Japan's Constitution, which states that "there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin."

Next year will see the seventieth anniversary of the establishment of the Supreme Court by Japan's democratic Constitution. The Court has yet to rule that the police have violated the constitutional rights of anyone.[28] The Court's blanket endorsement of the police actions in this case leaves one to wonder if it will ever do so.

One thing is certain. Japan's police can go forward with their surveillance of Muslims secure in the knowledge that Japan's judges will not stand in their way.

Notes

[1] The Tokyo District Court decision, the response of UN human rights bodies, and related issues are the subject of an Asia-Pacific Journal Special Feature, "Police Surveillance of Muslims nd Human Rights in Japan," Vol. 12, Issue 39, No. 1, Sept. 29, 2014. Available here: http://apjjf.org/2014/12/39/Asia-Pacific-Journal-Feature/4190/article.html. For a 2010 report on the leak, see David McNeill, "Muslims in shock over police 'terror' leak -- Japan residents named in documents want explanation — and apology — from Tokyo police force," The Japan Times, Nov. 9, 2010,
at http://www.japantimes.co.jp/community/2010/11/09/issues/muslims-in-shock-over-police-terror-leak/#.VA-aZmSDuzA

[2] Today such documents would undoubtedly be designated as secret and leakers would subject to criminal penalties of up to ten years in prison. The person who leaked these documents has apparently never been identified.

[3] In a recent book, Michael Penn cited estimates of the total foreign Muslim population in

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Japan to be between 60,000 to 100,000 persons. Michael Penn, Japan and the War on Terror (I.B. Tauris, 2014), p. 236.

[4] In two chapters of a book that analyzes the leaked documents, Aoki describes the public security police as the most secretive agency of Japan's government. He writes that even though the leaked documents provide only a fragmentary picture of security police operations, to his knowledge this is the most detailed exposure of their activities ever published. Regarding mosque surveillance, the leaked documents reveal that 43 undercover officers were assigned to monitor seven mosques in Minato-ku, Tokyo, from 8:30 in the morning until 7:00 in the evening every day, commencing on June 23, 2008. Osamu Aoki, Kazuyuki Azusawa, and Kenichiro Kawasaki (eds.) *Kokka to Joho* (The State and Information), Gendai Shokan (2011), pp. 22—33 and 34—55. The book includes an Appendix of approximately 200 pages with the actual documents, with names and other details redacted to protect privacy. For extraordinary measures taken to monitor Muslims and other foreigners during this period generally, see Michael Penn, *supra* n. 3, pp. 236—47.

[5] Decision of the 3rd Petty Bench of the Supreme Court of Japan (Chief Judge Masaharu Otani), May 31, 2016. The Court did not comment on the substantive issues raised by the case.

[6] A handy timeline for the New Jersey litigation is available here: https://www.ccrjustice.org/home/what-we-do/our-cases/hassan-v-city-new-york

[7] Press Release, AP, "AP wins Pulitzer Prize for Investigative Reporting on NYPD surveillance" (April 16, 2012), http://www.ap.org/content/press-release/2012/ap-wins-pulitzer-prize-for-investigative-reporting-on-nypd-surveillance

[8] See e.g., Adam Goldman and Matt Apuzzo, "NYPD built secret files on mosques outside NY," Feb. 22, 2012 http://www.ap.org/Content/AP-In-The-News/2012/NYPD-built-secret-files-on-mosques-outside-NY

[9] Press Release, Brennan Center for Justice, "Federal Appeals Court Says Suit Challenging NYPD Surveillance Can Continue" (October 13, 2015), https://www.brennancenter.org/press-release/federal-appeals-court-says-suit-challenging-nypd-surveillance-can-continue. See also, Danielle Wiener-Bronner, "NYPD Commissioner confirms Muslim spying program was a total bust," Nov. 21, 2015, available at http://fusion.net/story/236320/bill-bratton-nypd-muslim-spying-comments/

[10] Hassan v. City of New York, 804 F.3d 277, 289, 297 (3rd Cir. 2015). The text of the court's opinion is available here: http://www2.ca3.uscourts.gov/opinarch/141688p.pdf.

[11] U.S. courts apply a "strict scrutiny" standard in cases involving discrimination affecting suspect classes like race and nationality. They apply a somewhat less demanding "intermediate scrutiny" standard to cases involving gender discrimination. The Hassan court explained, "Strict and intermediate scrutiny (which we collectively refer to as 'heightened scrutiny' to distinguish them from the far less demanding rational-basis review) in effect set up a presumption of invalidity that the defendant must rebut." Id. at 299.

[12] See, e.g., Ronald D. Rotunda and John E. Nowak, Treatise on Constitutional Law – Substance and Procedure, Chapter 18, Equal Protection (2016 Update).

[13] For details of the suit and the settlement reached in January 2016, see https://www.aclu.org/cases/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-pro

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gram. The text of the settlement order is available here: https://www.aclu.org/legal-document/raza-v-city-new-york-settlement-stipulation-and-order. The proposed changes to the "Handschu Guidelines" are available here: https://www.aclu.org/legal-document/raza-v-city-new-york-exhibit-settlement-stipulation-and-order-proposed-modified?redirect=raza-v-city-new-york-exhibit-settlement-stipulation-and-order-proposed-modified-handschu-guidelines.

[14] See "Proposed modifications to the Handschu guidelines," Jan. 7, 2016, at http://www.nyclu.org/files/releases/Handschu_Guidelines_FINAL_PROPOSED_MODIFICATIONS.pdf. Also see https://www.aclu.org/other/raza-v-city-new-york-settlement-faq

[15] Japan's courts do not award attorneys' fees to successful plaintiffs in such cases.

[16] It is not surprising that Japan's news media failed to uncover the Muslim surveillance. Numerous factors that operate to limit investigative journalism in Japan were recently outlined in a preliminary report by the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression. http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19842&LangID=E.

[17] Tokyo District Court Decision, Jan. 15, 2014. This was a decision on the merits. Standing was not an issue in the Japan case because the plaintiffs' names appeared in the leaked documents. In this article, English expressions are derived from the translation of the court's decision appended to the UN submission by the attorneys' team. The full submission is available on the website of the UN Committee on the Elimination of Racial Discrimination, here http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fJPN%2f17783&Lang=en The website of the "Attorney Team for Victims of Illegal Investigation Against Muslims" is located at http://k-bengodan.jugem.jp

[18] Of course, no decision by any court is literally "unavoidable." Each decision should be based on the application of rules of law to the particular facts of the case. Regarding police surveillance of a targeted minority, attorneys cited three separate provisions of Japan's Constitution. The decision that those provisions do not prohibit this sort of police profiling may possibly be correct, but it is certainly not inevitable. According to David T. Johnson, the term "unavoidable" (*yamu wo enai*) "is ubiquitous in Japan's death penalty discourse." For his discussion of the use of this expression in cases involving the death penalty, see David T. Johnson, "Capital Punishment without Capital Trials in Japan's Lay Judge System, The Asia-Pacific Journal Vol. 8, Issue 52 No 1, December 27, 2010. http://apjjf.org/-David-T.-Johnson/3461/article.html.

[19] For a comparative discussion of equal protection standards focused on the Japan case, see Craig Martin, "The Japanese Constitution As Law and the Legitimacy of the Supreme Court's Constitutional Decisions: A Response to Matsui," available at http://openscholarship.wustl.edu/law_lawreview/vol88/iss6/.

[20] Lawrence Repeta, "Reserved Seats on Japan's Supreme Court," Washington University Law Review, Vol. 88, pp. 1739—41 (2011).

[21] Colin Jones, "Legitimacy-Based Discrimination and the Development of the Judicial Power in Japan as Seen through Two Supreme Court Cases," University of Pennsylvania East Asia Law Review, Vol. 9 (2014).

[22] United Nations Human Rights Committee, "Concluding observations on the sixth periodic report of Japan," Aug. 20, 2014,, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC

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%2fJPN%2fCO%2f6&Lang=en. The United Nations Human Rights Committee was created pursuant to the International Convention on Civil and Political Rights.

[23] United Nations Committee on the Elimination of Discrimination (CERD Committee), "Concluding observations on the combined seventh and ninth periodic reports of Japan," Sept. 26,
2014, http://tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fJPN%2fCO%2f7-9&Lang=en. The CERD Committee was created pursuant to the United Nations Convention on the Elimination of Discrimination.

[24] Translation from the website of the "Attorney Team for Victims of Illegal Investigation Against Muslims" is located at http://k-bengodan.jugem.jp (after the 4/15/2015 High Court decision)

[25] *Id*.

[26] Translation by the Attorney Team, *supra* n. 17.

[27] Hassan v. City of New York, *supra* n. 10.

[28] For a discussion of Supreme Court decisions involving individual rights, see Lawrence Repeta, "Limiting fundamental rights protection in Japan – The role of the Supreme Court," in Kingston (ed.) Critical Issues in Contemporary Japan (Routledge, 2014), pp. 36—51.

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