

U.S. Lawyer Makes Japan Sit Up and Take Note

By DAVID E. SANGER

Special to The New York Times

TOKYO, March 15 — Lawrence Repeta's fight to document the workings of Japanese courtrooms began one day in 1983 when he pulled out a memo pad in Tokyo District Court and jotted down a few notes about an intriguing case.

"A guard came over and said, 'Put that away,'" said Mr. Repeta, a 38-year-old lawyer and writer from Seattle. "I looked at him and said: 'What? This is a public courtroom.'"

Politely but firmly the guard recited one of the many ironclad rules that, in the eyes of many critics here, have largely served to keep the Japanese judiciary free of much scrutiny: Only Japanese journalists approved by the court are permitted to take notes on official proceedings.

Mr. Repeta's encounter with the courtroom guard, and then with any number of Japanese judges who insisted that note-taking was "disruptive," ended last week in Japan's Supreme Court. In a rare rebuke to the country's often hidebound legal system, and a rarer embrace of a foreigner's challenge to the status quo, the court ruled 14 to 1 that Mr. Repeta, who speaks Japanese fluently, should be free to scribble at will.

Legal Profession Applauds

His victory was immediately hailed by the Japanese legal profession, which sided with Mr. Repeta but seemed far more comfortable to have an outsider take up the cause. In Japan, which cherishes consensus, it is often foreigners who question rules that Japanese merely abide by.

"People forget that Japan is not a country with a democratic tradition," Mr. Repeta said the other day, as the Japanese press marveled that a foreigner had taken on one of Japan's most conservative institutions and emerged a winner. "The legal concepts sound Western, but they almost always take on different meaning. In almost every case, order is preferred over fundamental individual rights."

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But by that time, the case was becoming an embarrassment. Ryozo Saki, one of Japan's best-known authors, filed a similar lawsuit. A "support group" formed around Mr. Repeta and Mr. Saki. "The media got behind us, a lot of people got behind us, and soon we had a consensus of opinion leaders on this issue," Mr. Repeta said. "That way the Supreme Court had no choice."

Still, Mr. Repeta's victory was far from total. The Supreme Court dismissed his claim to \$10,000 in damages. And it stopped short of saying that court spectators had a right to take notes. The court did rule, however, that "the freedom to take notes should be respected" and that ordinarily note-taking could not be construed as obstructing "the fair and smooth conduct of a trial."

The word passed quickly. Employees at the Tokyo District Court taped over signs warning spectators to keep their pens in their pockets. Mr. Saki, the author, said he wanted to head to a court "just to take out my memo pad there."

Political Drama Unfolds

Soon Mr. Saki may have something to write about. By coincidence the Supreme Court's ruling comes just as a major political drama is about to move to the courtroom. For several weeks, prosecutors have been arresting principals in the scandal, in which a fast-growing company named Recruit sprinkled the Japanese establishment with millions of dollars worth of unlisted stock, apparently to gain favor with the Government and big business. Last week alone, the former chairman of the world's biggest corporation, Nippon Telegraph and Telephone, and the highest-ranking bureaucrat in the Labor Ministry were arrested on bribery charges.

When they appear in court, to describe the seamy underside of Japanese politics, a flood of writers, pencils in hand, are expected to greet them. But some social critics, like Maruo Shioda, a well-known local commentator, say the Japanese should not be too proud of their newfound liberty. "We have to reflect upon ourselves," he said the other day, "that it took a foreigner's appeal to reach this reasonable conclusion."

disruptive. Another barred a woman in a white summer hat.)

Mr. Repeta's battle with the judiciary started soon after he left a job with a Japanese law firm in 1982 to research a book about a Japanese stockbroker on trial for income tax evasion. The testimony in the case revealed a lot about how stock prices can be manipulated on the Japanese stock markets, and it embarrassed celebrities, businessmen and politicians among the broker's clients.

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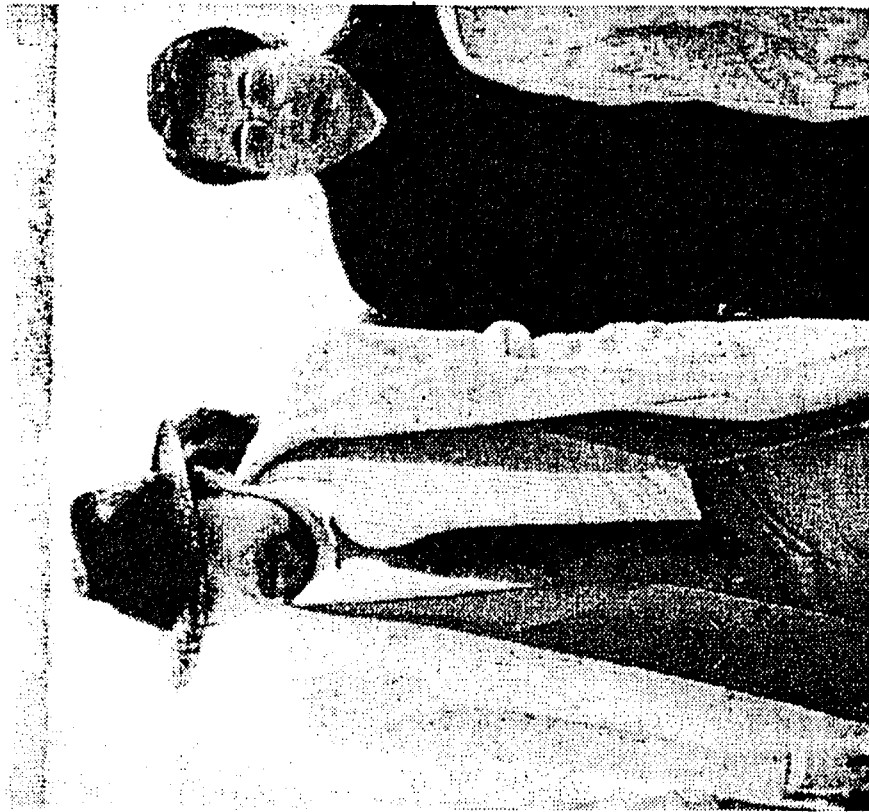
Seven times Mr. Repeta asked for permission to take notes. Each time the application was denied without explanation. When Mr. Repeta hired Japanese lawyers to help him, the judge refused to meet with them to explain his ruling.

So with the help of the Japan Civil Liberties Union, Mr. Repeta sued the Government, an event unusual enough by itself in Japan. Each time he lost. The first court that heard the case ruled that the guarantee of open trials, a provision of the Constitution imposed on Japan during the American occupation, protects only use of

"the five senses" in the courtroom. Note-taking, the court ruled, was a supplement to fact and not protected.

In its ruling, the court explained that witnesses might be psychologically affected by the presence of journalists taking notes. In fact, the court said gravely, note-taking could lead to inaccurate reporting about what takes place in the Japanese courtroom.

The Tokyo High Court, an appeals court, ruled that while the Constitution might allow note-taking, the judge had a right to stop any activity that had "even a slight possibility of affecting" courtroom proceedings.



Agence France-Press

Lawrence Repeta, a lawyer and writer from Seattle, leaving Supreme Court in Tokyo last week after winning a decision that allows him to take notes in Japanese courtrooms.

While seemingly trivial, the note-taking issue quickly became a symbol among civil liberties groups here of Japan's ambiguous feelings about free speech and detailed scrutiny of how government works. For as long as anyone can remember, the only people with note-taking privileges in courtrooms have been members of the court "press club," an exclusive group of Japanese reporters assigned to cover the court.

The rule meant that courtroom guards would regularly scan the crowds for authors, novelists, law students and foreign correspondents who scribbled notes, often removing their pencils and sometimes the offenders themselves. Judges may grant special permission for note-taking, but as a rule they have routinely denied such requests. (Japanese judges have something of a reputation for quirky rules on decorum. Last fall, a judge created a flurry of protest when he ordered a physically handicapped spectator removed from the courtroom, saying wheelchairs were