

# NHK Program Alteration Tokyo High Court Decision

January 29, 2007 Sentencing Proceeding Original Copy Receiving Court Clerk, Ogawa Issei

2004 (Ne) No. 2039 Demand for Compensation of Damages Appeal Incident (Original Sentence, Tokyo District Court 2001 (Wa) No. 15454

Oral Proceedings Closing Date: October 11, 2006

## Decision

Tokyo Kôtô-ku, Shiomi 2-chôme 10-10 Appellant and Respondent	“Violence Against Women in War” Network Japan (hereafter called “Plaintiff in the First Instance” VAWW-NET)
Representative of the Same	Nishino Rumiko Shôji Rutsuko
Appellant Nishino Rumiko The above two persons’ Appeal Proxy Attorney	(hereafter “Plaintiff in the First Instance, Nishino) Iida Masayoshi (and four others)
Tokyo Shibuya-ku Jin’an 2-chôme 2-1 Defendant	Japan Broadcasting Corporation [Nihon Hôsô Kyôkai; NHK] (hereafter “Defendant in the First Instance NHK”)
Representative of the Same Appeal Proxy Attorney of the Same	Chairman Hashimoto Gen’ichi Sugimoto Yukitaka (and six others)
Tokyo Shibuya-ku, Kamiyamachô 4-14 NHK Enterprise Co. Ltd. 21 <sup>st</sup> Case Successor Defendant	NHK Enterprises Co. Ltd. CEO Saegusa Takeshi Inose Toshiaki
Representative of the Same Appeal Proxy	
Tokyo Minato-ku, Akasaka 8-chôme 12-20 Wakô Building Defendant and Plaintiff	Documentary Japan Co. Ltd. (hereafter “Defendant in the First Instance DJ”)
Representative of the Same Appeal Proxy Lawyer	CEO Maki Tetsuo Okuno Yoshihiko (and ten others)

### [Main Text of the Decision]

1. Those sections relating to the Plaintiff in the First Instance VAWW-NET in the first point and the second point in the original decision will be revised in the following manner:

(1) The Defendant in the First Instance NHK will pay the Plaintiff in the First Instance VAWW-NET the amount of 2 million yen in addition to a 5% interest on said amount from August 4, 2001 until full payment is complete.

(2) The Defendant in the First Instance NEP and the Defendant in the First Instance DJ will pay the Plaintiff in the First Instance 1 million yen each in addition to a 5% interest on said amount from August 4, 2001 until payment is complete.

(3) The demand in excess of said amount made by the Plaintiff in the First Instance VAWW-NET to the Defendant in the First Instance is dismissed.

2. The appeal of the Plaintiff in the First Instance Nishino is dismissed.

3. The appeal of the Defendant in the First Instance DJ is dismissed.

4. Of the three fourths the of the cost of litigation for both the First and Second Instances accrued by Plaintiff in the First Instance VAWW-NET and the Defendants in the First Instance, this will be divided into six parts, three of which will be paid by Plaintiff VAWW-NET and two of which will be paid by Defendant in the First Instance NHK. The remaining amount will be a shared by Defendant in the First Instance NEP and Defendant in the First Instance DJ. One fourth of costs accrued by Plaintiff in the First Instance Nishino and the Defendants in the First Instance will be paid by Plaintiff in the First Instance Nishino.

5. Points (1) and (2) of Item 1 of this decision may be executed on provision.

## FACTS AND REASONS

### I. Key Points of Appeals

#### 1. Plaintiffs In the First Instance

(1) That the sections of the Plaintiff in the First Instance's loss of the case in the original decision be revoked.

(2) That to the Plaintiffs in the First Instance and the Defendants in the First Instance be jointly and each liable for 10 million yen and a 5% interest accrued from August 4, 2001, until payment is complete. (This includes the amount decreed by the original decision to be paid to Defendant in the First Instance DJ)

(3) (Regarding the increased demand made in this case)

That Defendant in the First Instance NHK pays Plaintiffs in the First Instance 10 million yen and 5% in accrued interest from April 25, 2005, until completion of payment.

#### 2. Defendant in the First Instance DJ

(1) That the Defendant in the First Instance DJ's loss of the case in the original decision be revoked.

(2) That the demands of the Plaintiff in the First Instance VAWW-NET toward the Defendant in the First Instance DJ be dismissed.

### II. Background Facts of the Case

1. The Plaintiff in the First Instance VAWW-NET with Matsui Yayori (hereafter "the late Matsui") serving as representative held an international tribunal to adjudicate military sexual slavery. The Defendant in the First Instance NHK aired a show taking up this tribunal, in the ETV2001 series "How is War To be Judged" as the second of a four-part series that was aired as "Wartime Sexual Violence To Be Examined." The Plaintiff in the First Instance VAWW-NET and the late Matsui (hereafter "the Plaintiffs in the First Instance"), based on requests for interviews by the Defendant in the First Instance and what followed, developed the trust (expectation) that a show with the aim of presenting in detail the content of the aforementioned tribunal would be aired. But despite the Plaintiff's full cooperation with the production of the show, the Defendant in the First Instance produced, edited, and aired a show with an aim that was different from how the show was first described. The plaintiffs found this to be in violation of a legally protected interest and as a joint tort-feasor. Additionally this was an illegal act that in breach of the obligation to explain because a

contract-like relationship was established between the Plaintiff in the First Instance and the Defendant in the First Instance, such that in the case of changes in the original description of the aim of the show the Defendant in the First Instance had the obligation to inform the Plaintiff in the First Instance, and because the Defendant in the First Instance, before or after the airing of the show made no effort to explain the change.. As a default on that obligation, the plaintiffs advanced a claim for damages in the amount of 10 million yen and all delayed damages.

In the original decision, based on the demands made by the Plaintiff in the First Instance against the Defendant in the First Instance a portion of Plaintiff in the First Instance VAWW-NET's demands against Defendant in the First Instance DJ were accepted, but all other demands were dismissed. The Plaintiff in the First Instance objected to this ruling, and the Defendant in the First Instance DJ also objected and thus each made an appeal.

In the present case, based on the aforementioned demands and because of the production, editing, and airing of a program unlike the program described at the outset and the interference by politicians and Right Wing groups, there was a non-autonomous act with the intent of illegal activity on the basis of a failure to perform an obligation as stated in the above aim of the appeal 1(3). Thus the Plaintiff in the First Instance seeks damages from the Defendant in the First Instance NHK in the amount of 10 million yen and interest on delayed payments and, on the basis of this section, expanded the damages.

2. Presupposed Facts (Facts accepted through evidence presented for each point so that no disagreement arises between parties)

(1) Parties Involved

a. The Plaintiffs in the First Instance

The Plaintiff in the First Instance VAWW-NET was established as an unincorporated association in June 1998, in order to do away with violence against women in wartime and armed conflict and from the perspective of women's rights to take on the task of making peace, aiming for a demilitarized world.

From the inception of the Plaintiff in the First Instance VAWW-NET, the late Matsui served as a representative for the Plaintiff in the First Instance VAWW-NET, and from December 27, 2000, Shôji Rutsuko (hereafter "Shôji") and the late Matsui's litigation successor the Plaintiff in the First Instance Nishino represented VAWW-NET together. However, Shôji passed away on December 27 of the same year while the original sentence was still pending, and Plaintiff in the First Instance Nishino succeeded to the rights and obligations of the late Matsui for this lawsuit.

b. The Defendants in the First Instance

The Defendant in the First Instance NHK is a semi-governmental organization that carries out the broadcasting concerns for all of Japan.

Before succeeding to this lawsuit, NHK Enterprise 21 Co. Ltd. was a corporation entrusted with the goal of producing and broadcasting programs, but while this lawsuit was pending, 2005, Defendant in the First Instance NEP took its place through merger on April 1 (hereafter, even prior to succession "Defendant in the First Instance NEP").

Defendant in the First Instance DJ is a corporation that makes its aim the planning and production of visual products such as movies and television.

(2) Convening the Women's International War Crimes Tribunal

The late Matsui felt that in regards to the problem of acts of sexual violence against women carried out by soldiers of the former Japanese army during World War II (the so-called "Comfort Women" Issue (hereafter referred to as the "Comfort Women issue")), the Japanese government was avoiding punishment for those responsible. Thus at the NGO (non-governmental organization) Forum of the U.N. Human Rights Committee held in April 1998, she proposed holding a people's tribunal that by the hands of women would adjudicate those responsible; in June of that year, along with those who agreed with her proposal, she established the Plaintiff in the First Instance VAWW-NET and began preparations for the aforementioned people's tribunal.

In February 1999, an international executive committee was established for the aforementioned people's tribunal, which included the Plaintiff in the First Instance VAWW-NET and NGOs from various Asian countries, and with that the preparations for the tribunal moved ahead; in December 2000, a tribunal called, "The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery" was held in Tokyo (hereafter called "The Women's Tribunal"). The Women's Tribunal used an approach similar

to a criminal trial. In other words, the court was held so that public prosecution teams from the victimized countries to which former Comfort Women belong could prosecute the aggressor Japan's Shōwa Emperor and former military personnel; that a trial would be held in which a team of judges would listen to testimonies of victims and specialists; and that a judgment would be rendered. The trial was held in Tokyo's Kudan Kaikan (Kudan Hall) from December 8 - 10, 2000. On December 12, in Tokyo's Nihon Seinenkan (Japan Youth Hall), the Shōwa Emperor was found guilty and a summary of the judgment was rendered (In the interest of time, the judgment on former soldiers other than the Emperor was left to the final verdict).

After a one-year break, the Women's Tribunal reconvened in December 2001 at The Hague, Netherlands. In the final verdict, all were found guilty, and the Japanese government was to accept responsibility for payment of reparations.

(3) The Defendant in the First Instance NHK aired a four-part ETV2001 series: "How Is War to be Judged?" (hereafter, "The Series in Question") on January 30, 2001. The second show of the Series in Question, entitled "The Question of Wartime Sexual Violence" featured the Women's Tribunal (hereafter "the Program in Question").

(4) The Progression for the Planning and Production of the Program in Question

a. On the occasion of the mention of the Women's Tribunal by Assistant Professor at Tokyo University Takahashi Tetsuya (hereafter, "Professor Takahashi") in his lecture "History on Trial" in August 2000, the Defendant in the First Instance NEP and the Defendant in the First Instance DJ planned a program that would take as its theme the sexual violence against women in wartime that would feature the Woman's Tribunal in a program to be aired by the Defendant in the First Instance NHK. In the above program, the Defendant in the First Instance NEP and the Defendant in the First Instance DJ proposed to make a two-part series and after discussions with the responsible party at the Defendant in the First Instance NHK, decided on the title "ETV2000 (Educational Television 2000) A Two-part Evening Program Series "The International Women's Tribunal: When Wartime Sexual Violence is Adjudicated". They wrote up a program proposal dated September 26, 2002, in which the first evening's program was titled, "What Was Put on Trial?" and the second evening's program was titled "Questioning Wartime Sexual Violence" (hereafter "the Proposal of the Program in Question) (A-1 image) and submitted it to Defendant in the First Instance NHK.

b. Around the same time, the Defendant in the First Instance NHK received a proposal from its European Directorate on the subject of European War Responsibility and Reconciliation and decided to make a single four-part series by combining this proposal with the proposal from the Defendants in the First Instance NEP and DJ; they then agreed to produce the Program in Question and to feature the Women's Tribunal in the second part of the program. In addition, the third part of the Series in Question was to take up the International Public Hearing entitled "Crimes against Women under Current Armed Conflicts," which was to be held during a break in the Women's Tribunal and hosted by the Plaintiffs in the First Instance VAWW-NET.

c. On November 27, 2000, the Defendant in the First Instance NHK entrusted production of the second and third programs of the Series in Question (B-1.c, C-1) to the Defendant in the First Instance NEP; the Defendant in the First Instance NEP re-commissioned the same program to the Defendant in the First Instance DJ (D-1, Overall Meaning of the Argument).

d. The Defendant in the First Instance DJ, in October 2000, began requesting interviews relating to the Series in Question's second and third programs, and on October 20, 2000, the Plaintiff in the First Instance VAWW-NET decided to agree to this request at a Steering Committee meeting. After receiving this consent, on October 24, 2000, the Defendant in the First Instance DJ's directors Sakagami Kaori (hereafter "Sakagami") and Kai Asako (hereafter "Kai"), the Plaintiff in the First Instance VAWW-NET's Shōji, Media (PR) Directors Koyanagi Akiko (hereafter "Koyanagi") and Matsumoto Makiko (hereafter "Matsumoto") all participated in a meeting to discuss the interview and information collecting process. At that time, Sakagami et al provided Shōji with copies of the Proposal of the Program in Question (A.1).

From that point on, over a two month period from the opening of the Women's Tribunal until its conclusion, the Plaintiff in the First Instance VAWW-NET worked with the Defendant in the First Instance DJ on interviews and information and cooperated in numerous ways; on this foundation the Program in Question was produced.

### **III. The Disputed Issues and Claims Made by the Parties Involved**

#### **1. On the Illegal Violation of Expectation Rights (Reliable Trust)**

(Claims made by the Plaintiffs in the First Instance)

(1) The trust held by the Plaintiffs in the First Instance on the content of the Program in Question is a form of interest (expectation right) that should be protected by the law.

#### a. The Progression of Events to the Interview Request and Its Content

The Women's Tribunal was not originally intended for media coverage but was carried out as part of an international wave of interest in the concept of adjudicating sexual violence in war and other armed conflicts as crimes; in other words, it was meant to adjudicate as crimes against humanity the wartime sexual violence committed against the former Comfort Women and to restore the dignity of the victims. The Plaintiffs in the First Instance were dealing cautiously with numerous requests from media organization within and outside of Japan.

On October 24, 2000, when Shôji, Koyanagi and Matsumoto met with Sakamoto and Kai, Sakamoto copied the Proposal of the Program in Question (A-1) and distributed those copies; regarding the Program in Question, they explained in detail how the Women's Tribunal would be filmed with care and would be aired in accordance with the Proposal provided. In the Proposal of the Program in Question, there was an entry stating: "On the first night, the Women's International War Crimes Tribunal will be carefully followed, and will pursue the issue of how the wartime sexual violence of a half century ago will be judged by specialists from around the world." With regard to the program content, under the given Program title, "What was Put on Trial" it stated "On the first night, the Women's International will be followed in detail, combined with segments of studio, in which the significance of addressing wartime sexual violence half a century later will be considered." In addition, the Proposal states that "through the examination of how, over half a century after the injuries have been committed, an international tribunal of the world's top experts is formed, whether or not the tribunal is actually held, and how international public opinion judges wartime sexual violence, the program seeks to address the question, "What has been put into question?"

After this meeting on November 6, 2000, Shôji reported the above meeting to the Plaintiff in the First Instance VAWW-NET's Steering Committee and circulated the copy of the Proposal of the Program in Question.

#### b. The Original Program Objective

The Defendant in the First Instance NHK decided to structure a four-part series program that combined the European Directorate's proposal for a program that considers crimes against humanity with a program featuring the Women's Tribunal proposed by the Defendants in the First Instance NEP and DJ. Chief producer Nagata Kôzô (hereafter, "Nagata") and Chief Producer Nagai Satoru created an Educational Program Division Fixed Time Program Proposal (B-4, hereafter, "NHK Proposal") for an internal Program Proposal for Defendant in the First Instance NHK. The NHK Proposal did not differ from the main theme or objectives of the Program in Question's plan. On November 26, 2000, at the Fixed Time Program Proposal Group Meeting held at the Program Production Department Educational Program Division in the offices of Defendant in the First Instance NHK, the production of the Series in Question was decided. On the same night, a planning meeting was held with Nagata, Nagai and Defendant in the First Instance DJ's Representative Director and Chief Producer Hirose Ryôji (hereafter "Hirose), with Sakagami and Kai in attendance. Regarding the Program in Question, they aimed to focus the program on the historically significant aspect of the Women's Tribunal; it was confirmed then that there would be no problem with airing the Shôwa Emperor's responsibility if it was stated as the Women's Tribunal's judgment or discretion.

#### c. The Trust of Plaintiffs in the First Instance

From the description in the copy of the Proposal of the Program in Question and the content of Sakagami's explanation, the Steering Committee of the Plaintiff in the First Instance VAWW-NET trusted that the Program in Question would be a program that was a documentary or similar of format on the Women's Tribunal, that the content would introduce the Women's Tribunal as its main focus, and that the entire process from the beginning of the actual trial procedures to the judgment including the victim's testimonies and the explanation of evidence would be presented objectively. This is why they agreed to be interviewed. In addition, Plaintiffs in the First Instance were not merely interviewees, but were also production collaborators whose cooperation was essential to the production of the program, since they were one of the sponsoring organizations of the Women's Tribunal, their repeated cooperation was essential to the production of the program, and the Women's Tribunal was a one time event that had no comparable substitute.

#### d. Cooperation by Plaintiffs in the First Instance

At the October 24, 2002 meeting the Defendants in the First Instance made a request, through Defendant in the First Instance DJ, for special accommodations. In response to this request, Plaintiffs in the First Instance, after consulting with the Steering Committee, agreed to and made accommodations for special filming of and interviews with private Steering Committee meetings, for the Women's Tribunal rehearsals, coverage of internal matters prior to the event, extended interviews with the late Matsui, and exclusive access to the first floor of the event site on opening day of the Women's Tribunal.

e. Considering the details of the cooperation in the overall coverage, the method, duration, and form as a chain of events, we can assess that this entire process is an interest (Reliable Trust) that must be protected by the law; and based on the Defendants in the First Instance's behavior, and the sequence of events as described, it was inevitable that as the subject of the coverage, the Plaintiffs in the First Instance developed trust that the Program in Question would be produced in a way that would coincide with the Plaintiffs in the First Instance's ideals. Article 13 of the Constitution establishes that on the basis of the decision whether or not to agree to the interviews, a contract and proprietary interest was established. This process also has the characteristics of personal interest.

(2) The Defendants in the First Instance's Editing of Program Production and the Violations enacted by the Airing of the Program

The Defendants in the First Instance, at the editing stage for the Program in Question's production deviated considerably from the initial program's focus and, against the requests of the organizers, removed crucial portions of the Women's Tribunal such as interviews with the late Matsui, testimonies and judgment of assailant soldiers, and in its place added interviews with academics who undermined the significance of the Women's Tribunal, and after altering the Program so that viewers could not understand the aims of the organizers or the result of the trials, they aired the Program in Question.

The editorial actions and airing of the program by The Defendants in the First Instance produced a program that was fundamentally different from the main objectives noted in the Proposal for the Program in Question. They understood the trust held by the Plaintiffs in the First Instance and violated the plaintiffs' interests. In particular, The Defendants in the First Instance NHK were under pressure externally and were experiencing interference from politicians after January 26, 2001; they erased and altered the Women's Tribunal organizers, the assailant soldiers' testimonies, and the judgment; thus the direct connection between politicians and Defendant in the First Instance NHK's illegal activities is great. The actual progression of events is outlined below.

Also, Defendant in the First Instance asserts its freedom to edit, but in altering the Program in Question, the editing was not based on the freedom of the Program Producer, but was based on external pressures of politicians, and thus lacks the premise for that assertion.

a. Until January 17, 2001

Defendant in the First Instance NHK's Nagata, Nakai, and Defendant in the First Instance NEP's Chief Producer Hayashi Katsuhiko (hereafter "Hayashi"), Defendant in the First Instance DJ's Hirose, Sakagami, and Kai carried out their production and editing according to the initial objectives of the Program in Question, in other words, to carefully preserve a record of historical significance of the Women's Tribunal. The editing process for the video footage from the Women's Tribunal took place after December 13, 2000. At the stage of filming the studio discussion on December 27, 2000, the content of the Program in Question fully conveyed the significance of the Women's Tribunal and reflected the following: (i) that the Plaintiffs in the First Instance is the organizer who promoted the Women's Tribunal, (ii) that the Women's Tribunal is an international people's tribunal composed of eminent experts of the law, (iii) that the intent of the Women's Tribunal is to mete out justice on the former Japanese Army's involvement in the Comfort Women Issue during the Second World War, (iv) inclusion of the footage of the interview with Matsui Yayori, (v) that the Women's Tribunal's investigation centers around the issue of responsibility of the Shōwa Emperor and of the Japanese state, (vi) that in the Women's Tribunals' process of investigation, the actual testimony of victims and assailant soldiers, as well as the testimony of experts was collected, (vii) inclusion of scenes of the statements by amici curiae (courtroom advisors) which contribute to a fair Women's Tribunal (viii) the Women's Tribunal deliberation results in a judgment that includes the Shōwa Emperor's guilt and Japan's responsibility.

On January 13, 2001 and January 17, Nagata, Nagai, Hirose, Sakagami, and Kai took part in a preview screening of the Program in Question. Nagata and Nagai gave their opinions on clarifying within the narration the Program in Question's aim to consider the historical significance of the Women's Tribunal. But they were satisfied with the content of the Program in Question and among the Defendants in the First Instance they were agreed that the Program in Question was a program that adhered to the aim of valuing the historical significance as a record of the Women's Tribunal.

b. Until January 24, 2007

On January 19, a preview screening (hereafter "first Managerial Screening") of the Program in Question was held for the Defendant in the First Instance NHK's Educational Program Manager Yoshioka Tamio (hereafter "Yoshioka"). Yoshioka stated to Nagata, Nagai, Hayashi, Hirose, and Kai, who were in attendance that "Your position is too close to the Tribunal," "This is different from the original intention," "This is unworkable," and "You tricked us."

Then from around this period, pressure by phone and fax from Right Wing groups began to be placed on Defendant in the First Instance NHK to stop the airing of the Program in Question.

In response to this, Nagata, Nagai, Hayashi, Hirose, Kai decided that the Women's Tribunal would make its own changes to the Program in Question and added foreign media coverage and research on the Women's Tribunal; and as Yoshioka instructed, they removed the interview with the late Matsui and scenes containing the judgment of guilt on the Shōwa Emperor. On January 24, a second Managerial Screening was held. Yoshioka stated then, "This was a mistake. If you want to air this as it is, we need to part ways. We will never do work together again." In addition, he demanded further changes to the program's content and decided to re-film the studio footage with the newscaster Machinaga Toshio (hereafter "Newscaster Machinaga") and Professor Takahashi.

Yoshioka's statements meant that many changes would be made to the content of the Program in Question and because of this Defendant in the First Instance DJ would withdraw from the editing process of the Program in Question.

#### c. Until the Airing of the Program in Question

Defendant in the First Instance DJ delivered to the Defendant in the First Instance NHK the videotape and the pre-editing footage for the Program in Question on January 25 and 26.

On January 26, at the offices of Defendant in the First Instance NHK, Executive Director-General of Broadcasting Matsuo Takeshi (hereafter "Matsuo"), Programming Director Itō Ritsuko (hereafter "Itō"), and Director-General of Planning Nojima Naoki (hereafter "Nojima"), Yoshioka, and Nagata met and held a screening of the Program in Question. Directly following the screening, in addition to the request to "maintain some distance from the Women's Tribunal," there were other concrete requests. But afterwards, Itō ordered Yoshioka to include opinions critical of the Women's Tribunal and Nagata et al, and requested the participation of Nihon University Professor Hata Ikuhiko (hereafter "Professor Hata"). On January 28, a rough edit based on a revised script and footage of additional comments from Professor Takahashi and newscaster Machinaga and Professor Hata's interview was completed. A screening of this edit was held for Yoshioka, and in addition, after further modifications were performed; the re-modified program was screened again for Yoshioka at 11:00am that day, and a 44-minute Offline version (provisional) was made.

Further, before the Program in Question's airtime on January 30, Defendant in the First Instance NHK deleted the assailant soldiers' testimonies, portions of the former comfort women's testimonies, and the Women's Tribunal's judgment. Nearly all of the aforementioned (i) to (viii) portions that were still included as of December 27, 2002, were erased. In its place, additional filming of the studio discussion was carried out and Professor Hata's interview which belittled the Women's Tribunal's objectives was edited in.

#### d. External Influence on Defendant in the First Instance NHK

January 25, 2002, "A People's Conference on Revising NHK's 'Anti-Japanese Bias'" posted a message on an internet comment board to "Stop the Airing of NHK ETV2001"; on January 27 and 28, twenty to thirty people from Right Wing groups charged into the Defendant in the First Instance's Broadcasting Center and carried out a protest to cancel the airing of the Program in Question.

On January 25 to 26, the directors of the Defendant in the First Instance NHK's General Planning Section met with several Liberal Party Diet members, Furuya Keiji, Hirasawa Katsuei, and Arai Hiroyuki in order to explain the Program in Question. On January 29, Nojima was also called by [Economics and Industry Minister] Nakagawa Shōichi, who criticized the content of the Program in Question.

After January 29, Matsuo and Nojima met at the Prime Minister's offices with Deputy Chief Cabinet Secretary Abe Shinzō (hereafter "Deputy Chief Abe"), with whom they had a prearranged meeting, and spoke with him about the Program in Question. After giving his view on the difficulty of diplomatic relations dealing with the Comfort Women Issue in relation to the Program in Question, Deputy Chief Abe requested that Defendant in the First Instance NHK be fair and neutral. Based on Deputy Chief Abe's intervention through his opinion that the program be fair and neutral, after that meeting Defendant in the First Instance NHK repeatedly changed the Program in Question through Matsuo and Nojima's direction in order to adhere to [Abe's] view.

### (3) Collective Illegal Actions

In terms of the Program in Question's coverage and production, Defendant in the First Instance DJ carried out interviews and research of Plaintiffs in the First Instance based on the plan that were collectively agreed upon by the Defendants in the First Instance. On that basis, The Defendants in the First Instance carried out repeated editing collectively and considered the final version of the Program in Question as a collective production of all the Defendants in the First Instance. Their activities concluded with the Defendant in the First Instance NHK's sequence of actions leading to the airing of the program. Therefore, we can say that the acts of editing and alteration were collective actions by Defendants in the First Instance.

Thus, according to the Defendants in the First Instance's explanations and interview and research process, the Plaintiffs in the First Instance developed the aforementioned trust in the content of the Program in Question, and with the airing of the Program in Question by The Defendants in the First Instance NHK, that Reliable Trust was violated; the Defendant in the First Instance's act of requesting interviews for the Program in Question, the act of interviewing, research and editing and of airing the Program in Question were acts connected to the aim of destroying the Reliable Trust of the Plaintiffs in the First Instance and mutually contributed to this sequence of actions. Therefore, the Defendants in the First Instance have the obligation to pay restitution based on their collective illegal actions.

(The Assertion by Defendant in the First Instance NHK)

(1) The Plaintiffs in the First Instance have No Reliable Trust that Warrants Legal Protection

Article 3 of the Broadcasting Law states, "Unless there are legal limitations, broadcasting programs need not be interfered with by anyone or regulated," guaranteeing the freedom to edit programs. Defendant in the First Instance NHK is a broadcaster for which this law is applicable, and as a public broadcasting corporation, has the obligation, in terms of editing, to produce programs that are fair, impartial, and independent. When producing a broadcasting program, broadcasters carry out interviews with people and groups in various positions, and if the interviewees expect a program that they themselves want, there is no obligation for the broadcasters to meet the expectation of the interviewee, regardless of the amount of time and degree of cooperation with information gathering. In addition, if the broadcaster were to bear such an obligation, this would be unacceptable as going against the freedom to edit based on the freedom of expression and freedom to edit based on the Broadcasting Law.

In order for an interviewee's trust to be legally protected, in those cases in which the interviewee develops some kind of expectation during the interview and research process concerning the content of a program and how it will be produced or edited, it is necessary that the expectation be suitably concrete, or that the interviewer makes promises as to how the footage and interviews will be edited or as to the aim of the program for which the footage and interviews would be used, and inevitably develops the expectations of the interviewee through that interviewer's behavior. As the following circumstances show, none of the conditions for legal protection were fully met in this case.

a. On the Suitable Concreteness of Expectation

Since the Program in Question is an educational program about, not a live transmission of the Women's Tribunal, it is not logical for the Plaintiffs in the First Instance to expect the Program in Question to be a documentary program that would take up the tribunal from its inception to the judgment based on the interview and research process. Further, in order to take up a position that gives a general overview of the Women's Tribunal, there is no clear standard by which to decide which parts of the Women's Tribunal to take up.

b. Explanations by the Defendant in the First Instance DJ

When Sakagami and Kai of Defendant in the First Instance DJ met directly with Shôji et al on October 24, 2001, the time afforded for the meeting was extremely short and discussion of the Program in Question was limited to the airdate, the planned studio discussion and the research director. Further, a copy of the Proposal for the Program in Question (A-1) which Defendant in the First Instance DJ delivered to Plaintiff in the First Instance VAWW-NET in order to express their sincere approach to the coverage was produced prior to the actual execution of any interviews or research, concrete changes to the structure of the program and its content as the actual research progressed were planned as a matter of course. On that day, information collection and interviews had not started, and the kinds of images that could be filmed were not even known; it was not at a stage at which a concrete image could be formed of the content of the program to be produced existed. As people who have dealt with program production for years, Sakagami and Kai knew full well that the Proposal for the Program in Question's descriptions were under the constant possibility of change. Moreover, from the fact that during a meeting with Defendant in the First Instance NHK's Nagata et al on September 26, 2001, since it was decided that the Program in Question would be an educational program that accommodates the characteristics of ETV2000, then it is unthinkable that Sakagami et al would give an explanation that suggested to Plaintiff in the First Instance VAWW-NET that the Program in Question would record the Women's Tribunal, that the program would express that directly to the viewers, and that the program content described in the Proposal in Question would become the content of the Program in Question.

c. The Plaintiff in the First Instance's Reliable Trust

Defendant in the First Instance DJ's Sakagami and Kai have never explained to Plaintiff in the First Instance VAWW-NET that the Program in Question would be a documentary program of the Women's Tribunal. Moreover, Sakagami et al did give to Plaintiff in the First Instance VAWW-NET a copy of the Proposal Question (A.1) in order to show that Defendant in the First Instance DJ



would cover the tribunal earnestly. But the Proposal for the Program in Question was created before actual information collection and interviewing began and it was naturally expected that through the progression of the interviews and information collection the concrete production of the program and its content would change. Plaintiffs in the First Instance had experienced numerous interviews with the media and were thus naturally aware of this about the Proposal of the Program in Question.

The expectation of the Plaintiffs in the First Instance was not a logical expectation deserving of legal protection because it was none other than a single-minded desire that the Program in Question be a program that recorded the Women's Tribunal, and because it was based on the fact that Defendant in the First Instance DJ Sakagami is a famous feminist and a first-rate documentary program producer and director, and that there was a high rate of completion for past programs on Japan's World War II responsibility dealt with by the Defendant in the First Instance NHK's ETV program. There are also no special circumstances that make such an expectation inevitable.

## (2) The Acts of Airing and Editing the Program in Question were Not Illegal Acts

a. From the time the Defendants in the First Instance NEP and DJ created the Proposal of the Program in Question, the aim of said Program was agreed upon as "Rethinking the meaning of wartime sexual violence after half a century," after which an NHK Proposal was produced internally within Defendant in the First Instance NHK which carried out the aims of the official Program Proposal. The Program in Question that was actually aired included the fact that Japanese and other Asian NGOs and Women's Rights activists from around the world held a Women's Tribunal, that the so-called Comfort Women Issue was examined from the view that it was a crime against humanity, that the content of the tribunal included statements by those who took on the role of public prosecutor and the testifiers' description of their experiences, comments by Gabrielle Kirk McDonald who served as Chief Justice, and comments by Professor Hata who holds a different perspective from the groups organizing the Women's Tribunal. In addition, the content of a studio discussion conducted a historical examination and dug deeper into the perspective that this was a crime against humanity and expressed to the viewers the difficulty of judging wartime sexual violence and provided the materials to consider the meaning of questioning wartime sexual violence. The Program in Question is a faithful realization of the aims of the program described in the Proposal for the Program in Question and the NHK Proposal. Thus, the Program in Question did not violate the expectations of the Plaintiffs in the First Instance.

Furthermore, the late Matsui's interview footage was not aired, but the Defendants in the First Instance understood the content of the explanation provided by the late Matsui and made use of it throughout the program production. The content fully expresses her message. On this point also, the expectations of the Defendants in the First Instance were not violated.

## b. There Was No Political Pressure on the Defendants in the First Instance

On January 29, 2002, Matsuo and Nojima did meet with Chief Deputy Abe. Matsuo accompanied Nojima on each of the meetings in which he submitted the Defendant in the First Instance NHK's budget to the Prime Minister on January 25 and to plan its explanation to Diet members. At the time rumors that a "four evening series program that documents the Women's Tribunal would be aired" were circulating among Diet members. Thus in order to dismiss false rumors, Matsuo gave a simple explanation to Deputy Chief Abe, who had a certain amount of influence on Diet members who held a special interest in the Comfort Women Issue. In response, Deputy Chief Abe stated that in the case of dealing with controversial issues like the Comfort Women Issue, the aim of a public broadcaster should be founded on fairness and neutrality.

For Defendant in the First Instance NHK, however, the fairness and neutrality of a public broadcaster was a given and this was actualized in the making of all its programs. Since in the case of the Program in Question they fully understood that fairness and neutrality would be preserved, it is not true that they were influenced by Deputy Chief Abe's opinion or that Defendant in the First Instance NHK suddenly changed the editorial perspective for the Program in Question. Further, at the time of the visit, the Program in Question was not yet at the stage of being organized onto a single tape, so a concrete explanation of the details of the Program in Question by Matsuo would have been impossible, and, therefore, it is clear that a concrete explanation was not made.

Moreover, Plaintiffs in the First Instance asserted political pressure as a motive for alteration and give the explanation that prior to the airing of the Program in Question, affiliated members of the Defendants in the First Instance NHK approached [Economics and Industry Minister] Nakagawa in connection to the Program in Question. But these affiliated members approached Nakagawa on February 2, 2002, after the airing of the Program in Question.

## (3) Collective Illegal Actions

The Defendants in the First Instance NHK entrusted the production of the Program in Question to the Defendants in the First Instance NEP based on the Proposal for the Program in Question, and the contract between the two parties to cover actual expenses is a contractual agreement. Therefore, as contractual employees, the Defendants in the First Instance NEP and DJ have the

obligation to interview, film, and edit and tentatively complete and deliver the Program in Question. But the Defendants in the First Instance NEP and DJ are to carry out these jobs at their own discretion and responsibility; moreover the planning of the Program in Question and Defendant in the First Instance NHK's editing and airing after the delivery made by Defendant in the First Instance DJ are proprietary acts, which were left to the discretion of The Defendants in the First Instance NHK.

(Assertion by Defendant in the First Instance NEP)

(1) The Expectation Claimed by the Plaintiffs in the First Instance is Merely a Subjective Expectation

The Reliable Trust asserted by the Plaintiffs in the First Instance must result from an objective and logical response to the Defendants in the First Instance's behavior and warrant protection both legally and in terms of social common sense. As described below, however, it does not result objectively from the Defendants in the First Instance's behavior.

a. The Relationship of the Program in Question to the Broadcasting Law and Japan Broadcasting Network's Standards for Domestic Programming

The freedom to edit is established according to the Broadcasting Law (Article 3), and furthermore stipulates that the program editing should be politically neutral and a contested issue should be examined from as many perspectives as possible (Article 3.2). Similar aims exist in the Japan Broadcasting Network Domestic Program Standards, which are the basis for the standards of the Defendant in the First Instance NHK's program editing and airing of programs.

In addition, the Plaintiffs in the First Instance fully understood the Japan Broadcasting Network and Domestic Program Standards as well as the provisions in the Broadcasting Law, for the subject of the Program in Question, the Comfort Women Issue, is a subject which intersects with issues of war responsibility and feminism and is a delicate subjects that invites controversy.

b. The Defendant in the First Instance DJ's Collection of Information and Coverage of the Plaintiffs in the First Instance

Defendant in the First Instance DJ's Sakagami and Kai, who carried out the information collection had not explained concretely the content of the Program in Question to the Defendants in the First Instance, and thus did not promise to air the Women's Tribunal's verdict. While cooperating with the interviews for the Program in Question, from their desire to distribute the videotape to participants in the Women's Tribunal, the Plaintiffs in the First Instance expected the Program in Question to air what the Women's Tribunal was, who would judge whom, what kinds of crimes would be judged, and how a verdict would be given. But since the Plaintiffs in the First Instance did not make clear the content of their expectation to Defendant in the First Instance DJ, there was no way for the Defendants in the First Instance to understand the expectation of the Plaintiffs in the First Instance.

c. The Characteristics of the Proposal for the Program in Question

The Proposal for the Program in Question itself did not have the structural outline of the program but only mentions the program's aims and purpose. Moreover, it was clear from the descriptions in the Proposal for the Program in Question that the Proposal for the Program in Question was in the early stages of drafting since the Women's Tribunal was not yet held; that the content was unfixed; that the Proposal for the Program in Question was not made by the broadcaster Defendant in the First Instance NHK but was instead made by Defendant in the First Instance DJ and Defendant in the First Instance NEP; and that the Program in Question was not merely a program to document the Women's Tribunal, but was part of an educational program series within Defendant in the First Instance NHK's Educational Television Network.

d. Intervention in the Editing Process

The Program in Question is an educational program that includes studio discussions, so editing after interviewing is essential. At the editing stage, selections are made from a massive amount of material obtained through interviews and research, thus it is natural that there is a possibility for the program content to change. Hence the Plaintiffs in the First Instance were naturally aware that the Defendants in the First Instance would edit the materials after their cooperation in the interviews, and that they would not be able to take part in the Defendants in the First Instance's editing process.

In addition, the Program in Question deals with a controversial theme so it would be necessary for the content to have a fair and balanced perspective. So content of the Program at the stage of Defendant in the First Instance DJ-led editing had not kept a suitable level of detachment from the Women's Tribunal, and thus an editing process from the stance of the Defendant in the First Instance NEP and Defendant in the First Instance NHK became necessary.

(2) Neither the Acts of Editing or Airing the Program in Question were Acts of Violation

a. The Program in Question was created in agreement with the aims presented [respectively] in the Proposal for the Program in Question and in the Educational Program Division's Fixed Time Program Proposal. Thus even when Defendant in the First Instance DJ removed itself from the editorial process, both [remaining] parties assumed that [the aims] were one and the same. Based on the interview materials and their editing rights, Defendant in the First Instance NHK completed a good program in accordance with the aims and purposes of the Program in Question and thus the Defendants in the First Instance did not perform any violations.

b. In terms of Defendant in the First Instance NHK's Editing rights, Matsuo and Nojima's meeting with the Diet members had no influence on them.

(3) Collective Illegal Actions

Defendant in the First Instance DJ's production activities (interviewing, filming, editing) were executed under commission by Defendant in the First Instance NEP and were independent acts of personal responsibility and discretion based on the NHK Proposal. Since The Defendants in the First Instance NEP gave no command, order, or direction, they do not bear the burden of collective responsibility for illegal activity.

Defendant in the First Instance DJ's Assertion

(1) The Absence of the Plaintiff in the First Instance's Claim of Reliable Trust

In those cases in which the interviewee's trust and expectations develop toward program content during the interview and research process for a program to be aired, not all of the content warrants legal protection. In order for the trust and expectation to be protected over the freedom of expression, (i) they must result from the interviewer's acts of promising and giving definitive explanations; (ii) they must be appropriate expectations which emerge logically from the above explanation; (iii) the expectations by the interviewee for the content must be proportionately explained to the interviewer and the interviewer must achieve the basic requirement for understanding or for being understood, and this should be evaluated overall from the degree and scale of how the level of trust developed and whether the expectation is logically related to the interviewer's actions and behavior. As explained below, due to the Plaintiffs in the First Instance's one-sided evaluation of the Defendant in the First Instance DJ's normal interview activity, they developed a disproportionately large trust and expectation, and that this trust and expectation lacks the aforementioned conditions and does not warrant legal protection.

a. The Attributes of the Defendant in the First Instance NHK and Director Sakagami

The Plaintiffs in the First Instance held a one-sided trust and expectation toward the content of the Program in Question because they thought that the Defendant in the First Instance NHK would air the Program in Question and because the Defendant in the First Instance DJ's Sakagami was a Feminist activist.

b. The Copy of the Proposal for the Program in Question

The Proposal for the Program in Question was at the drafting stage and what is clear from the descriptions themselves was a summary, had abstract content and was only a plan proposal. Plans were naturally made to be added and cut, revised and changed throughout the interview and editing process. This is clear to even the lay person, not to mention experienced professionals such as Plaintiffs in the First Instance, who planned and executed the Women's Tribunal, accepted various kinds of interviews, and naturally understood the characteristics of this kind of proposal. During the meeting on October 24, 2001, Sakagami gave no explanation on the content of the Program in Question other than the descriptions within the Proposal for the Program in Question.

If by chance Sakagami had given an oral explanation that the Program in Question would cover the Women's Tribunal in detail, this was absolutely an abstract plan at the drafting stage or merely a personal hope and nothing else.

c. The Gathering of Materials of the Defendant in the First Instance DJ

At the time of a program's production, the program producers, in order to collect as much material as possible for each program, plan, film and interview interviewees, and from then on, through the editorial process expand the potential and range of the selection and removal of material. Thus, in order to enrich a program's content, the production of similar programs requires interview activities that encompass a wide range and standardized depth. The interview activities for the Program in Question by

Defendant in the First Instance DJ do not differ from similar program production processes and is a common process. The Plaintiffs in the First Instance's cooperation was typical and natural, and required no special provisional accommodations.

(2) There Were No Illegal Violations

The aims of the aired Program in Question did not differ from the description within the Proposal for the Program in Question. Taking the Women's Tribunal as its main focus, it served as an educational program that presented positions from which to consider the Tribunal's objectives. Thus it does not negatively evaluate the Women's Tribunal. Even if the Program in Question did not adhere to the Plaintiffs in the First Instance's expectations for the Program in Question, the Reliable Trust asserted by the Plaintiffs in the First Instance has not been violated.

(3) Collective Illegal Actions

There was no illegality in Defendant in the First Instance DJ's interviewing activities, and even if illegality was found in the sequence of events between the editing and the airing of the Program in Question, not only are Defendant in the First Instance DJ not the subjects who aired the Program in Question, in terms of editing rights to revise or alter the program content based on Defendant in the First Instance NEP's contract commissioning production to Defendant in the First Instance DJ, Defendant in the First Instance NHK and Defendant in the First Instance NEP are left with the exclusive possession of rights. In the actual execution of the program editing process, Defendant in the First Instance DJ must follow the directions of the same Defendants in the First Instance when editing. In actuality, Defendant in the First Instance DJ withdrew in the middle of the Program in Question's editing process after January 24, 2002. Defendant in the First Instance DJ did not participate in the editing process that occurred after that, so Defendant in the First Instance DJ did not take part in collective illegal activities.

2 On the Violation of the Obligation to Explain

(Assertions by the Plaintiffs in the First Instance)

(1) The Obligation to Explain

In view of a broadcasting organization's freedom to report and collect information, it is not common for a relationship of rights and obligations to develop between a broadcasting organization and an interviewee. This does not mean, however, that the broadcasting organization will not be held accountable if it carries out reporting and information collection that is not permitted in the relationship with the interviewee; and in exceptional cases, a contract-like relationship of rights and obligations can emerge.

In terms of the Program in Question, a contract-like relationship of rights and obligations developed between the Plaintiffs in the First Instance and the Defendants in the First Instance given that the Program in Question follows in detail the development of the Women's Tribunal, which is a unique event with no comparable substitute; the program could not be made without the cooperation of the organizing group Plaintiffs in the First Instance VAWW-NET; and that throughout a period of two months the Plaintiffs in the First Instance cooperated with information collection and made special accommodations for the Defendants in the First Instance. When fundamental changes were made to the content of the Program in Question, based on the trust that developed from this relationship, the Defendants in the First Instance, as interviewers should have understood that they had an obligation to announce and explain the content changes to the interviewees Plaintiffs in the First Instance. In addition, since the interviewee has a right to decide for herself whether or not to agree to the interviews, this right to decide does not exist only at the time of the interview request, but should be protected until the program is aired. In addition, according to the Defendant in the First Instance NHK's Broadcasting Guidelines (hereafter "Guidelines in Question"), if during the production process changes occur in the content and goals explained previously to the interviewee, the Defendants in the First Instance are required to give another full explanation to the interviewee. Thus the Defendants in the First Instance are under an obligation with legal binding force to provide an explanation to the Plaintiffs in the First Instance.

(2) Acts of Breach of Obligations

As described above, however, the aim of the Program in Question changed since the initial plans, and the late-Matsui's interview was also erased. The Defendants in the First Instance should have given an explanation to the Plaintiffs in the First Instance on January 13, 2002 or January 24, 2002, but did not, and because they aired the revised Program in Question, they breached their obligation to explain and thus bear the responsibility for failing to perform its obligation.

(3) The Relationship among the Defendants in the First Instance

Among the Defendants in the First Instance, as the Collective Illegal Actions mentioned above in 1 (3) (The Defendants in the First Instance's Assertion), the tasks of planning, gathering material, editing, and airing of the Program in Question were distributed through negotiations, and each parties' actions were carried out to complement the others' in the program production. On the other hand, the Plaintiffs in the First Instance developed a relationship of trust with the Defendants in the First Instance due to the understanding that the Defendant in the First Instance NHK, would air the Program in Question as a collective production of the Defendants in the First Instance.

Therefore, the Defendants in the First Instance each had the obligation to explain the changes in the program to the Plaintiffs in the First Instance and have the obligation to pay compensatory damages for the aforementioned breach of obligations.

(Assertions by the Defendant in the First Instance NHK)

(1) Defendant in the First Instance NHK and Plaintiffs in the First Instance have never entered into a contract, nor have they had a contract-like relationship.

Generally during the editing process, removal of scenes filmed with the cooperation of an interviewee occurs on a daily basis; and as a matter of courtesy, explanations and understanding for this removal to the interviewee is desirable. But making this kind of prior explanation a legal obligation places a great deal of burden on the broadcasting business; and because it will atrophy the freedom to collect information and of expression, a legal obligation to do so should not exist.

(2) In the case in question, the content of the late Matsui's interview was expressed throughout the program, and the late Matsui's efforts were not wasted. In matters of courtesy or legally, we have not violated the obligation to explain.

(Assertions of Defendant in the First Instance NEP)

(1) The Failure to Perform the Obligation Claimed by the Plaintiffs in Question cannot be Established

a. In order to establish a violation of obligation based on the failure to perform an obligation for the Program in Question, these issues come into question: (i) whether the main objective of the Program in Question within the Proposal for the Program in Question was changed in the actually aired Program in Question; (ii) if changes were made, whether the degree and content of these changes wildly exceeded the boundaries of the program producers editing and discretionary power; (iii) whether or not due to the change, the Plaintiffs in the First Instance's interests were concretely damaged. The aim for the program in the Proposal for the Program in Question in the aired Program in Question was not changed whatsoever, and therefore a failure to perform an obligation cannot be established.

The Guidelines in Question strive for ethical improvement of journalists by providing perspectives and points of caution when dealing with problems in information collection and production sites and refer to the ethical obligations of the necessity to explain.

b. Regarding the late Matsui's Interview

In her interview, the late Matsui explains the motivations for holding the Women's Tribunal and the organization of the sponsoring groups. The Program in Question was a program that was a studio debate which featured video footage from the Women's Tribunal; because of existing conditions for the structure and time limit for airing the program, it is naturally permissible that at the editing stage that the late Matsui's explanation content might be replaced by other footage and comments. Further, the Defendants in the First Instance had made no promise to the late Matsui that her interview would be filmed. Thus even if the Defendants in the First Instance were to remove it, they have no obligation whatsoever to explain. Thus, on this point a failure to perform an obligation cannot be established.

(2) The Responsibility of Defendant in the First Instance NEP

As stated in regards to collective illegal activity in the aforementioned 1 (Defendant NEP's Assertion) (3), Defendant in the First Instance NEP's actions and Defendant in the First Instance DJ's information collecting are unrelated, therefore Defendant in the First Instance NEP need not bear responsibility for failure to perform its obligation.

(Assertions of the Defendant in the First Instance DJ)

(1) Lack of an Obligation to Explain

There is no contractual relationship, nor a contract-like relationship at all between the Defendant in the First Instance DJ and the Plaintiffs in the First Instance. Thus there is no obligation to explain that would be based on their right to self-determination (personal interest).

(2) There Were No Changes to the Aims of the Program in Question.

The program aims of the Program in Question did not change during the time from the drawing up of the Proposal for the Program in Question to the airing of the Program in Question.

(3) Even in the unusual case that Defendant in the First Instance DJ had an obligation to explain during either point in the editorial processes, in Defendant in the First Instance DJ 's Broadcasting Entrustment Contract, "The content of the subcontract, the outcome, secrets known among Defendant in the First Instance NEP and Defendant in the First Instance NHK in relation to the subcontract, and information from the work must not be leaked to a Third Party," (Article 20) carries the burden of a confidentiality agreement; thus it is not illegal if they did not provide an explanation to Plaintiff in the First Instance, there for, at the least, there is no possibility of a right to Expectation.

### 3 Damages

(Assertions by the Plaintiffs in the First Instance)

(1) Damages to the Plaintiff in the First Instance VAWW-NET

From the explanation received from the Defendants in the First Instance, Plaintiffs in the First Instance VAWW-NET trusted that the Program in Question would be a documentary program on the Women's Tribunal, that it would explain fully the Women's Tribunal, and would be a program that would express their aims; thus they cooperated by contributing a great deal of time at each stage of production of the program. The Program in Question that was in fact aired had been altered to the extent that the main subject, which should have been the Women's Tribunal's organizers, its aim, its suspects, the trial process, and the trial results were no longer understandable. Instead, Professor Hata's interview belittling the Women's Tribunal's objectives was added instead.

As a result, as one of the organizing groups that sponsored the Women's Tribunal in seeking the revival of the former Comfort Women's dignity and the pronouncement of justice, the Plaintiffs in the First Instance were severely shocked and were deeply saddened and angered by the fact that they would not be able to provide viewers of the Program in Question with accurate information about the Women's Tribunal; that the show gave them a mistaken view of the purpose of the Women's Tribunal; and that it undermined the potential for those victims who were former Comfort Women to regain their dignity. The damages brought about by the Defendants in the First Instance if given monetary value would amount to or exceed 10 million yen. In addition, the illegality of Defendant in the First Instance NHK's revision of the Program in Question under pressure from outside politicians is great; thus the damages sustained from Defendant in the First Instance NHK, in addition to the amount mentioned above, amounts to or exceeds 10 million yen.

(2) Damages Sustained by the late Matsui

At the same that she was the representative for the Plaintiff in the First Instance VAWW-NET, the late Matsui was also the co-representative for the Women's Tribunal International Executive Committee seeking the renewal of the former Comfort Women's dignity, and was fully occupied, dedicating her life to holding the Women's Tribunal. Moreover, from her desire for widespread understanding of the Women's Tribunal's aims, she agreed to extensive interviews by the Defendants in the First Instance despite her very busy schedule.

The Program in Question, however, was revised so that from its content, viewers could not comprehend the organizers' aims for the Women's Tribunal, and was aired with a content that differed from what was explained in advance to the former Comfort Women and to the contributors to the Women's Tribunal. The late Matsui suffered psychological agony feeling that this had hurt and inconvenienced the contributors and that the result of her work to which she had dedicated her life had been repudiated. The damages she sustained from the Defendants in the First Instance, if given a monetary value, amount to or exceed 10 million yen. Further, in similar manner to Plaintiff in the First Instance VAWW-NET, the damages she sustained from Defendant in the First Instance NHK amounts or exceeds 10 million yen, in addition to the amount stated above.

(Assertions by the Defendants in the First Instance)

(1) Contesting Plaintiff in the First Instance VAWW-NET's Damages

Even if the Program in Question did not turn out as the Plaintiff in the First Instance expected, they are not damages to be compensated by the Defendants in the First Instance. Further, the Defendant in the First Instance NHK did not in any way revise the Program in Question after receiving notice from external politicians.

(2) Contesting the late Matsui's Damages

It is not clear what the late Matsui's claims of psychological suffering concretely point to. Even if we understand it as disappointment that the content of the Program In Question did not go as expected, that expectation was only a one-sided desire and does not warrant legal protection.

#### IV. The Judgment on the Disputed Points

##### 1. The Development of Facts

From the evidence in addition to the aforementioned facts (A-1, 2, 4, 5, 7, 10, 15~17, 22, 30~33, 49, 53, 70~73, 75, 76, 82, 85, 98, 107, 109, 110, 119, 120, 120.a-b; A-131.a-c, A-137, 139, 140.a~b, A-166.a~b, A-173~175, 177, 180, 188~190, B-3, 4, 8~11, 16, 18, 19, 22, 24, 26, 38, C- 1, 3, D-1~3, 5~8, Witness Sakagami, Witness Kai, Witness Hirose, Witness Hayashi, Witness Nagata (counselor), Witness Yoshioka, Witness Nagai, Witness Matsuo, Witness Nojima, Representative to Plaintiffs in the First Instance Co-Plaintiff in the First Instance Nishino herself (hereafter Plaintiff in the First Instance Nishino herself) and evidence mentioned at the end of each clause as well as the overall case made in the argument, the following facts can be established:

##### (1) The Defendant in the First Instance's Activities toward convening the Women's Tribunal

a. As Asahi Newspaper's Society Section reporter, the late Matsui, had covered problems of pollution and medicinal side effects, and from 1990, put her energy into reporting on the issue of Comfort Women. Retiring from her post at said newspaper in 1994, she worked as a freelance journalist and began to concentrate her energies on the Women's Movement. From October to November of 1997, at international seminars and symposiums held in the Tokyo area on the theme of "Violence Against Women in Times of War and Armed Conflict," she spoke on sexual violence against women in armed conflicts taking place all over the world. On the issue of why sexual violence takes place in wartime, she raised the point that the reason sexual violence still exists today is because in the past those responsible were not punished.

The late Matsui served as the Executive Committee Chair for the aforementioned international seminars and conferences, and taking on that debate, in February 1998, together with Defendant in the First Instance Nishino et al, she began to take part in organizing on the issue of war and violence against women. While thinking that it was necessary to punish those responsible in order to eradicate wartime sexual violence against women, she also felt that the Japanese government's response to the issue of Comfort Women and the former Japanese Military during World War II was insufficient and that a public judicial branch of the government's investigation of individual responsible parties would be difficult; drawing from philosopher Bertrand Russell's proposal to hold a so-called "People's Tribunal" [Russell Tribunal] to be organized by civilians in order to bring to trial the United States' war crimes during the Vietnam War, she thus conceived of holding a People's Tribunal in which the issue of Comfort Women would be tried at the hands of women and civilians. At the NGO forum "Violence Against Women Under Armed Conflicts" held in Geneva in April 1998, and at the 5th Women's Solidarity Forum on Military Slavery by Japan during the same month, she proposed holding a Women's Tribunal and gained the support of conference participants.

In June of 1998, Plaintiff in the First Instance VAWW-NET was established with the late Matsui as its representative, and it began preparations to hold a Women's Tribunal to address the themes of Comfort Women, the sexual violence in and around the United States Military base, and various military conflicts taking place around the world.

b. In February 1999, seven organizing groups (the Comfort Women issue's perpetrating nation Japan's NGO Plaintiff in the First Instance VAWW-NET, and NGOs from each of the victim nations South Korea, North Korea, China, Taiwan, the Philippines, Indonesia) and an International Inquiry Committee made up of international law specialists and human rights activists who would make up an International Executive Committee that would be created to host the Women's Tribunal. By this said committee, the Women's Tribunal would investigate individual and national responsibility for international law violations relating to wartime sexual violence and establish a format similar to a criminal court, which would include judges, public prosecutors and secretariats; from December 8 -10, 2001, the tribunal would be opened and a trial held, and on December 12, an outline of the verdict would be given; on the rest day December 11, in connection with the Women's Tribunal, they planned to hold an international public hearing in which victims and specialists on current armed conflicts around the world would speak.

c. The late Matsui was co-representative of the International Executive Committee, was involved in the development and personnel selection for the Women's Tribunal, oversaw the International Executive Committee Meetings, and led preparations for realizing

the Women's Tribunal. In order to deepen Japanese domestic and international interest in Women's Tribunal, from 2000 to 2001, Plaintiff in the First Instance VAWW-NET held lectures and international symposiums in Tokyo, New York, and Shanghai. In addition, in order to raise funds to hold the Women's Tribunal, they began fundraising activities, which were dubbed the 10,000 Person Campaign.

d. On December 8-10, 2001, the Women's Tribunal was held in the Kudan Hall in Tokyo proper. Famous international law specialists and experts on sexual violence participated at the Women's Tribunal: Gabrielle Kirk McDonald, Chief Justice at the International War Crimes Tribunal in former Yugoslavia, Christine Chinkin of London University, and four others served as Judges; and Patricia Viseur-Sellers, Legal Adviser for Gender-Related Crimes in the Office of the Prosecutor for the International Criminal Tribunal for the former Yugoslavia and the Rwanda Tribunals, and Ustinia Dolgopol, Professor of Law at Flinders University, Australia, served as Chief Public Prosecutors. The Chief Prosecutors and the prosecuting teams from each of the victim nations individually read the charges against the Shōwa Emperor and a total of thirty high-ranking military personnel for crimes against humanity relating to the military Comfort Women issue. Further, they considered Japan's responsibility to pay reparations. According to the charter (A-32) of the Russell Tribunal, defenders were not selected, and in this case also defenders were not chosen, rather amici curiae (courtroom advisors) gave their opinions from the position of the defendants. Then, as a trial taking place in a courtroom, opening statements by chief prosecutors, opening opinions by amici curiae, and indictments read by each victim country, and victim's testimonies and evidence were presented. In addition, expert testimony on the former Japanese military's structure, the Shōwa Emperor's responsibility, and the system of Military Comfort Women took place. Finally, amici curiae presented their opinion, and the Chief Prosecutor's closing statements were presented.

On December 11, 2001, an international public hearing on the theme of "Crimes against Women in Recent Wars and Conflicts" was held. Experts provided analysis and women victimized in conflicts taking place in the present day around the world gave testimonies.

On December 12, 2001, at the Women's Tribunal, held in the Japan Youth Hall in Tokyo proper, the judgment found the Shōwa Emperor guilty and recognized the Japanese nation's responsibility. (As for high-ranking military personnel other than the Shōwa Emperor, no verdict was reached due to time constraints and was left to the final judgment.)

Following a year interval, the Women's Tribunal was held again, this time at The Hague, the Netherlands, and a final judgment was given.

(In reference to the above (1), A-7, 22, 30, 32, 33, 49, 70, 82, 107, Representative of Plaintiff in the First Instance Shōji, Plaintiff in the First Instance Nishino herself)

## (2) Information Collection and Planning for the Program in Question

### a. Planning by the Defendant in the First Instance NEP and the Defendant in the First Instance DJ

(a) After being deeply impressed by a lecture entitled "History and Judgment" given by Professor Takahashi on August 4, 2001, Chief Producer Hayashi of Defendant in the First Instance NEP decided to create a program based on the theme of "Crimes Against Humanity" using as material the Women's Tribunal and International Public Hearing, which were mentioned in the lecture. Together with Director Sakagami of Defendant in the First Instance DJ, he met with Professor Takahashi and discussed plans for a program that would feature the Women's Tribunal and requested from Sakagami a program proposal to present to Defendant in the First Instance NHK.

(b) On September 11, 2001, Hayashi and Chief Producer Hirose of Defendant in the First Instance DJ, approached Defendant in the First Instance NHK and submitted their proposal for a program (B-3, hereafter "Initial Proposal") to NHK Production Department Educational Section's Educational Broadcasting Program ETV2000's Chief Producer Nagata and sounded out the possibility of making a program that would feature the Women's Tribunal.

At the stage of the Initial Proposal, the program was a two-part series and was called "ETV2000 a Two-Part Series: 'The Women's International Tribunal – When Wartime Sexual Violence is Adjudicated'"; the first evening's program would deal with the Women's Tribunal and would be titled, "Document: '2000 Women's International War Crimes Tribunal,'" and the second evening's program would deal with the International Public Hearing and would be titled, "How Do We Respond to Victim's Memories?" Further, the Initial Proposal, while explaining the first evening's program content, together with a summary explanation of the Women's Tribunal also stated, "We will document over a five day period 'The Women's International War Crimes Tribunal' to be held in Tokyo. However, no mention of a studio discussion was made.

(c) On September 26, 2001, Nagata and Defendant in the First Instance NHK's ETV2000's Chief Producer Nagai held a meeting



with Hayashi and Sakagami based on the Initial Proposal to discuss a program that would cover the Women's Tribunal. Nagata asked Hayashi and Sakagami what the Women's Tribunal would judge and whether or not it would be possible to adjudicate deceased defendants. He requested that in structuring the program, the program not only document the Women's Tribunal, but that a studio discussion be included to make an in-depth educational program.

(d) After receiving the above result, Sakagami revised the initial proposal, made the Proposal for the Program in Question, and submitted it to Hirose, while also delivering it to Hayashi and Nagata.

In the Proposal for the Program in Question, the given Program Title for the first evening was, "What Was Put on Trial?" and the given Program title for the second evening was, "The Question of Wartime Sexual Violence." With regard to the program content for the first evening's program, modifications were made to state that in the first night's Program, "the Women's International War Crimes Tribunal to be held in Tokyo will be followed in detail, combined with segments of studio, in which the significance of addressing wartime sexual violence half a century later will be considered." Further, the studio discussion participants were planned to be Professor Takahashi and Keisen University's Professor Utsumi Aiko (hereafter "Professor Utsumi").

#### b. Considerations with regard to the Defendant in the First Instance NHK

(a) In October 2001, Defendant in the First Instance NHK had received from their European Directorate a proposal to develop a program for ETV2000 dealing with the themes of the French Vichy government, which had cooperated with Nazi Germany, the suppression of the Algerian Independence Movement, and the global movement to question "crimes against humanity." Thinking that this program and the program proposed by Defendant in the First Instance NEP and Defendant in the First Instance DJ shared the same issue of "crimes against humanity," Nagata decided to create a four-part series combining the two, making the second program the Program in Question dealing with the Women's Tribunal, and the third program on the International Public Hearing (hereafter, the Program in Question together with the third program together as "The Programs in Question"). Then on October 5, he communicated to Hayashi and Hirose that the plan for the Programs in Question submitted by Defendant in the First Instance NEP and Defendant in the First Instance DJ would move ahead as part of the series to consider crimes against humanity.

(b) On November 16, 2001, Yoshioka director of Defendant in the First Instance NHK's Educational Program Division, held a Fixed Time Program Division Meeting at the said division in order to select programs to be produced. Nagata presented and explained the outline of the NHK Proposal (B-4), which was based on the Proposal for the Program in Question, and after five minutes of deliberation he gained Yoshioka's support.

In the NHK Proposal (B-4), the name of the series is listed as "How Is War To Be Judged?" the second title is listed as "The Question of Wartime Sexual Violence." As an explanation for the program, after the summary of the Women's Tribunal, it says, "This international tribunal is situated within history in line with the Tokyo War Crimes Tribunal (the Tokyo Tribunal). And while elucidating the difficulty of adjudicating wartime sexual violence, it considers the kinds of processes by which victims in Japan and in the respective Asian countries can reach reconciliation."

On the same day, Defendant in the First Instance NHK's Nagata and Nagai et al, Defendant in the First Instance NEP's Hayashi, Defendant in the First Instance DJ's Hirose, Sakagami, Kai, and Sawa Asuka (hereafter, "Sawa") all attended a meeting at the Defendant in the First Instance NHK that also included Professor Takahashi. The NHK Proposal was distributed to each of the attendees and a discussion was held on the editorial aims of the Program in Question.

(c) On November 21, the Division Chief Itô hosted a director's proposal meeting at the Defendant in the First Instance NHK's Program Production Bureau with Yoshioka and eleven other directors from their respective divisions. The Educational Program Division proposed the production of the Series in Question based on the NHK Proposal, and it was accepted.

#### c. The Defendant in the First Instance DJ's Information Gathering Activities and the Plaintiffs in the First Instance's Response and Cooperation

(a) Defendant in the First Instance NEP and Defendant in the First Instance DJ were contacted (above "b. (a)") by Nagata et al on October 5, 2001. Defendant in the First Instance NHK commissioned to Defendant in the First Instance NEP the production work for the Program in Question. In addition, Defendant in the First Instance DJ, under the assumption that Defendant in the First Instance would re-commission this work to Defendant in the First Instance DJ, they decided to move ahead with the production of the Programs in Question. At the Defendant in the First Instance DJ, Kai would be in charge of the second program (Program in Question) dealing with the Women's Tribunal, and Sakagami would be in charge of the International Public Hearing dealt with in the third program.

(b) As the host country's organization within the aforementioned International Executive Committee, Plaintiffs in the First

Instance VAWW-NET received requests for interviews from numerous domestic and foreign media outlets. In early October 2001, Defendant in the First Instance NHK's ETV2000 program made a request for an interview and information gathering Media Representative Matsumoto at Plaintiff in the First Instance VAWW-NET's Executive Office.

On October 20, Plaintiff in the First Instance VAWW-NET, after deliberating over the above request at their Steering Committee meeting, based on their existing high evaluation of Defendant in the First Instance NHK's ETV2000 program and the fact that the Programs in Question and the third Program would be directed by the illustrious producer of documentary programs Sakagami, decided that if ETV2000 would cover the Women's Tribunal then a program that stands in the position of the victims would be made and decided to agree to the request made by Defendant in the First Instance DJ.

(c) On October 24, a meeting between Defendant in the First Instance DJ and Plaintiff in the First Instance VAWW-NET was held to discuss the Program in Question which was attended by Defendant in the First Instance DJ's Sakagami, Kai, and Sawa; Plaintiff in the First Instance's Shôji, Hayashi, Koyanagi, and Matsumoto (hereafter, "The October 24 Meeting"). Sakagami prepared a copy of the Proposal for the Program in Question (A-1) for the interviewee Plaintiff in the First Instance VAWW-NET, in order to gain their understanding and trust, and handed it to Shôji. Nagata explained that in regards to the Program in Question's plans, the two-part evening program series printed in the Proposal for the Program in Question was changed into a four-part series, and that the Program in Question would be made up of documentary footage and a [studio] discussion, would be a program that expresses to viewers what the Women's Tribunal would adjudicate and would show scenes at the Women's Tribunal directly. Further, the Proposal for the Program in Question is a document that a program director makes to propose to division chiefs and agencies that decide on the kind of program that will be produced, and Sakagami did not explain that it is normally not a document that is shown to interviewees or is expected to be distributed. Sakagami had not received permission in advance to send that document. In addition, when asked by Shôji whether or not, in the case that legal action was taken against the Emperor if the judgment on the Emperor would be aired, Sakagami answered that, though she did not know what kind of representative approach would be used, the content of the judgment should be aired if the judgment is included.

This meeting, which took from an hour to an hour and a half, consisted mostly of Sakagami and Kai's questions to Plaintiff in the First Instance VAWW-NET about the interviewees and participating nations in the Women's Tribunal, the content, and form of interviewing and material gathering, and explanations by Plaintiff in the First Instance VAWW-NET; Sakagami's explanation on the content of the Program in Question took only a few minutes.

Further, Sakagami and Kai requested from Shôji interviews on the Women's Tribunal, and not only permission to film the entire Women's Tribunal, but also the preparatory activities, Plaintiff in the First Instance's Steering Committee meetings, press conferences, preparations for these events, providing footage of the entire process leading up to holding the Women's Tribunal. Shôji et al responded that she would need to consult the Steering Committee in regards to the Steering Committee meetings and in regards to the Women's Tribunal avoided giving an immediate answer.

(d) After seeing the copy of the Proposal for the Program in Question (A-1) and learning about the above meeting, the late Matsui agreed to allow Kai and Sawa to attend the Plaintiff in the First Instance VAWW-NET's Steering Committee meeting on November 6, 2001, and would allow not only attendance but filming on November 21. Moreover, after giving instructions to keep the document confidential, Shôji distributed the copy of the Proposal for the Program in Question (A-1) at the November 6 Steering Committee meeting. Plaintiff in the First Instance VAWW-NET hoped that the process of holding the Women's Tribunal would be widely known by people and thought that if they permitted DJ's coverage of [the meeting] this too would be touched upon in the Programs in Question.

(e) On November 21, the late Matsui agreed to an interview as the representative for Plaintiff in the First Instance VAWW-NET and spoke about the sequence of events leading up to convening the Women's Tribunal and about the aims of the Women's Tribunal.

(f) On the same day, Koyanagi of Plaintiff in the First Instance VAWW-NET made a preliminary inspection of the Kudan Hall as a potential venue for the Women's Tribunal and at that time permitted Kai and Sawa to accompany her. Kai et al checked the placement of television cameras and electrical outlets to be used for filming. On December 5 and 6, 2001, a rehearsal for the Women's Tribunal took place privately with no time or location given to the media. Plaintiff in the First Instance VAWW-NET permitted only Defendant in the First Instance DJ permission, allowing Kai to film footage and interviews.

(g) In order to create a video of the Women's Tribunal for public record, Plaintiff in the First Instance VAWW-NET commissioned its production to a group called "Video Juku" (Video School). In addition to these groups, numerous media outlets requested interviews concerning the Women's Tribunal. At the International Executive Committee meeting, the Korean and Filipino NGOs' position that television cameras be allowed at the tribunal conflicted with Plaintiff in the First Instance VAWW-NET's view that the solemn atmosphere of the court should be preserved and should not allow television cameras. In the end, Plaintiff in the First Instance VAWW-NET made seating for the media on the second floor of the conference hall, and allowed only Video Juku and

Defendant in the First Instance DJ permission to film on the first floor; they made a request to the Executive Committee for permission to make a documentary program on the Women's Tribunal with footage taken for the Programs in Question and by Video Juku which would be distributed to each of the countries; after receiving permission, they then gave permission to Defendant in the First Instance DJ to film.

Then, during the Women's Tribunal the staff of Defendant in the First Instance DJ gathered interviews and footage of the tribunal from the second floor media seating and from the first floor.

(In regards to (2): A-1, 4, 5, 22, 31, 53, 67, 71, 72, 85, 98, 107, 120, 193, B-1.a~c, B-3, 4, 8, 9, 16, 17, 19, 38, C-3, D-2, 3, 5, 6, 8, Witness Sakagami, Witness Koyanagi, Witness Kai, Witness Hirose, Witness Hayashi, Witness Nagata (this trial), Witness Yoshioka, Witness Nagai, Representative of Plaintiff in the First Instance Shōji)

### (3) The Production, Editing, and Airing of the Program in Question

#### a. Until January 17, 2001

(a) On November 22, 2000, Nagata asked the Defendants in the First Instance NEP and DJ to select a participant for studio discussion other than the previously chosen Professor Utsumi because Professor Utsumi was part of the board of the Women's Tribunal and therefore too closely tied to the organization. Thereupon, the Defendant in the First Instance DJ replaced Professor Utsumi with University of California Lecturer Lisa Yoneyama as a participant for the studio discussion segment.

(b) After the materials and film footage on the Women's Tribunal had been collected, Kai, of the Defendant in the First Instance DJ, began the editing process on December 15, 2000 with the material gathered. On December 20, 2000, a meeting was held with Professor Takahashi on the Program in Question with Nagata and Nagai from Defendant in the First Instance NHK in attendance, and Hirose, Sakagami, and Kai from Defendant in the First Instance DJ in attendance. In a discussion over the program's editing aims, Nagata indicated that although the Women's Tribunal itself was sufficiently covered, the program was lacking a viewpoint appropriate of an educational program, which should put into historical perspective the Women's Tribunal's crimes against humanity.

(c) Based on the aforementioned meeting, Kai composed a format plan (A-15) and a program script (A-16). Ordinarily, a program in the ETV2000 series would be a 44-minute program, but in the aforementioned format plan for the program, the portion of the video footage of the Women's Tribunal and the studio discussion were longer than the allotted time for the program. As a consequence, further editing was anticipated to be necessary in order to shorten the program length. On December 27, 2000, with Nagata and Nagai from Defendant in the First Instance NHK, Hayashi from Defendant in the First Instance NEP, and Hirose, Sakagami, and Kai from Defendant in the First Instance DJ present, the studio discussion was filmed based on the aforementioned script, with Professor Takahashi and Professor Yoneyama serving as participants in the studio discussion, and Newscaster Machinaga serving as moderator. At the beginning of January of the following year, Kai edited the studio discussion footage and the Women's Tribunal video footage into the first version of Program in Question. In this version, the following information was incorporated: (i) that the Plaintiffs in the First Instance were the organizers who promoted the Women's Tribunal, (ii) that the Women's Tribunal was an international people's tribunal composed of eminent experts of the law, (iii) that the intent of the Women's Tribunal was to mete out justice on the former Japanese Army's involvement in the Comfort Women Issue during the Second World War, (iv) inclusion of the footage of the interview with Matsui Yayori, (v) that the Women's Tribunal's investigation centered around the issue of responsibility of the Shōwa Emperor and of the Japanese state, (vi) that in the Women's Tribunals' process of investigation, the actual testimony of victims and assailant soldiers, as well as the testimony of experts was collected, (vii) inclusion of statements from amicus curiae as part of the pursuit of a fair trial (viii) that the final result of the trial was guilty verdict for the Shōwa Emperor, and the recognition of responsibility of the Japanese Army.

(d) On January 13, 2001, Nagata, Nagai, Hayashi, Hirose, Sakagami, and Kai met for the screening of the first version, upon which, Nagata and Nagai directed Defendant in the First Instance DJ to incorporate information regarding the large size of the Women's Tribunals' sponsor organization, use voice-over narration to make clear that the program's goal is to consider the historical significance of the Women's Tribunal, and to subdue the applause in the hall in the scene where the guilty judgment of the Shōwa Emperor is pronounced. In addition, Hayashi instructed Defendant In the First Instance DJ to delete a section of former assailant soldier testimonies in order to protect the privacy of the former assailant soldiers' families.

(e) Thereupon, Defendant In the First Instance DJ edited the program on the basis of the instructions given above, and on January 17, 2001, a follow-up screening was held with Nagata, Nagai, Hirose, and Kai in attendance. All members present from the Defendants in the First Instance reached the common agreement that the direction of the program's course was satisfactory.

#### b. From January 19, 2001 to January 24, 2001

(a) On January 19, 2001, the first Managerial Screening of the edited version of the aforementioned first version took place. Yoshioka, from the time he deliberated on the series in question, wanted to the program not simply to document the Women's Tribunal, but to position it as part of an international current seen not since the Tokyo War Crimes Tribunal and thereby turn it into an educational program that considered its historical significance. But following the screening, he felt that the aforementioned edited version of the first version merely introduced the Women's Tribunal, and was missing the perspective of a educational program that would consider the historical significance of the Women's Tribunal in an objective, critical light. Thus, Yoshioka felt a need to alter the program's editing aims, and to those present at the editor's screening, which included Nagata, Nagai, Hayashi, Hirose, and Kai, he remarked, "Your position is too close to the Tribunal," "This is different from the original intention," "This is unworkable."

(b) Due to this, Nagata, Nagai, Hayashi, Hirose, and Kai changed their plan to build the program just around the Women's Tribunal, and instead confirmed changes including the inclusion of an explanation of the history of the post-war reparation trial using archived footage, the inclusion of a section on the foreign media's reaction, the inclusion of studio moderator's comments that addressed the various problematic issues at the start of the program such as the issue of putting deceased persons on trial, and the absence of any lawyers. In addition, editing was executed so that Matsui Yayori's interview was cut, and the scene of the pronouncement of the Emperor's guilty judgment was changed to its delivery by voice-over narration.

(c) On January 24, 2001, the second Managerial Screening was held, at which Yoshioka felt that the program had deviated away from the expected consideration of the significance of the Women's Tribunal within a historical current, and requested a further change in the program's content.

In response to this, Hirose of the Defendant In the First Instance DJ, seeing that the Program in Question would require large-scale changes in the editing direction, and thinking production according to the above requests would be difficult to perform by the broadcast date, withdrew from the editing process.

c. From January 26, 2001 to January 28, 2001

(a) The Defendant in the First Instance DJ supplied the videotape of the program (roughly 45-46 minutes long), as well as a videotape of pre-editing source footage to Defendant in the First Instance NHK on January 25 and 26, 2001.

On January 25 and 26, 2001, Nagai and Nagata edited the program script according to Yoshioka's editing instructions, by greatly shortening the statements of Professor Yoneyama and the statements of the former soldiers, and re-filming the studio discussion with Newscaster Machinaga and Professor Takahashi.

(b) On January 26, 2001, on the premises of the Defendant in the First Instance NHK, a screening of the program was conducted in the presence of Matsuo, Executive Director-General of Broadcasting, Itô, Programming Director, and Nojima, Director General of Planning in charge of relations with Diet members, as well as Yoshioka and Nagata. Although it was unconventional for Matsuo and Nojima to be present at a program's pre-screening, Nagata and others were told that in consideration of the fact that it was likely to be an issue at the Diet's budget explanation meeting, they would like to see the program beforehand. Following the screening, there were no concrete statements other than the following: "Make sure to maintain a critical distance with the Tribunal" and "Professor Yoneyama's comments are difficult to understand," which were both agreed upon by participants to be in need of change. However, Itô directed Yoshioka to also include critical opinions of the Women's Tribunal, and Nagata and others thereafter requested a television appearance by Professor Hata.

(c) On January 28, 2001, on the basis of the edited program script, the following changes were made: the filmed interview with Professor Hata was inserted, the comments from Professor Takahashi were added in accordance with the deletion of Professor Yoneyama's comments, the statements from amici curiae were deleted, and a comment that raised questions regarding the legitimacy of the Women's Tribunal was added into Newscaster Machinaga's introduction. Following another screening by Yoshioka of these rough edits, additional editing was performed to produce the 44-minute Offline version (provisional) at 11 pm of the same day.

d. From January 29, 2001 to January 30, 2001 (the Airdate of the Program in Question)

(a) In the late afternoon of January 29, 2001, Matsuo, Itô, Nojima, Yoshioka, Nagata, Nagai met in the office of the Programming Director at Defendant in the First Instance NHK's for a screening of the Program in Question. On that day, before the screening was to begin, Itô made a comment to Yoshioka and Nagata that the timing was not favorable for the program. Also, following the screening, Nojima commented, "This is in totally unacceptable," upon which Nagata and Nagai were subsequently asked to leave the room so that the rest of the executives of Defendant in the First Instance NHK could hold a discussion among

themselves. Nojima recorded into the program script the results of the discussion amongst the four, and after the conversation was over, Nagata was called back into the room. He then in detail directed Nagata on concrete revisions of program content that were to be made, which included: (i) deletion of the entire segment containing the Women's Tribunal's recognition of the rapes and comfort women system perpetrated by the former Japanese Army as crimes against humanity, and the finding of the Japanese state and the Shōwa Emperor to be responsible for those crimes (ii) deletion of the section of studio commentary in which the Women's Tribunal was positively compared to the Russell Tribunal [also known as the International War Crimes Tribunal] (iii) deletion of footage of foreign media responses which mention the responsibility of the Japanese government and (iv) deletion of the sections mentioning the responsibility of the Japanese government. When Nagata stated the opinion that Nojima's instructions included too many sections to be cut, Nojima, based on the information he received on the spot from Nagata, directed him to increase the length of the interview with Professor Hata, who holds a critical stance against the Women's Tribunal. When Nagata showed signs of unwillingness, Nojima said, "Might as well be hanged for a sheep as for a lamb," holding firm to the aforementioned instructions he gave. In addition, Nojima directed Nagata to edit the comments pertaining to materials implicating the involvement of the former Japanese Army. After the edits were made, Nagata reported this directly to Nojima.

(b) After these edits were performed, a screening of the newly edited 43-minute version of the Program in Question was held at 2 a.m. on the 30<sup>th</sup>, in the Office of the Programming Director of the Defendant in the First Instance NHK, with Matsuo, Itō, Yoshioka, and Nagata present. Following this screening, online editing on the broadcast tape (actual), as well as finalizations to the re-modified program script were conducted into the early morning.

(c) Around 9 a.m. on the same day, in-studio dubbing (inclusion of the sound track) was conducted, and the voice-over track by voice actors and narration by the newscaster was recorded. From slightly past 3 p.m. on that afternoon, finalization of the soundtrack was conducted, and at around 6:30 p.m., the 43-minute version of the program (actual editing) was completed.

On the afternoon of the same day, Itō spoke with President Ebizawa Katsuji regarding the Program in Question in the Office of the President of the Defendant in the First Instance NHK. Itō then approached the Office of the Executive Director-general of Broadcasting and read and considered the re-modified program script together with Matsuo, upon which Itō said to Yoshioka, who had also been called to the office, "The Liberal Democratic Party didn't go easy on this" and directed Yoshioka to cut a 3 minute segment including testimony from former soldiers and two former comfort women. Nagata, who was called by Yoshioka, went to the office of the Executive Director-general of Broadcasting and stated that should the program length be reduced to 40 minutes, the Defendant in the First Instance NHK would not be able to avoid a serious blow, thus trying to discourage the idea of cutting the 3 minute segment. However, Matsuo said, "I will take responsibility for this. I want the program to air in the form I will be satisfied with," and did not change his instructions.

After 7 p.m., based on Matsuo's aforementioned instructions, the editing room modified video footage and completed a 40-minute version of the Program in Question (actual editing), that was broadcast on the Defendant in the First Instance NHK's channel at 10 p.m.

(In regards to (3): A-6, 7, 10, 15~17, 73, 75, 76, 85, 123.a~b, A-131.a~c, A-141, 173-175, 177, B-4, 8, 9, 16~20, 24, 38, C-3, D-2, 3, 5~8, Witness Kai, Witness Hirose, Witness Hayashi, Witness Nagata, (this trial) Witness Yoshioka, Witness Nagai, Witness Matsuo, Witness Nojima.)

#### (4) Contacts Between the Defendant in the First Instance NHK and External Groups During this Period

##### a. Actions from External Groups

(a) On December 18, 2000, a Rightist group surrounded Defendant in the First Instance NHK and held a protest against the airing of news of the Women's Tribunal.

(b) On January 20, 2001, a letter of protest against the television series was faxed to the Defendant in the First Instance NHK from a group that called themselves the Public Congress Against the Women's Tribunal [*Nihon hōtei ni kōgi suru kokumin kaigi*].

(c) On January 26, 2001, the "Public Congress to Rectify NHK's Anti-Japanese Bias" [*NHK no 'Han-nichi henkō wo zesei suru kokumin kaigi*] (represented by Nishimura Shūhei) posted the message, "NHK must cancel the ETV2001 Broadcast" on an internet message board.

(d) On January 26, 2001, the officials under Japan Conference Vice President Odamura approached Internal Affairs Minister Katayama Toranosuke and requested that the Defendant in the First Instance NHK air a fair program that is appropriate for public programming.

(e) On January 27 and 28, 2001, several members (between 10 and 20) of a rightist organization burst in on the Defendant in the First Instance NHK's media center and conducted a protest seeking to cancel the airing the program.

Also, preceding the airing of the program, the Japanese Policy Institute [*Nihon seisaku kenkyū sentai*] held protests against the

Defendant in the First Instance NHK and requested the airing of the program to be cancelled.

b. Contacts made with Members of the Diet

(a) On January 25, 2001, the annual budget for the Defendant in the First Instance NHK's 2001 fiscal year was submitted to the Internal Affairs Minister. A short time prior to this, representatives from the General Programming Office, Defendant in the First Instance NHK had commenced budgetary explanations on an individual basis to roughly 260 of the most influential members of the caucus from the Higher and Lower Houses of Congress who were affiliated with the ruling party (The Liberal Democratic Party, the Liberal Party, and the New Komeito Party).

(b) From January 25 to the 26, 2001, when the aforementioned representatives approached several Diet members affiliated with the Liberal Democratic Party General Affairs Department, Furuya Keiji, Hirasawa Katsuei, Arai Hiroyuki, these members commented that they had heard from an assembly member affiliated with the Young Parliamentarians Society Considering Japan's Future and History Education [*Nihon no Zento to Rekishi Kyōiku o Kangaeru Wakate Gi'in no kai*] that Defendant in the First Instance NHK was producing a special program featuring the Women's Tribunal, and asked the representatives about the program's progress. The representatives were given instructions to provide an explanation about the program, while it was also discovered that at that time, rumors were spreading that the Program in Question was a documentary program on the Women's Tribunal that would be aired over four consecutive nights.

(c) Around January 26, 2001, Matsuoka Shiegomi, Chief of General Programming, formerly in the political department of Defendant in the First Instance NHK, arranged an appointment for a meeting between Defendant in the First Instance NHK and Deputy Chief Cabinet Secretary Abe. On the afternoon of January 29, 2001, Matsuo and Nojima, along with Matsuoka, met with Deputy Chief Abe in the Deputy Chief's Office inside the Prime Minister's official residence. During the meeting, Nojima gave a broad explanation of Defendant in the First Instance NHK's budget for the new year, and Matsuo explained that in the case of the Program in Question, the Women's Tribunal composed merely one element in the program, not the subject of an entire four-night documentary. Deputy Chief Abe expounded on his opinion on the issue of Comfort Women, and then indicated that it should be broadcast from an appropriate position of fairness and neutrality that Defendant in the First Instance NHK is expected to represent. In addition, Deputy Chief Abe himself has written on his own home page (A-119): "I inquired into the facts, since I had received information from certain conscientious people involved that those requesting to be in the courtroom audience of this mock trial were required to sign an oath that they would "approve of the Tribunal's purpose" and that the organizers were thus trying to control media coverage of the event to follow the intentions of the organizers. Through my inquiry into the facts, I learned that although judges and public prosecutors were present, no lawyers or witnesses [for the Defense] were present, rendering the procedures clearly biased, and I stated that coverage should take a position of fairness and neutrality that NHK is particularly expected to maintain. I suspected that this might be part of a ploy to mollify the abduction issue [*rachi mondai*], to make an appeal for North Korea's position as victim."

(In regards to (4): A-11, 14, 119, 137~139, 171.a~c, A-178, B-18, 22, Witness Matsuo, Witness Nojima.)

(5) Content of the Aired Program

a. Brief Outline of the Structure of the Program in Question

ETV2001 is normally a 44-minute program, but the Program in Question is 40 minutes in length. This Program is constructed of an introductory three and a half minutes of archival footage relating to crimes against humanity, followed by a fifteen minute segment of a studio discussion between Professor Takahashi and Professor Yoneyama, moderated by Newscaster Machinaga, followed by a 20-minute segment of video footage. This video footage included images of the Women's Tribunal, the press conference of two specialists who served as judges for the Women's Tribunal, an interview with the specialist who served as Chief Prosecutor, an interview with Professor Hata about the Women's Tribunal (in two segments), and an interview with Professor Utsumi (1 segment), in addition to archival footage regarding crimes against humanity and the issue of Comfort Women.

The footage of the Women's Tribunal featured the general atmosphere of the entire Tribunal, testimony from the victims, testimony from specialists, and comments from the Chief Justice of the Women's Tribunal. Footage of statements from amici curiae, testimony of former soldiers, and the reading of the final judgment were not included, and no description of said judgment was added by voice-over narration.

b. The Program in Question's Detailed Structure

The Program in Question was broadcast showing footage in the following order (A-2, 7):

(a) Opening – video footage (about 3 minutes and 56 seconds)

After the running of the title background, during the 3minute 29 second opening, archival images relating to crimes against humanity, such as the persecution of Jews by Nazi Germany, as well as images of the tensions in Algeria ran in tandem with voice

-over narration.

(b) Studio footage (3 minutes and 14 seconds)

This is comprised of footage taped in the studio, introducing Professor Takahashi and Professor Yoneyama, the participants in the studio discussion.

(c) Images of the Women's Tribunal and comments of expert professionals (10 minutes and 20 seconds)

Footage of the Women's Tribunal began with a view of the assembly hall, comments of the Chief Justice, images of the Public Prosecutors, the victims, and the courtroom audience. Next, the testimony of a Korean victim and a Dutch victim is shown, followed by expert testimony of specialists on the former Japanese Army and its Comfort Women system. Next, a taped interview with Professor Hata followed, in which he states the various problems of the Women's Tribunal, including firstly, the principle of protection against double jeopardy, secondly, the fact that there was no means of investigating the facts of the case other than through the allegations of the victims, thirdly, the problem of the statute of limitations, and finally, the fact that there was no lawyer present. Next, a taped interview with Professor Utsumi followed, in which she discussed the meaning of the Women's Tribunal vis-à-vis the Tokyo Tribunal. Then, a return to Professor Hata's comments, in which he takes issue with the fact that the Chief Justice and Chief Prosecutor in the Women's Tribunal are both Americans, and states that many of the former comfort Women were sold by their parents as part of a commercial transaction and brought to comfort stations.

(d) Studio footage (2 minutes and 22 seconds)

The program returns to studio footage, presenting the comments of Professor Takahashi, who mentions the Russell Tribunal. This is followed by a comment from Professor Yoneyama, who remarks on the importance of placing the Women's Tribunal within the trajectory of feminist thought.

(e) Archival footage (7 minutes and 40 seconds)

Then, against the backdrop of the following archived footage: of the Tokyo War Crimes Tribunal, the Vietnam War, The United Nations, grassroots movements in Korea, a lawsuit by a Korean woman and former Comfort Woman against the Tokyo District Court, demonstrations in the Philippines by former Comfort Women, and urban warfare in former Yugoslavia, a voice-over narration track explains the shifts in views regarding crimes against humanity.

(f) Studio footage (3 minutes and 15 seconds)

The program returns to in-studio comments from Professor Takahashi on wartime sexual violence, and Newscaster Machinaga's description of the process of the Japanese government's response to the issue of comfort women problem, through use of a flip board.

(g) Video footage (2 minutes and 27 seconds)

The program then runs comments of two judges of the Women's Tribunal taken from their press conference, followed by the coverage of the Women's Tribunal in the foreign media, and an interview with the Chief Prosecutor in the Women's Tribunal.

(h) Studio footage (6 minutes and 22 seconds)

The program then returns to studio footage, including a comment from Professor Takahashi that due to the great attention that the international media has drawn on the Women's Tribunal, concern is growing around the world on the issue of crimes against humanity, a comment from Professor Yoneyama on the difficulty of coming to a reconciliation, and Professor Takahashi's remarks on the meaning of the pursuit of responsibility for wartime sexual violence perpetrated by Japan.

(i) Ending (34 seconds)

c. Altered sections following the first Managerial Screening

At the point of the first Managerial Screening on January 19, 2001, the following scenes remained in the program content: the testimony of the assailant soldiers of the former Japanese army, the interview with the deceased Matsui, the statements by amici curiae, and the scene delivering the final verdict of the Shōwa Emperor's guilt and the recognition of the responsibility of the Japanese government. At the point of the second Managerial Screening on January 24, 2001, the changes included: the inclusion of foreign media coverage of the Women's Tribunal, of the scenes aforementioned, the deletion of the interview with the late Matsui Yayori, and a narration change in the scenes of the announcement of the final judgment on the Emperor's guilt. The rest of the scenes remained the same.

However, in the final cut, each of the aforementioned narrated segments as well as the remainder of the aforementioned scenes were all excised.

Also, at the point of the second Managerial Screening on January 24, 2001, the fact that the Plaintiff in the First Instance VAWW-NET was the organizing body of the Women's Tribunal was made clear. But in the Program in Question that was actually broadcast, the organizing body of the Women's Tribunal was stated to be "an NGO of Japanese and Asian Women," and new elements not included at the point of the second Managerial Screening were added, including the interview with Professor Hata, and new content in Newscaster Machinaga's introductory remarks, in which he made the following points: (i) that it is a "people's" tribunal and has no legally binding authority, (ii) that the accused had not made any appearance, (iii) that an attempt was being made to put deceased persons on trial, and (iv) the impossibility of confirming all of the victim's testimony. In addition, immediately prior to the airing of the Program in Question, the following three sections were deleted: 1) the recognition by the Women's Tribunal that the Japanese state and the Shōwa Emperor were responsible for actions that constitute crimes against humanity, 2) studio comments that compare the Women's Tribunal with the Russell Tribunal, 3) responses in the foreign media coverage that mentioned the Japanese government's responsibility. As a result, a program with a normal airtime of 44- minutes became a program with an airtime of 40 minutes.

(A-2, 7, 16, 141, 173, 174, 177, Witness Nagata (this trial))

#### (6) The Relationship between the Defendants in the First Instance

##### a. Commission of the Production Work Between Defendant in the First Instance NHK and Defendant in the First Instance NEP

On April 1, 1999, Defendant in the First Instance NHK and Defendant in the First Instance NEP entered into a basic contract ("kihon keiyaku") stating that Defendant in the First Instance NHK would commission to Defendant in the First Instance NEP the production of programming and perform the work relating to said production. Based on that contract, on April 1, 2000, the two parties signed a contract (individual contract "kobetsu keiyaku") that stated the details of the production work to be commissioned (B-1.1, B-2).

In the aforementioned individual contract, Defendant in the First Instance NHK outlined the basic plan and the delivery deadline in the execution of the commissioned work to be carried out by Defendant in the First Instance NEP. In addition, clauses stipulating that (i) directions on details of the work will be given as necessary (Article 2:3), (ii) Defendant in the First Instance NEP will agree to alterations made by Defendant in the First Instance NHK including changes of content and excisions made to the programs produced by commission (Article 7: 3), and (iii) when a third party is damaged for reasons attributable to Defendant in the First Instance NEP during the execution of the commissioned work, then Defendant in the First Instance NEP must pay the third party's compensatory damages (Article 12).

On the basis of the aforementioned basic contact and the individual contract, on November 27, 2000, Defendant in the First Instance NHK commissioned the production work for the Program in Question to Defendant in the First Instance NEP (B-1.c).

##### b. Commission of Production Work Between Defendant in the First Instance NEP and Defendant in the First Instance DJ

On January 23, 2001, Defendant in the First Instance NEP and Defendant in the First Instance DJ entered into a contract stating that Defendant in the First Instance NEP would re-commission the production of the Program in Question to Defendant in the First Instance DJ (C- 1, D- 1).

Under the terms of the contract stipulating the aforementioned re-commission of the production, Defendant in the First Instance DJ agreed to the following: (i) to respect the fair and neutral position of Defendant in the First Instance NHK in adherence to the standards for domestic programming of the Japan Broadcasting Association [NHK], maintain close contact with the Defendant in the First Instance NEP regarding the progress of program production as well as other issues relating to said production, and to comply with those directions in the execution of program production, (Article 3:1) (ii) with regard to the program script or the content of each episode of the program, when Defendant in the First Instance NEP requests a change or a deletion based on the character of Defendant in the First Instance NHK, Defendant in the First Instance DJ is to follow these requests and take appropriate action in good faith (Article 3: 4) (iii) Defendant in the First Instance NEP and Defendant in the First Instance NHK shall, depending on the need, make alterations including changes and deletions to the program, to the extent that the program's aims and content are not visibly destroyed (Article 9), (iv) when the need for a change in program content is confirmed by Defendant in the First Instance NEP or Defendant in the First Instance NHK in the process of the execution of the commissioned work, Defendant in the First Instance DJ is to submit to such instructions. The details concerning the manner and content of the change, as well as commission fees should be decided upon through negotiations between Defendant in the First Instance NEP and Defendant in the First Instance DJ (Article 13), (v) when a third party is damaged during the execution of the commissioned work, (excepting cases where the damages occur for reasons attributable to Defendant in the First Instance NEP) the responsibility and liability shall fall with the Defendant in the First Instance DJ (Article 17) (C-1, D-1).

## 2. The Expectations and Trust Held by Plaintiffs VAWW-NET and the late Matsui Regarding the Program in Question



(1) The particular circumstances of the production of the Program in Question include, as established above, the planning of the program, which was initiated by Hayashi of the Defendant in the First Instance NEP, who was deeply impressed by the content of a lecture by Professor Takahashi and drew up program plans with Sakagami of Defendant in the First Instance DJ. Thereupon, Nagata of Defendant in the First Instance NHK expressed his approval of the plans. With the common understanding that the program would be broadcast as part of Defendant in the First Instance NHK's ETV series, that the program would be developed in collaboration with each other, and that the description Proposal of the Program in Question and the description of the NHK Proposal were the same, Defendant in the First Instance DJ conducted research and gathered material for the program. Using the material that was obtained, the Defendants in the First Instance executed repeated stages of editing in collaboration with each other. Thus, Defendant in the First Instance NHK broadcast the final program as a collaborative production by the Defendants NEP and DJ in the First Instance. Given the above, the inquiry into the existence or absence of a legally protected expectation and trust, and the existence or absence of a violation of that expectation and trust will require consideration of the various stages of production of the Program in Question, including planning, researching and gathering material, editing, and airing.

(2) Generally, when a broadcaster produces a program and broadcasts it, either prior to, or simultaneous with the gathering of materials by the individual(s) assigned to program production, the material gathered from reporting undergoes editing to become the content for the program to be aired. In this editing process, the opinions and viewpoints of not only the individuals who participated directly in the gathering of materials, but the opinions of many other individuals connected to the program production are reflected in the editing. Furthermore, because social conditions change over time and become different from the time of the gathering of materials, and because factors to be considered in the editing process will change, it must be said that the contents of the program to be aired remains always under the possibility of being changed, from the time the planning and gathering of materials took place, to the time the program is actually aired. In addition, it is commonly understood that when interview subjects agree to be interviewed, there is the possibility that even if an explanation regarding the final program's content was provided by the interviewer, the program that is aired may be different in content than that which was explained at the time of the interview.

Furthermore, the right of broadcasters to the freedom to edit, a corollary of the freedom to report and the freedom to broadcast, is a constitutionally recognized right that should be guaranteed. This being in line with Article 3 of the Broadcast Law, even if interviewees develop some form of expectation through the process of the interview, the program's editing and production may not be unduly restricted.

However, whether or not the interviewees will comply with the interview is entrusted to the interviewee's free will, and it is possible that the manner in which the material gathered from the interview will be edited, or the manner in which said materials will be used in the program, may become key factors determining whether or not the interviewee will comply with the interview. Furthermore, unlike the case with news programs, in documentaries and educational programs such as the Program in Question, the manner and extent to which the actual subject at hand is taken up in the program, and how the interviewee's opinions and activities are reflected in the program are of utmost concern to the interviewee. In view of these two sides of the issue, as pertains to the relationship between the producer's freedom to edit and the interviewee's right to self-determination, the manner of how the interview took place must be considered, as well as the relationship of the interviewer to the interviewee. Moreover, when unique circumstances can be established in which it is unavoidable for the interviewee to develop expectations based on the words or actions of the interviewer, then the broadcaster's freedom to edit must undergo some constraints, and the expectation and trust of the interviewee regarding the content of the program can be said to merit legal protection.

Therefore, actions which betray the expectations and trust by deliberate means or by negligence, are an illegal violation of legal benefits and are properly understood as illegal actions.

(3) Now, in light of what has been stated above, we will consider whether in this matter, Plaintiffs in the First Instance (Plaintiff in the First Instance VAWW-NET and the late Matsui) developed expectations and trust that warrants legal protection.

As established above, when Director Sakagami of Defendant in the First Instance DJ met for the first time with Shôji and others of Plaintiff in the First Instance VAWW-NET on October 24, [she] supplied a copy (A-1) of the Proposal for the Program in Question in order to obtain the trust and cooperation of Plaintiff in the First Instance VAWW-NET. Thereupon, it was explained that the program would take the form of a documentary of the Women's Tribunal combined with studio commentary, and would convey to viewers what is being adjudicated by the Women's Tribunal, and plainly present scenes from the Women's Tribunal. In response to a question from Shôji, Sakagami replied that, should there be an indictment of the Emperor and an ensuing judgment, such scenes should also be aired. In the Proposal of the Program in Question (A-1), the objective for the consecutive two night series was stated as the following: "On the first night, the Women's International War Crimes Tribunal will be carefully followed, and will pursue the issue of how the wartime sexual violence of a half century ago will be judged by specialists from around the world." With regard to the program content, under the given Program Title, "What was Put on Trial" it stated: "On the first night, the Women's International War Crimes Tribunal to be held in Tokyo from December 8 through December 12 will be followed in detail, combined with segments of studio, in which the significance of addressing wartime sexual violence half a century later will be considered." In addition, the Proposal states that "through the examination of how, over half a century after the injuries have

been committed, an international tribunal of the world's top experts is formed, whether or not the tribunal is actually held, and how international public opinion judges wartime sexual violence, the program seeks to address the question, "What has been put into question?"

In view of the above, the aforementioned explanation given Sakagami described the program as a documentary, or one which would pursue to the format of a documentary, whose content would introduce the Women's Tribunal as its main focus, and furthermore, would objectively cover the entire process of the tribunal, from the beginning of the actual trial procedures to its final judgment, through the inclusion of victim testimonies and explanation of evidence.

In addition, Shôji and Koyanagi stated in their affidavit, that they were given the impression that the program to be aired on the first night would be a documentary, or alternatively, that through the trial testimony of victims, of the assailant former soldiers, and the presentation of various other evidence, the program would at the least shed some light on the nature of the inflicted harm and that the judgment scene would be clarified. (Representative of the Plaintiff in the First Instance Shôji, Witness Koyanagi).

If we compare this affidavit with the aforementioned explanation by Sakagami, Shôji and Koyanagi's understanding was in direct accordance with Sakagami's aforementioned explanation; in other words, they believed that the first night of the program would be a documentary, or one which would pursue to the format of a documentary, whose content would introduce the Women's Tribunal, and furthermore, would objectively cover the entire process of the tribunal, from the beginning of the actual trial procedures to its final verdict, through the inclusion of victim testimonies and explanation of evidence. Thus it can be confirmed that they developed an expectation and trust to this effect.

In addition, as established above, the late Matsui (then representative of the VAWW-NET), was given a report of the October 24 meeting from Shôji, and was shown the copy of Proposal of the Program in Question. At the Steering Committee meeting of the Plaintiff in the First Instance VAWW-NET, held on November 6, 2000, copies of the Proposal (A-1) were circulated. Kai, as the Defendant in the First Instance DJ's director of the Program in Question, took an active stance in research and gathering of materials, such as sitting in on and filming their closed-door Steering Committee meetings, conducting an hour to an hour and a half-long interview with the late Matsui, accompanying Sawa on a preliminary inspection of the Kudan Hall which was to be the location of the Women's Tribunal, and researching and filming the Women's Tribunal closed-door rehearsals. She was also given special accommodations on the day of the Women's Tribunal not provided to other media organizations, such as access to collect materials and film from the first floor, and full access to reporting and filming of the Women's Tribunal at all stages, from its preparation, to the actual event, to its conclusion. Viewing the Plaintiffs in the First Instances' full cooperation with the reporting process, it can be confirmed that through the Defendant in the First Instance DJ's reporting activities, the Plaintiff in the First Instance's aforementioned expectations and hopes for the content of the program were not only made more concrete and clear, but were also intensified as the Women's Tribunal proceeded from preparations to the actual event. Also, it is clear that the Plaintiff in the First Instance's expectations and trust were not limited to the Defendant in the First Instance DJ, but owing to the fact that the program was slated to be broadcast as part the ETV2000 series, their expectations and hopes were also directed at Defendant in the First Instance NHK and all parties involved in the broadcast of the Program in Question.

From the above, it can be said that the aforementioned expectations and trust of the Plaintiffs in the First Instance regarding the content of the program were already concrete at the point of the meeting on October 24, and that through the reporting activities of Defendant in the First Instance DJ, they were made yet more concrete and clear. Also, in view of the aforementioned explanation of Sakagami and Kai of Defendant in the First Instance DJ provided to Shôji, their thorough and comprehensive reporting of the Women's Tribunal at all stages, from its preparation, to the actual event, to its conclusion, and the Plaintiffs in the First Instance's full cooperation toward said activities, it can be confirmed that particular circumstances existed in which it was unavoidable that the plaintiffs would develop the aforementioned expectations and trust.

Certainly, during the process of producing a program, its content are in flux and always remain under the possibility of being altered, a possibility with which interviewees are normally familiar. The program proposal is a document drafted by a producer for the purpose of proposing a program, to organizations or departments such as Defendant in the First Instance NHK, which make decisions on the production of programs, and is generally not intended for submission to interviewees. It is strictly a document for the planning stage rendering its contents not necessarily reflective of the final program content. Also, the Plaintiffs in the First Instance are active internationally, and are experienced in dealing with the media. However, the act of providing a copy of the proposal to the interviewee, Plaintiff in the First Instance VAWW-NET, when such materials are not ordinarily shown to interviewees, itself can be said to invite an understanding on the part of the interviewees that the program is being planned with the rough design described in the therein. And in view of Sakagami and Kai's explanation as well as the fact that their reporting of the Women's Tribunal from preparation to conclusion was comprehensive and thorough, despite the commonly accepted knowledge on the nature of the proposal and the experience of the Plaintiffs in the First Instance in such matters, these were not sufficient causes to alter the aforementioned understanding.

Judging from the fact that the Plaintiffs in the First Instance VAWW-NET had already decided to accept the Defendant in the First Instance DJ's request for an interview at the October 20 Steering Committee meeting before the meeting on October 24, and since the time used to discuss the content of the program at the October 24 meeting amounted only to a few minutes, it cannot be denied that the Plaintiff in the First Instance VAWW-NET harbored the expectation that the program would take up the Women's

Tribunal adequately based solely on the fact that the program was part of Defendant in the First Instance NHK's ETV2000 series. However, at this juncture, their expectations were still vague; it was only at the October 24 meeting, at which the copy of the proposal (A-1) was provided, and after the explanation was given by Sakagami, that Shôji and Koyanagi of Plaintiff in the First Instance VAWW-NET began to form the aforementioned understanding of the plans for the program, leading them to develop such expectations and hopes. Because these expectations can be confirmed to have developed not from Shôji et al's one-sided preconceived ideas, it is determined that the above circumstances could not alter the assessment above, and no other circumstances could have changed their understanding.

(4) From the above, we can recognize that the Plaintiffs in the First Instance developed an expectation and trust for the program content that warrants legal protection.

### 3 Actions Violating the Expectation and Trust of the Plaintiffs in the First Instance

(1) The content of the program that was actually aired is as described above in Part 4, No. 1, (5). Although the testimony of two victims, and the testimony of experts on the comfort women system of the former Japanese Army was included in the actual footage of the Women's Tribunal, this amounted to one small portion of the entire program, only 10 minutes and 20 seconds. Within the roughly 10 minutes and 20 seconds of footage, besides the footage of the Women's Tribunal proper, the program included commentary from Professor Utsumi who spoke positively about the meaning of the Women's Tribunal, as well as commentary from Professor Hata, inserted before and after Professor Utsumi's comments, in which he discussed the problematic issues of the Women's Tribunal. In addition, about 2 minutes and 27 seconds of footage from the press conference of the two specialists who served as judges in the Women's Tribunal were included. And finally, the program was composed of the studio discussion between Professor Takahashi and Professor Yoneyama as well as archival footage with voice-over narration.

In view of the general structure of the Program in Question and the content of the studio discussion, the program that was actually aired traced, through the studio discussion and use of archival footage, the historical currents which brought forth the issue of wartime sexual violence perpetrated upon former Comfort Women as a crime against humanity, and focused on the role of the Women's Tribunal within this process. Although the Women's Tribunal was taken up as a central focus and the program had interwoven footage that was cited above, the scenes of indictment charges, the testimony of the assailant soldiers, and the explanation of the final verdict were deleted, and the identity of the organizers of the Women's Tribunal, the Tribunal's purpose, who it adjudicates, and its judicial process could not be understood. Instead, the program was altered so that commentary detailing the debated issues of the Women's Tribunal and its problematic aspects were added, and it can be confirmed that the Tribunal was treated merely as subject material for the program theme, from the perspective of considering its role and meaning.

Thus, it can be acknowledged that the Program in Question departed to a large extent from the format of a documentary, or one which pursues the form of a documentary, which would have objectively covered the entire process of the tribunal, from the beginning of the actual trial procedures to its final verdict, through the inclusion of victim testimonies and explanation of evidence.

Furthermore, it should be said that the Program in Question went against the expectations and the trust of the Plaintiffs in the First Instance.

Therefore, it should be declared that the content of the Program that was actually aired violated the expectations and the trust of the Plaintiffs in the First Instance.

(2) In contrast, the Defendants in the First Instance make the claim that the program that was aired followed what was indicated in the Proposal for the Program in Question; thus the editing process up until the airing of the program will be discussed.

a. At the point of the second Managerial Screening on January 24, 2001, the content of the program was as established above. The video recording segment included: (i) the testimony of Chinese victims, (ii) the testimony of the former Japanese Army assailant soldiers, (iii) various scenes of statements from amici curiae, and (iv) the scene of the final judgment in which the Women's Tribunal found that the injuries caused to the victims constituted a crime against humanity, and recognized the responsibility of the Japanese government and the Japanese state. In addition, there was voice-over narration for segments of the late Matsui's interview, and the announcement of the final judgment on the Emperor's guilt. Furthermore, the organizer of the Women's Tribunal was indicated to be Plaintiff in the First Instance VAWW-NET, and scenes such as the studio discussion comparing the Women's Tribunal with the Russell Tribunal, and the segments from the international media response touching on the responsibility of the Japanese government, were still included. All these factors suggest that at the time, at the very least, the Program in Question did introduce the Women's Tribunal as its main focus, and traced the historical current which brought the issue to be considered as a crime against humanity, all within which the role of the Women's Tribunal was being considered. The program does take the form similar to a documentary, by objectively covering the entire process of the Tribunal, from the beginning of the actual trial procedures to its final verdict, through the inclusion of victim testimonies and explanation of evidence. Thus, it can be said to have respected the expectations and the trust of the Plaintiffs in the First Instance.

And, according to the established facts of No. 4, 1 (3) b. above, (A- 15, 16, 174, Witness Yoshioka), and [the Defendant's] overall argument, it can be surmised that up until that point, despite some minor changes in opinion, there existed among Nagata and Nagai of Defendant in the First Instance NHK, Hayashi of Defendant in the First Instance NEP, and Hirose and Kai of Defendant

in the First Instance DJ, a general agreement on the editing aims of the program. That editing aim was to construct the program around footage of the Women's Tribunal, and to include a documentary-like style of content that would enable a comprehensive full-view perspective of the Women's Tribunal.

b. However, following the aforementioned second Managerial Screening, the Defendant in the First Instance DJ withdrew from program production citing reasons of differences of opinion in editorial aims. It can be thus said that there was a significant shift in the editorial aims which made it difficult for the Defendant in the First Instance DJ, who had been under contract for program production and performed the reporting, to continue editing work in the production process. The fact that the Program that was actually aired was completed following this significant shift in editorial aims explains its discrepancy with the explanation made by Sakagami at the October 24 meeting cited above.

Yoshioka was committed, from the time that the program was decided to be a part of the series in question, to making the program an educational program which would consider its historical significance by placing it in a current of international tribunals since the Tokyo Tribunals, rather than a program that would merely document the Women's Tribunal. At the Managerial Screening, Yoshioka felt that the program's content stopped merely at introducing the Women's Tribunal, and was lacking the perspective of an educational program which should consider its historical significance from an objective, critical eye. Thus it was acknowledged that editing would proceed in order to insert such a perspective. This editing act is regarded as being based upon the sincere position on the part of the head of program production to make a better program, and the editorial freedom at this juncture is to be respected. Also, it is acknowledged that, at this stage, at the very least, the expectations and the trust of the Plaintiffs in the First Instance was not violated.

c. The editing performed by the Defendant in the First Instance NHK, from the point up to which facts have been established above, will be discussed. (i) On January 26, 2001, a screening of the program was held with Matsuo, Executive Director-General of Broadcasting and Nojima, Director-General of the Planning in charge of relations with the Diet, individuals who do not normally participate in the program production. The first round of editing was performed to reflect the opinions of these individuals. (ii) Then, the edited 44-minute (provisional) online version was screened again for Matsuo and Nojima on January 29, at which Matsuo, Nojima, Itô, and Yoshioka held negotiations without the presence of the any members of the production team, followed by Nojima passing on the directions for editing, which produced a nearly completed 43-minute (real) version. (iii) On the day of the broadcast, Matsuo ordered the deletion of a roughly 3-minute segment in which former soldiers and two comfort women give their testimony, and based on these directions, hand-editing of the video recording footage was performed to complete the final 40 minute version. Considering this background together with the alterations in program content at each stage which have been established above, and with the contents of the program that was broadcast, it can be acknowledged that after January 26, editing was performed in a manner which departed from the production aims of those on the production team.

d. In reviewing the reasons for the events outlined above, as established above, despite the fact that the period was prior to the airing of the program, Defendant in the First Instance NHK had become particularly sensitive to the matter due to the protests and other attention that news of the program was drawing from right wing organizations and other groups. The period furthermore coincided with the time of year when explanations to various groups were necessary so that the budget of the Defendant in the First Instance NHK would be approved by the Diet, putting on edge the nerves of the chief budget officer and executives of the Defendant in the First Instance NHK. Hoping to evade a situation in which the program would cause a change in the budget, Matsuo and Nojima made efforts to meet with Diet members, during which Diet members called for "a fair and impartial" program. Considering this information together with backdrop of the time and the comments then made, it can be confirmed that Matsuo and Nojima took the Diet members' comments with an unnecessary amount of caution, and surmising their intention, went to the screening set to make the program as innocuous as possible, therefore directing multiple alterations so that the program would take such a form. This can be corroborated from the following facts, established above: (i) At the screening on the 29<sup>th</sup>, Nojima, who was the head of Diet-relations, got substantively involved in giving directions to Nagata, (On this point, Nojima has stated in his in-trial testimony that he was merely passing on to Nagata the result of the four-person discussion. However, since Yoshioka, the person directly in charge, participated in these discussions yet did not give Nagata any directions, and since according to information given by Nagata, he did not discuss with Matsuo or any others about the increase in segments of Professor Hata's interview, this statement is not admissible. (ii) Also, Itô made one comment to the effect that the timing [of the program] is unfavorable, as well as the comment: "the Liberal Democratic Party did not go easy on this." (On this point, Defendant in the First Instance NHK has asserted that the former comment pertained to the lateness of Nojima's return due to budget season, and the latter comment has been denied. However, in terms of the former comment, it is reasonable to interpret the comment straightforwardly, as a comment on the inopportune time to broadcast the Program in Question because it was budget season, and in terms of the second comment, in statements B-19 and B-38, Itô has not denied having made the latter comment, making Defendant in the First Instance NHK's claims inadmissible. (iii) According to (A-144), in Witness Matsuo's testimony, Matsuo made the following comments to an Asahi Newspaper journalist, "Diet member X was quite cunning. He is insistent in a roundabout way...his words insinuating something to the effect of, "Can't you read between the lines?!" Matsuo also made the comment, "[he] continued to make repeated and very forceful suggestions." Also, when asked [by the reporter] whether Nojima had been worried that if he did not follow what the Liberal Democratic Party politicians wanted him to do, they would make the budget approval process more complicated, he replied, "I would be lying if I were to say that wasn't true." (iv) Organizations having connections with politicians had knowledge of the details of the alterations made to the program and were quickly informed on the deletion of Professor Yoneyama's comments in the editing process, according to A-59, 125, 126, 135.a, A-137,

even though under normal circumstances, they would not. Confirmation of these facts supports the assertion that Defendant in the First Instance NHK had, through some method, provided these organizations rapid access to information on the Program's alteration.

Additionally, while the Plaintiffs in the First Instance claim that politicians intervened in this case with direct instructions, there is not enough evidence from witness Matsuo or witness Nojima's testimonies to prove either that the politicians, in the aforementioned meetings, gave concrete reference to or suggestions about the Program in Question beyond a general opinion, nor is there sufficient evidence to prove otherwise. Furthermore, the Plaintiffs in the First Instance assert that [Economics and Industry Minister] Nakagawa requested Defendant in the First Instance NHK to cancel the program prior to its broadcast. In addition, according to (A-179.a) and (A-179.b), Nakagawa responded to a question from a newscaster on a Fuji Television Network program in which he appeared by saying that he requested NHK to act in a fair manner stipulated in the Broadcast Law, suggesting that there was prior contact between the aforementioned representative from the Defendant in the First Instance NHK and himself. However, Nakagawa openly states in the same interview that he did have a meeting on February 2, 2001, a fact that is corroborated by information given in Nojima's affidavit and Itô's statement (B-19). It remains difficult to confirm, based solely on the above comment, whether the said Diet member did, indeed, state his opinion on the Program in Question to the individual from the Defendant in the First Instance NHK prior to the airing of the program.

e. Consequently, it follows that the editing (i.e., alteration) performed by Defendant in the First Instance NHK after January 26, 2001 was executed from intentions that do not adhere to the initial purpose of the program. Furthermore, because the research and editing of the program were measures taken for the purpose of broadcast, the action of airing the program executed by Defendant in the First Instance NHK and the alterations that were made collectively by Defendants in the First Instance NHK and DJ can be called actions which violated the expectations and trust of the Plaintiffs in the First Instance.

The Defendants in the First Instance assert that, in cases of issues where opinions are divided, broadcasters are obligated (Article 3:2) to edit a program in such a way as to clarify the debated points from as many varied viewpoints as possible. Indeed, as confirmed above, the Defendant in the First Instance NHK planned not simply to document the Women's Tribunal, but to produce an educational program that would consider the historical significance of the Women's Tribunal by placing the Women's Tribunal within a larger history dating back to the Tokyo Tribunals, and therefore situate the wartime sexual violence against women in an international current of putting it on trial as a crime against humanity. However, the Women's Tribunal which was the focus of the Program in Question, addressed responsibility for the issue of comfort women as a crime against humanity, a sensitive and hotly debated subject pertaining to issues of feminism, therefore making it necessary to edit the program from a fair, neutral, and diverse viewpoint.

However, in light of the fact that the acts of producing and airing the program as executed by Defendant in the First Instance NHK were executed following the editing process which has been established above, it cannot be denied that the Defendant in the First Instance NHK abused or deviated from the freedom to edit which is guaranteed and protected by the Constitution. Also, with respect to the Defendant in the First Instance NHK's relationship to the Plaintiffs in the First Instance who were the interviewees, their actions cannot be claimed to fall within the boundaries of editorial freedom granted to broadcasters.

f. In addition, the Defendant in the First Instance NHK asserts that the purpose of the Program that was actually aired followed the Proposal of the Program in Question, and that the changes made after the 26<sup>th</sup> were reasonable. However, on the assertion that the deleted comments of Professor Yoneyama's comments were replaced by the comments made by Chief Justice MacDonald, the problem of neutrality arises in replacing the third-party Professor Yoneyama's comments with the comments of Justice MacDonald, who was present and involved in the Tribunal itself. On the assertion that the victim's testimony was deleted because the witness's behavior during their testimony, in which they broke down in tears or fainted, left a very strong impression, does not stand to reason because the only the sections where the fainting occurs could have been deleted out, thus leaving the rest of the testimony. On the assertion that the scene of the final judgment was deleted because opinions are divided on the Emperor's responsibility, this does not stand to reason because other alternatives could have been taken, such as providing clarification that opinions are divided on whether or not the Japanese state or the Emperor of Japan is legally responsible, or airing the program with the disclaimer that the contents are not the opinion of the Defendant in the First Instance NHK. If there was a true concern of defamation against the Emperor, the phrasing of the judgment could have been put so that the responsibility lay with "the country of Japan et al," or "certain persons, unnamed"; therefore, their assertion does not stand to reason. Thus, it cannot be readily stated that there were reasonable grounds for the deletions indicated by the Plaintiffs in the First Instance.

(3) In addition, of the demands made by Plaintiff in the First Instance Nishino, regarding the demand of compensation based on the illegal violation of the late Matsui's personal expectation rights upon the deletion of her entire interview, because it is necessary to strike a balance between, on the one hand, the right to editorial freedom on the part of the program producers, and on the other hand, the expectation rights of the interviewees, it is to be understood that the interviewees cannot, in so much as they have agreed to be interviewed, demand the producer to broadcast that interview in some form. Thus, this demand has no grounds.

#### 4. Violation of the Obligation to Explain

(1) The plaintiffs assert that, because the program could never have come into being without the cooperation of the Plaintiff in the First Instance VAWW-NET, the organizer of the Women's Tribunal, and because the Plaintiffs in the First Instance provided

full cooperation at every stage over two months toward Defendants in the First Instance's research and information gathering of the Women's Tribunal, a relationship similar to a contract between the Plaintiffs and the Defendants in the First Instance was formed, thus obligating the Defendant in the First Instance to inform the Plaintiffs in the First Instance when a change in program content occurs.

On this point, the guidelines (A-95) drawn up by Defendant in the First Instance NHK stipulate the following: "If any changes occur over the course of the production process, including changes in the purpose or content of the program as communicated to the interviewee, then such changes must be explained to the interviewee." (No.2-2 (1)'Reporting') "If, in the editing process, it becomes impossible to broadcast the interview, then that fact and the reason for it must be communicated to the interviewee or the interviewees' representative prior to the broadcast." "In cases when the goal of a program is changed from changes occurring after the interview, the new goal of the program must be explained to the interviewee and consent must be obtained prior to the broadcast." (No.2-2 (3) 'Interview'), Therefore, it is evident that in the case where the goal of the program has been changed, some form of explanation must be given to the interviewee.

Considering this from the side of the interviewee, whether or not the interviewee will accept or decline to be interviewed, and the extent and depth to which the interviewee will cooperate is left entirely up to the free will of the interviewee. The issue of how the interview results will be edited, or the kind of program in which they will be used may become a contributing factor in the decision about whether or not that interviewee will choose to accept or decline, and the extent and depth to which they choose to participate. Thus, in the case where there is an unforeseen change in the program content following the interview, the interviewee has the freedom, based on his or her right to self-determination, instead of starting again [with the interview], to withdraw from the agreement, by declaring that there was a mistake and violation of conditions on which the initial decision to be interviewed was made. At the same time, it must be understood that because the program producers have editorial freedom, and because adjustments are necessary, the actual exercise of the right to self-determination on the part of the interviewee cannot extend to a demand for the editing to reflect the explanation provided at the time the decision to accept was made. Thus, as a rule, the interviewee can only either withdraw from the program or propose preferred alternatives to the program's producers, and in the case where the interviewee is subjected to significant defamation as a result of the program alteration, or where it becomes difficult to recover the damages upon the broadcast, the interviewees may demand an injunction. Of course, this does not preclude the interviewee from explaining the situation to other media organizations and seeking out [another broadcaster].

At the same time, during the production work, the extent of the change in program goal that makes an explanation necessary is not always clear. In addition, the editing work of a program is often performed right up until its airing, and there is not always enough time to provide explanations before airing the program. Thus, considering these points, to impose a legal obligation upon broadcasters to provide an explanation to interviewees in every case where changes in direction are made, is potentially to impose excessive limits upon the editing by broadcasters. In this sense, the guidelines in question point out the foundational ideas and cautionary points in dealing with issues faced in the work of gathering information for and producing programs, while also aiming to improve the ethical standards of the journalist; thus, the necessity of providing an explanation as drawn up [in the above guidelines] should be interpreted as guidelines for the ethical obligations that exist when reporting.

At the same time, as was stated above, because the self-determination of the interviewees should also be protected, it is appropriate to generally view producers and reporters of the program as obliged to explain changes in program content, and that the legal obligation to explain arises only in cases where special circumstances exist.

In addition, the Defendants in the First Instance assert that if such an obligation to explain is recognized, the freedom to broadcast cannot be upheld, but even in cases where an interviewee requests to withdraw from the program, as long as there is no injunction from the court, it is not prohibited for the program to be broadcast at the responsibility of the broadcast organization should it be viewed as appropriate to do so (whether or not compensation is to be paid upon the airing of the program for violation of trust is another issue.) Furthermore, in this case, over the progression of the program's alterations stated above, the Defendant in the First Instance NHK abused or deviated from the freedom to edit as it is respected and guaranteed in the Constitution in the execution of these alterations. Such actions are comparable with a relinquishment, of their own doing, of the autonomy and independence that is the substance of their editing rights, and thus the acknowledgement of the obligation to explain with regard to the Plaintiffs in the First Instance does not amount to an infringement of the Defendants in the First Instance's freedom to broadcast.

(2) Now, in considering the issue of whether or not special circumstances existed in this case wherein the Defendants in the First Instance bear a legal obligation to provide explanation to the Plaintiffs in the First Instance, as was stated above, the explanation of Sakagami and Kai of Defendant in the First Instance DJ to Shôji and others, the comprehensive coverage of the Women's Tribunal from its preparations to its conclusion, and the cooperation provided on the part of the Plaintiffs in the First Instance to make it possible, all contributed to a situation in which it was unavoidable that the Plaintiffs in the First Instance VAWW-NET would harbor an expectation and trust that the Program in Question would be a documentary or one which pursue such a format by objectively covering the entire process of the tribunal, from the beginning of the actual trial procedures to its final verdict, through the inclusion of victim testimonies and explanation of evidence. Therefore, because the Defendants in the First Instance were aware of the fact that a legally protected expectation and trust regarding the content of the program was held by the Plaintiff in the First Instance VAWW-NET, it must be said this case possesses the kind of particular circumstances that have been described above. While there was a significant split in the ideas and opinions surrounding the Women's Tribunal and

while the Plaintiffs in the First Instance were expected to anticipate an inquiry into its pros and cons to be conducted in the studio discussion, the Defendants in the First Instance were fully able to predict that, had the Plaintiffs in the First Instance known that the Program in Question would not give an adequate description of the Women's Tribunal, they either would not have complied with the gathering of materials, or they would not have given them special accommodations in the way that has been described above. And furthermore, it is clear that it would not have been significantly beyond the discernment of the Defendants in the First Instance to recognize their legal obligation to provide an explanation.

In this case, because the Program alterations resulted in content that departed significantly from Sakagami and Kai's description, had the Plaintiff in the First Instance VAWW-NET received an explanation of the change, they could have, as part of their right to self-determination, withdrawn from the program, sought from the Defendants in the First Instance measures to handle the situation, or explained the circumstances to other media organizations and sought media coverage from an oppositional viewpoint. However, as a result of the failure of the Defendants in the First Instance to fulfill their obligation to explain, the adoption of such measures was impeded, thus obstructing the legal benefits of the Plaintiffs in the First Instance.

On the other hand, as stated above, the interviewee does not possess the right to demand the producer to air the interview footage based solely on the compliance with being interviewed. Therefore, in the event that the interview footage is not aired, they no longer possess the legal right to an explanation from the producer (it is a separate issue whether or not it is preferable, as part of the good conscious of the producer or interviewer, for an explanation to be made either before or after the non-broadcast of the interview footage.) In this case, the subject of the interview would be excised from the program, and even if they had received some explanation earlier, the subject would not have recourse to action, nor is there a need for it. In this case, with regard to the late Matsui, because no part of her interview was ultimately broadcast, the Defendants in the First Instance do not bear any obligation to explain with regard to the late Matsui.

##### 5. On the Existence or Non-existence of Illegal Action by the Defendant in the First Instance

(1) As stated above, from the explanation made to Shôji of Plaintiff VAWW-NET by Director Sakagami of Defendant in the First Instance DJ, and the research and collection of materials performed by Defendant in the First Instance DJ, an expectation and trust was formed by the Plaintiffs in the First Instance that the program would introduce the Women's Tribunal as its central focus, and would be a documentary program or be of a similar format, that would objectively cover the entire process of the tribunal, from the beginning of the actual trial procedures to its final verdict, through the inclusion of victim testimonies and explanation of evidence. Sakagami and Kai, as individuals who are experienced in the work of producing programs, were aware of the fact that the footage gathered from the interviewee could be edited in various ways in the process of program production, and that the purpose and content of the program that would be formed from such footage could change. Likewise, in the case of the Program in Question, they were aware from the stage of material collection that the possibility for a change in program content existed, and therefore should have provided such an explanation to the Plaintiffs in the First Instance so that such misunderstandings would not develop. But such explanations were not made, and the aforementioned expectations and trust were harbored as a result of the neglect of Defendant in the First Instance DJ; thus the program that was actually aired produced the result of violating the trust and expectations of the Plaintiffs in the First Instance.

Furthermore, on January 24<sup>th</sup>, the date when Defendant in the First Instance DJ withdrew from the editing process, it was fully foreseeable judging from Yoshioka's behavior, that further changes may be made to the program by further editing executed at the hands of Defendant in the First Instance NHK. Thus, Defendant in the First Instance DJ should have requested from the appropriate person in charge at Defendant in the First Instance NHK to either seek permission to explain the alteration of the program to Plaintiff in the First Instance VAWW-NET, or should have pressed Defendant in the First Instance NHK to fulfill their obligation to explain; however, these actions were not taken.

Therefore, it must be said that Defendant in the First Instance DJ bears the responsibility for illegal actions based on the violation of expectation and trust formed by a misleading explanation provided to the Plaintiffs in the First Instance, and for their neglect to fulfill their obligation to explain to Plaintiff in the First Instance VAWW-NET regarding the alterations made to program content.

(2) Next, with regard to Defendant in the First Instance NHK, representatives from each of the Defendants in the First Instance held meetings at every opportunity beginning from the planning stages in the production of the Program in Question, and research and gathering of materials was conducted with a mutual understanding of the planned contents and purpose of the program. Furthermore, the program editing that was conducted after December 2000 included meetings with representatives from each of the Defendants in the First Instance during which opinions were exchanged, and the editing stage proceeded with their mutual understanding, thus rendering the production work, in substance, collaborative. Because it is clear that the Defendant in the First Instance NHK was aware of the trust and expectations held by the Plaintiffs in the First Instance, and nonetheless made the decision to proceed with the alteration of the program and air it, it must be said that their actions were illegal, as a violation of the trust and expectation of the Plaintiffs in the First Instance.

Furthermore, as established above, the Defendant in the First Instance NHK continued to make repeated alterations to the program after January 24<sup>th</sup>. And because the program's content became significantly different from the expectations of the Plaintiff in the First Instance VAWW-NET following the alterations made by Nojima, Matsuo, and Itô on January 26<sup>th</sup>, it is clear that the Defendant in the First Instance NHK, should have explained the content of the alterations to Plaintiff in the First Instance

VAWW-NET following that date. However, because Defendant in the First Instance NHK did not take such action, it must be said that their actions were illegal, as a neglect of their obligation to explain with respect to Plaintiff in the First Instance VAWW-NET.

(3) With regard to Defendant in the First Instance NEP, it is clear that in this matter, they took Sakagami's aforementioned work as its own, and were also aware of the expectations and trust of the Plaintiffs in the First Instance. Although they should have remained cognizant of Sakagami's situation through Hirose or through other means, or alternatively, should have sought better ways to handle the situation with Defendant in the First Instance NHK, neither action was taken. At the time of the withdrawal on January 24<sup>th</sup>, the obligation to explain remained unfulfilled, as with Defendant in the First Instance DJ. Thus, it must be said that the actions of the Defendant in the First Instance NEP were illegal, as a violation of the expectation and trust of the Plaintiffs in the First Instance; furthermore, it must be said that their actions were illegal as a neglect of their obligation to explain the changes in program content with respect to Plaintiff in the First Instance VAWW-NET.

(4) Also, with regard to Defendant in the First Instance DJ, while they produced and delivered the program based on the contract for the commission of program production work, after the confirmations from Defendant in the First Instance NHK and Defendant in the First Instance NEP that changes in program content were necessary, they were required to submit to these orders and had no rights to decide the program content, and as they did in fact withdraw in the midst of the editing process, [Defendant in the First Instance DJ] asserts that there is no illegal action shouldered by Defendant in the First Instance DJ as pertains to the airing of the program. However, because the Defendants in the First Instances mutually cooperated with one another towards the airing of this program, and because they took the research and editing work as their own, and because Defendant in the First Instance NHK aired the resulting program as a cooperative production of the collective Defendants in the First Instance, the action of the Defendants in the First Instance, is part of a series of organically linked actions which led to the betrayal of trust of the Plaintiffs in the First Instance, and amounts to a collective illegal action.

(5) Of the Defendants in the First Instance, Defendant in the First Instance NHK excluded Defendant in the First Instance DJ and Defendant in the First Instance NEP from the late stages of editing and deviated from the production aims of the program producer, surmising the intentions of the Diet members and altering the program to make it as uncontroversial as possible. When we consider the fact that the Defendant in the First Instance NEP and Defendant in the First Instance DJ participated in program production as subcontractors, and in accordance with their contract, were, strictly speaking, in the position of submitting to the program alterations made by the Defendant in the First Instance NHK, it must be said that their responsibility is lighter than that of the Defendant in the First Instance NHK.

## 6 The Judgment on the Plaintiff's Damages

(1) In consideration of the various circumstances of this case, including, (i) the fact that the Plaintiff in the First Instance VAWW-NET concentrated their energies on the Women's Tribunal, (ii) the fact that they cooperated with the Defendants in the First Instance in various ways, including an interview with the now late Matsui, based on their expectation and trust that they developed towards the Defendants in the First Instance regarding the program contents, (iii) the fact that despite the above, the program underwent repeated editing and that Defendant in the First Instance NHK even conducted editing on the basis of outside influence, (iv) that the airing of the program resulted in the incurring of intangible damages in the form of a violation of the aforementioned expectation and trust, (v) that, as established above, although information regarding the program alterations was forwarded to external organizations ("kankei dantai") faster than to anyone else, Defendant in the First Instance NHK failed to explain the situation to Plaintiff in the First Instance VAWW-NET, despite the latter's request for such explanation (Confirmed from A-37, 40), (vi) that furthermore, in this court case, the Defendant in the First Instance NHK firmly refused to disclose the above information, so that a part of this information was only revealed based on the internal whistle-blowing report of Nagai (see A-121.a~b, A-122, 123.a~b, B-11), violating the full honesty and candor stipulated in the Civil Procedure Code, Article 2, (vii) that meanwhile, the Program in Question, according to the expectation and trust of the Plaintiffs in the First Instance, was to have been a program which considered the historical meaning and role of the Women's Tribunal which considered wartime sexual violence as a crime against humanity, and (viii) that the program viewed as a whole was intended as an education program which presents viewpoints on the significance of the Women's Tribunal, and not intended to one-sidedly evaluate the Women's Tribunal in an negative light. In consideration of the extent of their involvement and their leadership in the instructions listed above, the Defendant In the First Instance NHK is ordered to pay the Plaintiff in the First Instance VAWW-NET for intangible damages incurred, a total amount in compensatory damages of 2 million yen (up to 1 million yen being a joint and several liability shared with Defendant In the First Instance NEP and Defendant In the First Instance DJ). The Defendant In the First Instance NEP and Defendant In the First Instance DJ are each to pay up to 1 million yen (as a joint and several liability with Defendant In the First Instance NHK).

### (2) Damages to the late Matsui

From the uncontested facts, the established facts of No. 4, 1 of the above (A-22, 30, 31, 107, 109), and the overall case made in the oral argument, it is confirmed that the late Matsui poured her energies on the organization of the Women's Tribunal, and wishing for the recovery of the dignity of former Comfort Women, engaged with fervor on the project. It is also confirmed that she felt that the contents of the aired program betrayed her expectation and trust, and felt that her own efforts were negated, as



well as feeling remorse for causing trouble to those involved with the Women's Tribunal. However, the late Matsui, in her act of accepting the interview and other acts, stood consistently as the representative for the Plaintiff VAWW-NET, and in this case, the actions of the late Matsui as an individual, independent of her role as representative of the Plaintiff VAWW-NET, are not recognized. Thus it can be said that when the intangible damages incurred by the Plaintiff in the First Instance VAWW-NET are redressed, that the damages to the late Matsui are thereupon redressed as well, and the damages of the late Matsui as an individual, separate from the damages incurred by the Plaintiff VAWW-NET, are not recognized. Thus, there are no grounds for Plaintiff in the First Instance Nishino's claims.

## **V. Conclusion**

Of the demands of the Plaintiff in the First Instance VAWW-NET toward Defendant in the First Instance NHK, an award of compensatory damages in the amount of 2 million yen, and the payment of past-due interest (up to 1 million yen as a joint and several liability with Defendant In the First Instance NEP, and Defendant In the First Instance DJ) are recognized by the court.

Of the demands of the Plaintiff in the First Instance VAWW-NET toward the Defendant in the First Instance NEP and the Defendant in the First Instance DJ, compensatory damages in the amount of up to 1 million yen, respectively, in addition to past-due interest, is recognized by the court. However, the remaining demands of the Plaintiff in the First Instance, and the demands of Plaintiff in the First Instance Nishino toward the Defendants in the First Instance are not recognized by the court.

Therefore, of Items 1 and 2 of the text of the original court decision indicating Plaintiff in the First Instance VAWW-NET's appeal, this court rules to alter sections pertaining to Plaintiff in the First Instance VAWW-NET as described in Item 1 Part 1, and Item 1 Part 3 in the text of the judgment, and deems such changes admissible to the extent described therein. The appeal of Plaintiff in the First Instance Nishino, and the appeal of Defendant In the First Instance DJ, are both dismissed. The court rules as stated in the text of the judgment.

Tokyo High Court, Civil Courts, Seventeenth Division

Presiding Judge Minami Toshifumi

Judge Andô Yuko

Judge Ikuno Kôji